



STAFF REPORT

TO: Mayor Keis and Members of the City Council

FROM: Bryce Shearen, CPRP, Parks & Recreation/Community Services Manager

DATE: February 10, 2021

RE: Recreation Coordinator 2021 Contract Renewal

ACTION REQUESTED

Approve the 2021 Recreation Coordinator Contract with Twin Cities Officials.

BACKGROUND:

Due to the pandemic, the Parks and Recreation Department was not able to offer many of the traditional youth and adult activities that we have done in the past which led to a substantial decrease in hours for 2020. Early indicators are showing that youth and adult activities will be able to resume this year. At this time, it is uncertain on what limitations may be in place, but the Parks and Recreation Department is committed to providing safe activities for the community. Discussion with surrounding leagues and cities has already begun for spring and summer activities with many groups calling looking to coordinate field and facility usage as well as league coordination.

Please find attached the 2021 contract for recreation coordinator services with Twin Cities Officials. The contract fee is budgeted at a maximum of not to exceed amount of \$14,000. This amount has been budgeted for in the Parks and Recreation Special Revenue Fund.

STAFF RECOMMENDATION:

Staff recommends approval of the 2021 Recreation Coordinator contract with Don Bowman, Twin Cities Officials.

AGREEMENT FOR RECREATION COORDINATOR SERVICES

This Agreement made and entered into this 10th day of February, 2021 by and between the City of Little Canada, a Minnesota Municipal Corporation (hereinafter referred to as "City"), and Twin Cities Officials, a Minnesota LLC (hereinafter referred to as "TCO").

WITNESSETH:

WHEREAS, City has been contracting with TCO to perform certain recreation coordinator services for the City's Parks & Recreation Department; and

WHEREAS, Don Bowman, the principal officer of TCO, is duly qualified to perform said services; and

WHEREAS, it is both parties believe it is mutually beneficial to continue this relationship;

NOW, THEREFORE, IT IS MUTUALLY AGREED by and between City and TCO as follows:

RECITALS

TCO is engaged in providing Recreation Coordinator Services, with its principal place of business at the address 2943 Payne Avenue, Little Canada, Minnesota 55117, Employer Tax I.D. Number 45-2495014.

TCO represents that it has complied with all Federal, State, and local laws regarding business permits, sales permits, licenses, reporting requirements, tax withholding requirements, and other legal requirements of any kind that may be required to carry out said business and the Scope of Work which is to be performed as TCO pursuant to this Agreement. TCO is or remains open to conducting similar tasks or activities for entities other than City and holds itself out to the public to be a separate business entity.

City desires to engage and contract for the services of TCO to perform certain tasks as set forth herein. TCO desires to enter into this Agreement and perform as TCO for the City and is willing to do so on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the above recitals and the mutual promises and conditions contained in this Agreement, the Parties agree as follows:

1. Status of TCO. This Agreement does not constitute a hiring by either party. It is the parties intention that TCO shall have an independent contractor status and not be an employee for any purposes, including, but not limited to, the application of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Revenue and Taxation Code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code 401(k) and other benefit payments and third-party liability claims. Within the Scope of Work, TCO shall retain sole and absolute discretion in the manner and means of carrying out their activities and responsibilities under this Agreement. This Agreement shall not be considered or construed to be a partnership or joint venture, and the City shall not be liable for any obligations incurred by TCO unless specifically authorized in writing.

TCO shall not act as an agent of the City, ostensibly or otherwise, nor bind the City in any manner unless specifically authorized to do so in writing.

2. Tasks, Duties, and Scope of Work.

- A.** TCO agrees to provide recreation coordinator services for certain recreation programs for City as determined by the City's Parks and Recreation/Community Services Manager. Don Bowman is hereby designated as the principal officer of TCO providing service to the City during the term of this Agreement. The TCO principal officer designated as the Recreation Coordinator is authorized to delegate his duties and responsibilities under this agreement to other employees or others with whom he contracts who shall perform such services as he directs under his supervision and according to the terms of this Agreement.
- B.** Except as otherwise specifically set forth herein, Recreation Coordinator services shall only include those types of duties and functions customarily provided by a municipal Parks & Recreation Department.
- C.** TCO shall also assist the City in the organization and management of youth and adult recreation programs, as assigned by the Parks and Recreation/Community Services Manager. Those duties may include but are not necessarily limited to recruiting, training, and supervising volunteer coaches, sports officials, and activity instructors involved in the delivery of the City's youth and adult recreation programs.

3. Books and Records. The books and records related to the Scope of Work outlined in this Agreement shall be maintained by TCO at TCO's principal place of business and open to inspection by City during regular working hours. Documents to which City will be entitled to inspect include, but are not limited to, any and all contract documents, change orders/purchase orders, and work authorized by TCO or City on existing or potential projects related to this Agreement. TCO agrees to give monthly reports to the City as to services and projects.

4. Location, Tools, Equipment, Suggestions. TCO shall report to the City supervisory staff, but TCO will not be required to follow or establish a regular or daily work schedule. TCO shall supply all necessary equipment, materials, and supplies. TCO will not rely solely on the equipment or offices of the City for completion of tasks and duties set forth pursuant to this Agreement. City retains the right to inspect, stop, or alter the work of TCO to assure its conformity with this Agreement and City needs.

5. General Terms and Conditions

- A.** TCO shall at all times during the term of this Agreement ensure that its personnel remains current in terms of knowledge and familiarity with all applicable policies, procedures, and directives of the City's Parks & Recreation Department.
- B.** TCO shall be responsible for the training and direction of all TCO personnel to ensure compliance with the terms of this agreement.
- C.** City shall remit payment to TCO for services rendered under this Agreement. City shall not assume any liability for the direct payment of any salary, wage, or benefit to

TCO's principals or employees, nor shall it assume any responsibility for compliance with workers' compensation insurance statutes or tax laws relating to said personnel. All such matters are solely the responsibility of TCO as an independent contractor.

- D. City, its officers, agents, and employees shall cooperate and assist TCO in the orderly performance of services to be provided for herein.

6. Schedule and Compensation.

- A. **Hours of Service.** Hours of service shall be scheduled at TCO's discretion, provided that TCO is reasonably and sufficiently available to the varied demands required for effective program coordination. A report of time worked and duties performed shall be provided with each invoice submittal.
- B. The fee for the services provided under this agreement shall be up to \$2,000 per month with total compensation not to exceed \$14,000. Invoices for payment shall be submitted on a monthly basis, along with a report of time worked and duties performed shall be provided with each invoice submittal.
- C. Said fee may be adjusted upon 30 days' notice from Recreation Coordinator to City, subject to City's consent. Said fee is inclusive of all costs, supplies, mileage, phones, benefits, expenses, etc. and no additional charges shall be made to City and TCO shall invoice the City. Should the Recreation Coordinator wish to absent himself from the performance of the aforementioned duties for a short time, the Recreation Coordinator shall provide reasonable advance notice to the City of said request. The City agrees to reasonably accommodate the Recreation Coordinator's request, at the City's sole discretion. Payments to the Recreation Coordinator shall be adjusted to reflect the approved absence.

7. Withholding of Taxes. TCO recognizes and understands that it will receive an IRS 1099 statement and related tax statements, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and State law. TCO hereby promises and agrees to indemnify City for any damages or expenses, including attorney's fees, and legal expenses, incurred by City as a result of TCO's failure to make such required payments. At City's request, TCO shall provide proof of required tax payments.

8. Agreement to Waive Rights to Benefits. TCO hereby waives and foregoes the right to receive any benefits given by City to its regular employees, including, but not limited to, health benefits, vacation, and sick leave benefits. TCO agrees that if any government agency or court of law claims that TCO is an employee, it agrees that it is not covered under these plans. This waiver applies to all non-salary benefits which might otherwise be found to accrue to TCO under their services to City and is effective for the entire duration of TCO's agreement with City. This waiver is effective independently of TCO's employment status as adjudged for taxation purposes or any other purpose.

9. Effective Date and Contract Term.

- A. **Effective Date.** This Agreement shall be effective February 10, 2021.

- B. Contract Term.** This Agreement shall continue in full force and effect until December 31, 2021. If neither party provides notice to the other of its intent to cancel this Agreement at least thirty (30) days prior to its scheduled expiration, the Agreement shall be automatically renewed for an additional one-year term.
- C. Early Termination for Incapacity.** The Agreement may be canceled prior to its scheduled termination by reason of the death of TCO's principal officer. In the event of death, City shall be obligated to pay TCO's estate or beneficiaries only the accrued but unpaid compensation and expenses due as of the date of death. In the event of permanent disability of TCO's principal officer, a successor principal officer and City may agree to continue the agreement by executing a written agreement to that effect within 15 days of the death or determination of permanent disability.
- D. Termination.** This Agreement is terminable by either party at any time, with or without cause, effective upon two weeks' notice to the other party. If City exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease immediately, except that City shall be obligated to compensate TCO for work performed up to the effective date of termination. If TCO exercises its right to terminate the Agreement, any obligation it may otherwise have under this Agreement shall cease upon the effective date of termination.
- E. Waiver.** Waiver of a breach of any part of this Agreement by either party, whether by inaction or by affirmative decision to waive, does not constitute a waiver or release from any other part of the Agreement, or for any further breach of the same provision occurring after the initial waiver.
- F. Notices.** Notices shall be addressed to the following:

For City: City Administrator
City of Little Canada
515 E. Little Canada Road
Little Canada, MN 55117

For TCO: Don Bowman, President Twin Cities Officials, LLC
2943 Payne Ave
Little Canada, MN 55117

10. Return of Property. On termination of this Agreement, or whenever requested by the parties, each party shall immediately deliver to the other party all property in its possession, or under its care and control, belonging to the other party to them, including but not limited to, proprietary information, customer lists, trade secrets, intellectual property, computers, equipment, tools, documents, plans, recordings, software, and all related records or accounting ledgers.

11. Expense Accounts. TCO and City agree to maintain separate accounts in regards to all expenses related to performing the Scope of Work. TCO is solely responsible for payment of expenses incurred pursuant to this Agreement unless provided otherwise in writing by City. TCO agrees to execute and deliver any agreements and documents prepared by City and to do all other lawful acts required to establish documents and protect such rights.

12. Legal Compliance. TCO is required to treat all City employees, customers, clients, business partners, and other affiliates with respect and responsibility. TCO is required to comply with all laws, governing their profession, licensing requirements, and other laws or regulations that will allow them to complete the Scope of Work.

13. Persons Hired by TCO. All persons hired by TCO to assist in performing the tasks and duties necessary to complete the Scope of Work shall be the employees of TCO unless specifically indicated otherwise in an agreement signed by all parties. TCO shall immediately provide proof of Workers' Compensation insurance and General Liability insurance covering said employees, upon request of City.

14. Notices. Any notice to be given hereunder by any party to the other may be affected either by personal delivery in writing or by mail, registered or certified, postage pre-paid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraphs of this Agreement, but each party may change their address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of five (5) days after mailing. TCO agrees to keep City current as to their business and mailing addresses, as well as telephone, facsimile, e-mail, and pager numbers.

15. Attorneys' Fees. In the event any litigation, arbitration, mediation, or other proceedings ("Proceeding") is initiated by any party against any other party to enforce, interpret, or otherwise obtain judicial or quasi-judicial relief in connection with this Agreement, the prevailing party in such Proceeding shall be entitled to recover from the unsuccessful party all costs, expenses, and actual attorney's fees relating to or arising out of (a) such proceeding, whether or not such proceeding proceeds to judgment, and (b) any post-judgment or post-award proceeding, including without limitation one to enforce any judgment or award resulting from any such Proceeding. Any such judgment or award shall contain a specific provision for the recovery of all such attorneys' fees, costs, and expenses. Any such judgment or award shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorney's fees.

16. Mediation and Arbitration. Any controversy between the parties to this Agreement involving the construction or application of any of the terms, provisions, or conditions of this Agreement, shall on written request of either party served on the other, be submitted first to mediation and then if still unresolved to binding arbitration. Said mediation or binding arbitration shall comply with and be governed by the provisions of the American Arbitration Association for Commercial Disputes unless the Parties stipulate otherwise. The attorneys' fees and costs of arbitration shall be borne by the losing party unless the Parties stipulate otherwise, or in such proportions, as the arbitrator shall decide.

17. Indemnification. TCO shall defend, indemnify, hold harmless, and insure City from any and all damages expenses or liability resulting from or arising out of, any negligence or misconduct on TCO's part, or from any breach or default of this Agreement which is caused or occasioned by the acts of TCO. Independent Contractor shall insure that its employees and affiliates take all actions necessary to comply with the terms and conditions set forth in this Agreement. TCO shall name City as an additional insured on all related insurance policies including workers compensation, and general liability.

18. Containment of Entire Agreement. This Agreement is an independent document and supersedes any and all other Agreements, either oral or in writing.

19. Representation. Each party of this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party hereto, or anyone acting on behalf of any party hereto, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement shall be effective only if it is in writing, signed, and dated by all parties hereto.

20. Partial Invalidity. If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute a single integrated document.

22. Severable Provisions. The provisions of this Agreement are severable, and if any one or more provisions may be determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions and any partially unenforceable provisions to the extent enforceable shall nevertheless be binding and enforceable.

23. Modifications. This Agreement may be modified only by a contract in writing executed by the party to this Agreement against whom enforcement of such modification is sought.

24. Prior Understandings. This Agreement contains the entire agreement between the parties to this Agreement with respect to the subject matter of the Agreement, is intended as a final expression of such parties' agreement with respect to such terms as are included in this Agreement, is intended as a complete and exclusive statement of the terms of such agreement, and supersedes all negotiations, stipulations, understanding, agreements, representations, and warranties. If any, with respect to such subject matter, which precedes or accompanies the execution of this Agreement.

25. Waiver. Any waiver of a default under this Agreement must be made in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement. No delay or omission in the exercise of any right or remedy shall impair such right or remedy or be constructed as a waiver. A consent to or approval of any act shall not be deemed to waive or render unnecessary consent to or approval of any other or subsequent act.

26. Drafting Ambiguities. Each party to this Agreement has reviewed and had the opportunity to revise this Agreement. Each party to this Agreement has had the opportunity to have legal counsel review and revise this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

27. Jurisdiction and Venue. This Agreement is to be construed pursuant to Laws of the State of Minnesota. Jurisdiction and venue for any claim arising out of this Agreement shall be made in the State of Minnesota, County of Ramsey.

28. Receipt of Copy. TCO hereby acknowledges that it has received a signed copy of this Agreement.

29. MISCELLANEOUS

- A.** It is understood that this Agreement contains the entire agreement between City and TCO and that no statement, promise, or inducements have been made to any party hereto, or any officer, agent, or employee of either party hereto which is not contained within this written Agreement.

- B.** This Agreement may not be enlarged, modified, or altered except in writing signed by the parties and endorsed herein. It is expressly understood between the parties hereto and this understanding should be considered in interpreting the provisions of this Agreement, that upon notice given by any party hereto, later negotiations may be undertaken for the purpose of revising, adding to, or striking any provision or provisions of this Agreement which appear unworkable or insufficient to perfect, maintain, and ensure the purpose of this Agreement. Any change to the original provisions of this Agreement mutually acceptable to both parties shall be written and attached to this Agreement as provided above and any such revision, addition, or deletion shall only apply to the provision so revised, added, or deleted and the remainder of this Agreement shall remain in full force and effect.

- C.** This Agreement, with the rights and privileges it creates, is assignable only with the written consent of both parties.

- D.** This Agreement is construed under the laws of the State of Minnesota.

This agreement is entered into this 10th day of February, 2021.

Twin Cities Officials, LLC

City of Little Canada

By: _____
Don Bowman
President

By: _____
John T. Keis
Mayor

By: _____
Christopher Heineman
City Administrator