

**EXHIBIT**

**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR  
PROFESSIONAL CONSULTING SERVICES FOR  
DESIGN SERVICES FOR THE  
FOREST CREEK GOLF COURSE RENOVATION PROJECT  
WITH  
KEMPER SPORTS, INC.**

**THE STATE OF TEXAS**

§

§

**THE CITY OF ROUND ROCK**

§

**KNOW ALL BY THESE PRESENTS**

§

**COUNTY OF WILLIAMSON**

§

**COUNTY OF TRAVIS**

§

THIS AGREEMENT for professional consulting services related to design services and project management services for the City of Round Rock's Forest Creek Golf Course Renovation Project (the "Agreement") is made by and between the CITY OF ROUND ROCK, a Texas home-rule municipal corporation with offices located at 221 East Main Street, Round Rock, Texas 78664-5299 (the "City"), and KEMPER SPORTS, INC., located at 500 Skokie Boulevard, Suite 444 Northbrook, Illinois 60062 (the "Consultant").

**RECITALS:**

**WHEREAS**, the Forest Creek Golf Course Renovation Project, consisting of work to renovate and rebuild greens, bunkers, the irrigation system, associated golf course drainage and other related items (the "Project"), requires specialized project management and design services; and

**WHEREAS**, City desires to contract for Consultant's professional services generally described as project management and design services for the Project; and

**WHEREAS**, City has determined that there is a need for the delineated services; and

**WHEREAS**, desires to contract for such professional services; and

**WHEREAS**, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties and obligations hereunder.

**NOW, THEREFORE, WITNESSETH:**

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

## **1.0 EFFECTIVE DATE, DURATION, AND TERM**

This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

The term of this Agreement shall be until full and satisfactory completion of the work specified herein is achieved, with an estimated completion date of August 1, 2018.

City reserves the right to review the Agreement at any time, and may elect to terminate the Agreement with or without cause or may elect to continue.

## **2.0 PROPOSAL FOR SERVICES**

For purposes of this Agreement Consultant has issued its proposal for services, such proposal for services being attached to this Agreement as Exhibit "A" titled "Scope of Services," incorporated herein by reference for all purposes.

## **3.0 SCOPE OF SERVICES**

Consultant, and any additional consultants contracted by Consultant for this Project, shall satisfactorily provide all services described herein and as set forth in Exhibit "A," the Scope of Services, in accordance with the agreed upon timeline set forth in Exhibit "A."

Consultant shall perform services in accordance with this Agreement, in accordance with the appended Scope of Service and in accordance with due care and prevailing consulting industry standards for comparable services.

Where the terms and conditions of pages one (1) through thirteen (13) of this Agreement conflict or differ with Exhibit "A," the terms and conditions set forth in pages one (1) through thirteen (13) of this Agreement shall control.

## **4.0 LIMITATION TO SCOPE OF SERVICES**

Consultant's undertaking shall be limited to performing services for City and/or advising City concerning those matters on which Consultant has been specifically engaged. Consultant and City agree that the Scope of Services to be performed is described in Exhibit "A" and herein, and may not be changed without the express written agreement of the parties.

## **5.0 CONTRACT AMOUNT**

**Not-to-Exceed Fee:** In consideration for the professional consulting services to be performed by Consultant, City agrees to pay Consultant an amount not-to-exceed **Three Hundred Eighty Thousand and No/Dollars (\$380,000.00)**, in accordance with Exhibit "A" entitled "Fee Schedule," which document is attached hereto and incorporated herein by reference

for all purposes, in payment for services and the Scope of Services deliverables as delineated in Exhibit "A."

Such fixed not-to-exceed amount includes amounts paid for Consultant's professional consulting services and for the fees of any additional consultants contracted by Consultant for the completion of this Project.

**Reimbursable Expenses:** Reimbursable expenses shall not be included in this Agreement.

## **6.0 INVOICE REQUIREMENTS; TERMS OF PAYMENT**

**Invoices:** To receive payment, Consultant shall prepare and submit detailed invoices to the City, in accordance with the delineation contained herein, for services rendered. Such invoices for professional services shall track the referenced Scope of Work, and shall detail the services performed, along with documentation for each service performed. Payment to Consultant shall be made on the basis of the invoices submitted by Consultant and approved by the City. Such invoices shall conform to the schedule of services and costs in connection therewith.

Should additional backup material be requested by the City relative to service deliverables, Consultant shall comply promptly. In this regard, should the City determine it necessary, Consultant shall make all records and books relating to this Agreement available to the City for inspection and auditing purposes.

**Payment of Invoices:** The City reserves the right to correct any error that may be discovered in any invoice that may have been paid to Consultant and to adjust same to meet the requirements of this Agreement. Following approval of an invoice, the City shall endeavor to pay Consultant promptly, but no later than the time period required under the Texas Prompt Payment Act described in Section 8.01 herein. Under no circumstances shall Consultant be entitled to receive interest on payments which are late because of a good faith dispute between Consultant and the City or because of amounts which the City has a right to withhold under this Agreement or state law. The City shall be responsible for any sales, gross receipts or similar taxes applicable to the services, but not for taxes based upon Consultant's net income.

## **7.01 INSURANCE**

Consultant shall meet all City of Round Rock Insurance Requirements set forth at: [http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr\\_insurance\\_07.20112.pdf](http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf).

## **8.0 PROMPT PAYMENT POLICY**

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, any payment to be made by the City to Consultant will be made within thirty (30) days of the date the City receives goods under this Agreement, the date the performance of the services under this Agreement are completed, or the date the City receives a correct invoice for the goods or services, whichever is

later. Consultant may charge interest on an overdue payment at the “rate in effect” on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b). This Prompt Payment Policy does not apply to payments made by the City in the event:

- (a) There is a bona fide dispute between the City and Consultant, a contractor, subcontractor, or supplier about the goods delivered or the service performed that cause the payment to be late; or
- (b) There is a bona fide dispute between Consultant and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- (c) The terms of a federal contract, grant, regulation, or statute prevent the City from making a timely payment with federal funds; or
- (d) The invoice is not mailed to the City in strict accordance with any instruction on the purchase order relating to the payment.

## **9.0 NON-APPROPRIATION AND FISCAL FUNDING**

This Agreement is a commitment of the City’s current revenues only. It is understood and agreed that the City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of the City does not appropriate funds sufficient to purchase the services as determined by the City’s budget for the fiscal year in question. The City may effect such termination by giving Consultant a written notice of termination at the end of its then-current fiscal year.

## **10.0 TIMETABLES**

Unless otherwise indicated to Consultant in writing by City, or unless Consultant is unreasonably delayed in the orderly progress of its work by forces beyond Consultant’s control, the timetable structure and deliverable due dates shall be in reasonable conformity to Consultant’s schedule set forth in Exhibit “A.”

## **11.0 SUPPLEMENTAL AGREEMENT**

The terms of this Agreement may be modified by written Supplemental Agreement hereto, duly authorized by City Council or by the City Manager, if the City determines that there has been a significant change in (1) the scope, complexity, or character of the services to be performed; or (2) the duration of the work. Any such Supplemental Agreement must be executed by both parties within the period specified as the term of this Agreement. Consultant shall not perform any work or incur any additional costs prior to the execution, by both parties, of such Supplemental Agreement. Consultant shall make no claim for extra work done or materials furnished unless and until there is full execution of any Supplemental Agreement, and the City shall not be responsible for actions by Consultant nor for any costs incurred by

Consultant relating to additional work not directly authorized by Supplemental Agreement.

## **12.0 TERMINATION; DEFAULT**

**Termination:** It is agreed and understood by Consultant that the City may terminate this Agreement for the convenience of the City, upon thirty (30) days' written notice to Consultant, with the understanding that immediately upon receipt of said notice all work being performed under this Agreement shall cease. Consultant shall invoice the City for work satisfactorily completed and shall be compensated in accordance with the terms hereof for work accomplished prior to the receipt of said notice of termination. Consultant shall not be entitled to any lost or anticipated profits for work terminated under this Agreement. Unless otherwise specified in this Agreement, all data, information, and work product related to this project shall become the property of the City upon termination of this Agreement, and shall be promptly delivered to the City in a reasonably organized form without restriction on future use. Should the City subsequently contract with a new consultant for continuation of service on the project, Consultant shall cooperate in providing information.

Termination of this Agreement shall extinguish all rights, duties, and obligations of the City and the terminated party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory or which is not performed in compliance with the terms of this Agreement.

**Default:** Either party may terminate this Agreement, in whole or in part, for default if the Party provides the other Party with written notice of such default and the other fails to satisfactorily cure such default within ten (10) business days of receipt of such notice (or a greater time if agreed upon between the Parties).

If default results in termination of this Agreement, then the City shall give consideration to the actual costs incurred by Consultant in performing the work to the date of default. The cost of the work that is useable to the City, the cost to the City of employing another firm to complete the useable work, and other factors will affect the value to the City of the work performed at the time of default. Neither party shall be entitled to any lost or anticipated profits for work terminated for default hereunder.

The termination of this Agreement for default shall extinguish all rights, duties, and obligations of the terminating Party and the terminated Party to fulfill contractual obligations. Termination under this section shall not relieve the terminated party of any obligations or liabilities which occurred prior to termination.

Nothing contained in this section shall require the City to pay for any work which it deems unsatisfactory, or which is not performed in compliance with the terms of this Agreement.

### **13.0 NON-SOLICITATION**

Except as may be otherwise agreed in writing, during the term of this Agreement and for twelve (12) months thereafter, neither the City nor Consultant shall offer employment to or shall employ any person employed then or within the preceding twelve (12) months by the other or any affiliate of the other if such person was involved, directly or indirectly, in the performance of this Agreement. This provision shall not prohibit the hiring of any person who was solicited solely through a newspaper advertisement or other general solicitation.

### **14.0 INDEPENDENT CONTRACTOR STATUS**

Consultant is an independent contractor, and is not the City's employee. Consultant's employees or subcontractors are not the City's employees. This Agreement does not create a partnership, employer-employee, or joint venture relationship. No party has authority to enter into contracts as agent for the other party. Consultant and the City agree to the following rights consistent with an independent contractor relationship:

- (1) Consultant has the right to perform services for others during the term hereof.
- (2) Consultant has the sole right to control and direct the means, manner and method by which it performs its services required by this Agreement.
- (3) Consultant has the right to hire assistants as subcontractors, or to use employees to provide the services required by this Agreement.
- (4) Consultant or its employees or subcontractors shall perform services required hereunder, and the City shall not hire, supervise, or pay assistants to help Consultant.
- (5) Neither Consultant nor its employees or subcontractors shall receive training from the City in skills necessary to perform services required by this Agreement.
- (6) City shall not require Consultant or its employees or subcontractors to devote full time to performing the services required by this Agreement.
- (7) Neither Consultant nor its employees or subcontractors are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan of the City.

### **15.0 CONFIDENTIALITY; MATERIALS OWNERSHIP**

Any and all programs, data, or other materials furnished by the City for use by Consultant in connection with services to be performed under this Agreement, and any and all data and information gathered by Consultant, shall be held in confidence by Consultant as set forth

hereunder. Each party agrees to take reasonable measures to preserve the confidentiality of any proprietary or confidential information relative to this Agreement, and to not make any use thereof other than for the performance of this Agreement, provided that no claim may be made for any failure to protect information that occurs more than three (3) years after the end of this Agreement.

**The parties recognize and understand that the City is subject to the Texas Public Information Act and its duties run in accordance therewith.**

All data relating specifically to the City's business and any other information which reasonably should be understood to be confidential to City is confidential information of City. Consultant's proprietary software, tools, methodologies, techniques, ideas, discoveries, inventions, know-how, and any other information which reasonably should be understood to be confidential to Consultant is confidential information of Consultant. The City's confidential information and Consultant's confidential information is collectively referred to as "Confidential Information." Each party shall use Confidential Information of the other party only in furtherance of the purposes of this Agreement and shall not disclose such Confidential Information to any third party without the other party's prior written consent, which consent shall not be unreasonably withheld. Each party agrees to take reasonable measures to protect the confidentiality of the other party's Confidential Information and to advise their employees of the confidential nature of the Confidential Information and of the prohibitions herein.

Notwithstanding anything to the contrary contained herein, neither party shall be obligated to treat as confidential any information disclosed by the other party (the "Disclosing Party") which: (1) is rightfully known to the recipient prior to its disclosure by the Disclosing Party; (2) is released by the Disclosing Party to any other person or entity (including governmental agencies) without restriction; (3) is independently developed by the recipient without any reliance on Confidential Information; or (4) is or later becomes publicly available without violation of this Agreement or may be lawfully obtained by a party from any non-party. Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Notwithstanding the foregoing, either party will be entitled to disclose Confidential Information of the other to a third party as may be required by law, statute, rule or regulation, including subpoena or other similar form of process, provided that (without breaching any legal or regulatory requirement) the party to whom the request is made provides the other with prompt written notice and allows the other party to seek a restraining order or other appropriate relief. Subject to Consultant's confidentiality obligations under this Agreement, nothing herein shall preclude or limit Consultant from providing similar services for other clients.

Neither the City nor Consultant will be liable to the other for inadvertent or accidental disclosure of Confidential Information if the disclosure occurs notwithstanding the party's exercise of the same level of protection and care that such party customarily uses in safeguarding its own proprietary and confidential information.

Notwithstanding anything to the contrary in this Agreement, the City will own as its sole property all written materials created, developed, gathered, or originally prepared expressly for the City and delivered to the City under the terms of this Agreement (the "Deliverables"); and Consultant shall own any general skills, know-how, expertise, ideas, concepts, methods, techniques, processes, software, or other similar information which may have been discovered, created, developed or derived by Consultant either prior to or as a result of its provision of services under this Agreement (other than Deliverables). Consultant's working papers and Consultant's Confidential Information (as described herein) shall belong exclusively to the Consultant. City shall have a non-exclusive, non-transferable license to use Consultant's Confidential Information for City's own internal use and only for the purposes for which they are delivered to the extent that they form part of the Deliverables.

Consultant shall require any contracts with additional consultants to include similar language regarding confidentiality or information specifically designated as confidential by the City.

## **16.0 WARRANTIES**

Consultant represents that all services performed hereunder shall be performed consistent with generally prevailing professional or industry standards, and shall be performed in a professional and workmanlike manner. Consultant shall re-perform any work not in compliance with this representation.

## **17.0 LIMITATION OF LIABILITY**

Should any of Consultant's services not conform to the requirements of the City or of this Agreement, then and in that event the City shall give written notification to Consultant; thereafter, (a) Consultant shall either promptly re-perform such services to the City's satisfaction at no additional charge, or (b) if such deficient services cannot be cured within the cure period set forth herein, then this Agreement may be terminated for default.

In no event will Consultant be liable for any loss, damage, cost or expense attributable to negligence, willful misconduct or misrepresentations by the City, its directors, employees or agents.

## **18.0 INDEMNIFICATION**

Consultant shall save and hold harmless City and its officers and employees from all claims and liabilities due to activities of his/her/itself and his/her/its agents or employees,



performed under this Agreement, which are caused by or which result from the negligent error, omission, or negligent act of Consultant or of any person employed by Consultant or under Consultant's direction or control.

Consultant shall also save and hold City harmless from any and all expenses, including but not limited to reasonable attorneys' fees which may be incurred by City in litigation or otherwise defending claims or liabilities which may be imposed on City as a result of such negligent activities by Consultant, its agents, or employees.

## **19.0 ASSIGNMENT AND DELEGATION**

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party may assign any rights or delegate any duties under this Agreement without the other party's prior written approval, which approval shall not be unreasonably withheld.

## **20.0 LOCAL, STATE AND FEDERAL TAXES**

Consultant shall pay all income taxes, and FICA (Social Security and Medicare taxes) incurred while performing services under this Agreement. The City will not do the following:

- (1) Withhold FICA from Consultant's payments or make FICA payments on its behalf;
- (2) Make state and/or federal unemployment compensation contributions on Consultant's behalf; or
- (3) Withhold state or federal income tax from any of Consultant's payments.

If requested, the City shall provide Consultant with a certificate from the Texas State Comptroller indicating that the City is a non-profit corporation and not subject to State of Texas Sales and Use Tax.

## **21.0 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES**

Consultant, its consultants, agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies. Consultant shall further obtain all permits, licenses, trademarks, or copyrights required in the performance of the services contracted for herein, and same shall belong solely to the City at the expiration of the term of this Agreement.

## **22.0 FINANCIAL INTEREST PROHIBITED**

Consultant covenants and represents that Consultant, its officers, employees, agents, consultants and subcontractors will have no financial interest, direct or indirect, in the purchase

or sale of any product, materials or equipment that will be recommended or required hereunder.

### **23.0 DESIGNATION OF REPRESENTATIVES**

The City hereby designates the following representative authorized to act on its behalf with regard to this Agreement:

Brian Stillman  
Sports Facilities & Operations Manager  
Sports Management & Tourism Department  
221 East Main Street  
Round Rock, TX 78664  
Telephone: (512) 218-6607  
E-mail address: [bstillman@roundrocktexas.gov](mailto:bstillman@roundrocktexas.gov)

### **24.0 NOTICES**

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

- (1) When delivered personally to recipient's address as stated herein; or
- (2) Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

#### **Notice to Consultant:**

KemperSports, Inc.  
500 Skokie Boulevard  
Suite 444  
Northbrook, IL 60062

#### **Notice to City:**

City Manager, City of Round Rock  
221 East Main Street  
Round Rock, TX 78664

#### **AND TO:**

Stephan L. Sheets, City Attorney  
309 East Main Street  
Round Rock, TX 78664

Nothing contained in this section shall be construed to restrict the transmission of routine communications between representatives of the City and Consultant.

## **25.0 APPLICABLE LAW; ENFORCEMENT AND VENUE**

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of Texas.

## **26.0 EXCLUSIVE AGREEMENT**

The terms and conditions of this Agreement, including exhibits, constitute the entire agreement between the parties and supersede all previous communications, representations, and agreements, either written or oral, with respect to the subject matter hereof. The parties expressly agree that, in the event of any conflict between the terms of this Agreement and any other writing, this Agreement shall prevail. No modifications of this Agreement will be binding on any of the parties unless acknowledged in writing by the duly authorized governing body or representative for each party.

## **27.0 DISPUTE RESOLUTION**

The City and Consultant hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

## **28.0 SEVERABILITY**

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion of provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion of provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this Article shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

## **29.0 STANDARD OF CARE**

Consultant represents that it is specially trained, experienced and competent to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed, whether by Consultant or designated subconsultants, in a manner acceptable to the City and according to generally accepted business practices.

### **30.0 GRATUITIES AND BRIBES**

City, may by written notice to Consultant, cancel this Agreement without incurring any liability to Consultant if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Consultant or its agents or representatives to any City Officer, employee or elected representative with respect to the performance of this Agreement. In addition, Consultant may be subject to penalties stated in Title 8 of the Texas Penal Code.

### **31.0 RIGHT TO ASSURANCE**

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure an anticipatory repudiation of this Agreement.

### **32.0 MISCELLANEOUS PROVISIONS**

**Time is of the Essence.** Consultant agrees that time is of the essence and that any failure of Consultant to complete the services for each Phase of this Agreement within the agreed project schedule may constitute a material breach of the Agreement.

Consultant shall be fully responsible for its delays or for failures to use reasonable efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Consultant's failure to perform in these circumstances, City may withhold, to the extent of such damage, Consultant's payments hereunder without a waiver of any of City's additional legal rights or remedies. City shall render decisions pertaining to Consultant's work promptly to avoid unreasonable delays in the orderly progress of Consultant's work.

**Force Majeure.** Notwithstanding any other provisions hereof to the contrary, no failure, delay or default in performance of any obligation hereunder shall constitute an event of default or breach of this Agreement, only to the extent that such failure to perform, delay or default arises out of causes beyond control and without the fault or negligence of the party otherwise chargeable with failure, delay or default; including but not limited to acts of God, acts of public enemy, civil war, insurrection, riots, fires, floods, explosion, theft, earthquakes, natural disasters or other casualties, strikes or other labor troubles, which in any way restrict the performance under this Agreement by the parties.

**Section Numbers.** The section numbers and headings contained herein are provided for convenience only and shall have no substantive effect on construction of this Agreement.

**Waiver.** No delay or omission by either party in exercising any right or power shall impair such right or power or be construed to be a waiver. A waiver by either party of any of the covenants to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach or of any other covenant. No waiver of discharge shall be valid

unless in writing and signed by an authorized representative of the party against whom such waiver or discharge is sought to be enforced.

**Multiple Counterparts.** This Agreement may be executed in multiple counterparts, which taken together shall be considered one original. The City agrees to provide Consultant with one fully executed original.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereafter indicated.

**City of Round Rock, Texas**

**KemperSports, Inc.**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date Signed: \_\_\_\_\_

**For City, Attest:**

By: \_\_\_\_\_  
Sara L. White, City Clerk

**For City, Approved as to Form:**

By: \_\_\_\_\_  
Stephan L. Sheets, City Attorney



500 Skokie Boulevard  
Suite 444  
Northbrook, Illinois 60062  
847 291 0271 fax  
www.kempersports.com

May 15, 2017

Mr. Brian Stillman  
Sports Facilities & Operations Manager  
Sports Management & Tourism  
City of Round Rock, Texas 78644

**Re: Project/Construction Management Service Proposal, Forest Creek Golf Course**

Dear Mr. Stillman:

On behalf of KemperSports, I am pleased to submit the following proposal to provide Project/Construction Management Services as described to The City of Round Rock, Texas Sports Management & Tourism Department for the renovation of Forest Creek Golf Course including work to renovate and rebuild greens, bunkers, irrigation system, and associated golf course drainage and ancillary items. The City of Round Rock has been clear in their instructions to KemperSports that the work to renovate and improve the golf course is the priority of this project.

KemperSports is well qualified to provide comprehensive development/construction management services for the renovation of Forest Creek Golf Course. Since 1978, we have managed and consulted on the development of over 40 golf course, clubhouse, and recreation oriented projects throughout the United States.

Our proposal is to act as the Project/Construction Manager to insure the delivery of the project and all related design, development, and construction oversight, and to participate fully in the public bid and award process of all individual scopes of work to the lowest responsible bidder. When awarded KemperSports is prepared to enter in to all consulting contracts necessary for design, bid, and delivery of the project to the City of Round Rock and their operations and management team. Our proposal is for full engagement during the final project scope development, subsequent design development, permitting, bid, award, Value Engineering and subsequent construction and grow-in. The tentative schedule for project delivery is June 1, 2017 through August 1, 2018. The Scope of Service for this proposal is as outlined in the attachment titled '**Project/Construction Management Services**' and provides tasks to be completed in related phases of Pre-Construction, Bid and Award, Construction, and Post Construction.

It is anticipated that work will begin immediately upon execution of the agreement, to assist the client in the completion of the design development and construction documentation together with final budgeting and value engineering exercises. During this period a campaign will be initiated to develop contractor interest in anticipation of bidding and negotiation for construction contracts beginning as early as June 1, 2017.

Exhibit "A"



500 Skokie Boulevard  
Suite 444  
Northbrook, Illinois 60062  
847 291 0271 fax  
www.kempersports.com

**Sports Management & Tourism Department  
Construction Management Agency Proposal  
May 15, 2017  
Page 2**

KemperSports proposes to manage all construction contracts and scopes of work required for the delivery of the project including Pre-Construction, Construction, and Post Construction phases as outlined above and on the attachments for a **Lump Sum Fee of \$380,000**. Included in this fee are Project Management, Final Design Development and Construction Documents, Civil Engineering and Permitting, Irrigation Design and Construction Documents, and Construction Oversight. We anticipate that our work would begin on or about June 1, 2017 with a start of construction in October, 2017 and a scheduled reopening for play in August of 2018.

KemperSports Development and Construction is pleased to have the opportunity to be of service to The City of Round Rock and to continue a mutually beneficial service relationship at Forest Creek and reestablish the golf course as a must play in the market. We offer our experience and qualifications to the City of Round Rock Sports Management & Tourism Department for the successful delivery of this exciting project and look forward to being considered for Project/Construction Management services.

Sincerely,

Daniel F. Cunningham  
VP Development and Construction

Cc: Jim Stegall, EVP KemperSports  
Val D'Souza, Regional Operating Executive, KemperSports  
Keith Hanley, Vice President Operations, KemperSports

Exhibit "A"

**Project/Construction Management Services (June 1, 2017 – August 1, 2018)**

KemperSports will provide the following development and construction phase services and assistance to the City of Round Rock, Sports Management & Tourism Department to complete Project Development consisting of final design and development, permitting, bid assistance, contract award, implementation, and oversight of the golf course renovation at Forest Creek Golf Course, City of Round Rock, Texas.

**Scope of Services**

The following Scope of Services is proposed in conjunction with the delivery of Forest Creek Golf Course. KemperSports will provide a site representative to provide comprehensive service to implement a Construction Management Plan for the delivery of the Golf Course renovation project to the Sports Management & Tourism Department during the development phases of pre-construction activities, the bid and award phase, the construction phase, and during the post construction phase of development and construction. KemperSports proposes to perform the following services as outlined below.

1. Final Design and Development of construction plans, bid and contract documents and facilitate value engineering.
2. Contract all design and permitting consultants including Civil Engineering/Permitting, Construction Design Plans and Specifications, and Irrigation Plans and Specifications.
3. Provide recommendations as required for public bid packages, scopes of work, and bid items.
4. Provide pre-bid budget and schedule preparation and analysis.
5. Participate in processes prior to bidding and assist in the bid process including review and analysis of any contractor bids or proposals.
6. Manage all construction related contracts.
7. Schedule and coordinate construction activities at the golf course site.
8. Regularly review construction activities for compliance with construction bid / contract documents.
9. Review and sign pay applications under title of "Signature of City of Round Rock Representative" with approval of the City.

**1. Pre-Construction**

During the pre-construction phase, KemperSports will represent the Department and team to ensure a seamless transition from planning, design, engineering, permitting and final approvals to the bid and award phase. During this pre-construction phase, KemperSports will perform the necessary assistance to ensure that the project will be successfully delivered to the Department consistent with the goals and objectives and consists of the following specific tasks.

- a. Manage the permitting process.
- b. Review the Site, Current Plans and Programs, and any other associated study results for the determination of compliance with the best interest of overall goals of the Department.
- c. Provide all Golf Course Construction Plans as proposed for consistency, constructability and financial responsibility.
- d. Develop preliminary budgets consistent with desired scope to determine overall viability.
- e. Develop Action Plan and develop alternatives for implementation.
- f. Develop with Owner and Operator the final design development and construction plans and programs.
- g. Assist with efforts for solicitation and selection of qualified Contractors.
- h. Develop construction management plan, procedures, and coordinate and attend pre-development meetings.
- i. Develop information management systems on behalf of the Department, Operator, and Construction Management team.
- j. Update development and construction schedules on a regular basis.
- k. Review and recommend value engineering alternatives during pre-construction process.

**Exhibit "A"**



## **2. Bid and Award**

KemperSports will provide all services as outlined and necessary to facilitate the public bidding process as required by any public bidding requirements of the City of Round Rock. It is our goal to expedite the bidding and award process and to assist with all tasks required to realize a successful bid process and begin construction with the most responsive and qualified bidder/contractor. To that end KemperSports will perform the following tasks.

- a. Assist with development and coordination for bidding and contracting procedures.
- b. Review, analyze and make recommendations on bids as requested.
- c. Manage Value Engineering process.
- d. Schedule and attend pre-bid and pre-construction meetings.
- e. Review Drafts and Assist to Finalize Contract Agreements between the Department and contractors as required.
- f. Facilitate Bonding and Insurance Procedures as necessary.

## **3. Construction**

KemperSports will provide all construction management services necessary or appropriate in connection with the timely completion of the project in accordance with the contract documents for the project. Specifically, KemperSports will oversee construction of the golf course and manage all construction contracts and work whether publicly bid, performed by Department or Operator forces, or third party contractors. KemperSports will manage all work and scope items included in the project budget. Construction Management services will include, but are not limited to the following:

- a. Field representative to be present on site on a daily basis during construction activities.
- b. Coordinate on-site facilities.
- c. Point of contact between Department, CM, design and permitting consultants and contractors.
- d. Project kick off planning meetings.
- e. Monitor Permits, Insurance, Labor Affidavits and Bonds, and Prevailing Wage requirements.
- f. Schedule, conduct, and document progress meetings.
- g. Manage scheduling process, budget and cost monitoring,
- h. Review and sign pay applications under the title of "Signature of City of Round Rock Representative".
- i. Negotiate and process change orders and manage claims.
- j. Manage quality assurance and control procedures.
- k. Coordinate Construction Testing as required; review proposals and contract, organize reports, and work with City of Round Rock testing company.
- l. Manage work performed under public bid contract.
- m. Supervise Owner performed work and purchased equipment and materials.
- n. Manage work performed by all contractors.
- o. Monitor and make recommendations for reporting, record keeping, information management, and record drawing procedures. Provide monthly status reports.
- p. Recommendations during grow-in as necessary and required.

Exhibit "A"

#### **4. Post Construction**

Upon construction completion of the golf course, KemperSports will perform all necessary closeout procedures and facilitate the receipt of all required documentation to finalize construction contracts. Additionally KemperSports' Construction Managers will work seamlessly with the Department to ensure a successful turn over from the Construction Manager and Contractors to Owner prior to grow-in period as well as the delivery of supplies and equipment as required by the Department. At a minimum KemperSports will perform the following items:

- a. Prepare final cost report.
- b. Development final acceptance, grow-in, and opening/occupancy plan.
- c. Develop plan for receipt of maintenance manuals, operating procedures, spare parts and warranties.
- d. Review maintenance manuals and operating information for conformance.
- e. Review warranty information and insure all warranted items are documented and in compliance.
- f. Assist in obtaining final permits where required.
- g. Develop contractor closeout procedure including punch list, training and acceptance procedure, callback procedure and close out reports.
- h. Process final payment and waivers of lien.

The scope of this proposal is for a comprehensive Development Phase Service agreement with site representation on a daily basis. Our Project delivery team consists of the following members.

- Daniel F. Cunningham, VP Development and Construction
- Valentine D' Souza, Regional Operations Executive
- Keith Hanley, VP Operations
- William Kenneth Bell, Construction Superintendent and Project Agronomist

KemperSports Development and Construction is proposing that our development department in partnership with The City of Round Rock and their departments, operators, and team would become the Project/Construction Manager for delivery of the Forest Creek Renovation Project working seamlessly during the Development, and Construction Phases to ensure positive results, limit inconvenience, and lead to success in the overall process.

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Exhibit "A"

# KEMPERSPORTS PROJECT MANAGEMENT

## Pre-Construction

- Job Familiarization
- Review Plans and Specifications
- Coordinate Permit Approvals
- Prepare Project Budget
- Coordinate Design Team
- Develop Bidding/Contracting Procedures
- Prepare Project Schedules & Phasing
- Pre-qualify Contractors
- Contractor Pre-bid Meetings
- Solicit Bids
- Review Bids
- Analyze Bids and Value Engineering
- Make Recommendations
- Facilitate Contract Negotiation
- Issue Notice to Proceed

## Construction

- Owner Representation
- Coordinate with Owner/Design Team
- Provide Daily On-site Supervision
- Provide Site Inspection/Quality Control
- Provide Site Safety Representation
- Prepare Construction Schedules
- Manage Critical Path Schedule
- Prepare Budget Monthly Updates
- Coordinate RFI Documentation
- Verify Material Requisitions
- Review/Approve Contractor Submittals
- Coordinate Design Team Visits
- Chair Site Meetings
- Coordinate Testing and Inspections
- Oversee Contractor Payment Requests

## Post-Construction

- Review and Approve "As-Built" Plans
- Verify Contractor "turnover" items
- Verify Contractor Warranty Items
- Verify Manufacturer Warranty Items
- Provide Close-Out Inspections/Punch lists
- Provide Post-Construction Evaluation
- Provide Recommendation for Long-Term maintenance
- Turnover to Operations

Exhibit "A"

**Daniel F. Cunningham, Vice President, Development and Construction**

Dan Cunningham oversees the company's development, construction, building, and capital improvement projects, including all horizontal and vertical construction.

Mr. Cunningham has more than 35 years of experience in project management for the development of championship golf courses, club houses and related structures, master planned communities, and civil engineering works. He has played key roles in building dozens of golf courses, including the 2008 Golf Inc. Magazines Winner and Runner-Up Golf Course Developments of the Year, Butterfield Trail and Ridge Creek at Dinuba, remodeling of the Boca Raton Resort in Florida and ASU Karsten Golf Course in Arizona, as well as Harborside International Golf Course in Chicago, which Golfweek rated the "Third Best Municipal Golf Course" in America. He has worked with many of the industry's leading golf course architects, building architects, planners, landscape architects, engineers, and contractors.

**BACKGROUND**

<b>KemperSports Management – Northbrook, IL</b>	<b>1999-Present</b>
<ul style="list-style-type: none"> <li>• VP Development and Construction</li> <li>• Project Manager</li> </ul>	
<b>The Cunningham Company – Lake Hills, IL</b>	<b>1994-1999</b>
<ul style="list-style-type: none"> <li>• Project/Construction Management</li> <li>• Principal</li> </ul>	
<b>Dick Nugent Associates – Long Grove, IL</b>	<b>1989-1995</b>
<ul style="list-style-type: none"> <li>• Golf Course Architecture and Construction Management</li> <li>• Associate/Senior Construction Manager</li> </ul>	
<b>Dye Designs, Inc. – Denver, CO</b>	<b>1986-1989</b>
<ul style="list-style-type: none"> <li>• Golf Course Design</li> <li>• Project Manager</li> </ul>	
<b>Futura Engineering Inc., - Denver, CO</b>	<b>1983-1989</b>
<ul style="list-style-type: none"> <li>• Civil Engineering and Land Surveying</li> <li>• Project Manager</li> </ul>	
<b>Wood Brothers Homes – Denver, CO</b>	<b>1977-1983</b>
<ul style="list-style-type: none"> <li>• Land Development</li> <li>• Project Engineer</li> </ul>	
<b>Federal Highway Administration</b>	<b>1974-1977</b>
<ul style="list-style-type: none"> <li>• Highway Construction</li> <li>• Civil/Construction Engineering</li> </ul>	
<b>Professional Registration</b>	
<ul style="list-style-type: none"> <li>• State of Colorado, 1985 Registration Number 23038</li> <li>• State of Arizona, 1987 Registration Number 22255</li> </ul>	

Exhibit "A"

**RECENT PROJECTS**

- ***Hudson County Improvement Authority – Golf Course, Clubhouse, Maintenance***
- ***Glenview Park District – Golf Course Renovation & Storm Water Improvements***
- ***Quail Lodge Golf Club – Golf Course Renovation***
- ***Union County – Galloping Hill Golf Course Clubhouse – Kenilworth, NJ***
- ***Harbor Shores (Benton Harbor, MI) - Jack Nicklaus Signature Golf Course***
- ***Butterfield Trail Golf Club (El Paso, TX) - 2008 Development of the Year***
- ***Ridge Creek at Dinuba Golf Club (Dinuba, California) - 2008 Runner-Up for Development of the Year***
- ***Bandon Trails (Bandon, OR) - Coore/Crenshaw golf course at Bandon Dunes Golf Resort***
- ***The Glen Club (Glenview, IL) - 2003 Mixed Use Development of the Year, Urban Land Institute***
- ***City of Chicago First Tee Golf Centers***
- ***Gillette Ridge (Bloomfield, CT) - Arnold Palmer-designed golf facility on the corporate campus of Cigna Insurance***
- ***Lansdowne Resort and Conference Center (Lansdowne, VA) - Greg Norman designed golf course and 43,000 square foot clubhouse***
- ***Nike Redevelopment Project (Vernon Hills, IL) – multi-million dollar sports complex***

Exhibit "A"

**FOREST CREEK GOLF COURSE RENOVATION  
FEE MATRIX 5/15/2017**

	Project Budget \$2,000,000 Phase A	Project Budget \$2,700,000 Phase B	Project Budget \$3,400,000 Phase C	Project Budget \$4,000,000 Phase D
Consulting				
Design Development & Construction Documents	\$35,000	\$45,000	\$60,000	\$65,000
Freese & Nichols - Engineering & Permitting	\$20,000	\$25,000	\$25,000	\$25,000
Irrigation Design, Layout, Programming	\$30,000	\$40,000	\$70,000	\$70,000
Project/Construction Management	\$160,000	\$190,000	\$225,000	\$230,000
	<b>\$245,000</b>	<b>\$300,000</b>	<b>\$380,000</b>	<b>\$390,000</b>
	12%	11%	11%	10%