

CITY OF ANGLETON, TEXAS
INDEPENDENT CONTRACTOR AGREEMENT

This Independent Contractor Agreement (“**AGREEMENT**”) is made and entered into as of the date fully executed (“**Effective Date**”), by and between City of Angleton, a political subdivision of the State of Texas, duly created and operating pursuant to Chapter 289, Acts of the 73rd Texas Legislature, Regular Session, 1993, as amended, and by operation of law, any successor-in-interest (“**CITY OF ANGLETON**”), and Reward Flip, Inc. dba I9 Sports – North Houston (“**INDEPENDENT CONTRACTOR**”) (THE CITY OF ANGLETON and INDEPENDENT CONTRACTOR may hereafter individually be referred to as a “**Party**” or collectively referred to as the “**Parties**”).

WITNESSETH:

WHEREAS, INDEPENDENT CONTRACTOR desires to provide its services to CITY OF ANGLETON pursuant to the terms and conditions contained in this Agreement;

WHEREAS, CITY OF ANGLETON desires to receive services from INDEPENDENT CONTRACTOR;

NOW, THEREFORE, for and in consideration of the mutual promises to each other, as hereinafter set forth, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereto do mutually agree as follows:

- 1) **SCOPE OF SERVICES.** INDEPENDENT CONTRACTOR shall provide program services to CITY OF ANGLETON pursuant to the terms and conditions provided herein and as hereinafter set forth in Exhibit “A”, attached hereto and incorporated herein for all purposes (the “Services”).
- 2) **TERM.** This Agreement shall be effective as of the Effective Date and shall expire on the 31st day of December, 2022 (the “Term”).
- 3) **DUTIES OF INDEPENDENT CONTRACTOR.** During the Term of this Agreement, INDEPENDENT CONTRACTOR shall have the full and complete obligation and responsibility to provide all labor, services, employees, materials and equipment required to provide the Services in accordance with the terms of this Agreement.
 - a) **No Employee Relationship.** INDEPENDENT CONTRACTOR, its employees, staff, agents, directors or assigns are not agents, employees or servants of CITY OF ANGLETON or its affiliates and shall not claim any such status or rights associated with the same. Nothing

contained herein shall authorize INDEPENDENT CONTRACTOR its employees, staff, agents, directors or assigns to assume or create any obligation or responsibility, expressed or implied, on behalf of, or in the name of, CITY OF ANGLETON, or its affiliates or to bind it in any manner.

b) **Timely Performance.** INDEPENDENT CONTRACTOR shall report to all scheduled classes or programs on time and be prepared to provide the Services. Failure by INDEPENDENT CONTRACTOR to timely report for a scheduled class or program or failure to be fully prepared to provide the Services shall constitute a breach of this Agreement for which CITY OF ANGLETON may, but is not obligated to, terminate this Agreement. Alternatively, CITY OF ANGLETON may withhold up to twenty-five percent (25%) of INDEPENDENT CONTRACTOR's fee for that particular class or program as a fee for failure to timely report for that scheduled class or program ("Late Fee").

If INDEPENDENT CONTRACTOR fails to report to said class or program at all for any reason, CITY OF ANGLETON may withhold up to one-hundred percent (100%) of INDEPENDENT CONTRACTOR's fee for that particular class or program as a fee for failure to timely report for that scheduled class or program ("No Show Fee"); it being fully acknowledged and agreed to by the Parties that the harm caused by any untimely performance or failure to be available by INDEPENDENT CONTRACTOR is incapable or difficult to estimate or cure and that the Late Fee and No Show Fee are reasonable estimates of just compensation to CITY OF ANGLETON for such breach.

c) **Warranty.** INDEPENDENT CONTRACTOR warrants to CITY OF ANGLETON that all materials and equipment to be furnished in connection with this Agreement have been properly inspected by INDEPENDENT CONTRACTOR and are of good quality and fit for their intended purpose and free from any defects, and that INDEPENDENT CONTRACTOR and its agents or employees performing under this Agreement have any and all licenses, certifications, permits and other like authorizations and documents required by law to perform the Services or to be maintained by professionals providing similar services.

d) **Drug-Free; Background Checks.** INDEPENDENT CONTRACTOR shall enforce a drug-free workplace for the INDEPENDENT CONTRACTOR and all of its employees, staff, agents, directors or assigns. This includes requiring INDEPENDENT

CONTRACTOR, its applicants and employees (for purposes of this paragraph, INDEPENDENT CONTRACTOR is required to test anyone for whom INDEPENDENT CONTRACTOR withholds and is responsible for reporting payroll taxes, using its IRS- assigned EIN, including INDEPENDENT CONTRACTOR), at INDEPENDENT CONTRACTOR's expense, to submit to a drug test prior to performing work within the Township and upon reasonable suspicion in the workplace. The remainder of this paragraph is intended to and shall apply to all of INDEPENDENT CONTRACTOR's employees, as defined above. INDEPENDENT

CONTRACTOR shall provide satisfactory proof of such testing at any time requested by CITY OF ANGLETON. CITY OF ANGLETON retains the authority to prohibit any of such INDEPENDENT CONTRACTOR'S employees, staff, agents, directors or assigns from providing the Services described hereunder based on either adverse test results or upon reasonable suspicion of drug or alcohol usage while services are being performed. INDEPENDENT CONTRACTOR shall, within thirty days of contract execution, perform a criminal background check for all of Independent Contractor's employees performing work within the Township. Such checks shall cover the previous seven (7) years, showing no convictions other than minor traffic offenses. The background checks shall be at the INDEPENDENT CONTRACTOR'S expense and be completed at least thirty (30) days prior to hosting classes or within thirty (30) days of Agreement. CITY OF ANGLETON shall retain the authority to prohibit any of such INDEPENDENT CONTRACTOR'S employees, staff, agents, directors or assigns from providing the Services described hereunder based on failure to satisfy such background checks or for any arrest involving offenses of crimes against the person, moral turpitude and/or felony offenses under state, federal or local law.

4) **TIME REQUIREMENTS.** INDEPENDENT CONTRACTOR, its employees, staff, agents, directors or assigns shall devote, during the term of this Agreement, all of the time, energy, and skills necessary for the performance of the Services and shall periodically, or at any time upon request by CITY OF ANGLETON, submit any reports requested by CITY OF ANGLETON including, but not limited to, time reports regarding the Services provided to CITY OF ANGLETON.

5) **FEES TO INDEPENDENT CONTRACTOR.** The INDEPENDENT CONTRACTOR shall pay the CITY OF ANGLETON on a "per program" basis for services in connection with this Agreement. The exact amount for each program shall be agreed upon in writing by CITY OF ANGLETON and INDEPENDENT CONTRACTOR prior to any work being performed, as set forth in attached Exhibit "B." Said payment shall be subject to reduction as provided herein.

6) **RELATIONSHIP BETWEEN THE PARTIES.** CITY OF ANGLETON retains INDEPENDENT CONTRACTOR only for the purposes and to the extent set forth in this Agreement, and INDEPENDENT CONTRACTOR's relationship to CITY OF ANGLETON shall, during the Term of this Agreement, be that of an independent contractor. CITY OF ANGLETON shall not withhold from sums becoming payable to INDEPENDENT CONTRACTOR, its employees, staff, agents, directors or assigns hereunder, any amounts for State or Federal Income Tax, Unemployment Taxes, or for FICA (Social Security) taxes, during the Term of this Agreement. Neither INDEPENDENT CONTRACTOR nor its employees, staff, agents, directors, or assigns shall be entitled to receive any benefits which employees of CITY OF ANGLETON receive, including workers' compensation, unemployment compensation, medical insurance, life insurance, paid vacations, paid holidays, pension, profit sharing, or Social Security in exchange for the Services provided to CITY OF ANGLETON.

7)

TERMINATION.

a) Unless permitted to terminate earlier pursuant to the provisions contained herein, CITY OF ANGLETON may terminate this Agreement for any reason, with or without cause, by providing thirty (30) days' notice to INDEPENDENT CONTRACTOR. In the event of failure by INDEPENDENT CONTRACTOR to perform the Services as required by this Agreement with reasonable skill and diligence, CITY OF ANGLETON shall provide written notice to INDEPENDENT CONTRACTOR of specific deficiencies in performance and shall provide INDEPENDENT CONTRACTOR ten (10) calendar days from the date of such notification to cure said deficiencies to the satisfaction of CITY OF ANGLETON. If INDEPENDENT CONTRACTOR fails or is for any reason unable to cure said deficiencies, CITY OF ANGLETON may, at its sole discretion, but is under no obligation to, terminate this Agreement.

b) INDEPENDENT CONTRACTOR may terminate this AGREEMENT with or without cause and must provide at least forty-five (45) days' written notice prior to the termination of this Agreement. Failure by INDEPENDENT CONTRACTOR to provide said notice to CITY OF ANGLETON shall constitute a breach of this Agreement for which CITY OF ANGLETON may, but is not obligated to, immediately terminate this Agreement and any other current or future Agreement with INDEPENDENT CONTRACTOR to provide other similar services.

c) Failure of CITY OF ANGLETON to terminate this Agreement or to charge INDEPENDENT CONTRACTOR with a Late Fee or No Show Fee for any incident of INDEPENDENT CONTRACTOR reporting late to a scheduled class or program, or for failing to be prepared for a scheduled class or program, or for failing to provide prior notice for cancellation of a class or program shall not constitute a waiver of CITY OF ANGLETON's right to terminate this Agreement or charge fees as set forth herein for any future breaches for programs or classes covered by this Agreement or exercise any other remedies permitted herein, by law or in equity.

8) **RELEASE, DEFENSE, AND INDEMNITY.** CITY OF ANGLETON SHALL NOT BE LIABLE FOR, AND INDEPENDENT CONTRACTOR AGREES TO RELEASE, PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY OF ANGLETON ITS SUCCESSORS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS WHATSOEVER (INCLUDING CLAIMS OF THIRD PARTIES AND CLAIMS OF SPOUSES, HEIRS, SURVIVORS OR LEGAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS OF INDEPENDENT CONTRACTOR FOR PERSONAL INJURY, ILLNESS, DEATH, PROPERTY (WHETHER REAL OR PERSONAL, OWNED OR LEASED) DAMAGE AND LOSS ARISING OUT OF OR RESULTING FROM THE PERFORMANCE OF THIS AGREEMENT AND THE SERVICES PROVIDED BY INDEPENDENT CONTRACTOR EVEN IF THE CLAIMS ARE CONTRIBUTED TO OR CAUSED BY THE SOLE, JOINT,

COMPARATIVE, CONCURRENT, ACTIVE OR PASSIVE NEGLIGENCE OF CITY OF ANGLETON. THE RELEASE, PROTECTION, DEFENSE, INDEMNITY AND HOLD HARMLESS OBLIGATIONS ASSUMED BY INDEPENDENT CONTRACTOR, AND THE LIMITATIONS AFFORDED TO CITY OF ANGLETON IN THIS PARAGRAPH INCLUDE ANY LIABILITY FOR EMPLOYMENT DISCRIMINATION AS PART OF THE TOWNSHIP'S ADA, TITLE II, TITLE VI, TITLE VII OR OTHER COMPARABLE FEDERAL OR STATE CONTINUING LEGAL OBLIGATIONS TO ENSURE A DISCRIMINATION-FREE WORKPLACE TO ITS OWN EMPLOYEES AND FACILITY, PROGRAM, PLAN OR SERVICE FOR THE PUBLIC.

a) The indemnities contained in this Agreement shall only be effective to the maximum extent permitted by the applicable law, either legislative enactment or a controlling judicial decision. If such existing or future law limits in any way the extent to which indemnification may be provided to an indemnitee that is negligent, solely negligent, or otherwise at fault and, notwithstanding the choice of law provisions set forth herein, such law is applicable to interpretation of this Agreement, then this Agreement shall automatically be amended to provide that the indemnification provided hereunder shall extend only to the maximum extent permitted by such law.

b) For the purposes of this paragraph 8, the phrase "arising out of or resulting from the performance of this Agreement" shall be broadly construed to include, but not be limited to, not only formal work, but also any occurrences at the work site, including transportation to and from the work (other than personal or public transportation to the work site), breaks of all kinds, including, without limitation, breaks for meals and/or rest, horseplay of all kinds, or volunteering of all kinds to assist others in their work.

9) **REMEDIES.** INDEPENDENT CONTRACTOR's sole remedy for a default by CITY OF ANGLETON shall be to terminate this Agreement. INDEPENDENT CONTRACTOR shall not be entitled to any economic or financial damages whatsoever from CITY OF ANGLETON or its respective affiliates, officers, directors, employees, agents, attorneys, successors and assigns.

10) **SEVERABILITY.** Any provision of this Agreement, which is invalid or unenforceable in any jurisdiction, shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

11) **GOVERNING LAW/VENUE.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, with venue in Brazoria County, Texas.

12) **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all

of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

13) **HEADINGS FOR CONVENIENCE.** Section, subsection and paragraph headings are inserted for convenience of reference only and shall not in any way affect the meaning and interpretation of this Agreement.

14) **LAWS AND ORDINANCES. COMPLIANCE WITH ALL APPLICABLE STATE & FEDERAL LAWS, TO INCLUDE BUT NOT LIMITED TO THE CIVIL RIGHTS ACT, THE THE ADA AND AND § 21.141 TEXAS LABOR CODE..** INDEPENDENT CONTRACTOR shall comply with all provisions of Titles II, VI and VII of the Civil Rights Act, as amended and the Americans with Disabilities Act (ADA), as amended. As such, all efforts will be made for reasonable modification of said program(s).

15) **EXHIBITS.** All Exhibits are incorporated for all purposes as part of this Agreement.

EXHIBIT A: Independent Contractor Services (“Services)

EXHIBIT B: Independent Contractor Compensation

EXHIBIT C: Copy of Independent Contractors Additional Fees

EXHIBIT D: Sworn Affidavit of Additional Fees

[Signatures on pages following]

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as follows:

Independent Contractor

City of Angleton

By: _____
Name: Scott Read
Title: Instructor
Tax I.D. No: 30-0490278
Date: _____

By: _____
Chris Whittaker
City Manager, City of Angleton
Date: _____

EXHIBIT “A”
INDEPENDENT CONTRACTOR SERVICES

1. INDEPENDENT CONTRACTOR DUTIES: INDEPENDENT CONTRACTOR (hereinafter sometimes referred to as “Instructor”) will provide the following:

Type of service/Instructor:	Youth Sport Leagues & Instructional Clinics
Name of class or activity:	I9 Sports
Day(s)/Date(s) Scheduled:	TBD
Time Scheduled:	TBD
Location:	TBD

a. **Enrollments.** A minimum of 4 and a maximum of 12 paid enrollments must be received by CITY OF ANGLETON prior to commencement of the class or activity. CITY OF ANGLETON reserves the right to cancel any class or activity that does not meet the minimum enrollment requirements as determined at the sole discretion of CITY OF ANGLETON.

b. **Scope.** All materials, class supplies, labor, including set-up and tear-down, equipment and services required to be performed under this Agreement are to be provided by INDEPENDENT CONTRACTOR. CITY OF ANGLETON cannot purchase supplies for INDEPENDENT CONTRACTOR utilizing CITY OF ANGLETON’s tax exempt status.

c. **Program and Participant Ratio Guidelines.** Instructor understands and acknowledges that Instructor-to-participant ratios are crucial to the success of any program, and the consideration of actual activities performed as well as the ages of participants will affect this ratio. INDEPENDENT CONTRACTOR must provide a safe program setting by providing appropriate supervision and instruction. CITY OF ANGLETON reserves the right to require additional supervision or program modification based on a mutually agreed upon state or national standard (e.g. American Camping Association, United States Tennis Association, Texas Department of Licensing and Regulation) to be provided by INDEPENDENT CONTRACTOR at the sole expense of INDEPENDENT CONTRACTOR based upon the program activities and ages of participants.

2. CITY OF ANGLETON DUTIES.

a. **Facilities.** CITY OF ANGLETON shall provide the facilities for use by INDEPENDENT CONTRACTOR and shall ensure that such facilities are in proper working order. Contractor will notify CITY OF ANGLETON immediately when repairs are needed. An on-call number is available to facilitate after-hours notification of repairs – 979.849.4364 option #5. While

repairs are in progress, alternate facility accommodations may need to be made, but may not be guaranteed by CITY OF ANGLETON; it being understood that such failure to provide alternate facilities shall not be a breach of this Agreement.

b. **Registration.** The INDEPENDENT CONTRACTOR shall conduct registration, collect participation fees and process class transfers or refunds for any and all programs and registrations related to programs and services provided.

c. **Rosters.** CITY OF ANGLETON shall provide class/activity rosters to INDEPENDENT CONTRACTOR.

d. **Publicity.** CITY OF ANGLETON shall publicize the class or activity through the most appropriate medium as determined in the sole discretion of CITY OF ANGLETON. INDEPENDENT CONTRACTOR is authorized to conduct supplemental publicizing only utilizing materials preapproved by CITY OF ANGLETON.

e. **Monitoring.** CITY OF ANGLETON reserves the right to monitor classes and/or activities performed hereunder to ensure adequate quality services are being performed and that provisions of this Agreement and its Exhibits are being met.

f. **Refund Policy.** INDEPENDENT CONTRACTOR agrees to abide by CITY OF ANGLETON refund procedures as set forth below.

- i. Full refunds will be given to participants who have registered for a class or program that has been cancelled by CITY OF ANGLETON.
- ii. If the participant requests a refund more than three (3) days prior to the start of any class or program, one day class or program or recurring class or program, they will receive a full refund less a \$5.00 service charge.
- iii. If the participant attends the 1st day of class or program and *for any reason is not satisfied*, they will receive a full refund less the \$5.00 processing fee.
- iv. Participants must submit a refund request prior to the 2nd class/program meeting. After the 2nd day of class/program, NO refunds will be available.
- v. Fees associated with online transactions are not refundable.
- vi. No cash refunds are given. A refund check may take up to three to four weeks to process and receive.

3. MEDIA RELEASE. INDEPENDENT CONTRACTOR hereby releases to CITY OF ANGLETON the right to use, publish, and reproduce, for all purposes, pictures, video recordings, and printed and electronic copy of any images of INDEPENDENT CONTRACTOR while performing the Services in any and all media, including, without limitation, the Internet and print media. INDEPENDENT CONTRACTOR further grants all right, title, and interest to CITY OF ANGLETON that may exist in the finished pictures, negatives, reproductions and copies of

original prints, and further grant the right to exhibit the print in copies thereof for marketing, communications, and advertising purposes, as CITY OF ANGLETON deems fit. INDEPENDENT CONTRACTOR hereby waives the right to receive any payment for such release and waive the right to receive any such payment for the continued use thereof.

EXHIBIT "B"
INDEPENDENT CONTRACTOR COMPENSATION

CITY OF ANGLETON will be compensated twenty-five percent (25%) of all monies collected through registrations received for the following programs: sport camps, leagues, instructional programs.

Payments made to CITY OF ANGLETON

a. Youth Sports Instructional Programs: Independent Contractor shall submit one (1) payment, no later than the 5th day of the subsequent month including the previous month's rosters and payment to the Program Coordinator. All rosters shall be divided to include each class/league separately with the names and payments per participant. This check shall be noted as Program Payments.

b. Facility Rental: Payments will be set up through an automatic payment system to withhold the agreed upon amount on the 10th of each month.

EXHIBIT “C”
INDEPENDENT CONTRACTOR ADDITIONAL FEES

INDEPENDENT CONTRACTOR agrees that the below list is the exclusive, exhaustive list of all additional fees charged or which may be charged by INDEPENDENT CONTRACTOR. INDEPENDENT CONTRACTOR acknowledges, as detailed with each listed additional fee, that (i) the listed supplies and/or materials are the supplies and/or materials to be purchased with said additional fees, (ii) that the intended use of said supplies and/or materials is accurate in all material respect, and (iii) unless otherwise indicated, the participant may keep said supplies and/or materials upon conclusion of the program:

Fee Name:	Fee Amount:	Supplies to be Purchased:	Intended Use:
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A
N/A	N/A	N/A	N/A

EXHIBIT “D”
SWORN AFFIDAVIT IN SUPPORT OF ADDITIONAL FEES

BEFORE ME, the undersigned authority, on this day personally appeared ___ who swore on oath that the following facts are true:

"My name is _____. I am over 18 years of age, of sound mind, and fully competent to make this affidavit. I have personal knowledge of the facts stated herein and they are all true and correct."

"On _____, CITY OF ANGLETON contracted with me to provide services as provided in the Independent Contractor Agreement (“Agreement”) to which this affidavit is attached as Exhibit D. Attached to said Agreement is Exhibit C, as proof of the additional fees to be charged pursuant to the Agreement (“Additional Fees”)."

"I hereby warrant, represent and attest that these Additional Fees are correct and represent the true and accurate out of pocket expenses to me of the items on which said Additional Fees are based and have not been increased in any way to provide for or charge other bonus or surplus amounts, including but not limited to administrative or management related fees or charges."

SIGNED on this _____ day of _____, 20_____.

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME on _____, by _____.

Notary Public, State of Texas