

## SOFTBALL TOURNAMENT ORGANIZER AGREEMENT

**THIS AGREEMENT** (the “Agreement”) is made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”), by and between, on the one hand, **The City of Pascagoula, Mississippi** (the “City”), and, on the other hand, **Jeffrey L. Strode, Individually d/b/a USAY Sports** (the “Organizer”). The City and Organizer may be severally referred to as a “Party” or collectively referred to as the “Parties.”

### WITNESSETH:

**WHEREAS**, the City desires to contract with an entity to organize, schedule, promote, and manage softball tournaments at the Pascagoula Sports Complex, 1813 Tucker Street, Pascagoula, Mississippi (the “Park”); and

**WHEREAS**, Organizer possesses the capabilities to provide such services and has proposed to the City to provide such services; and

**WHEREAS**, the City desires to contract with Organizer for the provision of such services; and

**WHEREAS**, it is appropriate that the following Agreement be entered into for the safety and convenience of the general public in the use and enjoyment of and the overall enhancement of recreational and educational experience within the Park.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do hereby mutually enter and agree to this Agreement, each for itself and its successors and assigns, as follows:

### **Section 1. Organization of Softball Tournaments .**

1.1. The City hereby grants the Organizer the exclusive right to organize, schedule, promote, and manage non-municipal-league softball tournaments at the at the Park upon the terms and conditions contained herein. Organizer hereby agrees to organize, schedule, promote, and manage non-municipal-league softball tournaments at the at the Park upon the terms and conditions contained herein.

1.2. Organizer agrees, promises, and covenants to use its best efforts to organize and host a reasonable number of softball tournaments at the Park. The Parties agree that sixteen (16) softball tournaments during any twelve (12) month period shall constitute a reasonable number of tournaments. Organizer further agrees, promises, and covenants that for any and all tournaments scheduled at the Park, Organizer shall use its best efforts to ensure that teams attend and play softball games at such the tournaments.

### **Section 2. Tournament Scheduling.**

2.1. Organizer shall request in writing the City’s approval prior to scheduling any tournaments. Organizer’s request shall be made to the City Manager or his designee.

Upon receipt of the Organizer's written scheduling request, the City Manager or his designee may approve or disapprove the request. Organizer acknowledges and understands that priority in scheduling is determined by the Athletic Facility Procedures and Rental Agreement, attached hereto as Exhibit "A." In the event the City approves a scheduling request from the Organizer, and as except provided otherwise in this Agreement, the Organizer shall be required to execute and comply with the Athletic Facility Procedures and Rental Agreement, attached hereto as Exhibit "A," which may be revised from time-to-time by the City.

2.2. No later than seventy-two (72) hours prior to commencement of an approved tournament, Organizer shall submit to the City's City Manager or his designee the following: (i) number of fields needed; (ii) field dimensions; (iii) tournament schedule; (iv) the number of participating teams and the overall number of participants; and (v) notice of any special considerations related to the tournament.

2.3. No new tournament games may be commenced after 9:30 p.m. In the event inclement weather or other outside factors interfere with tournament operations, the City Manager or his designee may, in his discretion, allow games to be commenced after 9:30 p.m.

2.4. For weekend tournaments commencing on Fridays after 4:00 p.m. Central Time, Organizer shall pay to City a prorated rental fee of \$100.00 per field for usage on any such Friday.

2.5. In the event all tournament games on a particular day are cancelled due to inclement weather, Organizer shall not be required to pay to the City the rental fees for fields for that day.

2.6. The City reserves the right to postpone, delay, or cancel any event at the Park due to unsafe playing conditions, inclement weather, lightning, or as precautionary measures to preserve playing surfaces and maintain a safe environment for all patrons. In the event that any game is delayed due to lightning or deteriorating weather conditions, those in attendance at the Park will be notified over a public address system and shall seek shelter immediately in their vehicles. Under such conditions, no coaches or players will be allowed to remain inside the dugouts or on the fields. Organizer shall ensure to the extent reasonably practicable that those participating in Organizer's tournaments comply with these requirements.

2.7. Except as provided otherwise herein, Organizer's tournament fees payable to the City shall be as follows:

- a. Deposit: \$500.00
- b. Rental Fee: \$125.00 Per field/per day
- c. Field Lights: \$15.00 Per hour/per field
- d. Vendor Permit: \$50.00 Per Vendor

e. Field Supplies (Quick Dry): \$10.00 Per bag

2.8. All notices authorized or required by Section 2 of this Agreement may be made via email. Such email notices may be provided to the City by emailing the City Manager or his designee. Such email notices may be provided to the Organizer at [jeff@usaysports.com](mailto:jeff@usaysports.com).

### **Section 3. Use of Park .**

3.1. Organizer shall be permitted to utilize all softball fields at the Park in furtherance of its commitment and agreement to organize, schedule, promote, and manage non-municipal-league softball tournaments. With the written permission of the City Manager or his designee, Organizer may also be permitted to utilize the baseball fields at the Park.

3.2. Organizer understands, agrees, and acknowledges that no vehicles shall be permitted inside the Park, except to use designated drop-off points and parking areas. Organizer shall ensure that its staff, participants, coaches, players, and spectators park their vehicles in compliance with this Section. The City may, in its discretion, require individuals in violation of this Section to leave the Park and may have any such vehicles towed.

3.3. Except for properly documented service animals, Organizer shall be permitted to ban and exclude pets from the Park during tournaments organized by Organizer.

3.4. Organizer understands, agrees, and acknowledges that participation in and spectating of tournaments shall be done in a friendly and sportsmanlike manner and without obscene language. The City reserves the right to remove anyone from the Park who fails to abide by these standards. To the extent reasonably practicable, Organizer shall ensure that its participants, coaches, players, and spectators comply with the behavior and conduct standards set forth in this Section.

### **Section 4. Tournament Operations and Promotion .**

4.1. Organizer shall be responsible for establishing and collecting gate admission fees, and Organizer shall retain all such fees it collects for its own benefit.

4.2. Organizer shall be responsible for furnishing and compensating umpires and gate staff for any tournaments scheduled by Organizer.

4.3. Organizer understands, agrees, and acknowledges that no third-party vendors of any kind shall be allowed to sell, distribute, or provide any services or goods at the Park without first (i) receiving the written approval of the City's City Manager or his designee, and (ii) providing the City a valid sales tax number (or use tax number, if applicable) issued by the Mississippi Department of Revenue for each vendor.

4.4. City agrees to provide concession services at the Park during all operational hours of Organizer's tournaments. Organizer understands, agrees, and acknowledges that it shall not be permitted to utilize or hire an outside or third-party concessionaire at the Park. Organizer further understands, agrees, and acknowledges that it shall not be entitled to any portion of the proceeds of concession sales at the Park.

4.5. Teams participating in Organizer's tournaments shall be permitted to utilize team ice chests.

4.6. Organizer hereby grants the City a non-exclusive license to use Organizer's name and logo and other branding to be used to promote and advertise Organizer's tournaments. Organizer further authorizes the City to promote and advertise Organizer's tournaments.

### **Section 5. Maintenance of Park.**

5.1. The City shall ensure, to the extent reasonably practicable, that the fields to be utilized by the Organizer are properly groomed and prepared prior to the commencement of a tournament. Organizer shall be responsible for grooming and maintaining the fields for the duration of the tournament. Organizer shall further ensure that the fields are returned to the City in substantially the same condition in which they were received. Organizer, with the approval of the City's City Manager or his designee, shall be permitted to use the City's maintenance equipment in furtherance of its obligations contained in Section 5.1 of this Agreement.

5.2. Organizer understands, agrees, and acknowledges that the City may deny any signage entering the Park. Organizer agrees that no signage, whether its own or its sponsors, shall be displayed in the Park without the express approval of the City's City Manager or his designee.

5.3. Organizer understands, agrees, and acknowledges that "soft tossing" or hitting into fencing is prohibited at the Park. Organizer shall be responsible for ensuring that its staff, participants, coaches, players, and spectators comply with this prohibition.

5.4. Any and all damage to Park property, including the City's maintenance property, caused by Organizer and its tournament staff, participant, coaches, and spectators shall be the sole responsibility of Organizer. In the event such damage occurs, Organizer shall provide written notice of such damage to the City's City Manager within twenty-four (24) hours of Organizer learning of such damage. The City shall thereafter be responsible for repairing such damage; provided, however, that Organizer shall reimburse the City for the actual costs of performing such repairs. Upon completion of such repairs, the City shall provide written notice of the actual costs of the repairs to Organizer. Within thirty (30) days of the receipt of such written notice, Organizer shall pay to the City those actual costs.

5.5. In the event Organizer fails to make such payment as provided in Section 5.4, Organizer shall not be permitted to host any tournaments at the Park, including scheduled tournaments, until such payment is made. In the event Organizer fails to

make such payment, the City may further file a lawsuit against Organizer seeking the actual repair costs incurred by the City. If the City recovers any repair costs in such a lawsuit, the City shall further be entitled to recover from Organizer reasonable attorneys' fees, costs, and expenses incurred by the City in pursuit of such a lawsuit. Nothing herein shall be construed to limit or replace any other remedy or right belonging the City under this Agreement or as otherwise provided by law.

**Section 6. Term.** The term of this Agreement (the "Term") will begin on the Effective Date and will remain in full force effect through October 31, 2021 (the "Initial Period"), subject to earlier termination as provided for below. At the conclusion of the Initial Period, this Agreement may be renewed with the written agreement of both Parties for successive one (1) year terms, ending on October 31 each year, until October 31, 2026. Notwithstanding the foregoing, either party may terminate this Agreement at any time upon thirty (30) days written notice to the other party.

**Section 7. Loss or Damage to Organizer's Property.** Organizer shall bear the risk of loss for any damage equipment, inventory, signage, or other personal property owned by Organizer or its employees or agents which are located at, on, or within the Park. Any insurance for such loss or damage shall be obtained by and paid for by Organizer. The City shall have no responsibility or liability for (i) loss or damage to property of the Organizer, its employees or agents, or third parties located at, on, or within the Park; or (ii) any personal injury to Organizer or third parties, including agents or employees of Organizer, at or within the Park and, in this regard, Organizer does hereby indemnify and hold the City harmless from such loss, damage, or injury, pursuant to Section 12 of this Agreement.

### **Section 8. Termination.**

8.1. Either Party shall have the right to immediately terminate this Agreement, without penalty or prejudice to any other rights and remedies it may have, if:

- a. The other Party fails to perform any material provision of this Agreement and the failure is not corrected within thirty (30) days after the other Party gives the defaulting Party written notice of the breach;
- b. The other Party (i) becomes insolvent, is unable to pay its debts as they mature, or is the subject of a petition in bankruptcy, whether voluntary or involuntary, or of any other proceedings under bankruptcy, insolvency, or similar laws; (ii) is named in, or its property is subject to, a suit for appointment of a receiver; or (iii) is liquidated or dissolved, whether through court proceedings or administratively; or
- c. The other Party suspends, discontinues, or materially alters its business operations.

8.2. This Agreement may be terminated at any time, including during the Initial Period, without penalties or prejudice, by mutual agreement of both Parties in writing.

**Section 9. Remedies Upon Default.** Termination by either Party of this Agreement shall not limit or otherwise effect the remedies of the non-defaulting or non-breaching Party against the defaulting or breaching Party. In the event that either Party is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the non-defaulting or non-breaching Party shall be entitled to pursue, in addition, to any remedies specifically provided herein, all further remedies then available at law or in equity. In the event that a court of competent jurisdiction finds that Organizer is in material default under any of the terms or conditions of this Agreement or has materially breached any of its representations or warranties in this Agreement, the City shall be entitled to recover from Organizer all attorneys' fees, expenses, and costs incurred by the City in obtaining such a finding.

**Section 10. Binding Successor Doctrine.** As a political subdivision of the State of Mississippi, the City is subject to the laws of the State of Mississippi. Mississippi law provides that the current City Council of The City of Pascagoula, Mississippi may bind itself contractually for the remainder of its term (approximately twelve (12) months) but may not bind successor City Councils without express statutory authority (the "Binding Successor Doctrine"). There is no express statutory authority for the City to enter a Softball Tournament Organizer Agreement exceeding twelve (12) months. Thus, the Parties acknowledge that this Agreement could be voided by a successor City Council pursuant to the Binding Successor Doctrine.

**Section 11. Participant Waivers.** Organizer shall ensure that each tournament participant, or legal guardian of each tournament participant if the participant is a minor, executes and provides to the Organizer a properly executed Waiver, attached hereto as Exhibit "B." In the event a participant or his or her guardian does not provide a properly executed Waiver prior to participating in a tournament, any such participant shall not be permitted to participate in the tournament. Should Organizer fail to obtain a properly executed Waiver by a participant who makes a claim against the City related the participant's participation in a tournament, Organizer shall hold harmless, defend, and indemnify the City pursuant to Section 12 of this Agreement. Nothing herein shall be construed to limit, modify, or replace the City's rights existing under any other term of this Agreement, including the terms contained in Section 12.

**Section 12. Hold Harmless , Defense, and Indemnity .**

12.1. Organizer, on its own behalf, as well as on behalf of its employees, agents, representatives, clients, customers, and participants, acknowledges, stipulates, and accepts the dangers, risks, and potential liabilities associated with the organization, scheduling, promotion, management, attendance of, spectating of, and playing of softball tournaments (the "Permitted Activity"). Organizer, its employees, agents, and representatives agree, swear, and affirm to release and hold harmless the City for any and all loss, damage, injury, claim, or liability (including, without limitation, attorneys' fees) arising from their engagement in the Permitted Activity.

12.2. In consideration of the benefits conferred herein, and to the fullest extent permitted by law, Organizer shall defend, indemnify, and hold harmless the City, its agents, and employees (collectively, the "Indemnities"), from and against any and all demands, claims, causes of action, liens, fines, penalties, losses, damages, costs, and expenses (including legal fees), of every kind and nature, regardless of whether in law or in equity, or whether nominal, actual, direct, indirect, consequential, special, punitive, or otherwise (collectively, the "Liabilities"), arising out of, or related to, participation in the Permitted Activity by Organizer and its employees, agents, and representatives.

12.3. The City shall be entitled to recover from the Organizer all attorneys' fees, costs, and expenses incurred enforcing the defense and indemnity obligations contained in Section 12 of this Agreement. The defense and indemnity obligations contained in Section 12 of this Agreement shall survive the expiration of this Agreement.

12.4. If any portion of Section 12 is determined to be in contravention of applicable law or otherwise invalid or unenforceable, that portion shall be deemed severable and the rest of Section 12 shall be reformed to provide the maximum enforceable defense and indemnity in favor of the Indemnities permitted by applicable law.

**Section 13. General Liability.** The City shall not be liable for any damage to property of Organizer or of others entrusted to Organizer, nor for the loss of, or damage to, any property of Organizer or of others entrusted to Organizer by theft or otherwise. The City shall not be liable for any injury or damage to persons or property resulting from fire, water, or rain, or by any other cause of any nature whatsoever.

**Section 14. Liability Insurance.** Organizer shall be responsible for providing liability insurance at all times during the Term hereof, and shall purchase, pay for, and carry public liability insurance with limits in an amount no less than \$500,000.00 per incident and \$1,000,000.00 in the annual aggregate, and Organizer shall furnish to the City within fifteen (15) days of the Effective Date of this Agreement written evidence of the existence of such insurance. The City shall be named in said policy as an additional insured.

### **Section 15. Relationship of the Parties.**

15.1. Organizer's relationship with City is that of an independent contractor, and nothing in this Agreement is intended to or shall be constructed as creating a partnership, agency, joint venture, employment, or similar relationship.

15.2. Organizer acknowledges that it and all its officers, employees, and agents are not an employee or agent of the City for any purpose whatsoever. Organizer shall be responsible for all applicable W-9s and work eligibility verification, earnings reports, and tax payments to government agencies, such as the U.S. Internal Revenue Service and the Social Security Administration, including payment of all wages due to Organizers employees, insurance premiums, license fees, fingerprinting costs, outfitting expenses, and all other obligations or expenses of Organizer relative to its employees in performance of the terms, duties, and obligations under this Agreement.

15.3. Organizer acknowledges that its personnel, employees, officers, and agents are not entitled to receive any of the fringe benefits received by the City's employees, including, but not limited to, Workers' Compensation insurance.

15.4. Organizer shall not have the authority to enter into any contract on the City's behalf or to otherwise bind the City to any agreement, unless expressly authorized to do so in writing by the City.

15.5. Because Organizer is an independent Organizer, City has no direction or control over the softball tournament organization services to be performed hereunder, nor over Organizer's personnel, and Organizer shall at all times remain the employer of its personnel performing the softball tournament organization services (and shall be liable for each of their actions, omissions, or breaches). Organizer shall indemnify the City from any claim made by any of Organizer's personnel against City alleging rights or benefits as an employee of City, as set out in Section 12 of this Agreement.

**Section 16. Taxes and Fees.** Organizer shall be responsible for the payment of all fees and taxes which may be levied or assessed against its operations, the income therefrom, the improvements, the contractual interest created by this Agreement, and any personal property used on or in conjunction with Organizer's operations at the Park, which may be assessed by any lawful authority.

**Section 17. Licenses.** Organizer shall, at its expense, obtain all licenses and permits required for the conduct of its business. Organizer shall, at its expense, observe and comply with all present and future laws, ordinances, directives, orders, rules, and regulations of governmental authorities having or claiming jurisdiction over the organization and management of softball tournaments at the Park.

**Section 18. Assignment.**

18.1. This Agreement, or any interest therein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by Organizer without the prior written consent of the City.

18.2. Subject to the requirements of Section 18.1, and to the extent authorized by law, covenants and conditions herein contained shall apply to and bind the successors and assigns of all the Parties hereto.

**Section 19. Extent of Agreement, Severability, and Modification .**

19.1. This Agreement represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, or agreement, either written or oral.

19.2 In the event any provision of this Agreement shall be held invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either Party of any breach of any provision, term, condition, or



covenant shall not be construed by the other party as a waiver of any subsequent breach.

19.3 No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed by both Parties.

**Section 20. Force Majeure.** Any delay in the performance of any duties or obligations of either Party will not be considered a breach of this Agreement if such delay is caused by any occurrence or contingency beyond the Party's reasonable control, including, but not limited to, acts of God, weather, labor disputes and strikes, market shortage of materials, riots, war, and governmental requirements (any such event, a "Force Majeure Event"), provided that such Party uses reasonable efforts, under the circumstances, to resume performance as soon as reasonably practicable. The obligations and rights of the Party so excused will be extended on a day-to-day basis for the period of time reasonably necessary to overcome the effects of the underlying cause of the delay.

**Section 21. Successors, Survival, and Remaining Obligations.**

21.1. City and Organizer each binds itself and its successors, executors, administrators, and assigns to the other Party of this Agreement and to the successors, executors, administrators, and assigns, or such Party, in respect to all covenants of this Agreement.

21.2. This Agreement and all covenants and warranties contained herein shall survive indefinitely unless agreed otherwise in writing by the Parties.

21.3. Termination of this Agreement, unless expressly provided herein, shall not relieve or release any Party from any rights, liabilities, or obligations that it has accrued prior to the date of such termination and those rights, liabilities, and obligations expressed herein of the Parties upon the termination of this Agreement.

**Section 22. Notices.**

22.1. Except as stated otherwise herein, any notice required or permitted to be sent to the City hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the City at the address below:

City of Pascagoula  
c/o City Manager  
Post Office Drawer 908  
Pascagoula, Mississippi 39568

22.2. Except as stated otherwise herein, any notice required or permitted to be sent to the Organizer hereunder shall be deemed given when deposited in the United States mail, postage prepaid, certified mail, to the Organizer at the address below:

Jeffrey L. Strode  
d/b/a USAY Sports  
8244 Jordan Road  
Baker, Florida 32531

**Section 23. Governing Law and Venue.** This Agreement shall be governed and construed in accordance with Mississippi law, without regard to conflict of law principles. In the event any litigation arises between the Parties in connection with this Agreement, venue for such litigation shall lie exclusively in Jackson County, Mississippi, to the exclusion of all other venues. Organizer hereby waives any and all objections and defenses to personal jurisdiction in Mississippi in the event any such litigation arises.

**Section 24. Representations and Warrantie s.**

24.1. Each Party represents and warrants to the other Party as of the Effective Date that: (i) it has the full power and authority to make, deliver, enter into, and perform pursuant to the terms and conditions of this Agreement, and (ii) it has taken all necessary action to authorize the execution, delivery, and performance of the terms and conditions of this Agreement.

24.2. Each Party represents and warrants to the other Party that it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendation of the Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement.

**Section 25. Headings and Section Names.** The headings and section names in this Agreement are for convenience only and shall not be used to interpret or construe the provisions of this Agreement.

**Section 26. Counterparts.** This Agreement and any amendment or supplement hereto or any waiver granted in connection herewith may be executed in any number of counterparts and by the different Parties on separate counterparts and each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same agreement.

**IN WITNESS WHEREOF,** the Parties hereto have executed and caused this Agreement to be effective as of the Effective Date first written above.

[Intentionally Left Blank]



Michael Silverman

By: \_\_\_\_\_  
Michael Silverman, City Manager  
City of Pascagoula, Mississippi

STATE OF MISSISSIPPI

COUNTY OF JACKSON

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named Michael Silverman, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_

Jeffrey L. Strode

By: \_\_\_\_\_  
Jeffrey L. Strode, Individually  
d/b/a USAY Sports

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the aforesaid County and State, within my jurisdiction, the within named Jeffrey L. Strode, and that he signed and delivered the above and foregoing instrument for and on his behalf after being duly authorized to do so.

SWORN TO AND SUBSCRIBED BEFORE ME, this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]

My Commission Expires: \_\_\_\_\_