

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT for professional services is made by and between the City of Madison, Alabama, a municipal corporation located at 100 Hughes Road, Madison, Alabama 35758, hereinafter referred to as "City," and Baseline Sports Construction, a Tennessee corporation located at 3600 Henson Road, Knoxville, TN 37921, hereinafter referred to as "Consultant."

WITNESS TO:

WHEREAS, the City of Madison requires the installation of LED lighting for the Intergraph fields (herein "the Project"); and

WHEREAS, the best interests of the City and its residents will be served by retaining a profession with experience designing and installing similar projects; and

WHEREAS, Consultant is an experienced and unique provider of the services required and is capable of providing the same in a professional, timely manner; and

WHEREAS, the City desires to avail itself of Consultant's unique abilities and services and Consultant desires to provide same to City;

NOW, THEREFORE, in consideration of mutual covenants and agreements herein set forth, the parties, intending to be legally bound, hereby agree as follows:

SECTION 1: SCOPE OF WORK

- A. Pursuant to the provisions of this Agreement, Consultant will provide the following services to City: installation of LED lights for the Intergraph fields.
- B. Consultant agrees to comply with all applicable Federal, State, and Local laws and regulations, including, but not limited to, those pertaining to wages and hours of employment. By signing this Agreement, the parties affirm, for the duration hereof, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.

- C. Consultant shall ensure that its work complies with the Americans with Disabilities Act (ADA), the City's ADA Pedestrian Facilities Plan, dated August 29, 2016, as well as the City's ADA Self-Evaluation and Transition Plan, dated August 29, 2016.
- D. Consultant shall thoroughly and proficiently perform all services using reasonable diligence and exercising the best judgment, care, and skill ordinarily used by similar persons providing the same or similar services under the same or similar circumstances.
- E. Consultant shall furnish all supplies, materials, machinery, equipment, and means, except as otherwise expressly specified herein, necessary or proper to carry out the services required by this Agreement.
- F. Consultant shall perform all services in accordance with the provisions of this Agreement and shall be solely responsible for the legality, safety, efficiency, and adequacy of the services performed hereunder.
- G. Throughout the term of this Agreement, Consultant shall provide City reasonable and meaningful access via telephone and e-mail to Consultant's principals for the purpose of fulfilling the contracted-for deliverables.
- H. Any and all information provided to Consultant by City, of the type normally available for the proposed services, which has been prepared by or for others (including, but not limited to, the City, the State of Alabama, and various federal agencies) will be considered "best available information" and thus appropriate and sufficient for the services proposed herein.
- I. By signing this contract, Consultant represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

SECTION 2: EXPENSE STRUCTURE; OPTIONAL SERVICES & FEES

- A. The total compensation for services rendered by Consultant pursuant to Section 1.A. shall be an amount not to exceed **one hundred twenty-eight thousand two hundred fifty-three dollars (\$128,253.00)**, payable on a monthly basis as services are rendered and invoiced to City. Consultant is solely responsible for submission of monthly detailed invoices outlining the work performed and the payment due from City, terms net thirty (30) days.
- B. All fees and expenses related to Consultant's performance are included in the total

compensation set forth in Section 2.A., and Consultant shall not be compensated for any other expenses.

- C. All taxes applicable to the payments made to Consultant hereunder shall be the sole responsibility, obligation, and liability of Consultant.
- D. Payment of compensation as set forth in Section 2.A. vests complete and irrevocable ownership in the City of all paid-for deliverables created by Consultant and City shall be perpetually vested with full usage rights of the same.
- E. In the event that Consultant determines that additional services are necessary, Consultant shall notify the City with reasonable promptness and explain the facts and circumstances giving rise to the need. Consultant shall not proceed to provide any additional services until Consultant receives written authorization of City.

SECTION 3: INDEMNIFICATION & INSURANCE

Consultant agrees to hold harmless and indemnify City from and against all injuries, deaths, claims, suits, damages, losses, liabilities, judgments, costs, and expenses resulting from willful malfeasance, bad faith, or gross negligence on the part of Consultant or its individual employees, officials, agents and representatives in the course of Consultant providing services pursuant to the instant Agreement.

To the extent allowed by law, City agrees to hold harmless and indemnify Consultant from and against all injuries, deaths, claims, suits, damages, losses, liabilities, judgments, costs, and expenses resulting from willful malfeasance, bad faith or gross negligence on the part of City or its individual employees, officials, agents and representatives in the course of receiving services from Consultant pursuant to the instant Agreement.

Consultant further agrees to maintain and keep in full force and effect at all times during the term of this Agreement and any extensions thereof the following insurance policies: Commercial General Liability Insurance, including officers, agents, and employees with per-project policy limits of not less than two million dollars (\$2,000,000.00) for each occurrence and in the aggregate for bodily injury and property damage; automobile liability covering owned and rented vehicles operated by Consultant with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit and aggregate for bodily injury and property damage; two million dollars (\$2,000,000.00) Products/Completed Operations Aggregate; one million dollars (\$1,000,000.00) Personal and Advertising Injury limits combined single limit or equivalent; one million dollars (\$1,000,000.00) workers' compensation; and one million dollars (\$1,000,000.00) Umbrella/Excess Liability Insurance. The Consultant shall name the City and its employees, agents, and servants as additional insureds in said policies and shall provide endorsements evidencing such coverage upon City's request. In addition, Consultant shall carry professional liability insurance covering Consultants negligent acts, errors, and omissions in its performance

of professional services with policy limits of not less than one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate per project.

SECTION 4: COMMENCEMENT; TERM

This Agreement shall come into effect when the authorized representatives of each party finally execute and affix their respective signatures hereto in their duly authorized capacities. In the event the signatures are affixed on different dates, the date of the latter signature shall be the date the Agreement comes into effect. This Agreement shall expire upon the City's acknowledgement of Consultant's fulfillment of the terms of the Scope of Work contained herein.

SECTION 5: TERMINATION

This Agreement may be terminated by either party, with or without cause, upon the provision of thirty (30) days' notice to the other party. In the event of termination, Consultant shall be entitled to payment only for services rendered as of the date of termination, and City shall be entitled to receive only that work product created by Consultant as of the date of termination.

SECTION 6: INDEPENDENT CONTRACTOR RELATIONSHIP

It is mutually understood and agreed, and it is the intent of the parties, that an independent contractor relationship be and is hereby established under the terms and conditions of this Agreement. It is further mutually understood and agreed that employees of Consultant are not nor shall be deemed to be employees of City and that employees of City are not nor shall they be deemed to be employees of Consultant.

SECTION 7: EXCUSED PERFORMANCE

In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree or order of any governmental agency or authority, whether the same shall be of Local, State or Federal origin, or because of riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God or any other reason whatsoever which is not within the control of the party whose performance is interfered with and which, by the exercise of reasonable diligence, said party is unable to prevent, the party so suffering may, at its option, suspend, without liability, the performance of its obligations hereunder during the period of such suspension of performance of duties hereunder.

SECTION 8: ASSIGNMENT

Neither Consultant nor City may assign or transfer this Agreement or any part thereof

without the express, written consent of the other party.

SECTION 9: ENTIRE AGREEMENT: WAIVER

This Agreement constitutes the entire Agreement between the parties with respect to the provision of the services outlined herein and there are no other or further written or oral understandings or agreements with respect thereto. No variation or modification of this Agreement and no waiver of its provisions shall be valid unless in writing and signed by duly authorized representatives of Consultant and City. This Agreement supersedes all other agreements between the parties.

SECTION 10: NOTICES

All notices to City shall be addressed to:

*Director
City of Madison Recreations Department
100 Hughes Road
Madison, Alabama 35758*

All notices to Consultant shall be addressed to:

*Steve Clift
Baseline Sports Construction, LLC
3600 Henson Road, Knoxville, TN 37921*

SECTION 11: GOVERNING LAW

This Agreement shall be governed by the laws of the State of Alabama.

SECTION 12: MISCELLANEOUS PROVISIONS

- A. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of the Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
- B. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

Baseline Sports Construction, LLC

By: _____

Its: _____

Date: _____

STATE OF _____ §

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COUNTY OF _____ §

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I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that _____, whose name as _____ of Baseline Sports Construction, LLC is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, s/he, as such officer and with full authority, executed the same voluntarily for and as the act of said entity.

Given under my hand this the _____ day of _____, 2023.

Notary Public