

**AGREEMENT FOR CONSULTANT SERVICES BETWEEN
TEMECULA COMMUNITY SERVICES DISTRICT AND DOUGLAS HINER DBA DH
UMPIRE SERVICES COMPANY**

THIS AGREEMENT is made and effective as of **July 27, 2021**, between the **Temecula Community Services District**, a community services district (hereinafter referred to as "City"), and **Douglas Hiner dba DH Umpire Services Company, Sole Proprietor**, (hereinafter referred to as "Consultant"). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on **July 27, 2021** and shall remain and continue in effect until tasks described herein are completed, but in no event later than **June 30, 2024**, unless sooner terminated pursuant to the provisions of this Agreement.

The City may, upon mutual agreement, extend the contract for one (1) additional two (2) year term. In no event shall the contract be extended beyond June 30, 2026.

If Agreement is extended beyond the original term, the Agreement price shall be adjusted at the beginning of each fiscal year in accordance with the changes in the Consumer Price Index (CPI) for all Urban Consumers for the Riverside-San Bernardino-Ontario Core Based Statistical Area using the most recently published month annual percentage change.

2. SERVICES

Consultant shall perform the services and tasks described and set forth in Exhibit A, attached hereto and incorporated herein as though set forth in full. Consultant shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A.

3. PERFORMANCE

Consultant shall faithfully and competently exercise the ordinary skill and competence of members of their profession. Consultant shall employ all generally accepted standards and practices utilized by persons engaged in providing similar services as are required of Consultant hereunder in meeting its obligations under this Agreement.

4. PAYMENT

a. The City agrees to pay Consultant monthly, in accordance with the payment rates and terms and the schedule of payment as set forth in Exhibit B, Payment Rates and Schedule, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. Any terms in Exhibit B, other than the payment rates and schedule of payment, are null and void. This amount shall not exceed **Thirty-One Thousand Dollars and No Cents (\$31,000)** each fiscal year for a **total not to exceed Agreement amount of Ninety-Three Thousand Dollars and No Cents (\$93,000.00)** unless additional payment is approved as provided in this Agreement.

b. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the General Manager. Consultant shall be compensated for any additional services in the amounts

and in the manner as agreed to by General Manager and Consultant at the time City's written authorization is given to Consultant for the performance of said services.

c. Consultant will submit invoices monthly for actual services performed. Invoices shall be submitted between the first and fifteenth business day of each month, for services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of Consultant's fees, it shall give written notice to Consultant within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. For all reimbursements authorized by this Agreement, Consultant shall provide receipts on all reimbursable expenses in excess of Fifty Dollars (\$50) in such form as approved by the Director of Finance.

5. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Consultant at least ten (10) days prior written notice. Upon receipt of said notice, the Consultant shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Consultant the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Consultant will submit an invoice to the City, pursuant to Section entitled "**PAYMENT**" herein.

6. DEFAULT OF CONSULTANT

a. The Consultant's failure to comply with the provisions of this Agreement shall constitute a default. In the event that Consultant is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating Consultant for any work performed after the date of default and can terminate this Agreement immediately by written notice to the Consultant. If such failure by the Consultant to make progress in the performance of work hereunder arises out of causes beyond the Consultant's control, and without fault or negligence of the Consultant, it shall not be considered a default.

b. If the General Manager or his delegate determines that the Consultant is in default in the performance of any of the terms or conditions of this Agreement, it shall serve the Consultant with written notice of the default. The Consultant shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the Consultant fails to cure its default within such period of time, the City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

7. OWNERSHIP OF DOCUMENTS

a. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of

City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of three (3) years after receipt of final payment.

b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the work, surveys, notes, and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of the City and may be used, reused or otherwise disposed of by the City without the permission of the Consultant. With respect to computer files containing data generated for the work, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.

8. INDEMNIFICATION

The Consultant agrees to defend, indemnify, protect and hold harmless the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees and volunteers from and against any and all claims, demands, losses, defense costs or expenses, including attorney fees and expert witness fees, or liability of any kind or nature which the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, agents, employees or volunteers may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property arising out of Consultant's negligent or wrongful acts or omissions arising out of or in any way related to the performance or non-performance of this Agreement, excepting only liability arising out of the negligence of the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency.

9. INSURANCE REQUIREMENTS

a. Consultant shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

b. Minimum Scope of Insurance. Coverage shall be at least as broad as:

1) Insurance Services Office Commercial General Liability form No. CG 00 01 11 85 or 88.

2) Insurance Services Office Business Auto Coverage form CA 00 01 06 92 covering Automobile Liability, code 1 (any auto). If the Consultant owns no automobiles, a non-owned auto endorsement to the General Liability policy described above is acceptable.

3) Worker's Compensation insurance as required by the State of California and Employer's Liability Insurance. If the Consultant has no employees while performing under this Agreement, worker's compensation insurance is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability Insurance shall be written on a policy form providing professional liability for the Consultant's profession.

c. Limits of Insurance. Consultant shall maintain limits no less than:

1) General Liability: One Million (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2) Automobile Liability: One Million (\$1,000,000) accident for bodily injury and property damage.

3) Worker's Compensation as required by the State of California; Employer's Liability: One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

4) Professional Liability Coverage: One Million Dollars (\$1,000,000) per claim and in aggregate.

d. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions shall not exceed Twenty-Five Thousand Dollars and No Cents (\$25,000).

e. Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1) The City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers are to be covered as insured's, as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

2) For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City of Temecula, the Temecula Community Services District, the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees and volunteers. Any insurance or self-insured maintained by the City of Temecula, Temecula Community Services District, and/or the Successor Agency to the Temecula Redevelopment Agency, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Temecula, the Temecula Community Services District, and the Successor Agency to the Successor Agency to the Temecula Redevelopment Agency, their officers, officials, employees or volunteers.

4) The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5) Each insurance policy required by this agreement shall be endorsed to state in substantial conformance to the following: If the policy will be canceled before the expiration date the insurer will notify in writing to the City of such cancellation not less than thirty (30) days' prior to the cancellation effective date.

6) If insurance coverage is canceled or, reduced in coverage or in limits the Consultant shall within two (2) business days of notice from insurer phone, fax, and/or notify the City via certified mail, return receipt requested of the changes to or cancellation of the policy.

f. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of A-:VII or better, unless otherwise acceptable to the City. Self insurance shall not be considered to comply with these insurance requirements.

g. Verification of Coverage. Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City's forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications.

10. INDEPENDENT CONTRACTOR

a. Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees, agents, or volunteers shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner.

b. No employee benefits shall be available to Consultant in connection with the performance of this Agreement. Except for the fees paid to Consultant as provided in the Agreement, City shall not pay salaries, wages, or other compensation to Consultant for performing services hereunder for City. City shall not be liable for compensation or indemnification to Consultant for injury or sickness arising out of performing services hereunder.

11. LEGAL RESPONSIBILITIES

The Consultant shall keep itself informed of all local, State and Federal ordinances, laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. The Consultant shall at all times observe and comply with all such ordinances, laws and regulations. The City, and its officers and employees, shall not be liable at law or in equity occasioned by failure of the Consultant to comply with this section.

12. RELEASE OF INFORMATION

a. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the General Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

b. Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

13. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, that provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, certified mail, postage prepaid, return receipt requested, addressed to the address of the party as set forth below or at any other address as that party may later designate by Notice. Notice shall be effective upon delivery to the addresses specified below or on the third business day following deposit with the document delivery service or United States Mail as provided above.

Mailing Address: City of Temecula
Attn: General Manager
41000 Main Street
Temecula, CA 92590

To Consultant: DH Umpire Service
Attn: Douglas Hiner
377 Overleaf Way
San Jacinto, CA 92583

14. ASSIGNMENT

The Consultant shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of the City. Upon termination of this Agreement, Consultant's sole compensation shall be payment for actual services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between the City Council and the Consultant.

15. LICENSES

At all times during the term of this Agreement, Consultant shall have in full force and effect, all licenses required of it by law for the performance of the services described in this Agreement.

16. GOVERNING LAW

The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Temecula. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

17. PROHIBITED INTEREST

No officer, or employee of the City of Temecula that has participated in the development of this agreement or its approval shall have any financial interest, direct or indirect, in this Agreement, the proceeds thereof, the Consultant, or Consultant's sub-contractors for this project, during his/her tenure or for one year thereafter. The Consultant hereby warrants and represents to the City that no officer or employee of the City of Temecula that has participated in the development of this agreement or its approval has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, the proceeds thereof, or in the business of the Consultant or Consultant's sub-contractors on this project. Consultant further agrees to notify the City in the event any such interest is discovered whether or not such interest is prohibited by law or this Agreement.

18. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to the obligations of the parties described in this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material.

19. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of Consultant warrants and represents that he or she has the authority to execute this Agreement on behalf of the Consultant and has the authority to bind Consultant to the performance of its obligations hereunder. The General Manager is authorized to enter into an amendment on behalf of the City to make the following non-substantive modifications to the agreement: (a) name changes; (b) extension of time; (c) non-monetary changes in scope of work; (d) agreement termination.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

TEMECULA COMMUNITY SERVICES DISTRICT

By: _____

Zak Schwank, President

DOUGLAS HINER DBA DH UMPIRE SERVICES COMPANY *(Two Signatures of corporate officers required unless corporate documents authorize only one person to sign the agreement on behalf of the corporation.)*

By: _____


Douglas Hiner, Owner

ATTEST:

By: _____

Randi Johl, Secretary

By: _____

APPROVED AS TO FORM:

By: _____

Peter M. Thorson, General Counsel

CONSULTANT

DH Umpire Service

Attn: Douglas Hiner

377 Overleaf Way

San Jacinto, CA 92582

(951) 392-5948

dhumpireservice@gmail.com

| | |
|--|--|
| | City Purchasing Mgr. Initials and Date: |
|--|--|

MSV 06-29-2021

EXHIBIT A

Tasks to be Performed

The specific elements (scope of work) of this service include:

1. **RESPONSIBILITIES OF THE CONSULTANT.** The Consultant shall be responsible for assigning Qualified Officials for all scheduled City League games and tournaments according to the terms which follow. Requests for services will be made on an as-needed basis for the City of Temecula Community Services District at various park facilities:
 - a. Provide "Qualified Officials" who have appropriate experience, training, and certification
 - b. Provide appropriate scheduling and supervision for league officials at all City leagues and tournaments;
 - c. Require all officials to purchase, maintain in good order and wear while officiating Temecula league and tournament games, the prescribed uniform and equipment to fulfill the terms of the contract;
 - d. Conduct on-site evaluations of officials to insure appropriate service and performance levels are maintained. Will periodically provide the Sports Manager copies of evaluations;
 - e. Provide, at no additional cost to the City, representatives to attend any league organizational meeting as deemed necessary by the Sports Manager, when sufficient notice of meeting is given;
 - f. Provide, maintain, and repair the equipment, materials, supplies, and similar items, necessary for the proper conduct of the officiating to be performed;

Within five business days of the date of this Agreement, Consultant shall provide City with a list of the Qualified Officials it will draw from in making assignments to be approved by the Director of Community Services or designee. The Consultant shall update the list each time a new official is added;

- g. Should an official, for any reason within his/her control, cause a game to be protested, Consultant shall submit a verbal report to the City of the circumstances on the following day and a written report shall be provided, if required, within five (5) days. Officials shall be provided by the Consultant, at no cost to the City for any rescheduled game resulting from a protest that is upheld;
 - h. Consultant shall assist the City in the handling of protests, including but not limited to, representing the official(s) at protest meetings, as required;

- i. When a grievance is filed with the Consultant, the Consultant shall notify the City in writing not more than five (5) days after the grievance is filled with the Consultant and provide a copy of the grievance.

2. RESPONSIBILITIES OF THE CITY

- a. City has the right to refuse the services of any Consultant official, with or without cause, provided the City notifies the Consultant of its decision and Consultant shall not assign any such official to City games;
- b. City shall provide fields in playable condition and set up necessary equipment for games;
- c. City is to provide the Consultant with a copy of all by-laws and rules unique to the conduct of their games;
- d. City shall schedule all games as to the time and location. A complete schedule of games shall be furnished to the Consultant in sufficient time as to allow for scheduling of officials. When a game is rescheduled or canceled after notification, the Consultant shall be apprised at least three (3) hours in advance. If this time frame is not met, the District shall pay all fees due as if the game was played;
- e. Officials shall appear at the game site at least fifteen (15) minutes prior to the scheduled starting time. Should officials fail to appear for a game, when properly notified, the Consultant shall forfeit the fee in the amount as if the game were played for each official who did not show. Games not played due to the non-appearance of one or both scheduled teams, inclement weather, or other misfortune, will be paid for by City at the rate as if the game were played per official, provided an official(s) is present. Should a game in progress be canceled or terminated for any reason, the City shall pay all fees due as if the game was played.

EXHIBIT B

Payment Rates and Schedule

Cost for services shall be as per Contractors proposal attached hereto and incorporated herein as though set forth in full but in no event shall the total cost of services exceed \$93,000 for the total term of the Agreement unless additional payment is approved as provided in the Payment section of this Agreement.