

## **Recreation Services Contract**

### **City of Waukesha – Youth Sports Team Photography**

This Contract is entered into by and between the City of Waukesha and its Parks, Recreation and Forestry Department, 1900 Aviation Drive, Waukesha, Wisconsin 53188, referred to herein as the City; and Empire Photography, 1911 Monroe Street, Madison, WI 53711, referred to herein as Provider. City and Provider together are referred to herein as the Parties.

### **Recitals**

The City wishes to provide members of its youth sports teams with an opportunity to purchase professional photographs of themselves and their teams. Provider has represented to the City that it has the ability to provide such services, and is willing to enter into a contract with the City to do so.

Now, therefore, the Parties agree and contract as follows:

1. **General Terms.** The City will make designated space available to Provider, for Provider to carry out its recreation service activities, referred to herein as the Services, subject to all of the terms and conditions of this Contract. The City shall not contract with any other provider of the same services, provided Provider is not in breach of this Contract, and shall allow Provider to offer its services to all participants in youth sports activities sponsored by the City. The City will have no obligations other than those specifically assumed by the City in this Contract. Provider is an independent contractor, and is solely responsible, at its sole expense, for the conduct of the Services.
2. **Locations.** The City shall designate the locations at the William R. Oliver Youth Sports Complex and at Mindiola Park at which the Provider will provide its Services. All services to be performed by Provider shall take place within the designated locations.
3. **Dates.** Provider shall perform its Services only on scheduled practice days or game days, as approved by the City.
4. **Marketing and Scheduling.** Provider shall be solely responsible for marketing and promoting its services, and for scheduling the dates of photo shoots. Photo shoots must take place no later than the third week of the season, and may not conflict with scheduled games. Rain dates may be one week later. City shall cooperate in good faith but shall have no obligation to promote Provider's services, schedule shoots, or arrange for the presence of participants or teams.
5. **Permitted Activities.** Provider shall use the designated location exclusively to provide the Services described in section 7. No other activities may be conducted by Provider in the location without the City's prior, express, written approval.
6. **Term.** The term of this Contract commences upon its execution and terminates December 31, 2019.
7. **Services.** Provider shall provide the Services according to the following terms:
  - a. Provider shall offer photography services to all participants in City youth sports programs specified by the City. The services are subject to the following:
    - i. Provider shall provide order forms to the City at least 6 weeks prior to scheduled photo shoots. Additional forms must be made available on the day of the shoot.
    - ii. Photography packages, including specialty items, shall be delivered to purchasers no later than 4 weeks after each photo shoot.

- iii. Provider's products and services shall be 100% guaranteed for quality and compliance with Provider's marketing materials.
  - iv. Provider shall submit a sales volume report for each season to the City, with each payment.
  - v. Provider shall provide one complimentary coach plaque to each team, the design of which must be approved by the City.
  - vi. Provider shall provide one complimentary team photo composite, framed or plaque, to each youth sports sponsor, the design of which must be approved by the City.
- b. Prices for prints and other products shall be as follows:
- Team: 5x7 \$9.50; 8x10 \$12.00
- Individual: Baseball Card Size 2 1/4 x 3 1/4; 5 X 7 - 2@\$14.00; 8 X 10 - \$14.00
- c. Products offered by Provider shall be of at least good quality, according to generally-accepted standards of quality in the field of professional photography.
  - d. Provider shall be solely responsible for obtaining all required releases for photographs.
  - e. Provider shall be solely responsible for providing all equipment, materials, and personnel required to perform its Services.
  - f. Provider shall be solely responsible for contracting with participants for Services, and City shall have no responsibility to collect any fees on behalf of Provider.
  - g. Provider shall ensure that all persons providing the Services are neat and clean in appearance, and are courteous to participants.
  - h. Provider shall ensure that the service location is kept clean, and returned to a clean condition when services are complete. Provider shall be responsible for the collection of all trash and waste generated during the Services, and placing it in containers designated by the City.
  - i. Provider shall be responsible for any damage to the Premises or City property equipment caused by its employees, volunteers, participants in its events, or invitees to its events, occurring during its events. Provider shall replace or repair all damaged items, at its sole expense.
  - j. Provider shall ensure that all set-up of equipment for the Services does not disrupt other scheduled activities.
8. **City Obligations.** The City's only obligations under this Contract are to provide designated locations where Provider will provide its services, and not to interfere with Provider's activities in performance of this Contract. In general, Provider shall be responsible, at its sole expense, for the operation of the Services, and the City shall be responsible only for the specific obligations listed in this Contract.
9. **Relationship of Parties.** The Parties are independent contractors, and this Contract shall not be deemed to create any other relationship between them, including that of landlord and tenant. Neither Party is authorized to bind the other contractually, and neither shall be responsible for the acts or omissions of the other's employee or agents.
10. **Indemnification.** Provider shall indemnify and hold the City harmless from any and all third-party claims, demands, causes of action, lawsuits, judgments, penalties, and other liabilities of any kind, including court costs and actual attorney fees, arising out of, or connected in any way with:

- a. The presence of Provider or Provider's employees or agents on City property.
  - b. The conduct of photography services by Provider or Provider's employees or agents, including, but not limited to, damages for personal injury, death, or casualty loss to personal property.
  - c. Provider's breach of any provision of this Contract.
  - d. Provider's violations of any laws.
11. **Insurance.** Provider shall maintain insurance of the following kinds and for not less than the following limits, at Provider's sole expense, at all times during the term of this Contract. Policies shall be occurrence, and not claims-made, policies. Provider shall obtain an endorsement making the City an additional insured and loss payee, and Provider's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in Wisconsin. Upon the execution of this Contract, Provider shall deliver a certificate of insurance to City showing that all requirements of this section are met.
- a. Commercial general liability, including products-completed operations, \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
  - c. Umbrella, \$1,000,000.
12. **Fees.** Provider shall pay to City \$4025.00 each year during the Term of this Contract, in two equal installments due no later than July 31 and September 30 each year.
13. **Default in Payment of Fees.** Time is of the essence with respect to the payments required in section 12. A default in payment of any installment may result in the immediate termination of this Contract, at the City's option.
14. **Public Accommodations Law.** Provider shall not discriminate against any persons for concession services on the basis of sex, race, color, creed, disability, sexual orientation, national origin or ancestry.
15. **Sex Offender Prohibition.** Provider shall not, in the performance of its Services under this Contract, employ, or use the volunteer services of, any persons who have been convicted of child molestation or sexual assault against a minor.
16. **Record Keeping.** Provider shall keep all documents and records generated in its conduct of the Services for no less than 7 years after completion of the Services, and shall make them available to the City at the City's request. Provider acknowledges that such documents and records may be subject to Wisconsin's Open Records Law.
17. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
18. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
19. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha

County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

- 20. Contacts.** Communications regarding this Contract shall be directed to the City, Ron Grall, Director of Parks, Recreation and Forestry, rgrall@waukesha-wi.gov, (262) 524-3734, or Karen Richards, SPARS Coordinator, krichards@waukesha-wi.gov, (262) 524-3741; and to Concessionaire, Empire Photography Inc., marksmith@empirephotos.com, 262-490-7900.

**City of Waukesha**

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By Shawn N. Reilly, Mayor  
Date:\_\_\_\_\_

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Attested by Gina L. Kozlik, City Clerk  
Date:\_\_\_\_\_

**Provider**

\_\_\_\_\_  
Mark Smith, Empire Photography, Inc  
Date:\_\_\_\_\_