



**CITY OF CARTERSVILLE
PARKS & RECREATION DEPARTMENT
AGREEMENT FOR OUTSIDE PROVIDERS**

THIS IS AN AGREEMENT, made this 5 day of November 2020, between:

THE CITY OF CARTERSVILLE, a municipal corporation organized and operating under the laws of the State of Georgia, with a business address of 100 Pine Grove Road P.O. Box 1390 CARTERSVILLE, Georgia 30120, hereinafter referred to as the "CITY."

and

SAM BARFIELD dba ETOWAH DISC GOLF hereinafter referred to as "PROVIDER". CITY and PROVIDER may hereinafter collectively be referred to as "the Parties".

In consideration of the mutual obligations of the Parties and for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1.0
PROVIDER's Services and Responsibilities**

1.1 PROVIDER shall conduct services generally described as **DISC GOLF TOURNAMENTS** at the following locations: Deerfield Park 10 Pine Grove Road, Cartersville GA 30120.

1.2 The PROVIDER's services shall be performed during the days and hours described in **Exhibit "A,"** attached hereto and incorporated herein by reference.

1.3 The PROVIDER and The Director of the Parks & Recreation Department or his designee, hereinafter referred to as the "DEPARTMENT", will agree upon program schedules. ***PROVIDER agrees to submit a Program Request Form to the Coordinator for each program being proposed eight (8) weeks prior to the beginning of each session.***

1.4 The fees charged to each participant will be as described in **Exhibit "A"** for Tournament participants.

1.5 The PROVIDER warrants to CITY that it is not insolvent, it is not in bankruptcy proceedings or receivership, nor is it engaged in or threatened with any litigation or other legal or administrative proceedings or investigations of any kind which would have an adverse effect on its ability to perform its obligations under this Agreement.

Parks and Recreation Agreement for Outside Providers

1.6 The PROVIDER agrees that it shall be solely responsible for all costs and/or expenses associated with, or as a result of its operation under this Agreement. The PROVIDER stipulates and certifies that it is qualified to provide the programs it is hired to provide, maintains the education and required licenses or permits necessary to provide the programs, and shall continue to maintain such licenses or permits during the term of this Agreement.

1.7 This Agreement is considered a non-exclusive Agreement between the Parties. The CITY shall have the right to purchase the same kind of services to be provided by the PROVIDER from other sources during the term of this Agreement. The PROVIDER is not precluded from providing the same or similar services for other parties so long as such other engagements do not interfere with the PROVIDER'S provision of services to the CITY.

1.8 ***The DEPARTMENT must approve any promotional material, flyers, and banners advertising the programs prior to its release. The following content and topics shall specifically be prohibited: sexually explicit materials, profanity, child pornography, alcoholic beverages, tobacco products, adult movies, adult book/video stores, adult entertainment establishments, massage parlors, pawn shops, and tattoo parlors or shops.***

1.9 The PROVIDER shall not promote any privately owned business in a CITY park/facility or solicit any participant in a CITY park/facility activity for any privately owned business. The PROVIDER may not use said facilities to conduct personal business including workshops, clinics, seminars, camps, private sessions, or any other activities that are outside the scope of service described in (**Exhibit "A"**). It is further understood that such action(s) may result in immediate termination of the Agreement and the forfeiture of all compensation due to the PROVIDER.

1.10 The PROVIDER shall abide by the policies, procedures, rules and regulations of the DEPARTMENT and the CITY as promulgated from time to time. **PROVIDER understands and agrees that the DEPARTMENT shall have first priority for use of CITY facilities, notwithstanding any other provisions of this Agreement**

1.11 All assistants, substitutes, and subcontractors utilized by the PROVIDER must have prior written approval of the DEPARTMENT.

1.12 PROVIDER shall provide necessary supervisory personnel to ensure that the participants of the programs obey all applicable policies, procedures, Rules and Regulations.

1.13 The DEPARTMENT or CITY may require that the PROVIDER not be permitted to utilize specific assistants, substitutes, or subcontractors of PROVIDER who have failed to follow any policies, procedures, rules or regulations applicable to the use of the facility.

1.14 Although the CITY shall not control the PROVIDER'S techniques, methods, procedures, or sequence of instruction, the PROVIDER will comply with the CITY'S and DEPARTMENT'S policies, rules, regulations and procedures and shall not interfere with their operation, nor harm or damage the equipment or facilities afforded to PROVIDER for his/her programs, nor otherwise disrupt the other on-site activities being offered at such public facilities.

1.15 The PROVIDER also acknowledges that he or she is primarily responsible for the conduct of the participants in all programs under the PROVIDER'S charge.

Parks and Recreation Agreement for Outside Providers

1.16 If the PROVIDER will be providing services directly with minor children without parental supervision, the PROVIDER shall, prior to commencing services under this Agreement, comply with the CITY's policy regarding criminal background screening. The CITY will furnish the PROVIDER with a CITY approved National Screening Program for all the provider's counselors, coaches, volunteers, subcontractors, employees or any other individuals that will come in contact with a child, at the PROVIDER's sole expense. A Consent and Release Form to conduct a criminal background must be executed by any of PROVIDER's employees or any individual who will come in contact with a child at the CITY through PROVIDER or at PROVIDER's direction. The result of such inquiry may be deemed acceptable by the CITY in its sole and complete discretion, and the CITY may reject any individual from participating in any program based upon such results. *If the PROVIDER has recently had a background screening conducted by another agency, the CITY, at its sole discretion, may accept that background screening and waive the requirement of a new background screening.* PROVIDER and its employees must also execute a Waiver and Release of Liability holding the CITY and harmless.

1.17 The CITY shall require all participants in all programs to sign a Waiver and Release of Liability.

1.18 The PROVIDER shall only use the facilities identified by the CITY, and such use shall be limited to CITY designated activities.

1.19 The PROVIDER shall not sublet any CITY facilities to any entity.

ARTICLE 2.0 **Equipment & Materials**

2.1 All program materials and equipment needed or pertaining to the above stated programs will be provided by the PROVIDER at his/her own cost and expense. However, PROVIDER may require participants to obtain certain materials required in the programs by providing a list of such materials (with approximate costs) to the participants. If PROVIDER makes such materials available to participants, they must be sold at PROVIDER's cost. All equipment provided by the PROVIDER shall be used in strict accordance with equipment manufacturer's instructions and in accordance with all applicable laws.

2.2 The sale of merchandise is restricted to those materials utilized in and for the programs. Fundraising activities conducted by the PROVIDER will not be permitted. The PROVIDER shall obtain the CITY's approval of any merchandise to be sold prior to its distribution or sale.

2.3 The CITY will provide no storage space to the PROVIDER, unless otherwise mutually agreed upon in a separate written agreement.

2.4 Any supplies or equipment left at the facility will be the responsibility of the PROVIDER. The CITY will not be responsible for any lost, stolen, or broken equipment or supplies.

2.5 The PROVIDER shall inspect the premises and equipment offered to him/her for his/her proposed activity and if he or she finds anything wrong with the premises or equipment before each program commences that cannot be corrected immediately by the DEPARTMENT, the program shall be cancelled and the matter reported to the DEPARTMENT for correction. If the PROVIDER elects to hold his/her programs in the facility provided, it will be presumed that the PROVIDER has inspected the premises and facilities and equipment provided for such programs and has accepted same as being safe and suitable for the use intended.

ARTICLE 3.0
Program Size Minimums:

3.1 ACTIVE: Program sizes shall meet the minimum numbers of participants for each program as designated in **Exhibit "A."**

ARTICLE 4.0
Compensation and Method of Payment

4.1 In consideration of the releases and indemnities contained herein and of the PROVIDER's services in connection with the programs and activities described herein, the CITY shall be entitled to a commission consisting of **20%** of the registration fees paid by all program participants to the PROVIDER, and the PROVIDER shall be entitled to **80%** of such fees paid. PROVIDER shall be entitled to retain all non-registration fees paid by participants to PROVIDER, i.e. PROVIDER membership fees and costs for uniforms and pictures to participants.

4.2 The PROVIDER agrees to provide the CITY with schedules of fees to be charged to participants in conformance with **Exhibit "A"** and to collect all fees from participants. The PROVIDER will submit a completed registration report, in the format designated by the CITY, to the CITY within two weeks of the close of registration for each program. The CITY will check for residency verification & then send the PROVIDER an invoice, including supporting documentation, for the total amount due to the CITY. Each payment will include the registration commission. Payments will be made to the CITY within fourteen (14) business days of PROVIDER's receipt of each invoice.

4.3 It is the responsibility of the PROVIDER to pay all applicable local, state, and federal taxes associated with this Agreement, and to acquire and pay for all necessary permits, licenses, and insurance required for the execution of this Agreement.

ARTICLE 5.0
Independent PROVIDER

5.1 This Agreement does not create an employee/employer relationship between the Parties. It is the intent of the Parties that the PROVIDER is an independent contractor under this Agreement and not a CITY employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, The State Workers Compensation Act, and the State unemployment insurance law. The PROVIDER shall retain sole and absolute discretion in the judgment of the manner and means of carrying out PROVIDER's activities and responsibilities hereunder. The PROVIDER agrees that it is a separate and independent enterprise from the CITY, that it had full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work required hereunder. This Agreement shall not be construed as creating any joint employment relationship between the PROVIDER and the CITY and the CITY will not be liable for any obligation incurred by PROVIDER, including but not limited to unpaid minimum wages or overtime premiums.

Parks and Recreation Agreement for Outside Providers

5.2 PROVIDER warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the PROVIDER to solicit or secure this Agreement, and that it has not paid or agreed to pay any person, company, corporation, individual or firm any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the CITY shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 6.0
Insurance

6.1 PROVIDER shall not provide any service until all insurance required under this paragraph has been obtained and approved by the CITY.

6.2 Certificates of Insurance. Certificates of Insurance reflecting evidence of the required insurance shall be filed with the CITY prior to the commencement of this Agreement. These Certificates shall contain a provision that coverages afforded under these policies will not be cancelled until at least forty-five days (45) prior written notice has been given to the CITY. Policies shall be issued by companies authorized to do business under the laws of the State of Georgia. Financial Ratings must be not less than "A-VI" in the latest edition of "Best Key Rating Guide", published by A.M. Best Guide.

6.3 Insurance shall be in force until the obligations required to be fulfilled under the terms of the Agreement are satisfied. In the event the insurance certificate provided indicated that the insurance shall terminate and lapse during the period of this Agreement, then in that event, the PROVIDER shall furnish, at least thirty (30) days prior to the expiration of the date of such insurance, a renewed Certificate of Insurance as proof that equal and like coverage for the balance of the period of the Agreement and extension thereunder is in effect. The PROVIDER shall not provide any service pursuant to this Agreement unless all required insurance remains in full force and effect.

6.4 Commercial General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

\$1,000,000	Combined Single Limit – each occurrence
\$2,000,000	Combined Single Limit – general aggregate
\$1,000,000	Personal Injury
\$1,000,000	Products/Completed Operations Aggregate

PROVIDER shall have its insurer name the CITY OF CARTERSVILLE as an additional insured on its General Liability policy.

6.5 Worker's Compensation insurance shall be maintained during the life of this Agreement to comply with the statutory limits for all employees, and in the case any work is sublet, the PROVIDER shall require the subcontractor(s) similarly provide Workers Compensation Insurance for all the latter's employees unless and until such employees are covered by the protection afforded by the PROVIDER. The PROVIDER and his subcontractors shall maintain during the life of this Agreement Employers Liability Insurance. The following limits must be maintained:

Parks and Recreation Agreement for Outside Providers

- A. Workers Compensation Statutory
- B. Employer's Liability \$100,000 each accident
\$500,000 Disease-policy limit
\$100,000 Disease-each employee

If PROVIDER or its subcontractor claims to be exempt from this requirement, PROVIDER shall provide CITY proof of such exemption along with a written request for CITY to exempt PROVIDER, written on PROVIDER or subcontractor's letterhead.

6.6 PROVIDER shall also maintain Auto Liability and Directors and Officers insurance with limits reasonably acceptable to CITY during the term of this Agreement.

6.7 The CITY shall each be named as an additional insured and loss payee on all policies required by this Agreement.

ARTICLE 7.0
Term and Termination

7.1 After a two (2) month trial period, the programs will be evaluated by the DEPARTMENT, and the remainder of this Agreement will either be terminated or continue in full force and effect. If at any time after the two (2) month evaluation, program enrollment should fall below the required minimum, the PROVIDER will be allotted four (4) weeks to bring enrollment up to the required minimum. The programs will be reevaluated and execution or termination of the contract will be determined by the DEPARTMENT.

7.2 The term of this Agreement shall commence upon the date of execution hereof and shall remain in effect until **June 30, 2021**, unless terminated sooner as provided in this Article. Renewal of this Agreement beyond said term shall require the mutual written agreement of the CITY and PROVIDER.

7.3 This Agreement may be terminated by the CITY for convenience upon giving of at least thirty (30) days prior written notice of termination to the PROVIDER at the PROVIDER's address set forth herein at the sole and exclusive discretion of the CITY. This Agreement may be terminated by the City immediately by written notice to PROVIDER upon any willful, reckless, or grossly negligent act or omission by PROVIDER or any of its officers, agents, employees, or volunteers.

7.4 This Agreement may be terminated by PROVIDER upon giving at least thirty (30) days written notice of termination to the CITY.

7.5 PROVIDER must notify the DEPARTMENT in writing of any program cancellations at least ten (10) business days prior to the scheduled cancellation.

7.6 CITY reserves the right to cancel or reschedule any of the PROVIDER's programs, in the case of scheduling conflicts or other emergencies, as determined by the DEPARTMENT.

ARTICLE 8.0
Indemnification

8.1 PROVIDER agrees to indemnify and hold harmless the CITY, their trustees, elected and appointed officers, agents, servants and employees, from and against any and all claims, demands, or causes of action of whatsoever kind of nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, including paralegal fees, liabilities, damages, orders, judgments, or decrees, sustained by the CITY or any third party arising out of, or by reason of, or resulting from the will full or negligent acts, errors, or omissions of the PROVIDER or its agents, officers, volunteers or employees.

8.2 The Parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the PROVIDER's responsibility to indemnify.

ARTICLE 9.0
Americans with Disabilities Act

9.1 PROVIDER shall not discriminate against any person in its operation and activities in its use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA"), in the programs while providing any services funded in whole or in part by the CITY, including Titles I and II of the ADA and all applicable regulations, guidelines, and standards.

9.2 PROVIDER's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor which cannot be lawfully or appropriately used as a basis for delivery of service.

ARTICLE 10.0
Miscellaneous

10.1 No modification, amendment, or alteration of the terms and conditions contained shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

10.2 This Agreement is non-transferable or assignable, and PROVIDER agrees not to transfer or assign the performance of services called for in the Agreement.

10.3 This Agreement sets forth the full and complete understanding of the Parties as of the effective date, and supersedes any and all negotiations, agreements, and representations made or dated prior to this Agreement.

10.4 The PROVIDER shall pay reasonable attorney's fees to the City should the City be required to incur attorney's fees in enforcing the provisions of this Agreement.

10.5 Time is of the essence of this Agreement.

Parks and Recreation Agreement for Outside Providers

10.6 Each of the individuals who execute this Agreement agrees and represents that he is authorized to execute this Agreement on behalf of the respective entity. Accordingly, the City and PROVIDER both waive and release any right to contest the enforceability of this Agreement based upon the execution and/or approval thereof.

10.7 Nondiscrimination: In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and all other provisions of Federal law, the PROVIDER agrees that, during performance of this Agreement, Consultant, for itself, its assignees and successors in interest, will not discriminate against any employee or applicant for employment, any subcontractor, or any supplier because of race, color, creed, national origin, gender, age or disability. In addition, PROVIDER agrees to comply with all applicable implementing regulations and shall include the provisions of this Section in every subcontract for services contemplated under this Agreement.

10.8 IMMIGRATION COMPLIANCE - During the entire duration of this Agreement, PROVIDER must remain in compliance with Georgia Security and Immigration Compliance Act of 2007 and Georgia code § 13-10-91 and § 50-36-1.

10.9 E-VERIFY - PROVIDER shall be required to be registered for and comply with Federal E-Verify requirements and the requirements of the Georgia Security and Immigration Compliance Act, O.C.G.A. § 13-10-91. PROVIDER shall submit the required affidavit promulgated by the Georgia Department of Labor to affirm its compliance. "E-Verify" is an internet-based employment eligibility verification program, operated by the U.S. Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA), that allows employers to electronically verify through an online government database the work eligibility of newly hired employees. E-Verify is administered by U.S. Citizenship and Immigration Services (USCIS).

Parks and Recreation Agreement for Outside Providers

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seal the day and year first written above.

CITY:


ATTEST:

Julia Drake
JULIA DRAKE, CITY CLERK

BY: Matt Santini
MATT SANTINI, MAYOR

PROVIDER:

NOTARY:

Debra R Herrow


BY: Sam Barfield
NAME: SAM BARFIELD
TITLE: PRESIDENT
COMPANY: ETOWAH DISC GOLF

[AFFIX CORPORATE SEAL]

