



Issue: Academy Sports and Outdoors Sponsorship Agreement 2022

Date: February 1, 2022

Submitted By: Matt Crouse, Director of Parks and Recreation

Background

Nixa Parks and Recreation has been fortunate to have a great working relationship with Academy Sports and Outdoors through the form of a sponsorship agreement. This is the yearly renewal of that agreement through February 28, 2023.

Analysis

Through this agreement Nixa Parks and Recreation will provide team sponsorships, banner and signage sponsorships, and social media posts, etc. In return Nixa Parks and Recreation will receive monetary compensation and the ability to have discount shopping days for our residents.

Recommendation

Staff recommends the approval of this sponsorship agreement as we can meet the demands of the agreement. The agreement has worked well for the department and provided many opportunities through programming and services to our community. We are fortunate to have such a good working relationship with Academy and hope the relationship continues.

Thank you for your consideration and I would be happy to answer any questions you may have.

Respectfully,

Matt Crouse
Director, Parks and Recreation

RESOLUTION NO. 2022-029

A RESOLUTION OF THE COUNCIL OF THE CITY OF NIXA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A SPONSORSHIP AGREEMENT WITH ACADEMY SPORTS AND OUTDOORS.

WHEREAS the City and Academy Sports and Outdoors regularly enter into a sponsorship agreement where Academy provides funding to certain Parks' Department programs in exchange for certain sponsorship rights; and

WHEREAS the City Council desires to authorize the City Administrator to execute, on behalf of the City, a certain sponsorship agreement, attached hereto as "Resolution Exhibit A."

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NIXA, AS FOLLOWS, THAT:

SECTION 1: The City Administrator, or designee, is hereby authorized to execute the contract attached hereto, and incorporated herein by this reference, as "Resolution Exhibit A," with Academy Ltd. d/b/a Academy Sports and Outdoors. Said Contract shall be in substantially similar form as the document attached hereto as "Resolution Exhibit A." The City Administrator and the officers of the City are hereby authorized to do all things necessary or convenient to carry out the terms and intent of this Resolution.

SECTION 2: This Resolution shall be in full force and effect from and after its final passage by the City Council and after its approval by the Mayor, subject to the provisions of section 3.11(g) of the City Charter.

ADOPTED BY THE CITY COUNCIL THIS 28th DAY OF FEBRUARY 2022.

ATTEST:

CITY CLERK

PRESIDING OFFICER

APPROVED BY THE MAYOR.

ATTEST:

CITY CLERK

MAYOR

APPROVED AS TO FORM:

DATE OF APPROVAL

CITY ATTORNEY



This Sponsorship Summary ("**Summary**"), naming Academy Ltd. d/b/a Academy Sports + Outdoors ("**Academy**") as a Sponsor of the City of Nixa, Missouri ("**Recipient**"), is governed by that certain Sponsorship Rider ("**Rider**") between Academy and Recipient effective as of 3/1/2022 ("**Effective Date**").

The term of this Summary is for the period of time from the Effective Date until 2/28/2023 (the "**Term**"). Academy shall have the right to extend this Agreement ("**Agreement**" as defined in the attached Rider) for optional additional one (1) year periods. Academy must notify Recipient of its intent to renew the Agreement with written notice to Recipient thirty (30) days prior to the end of the then current term.

1. Academy will provide the following to Recipient:

- \$1,000 Cash
- \$1,000 Gift Cards

2. Recipient will provide the following sponsorship benefits to Academy:

- Academy logo on banners two (2) banners
 - One (1) banner at ballfield
 - One (1) banner at aquatic facility.
- One (1) digital slide for monitors inside facility.
- Academy logo on back of jersey
 - Ten (10) baseball program teams
 - Ten (10) basketball program teams
- Metal sign in the gymnasium (2' x 6'), to be provided by Nixa Parks & Recreation
- Four (4) social promotions throughout the year
 - Posts will feature Academy product or location
 - Content to be mutually agreed upon
- Social posts on Facebook to tag @AcademySpringfield
- Recipient to host minimum of two (2) discount shopping events
- Date must be before any competitors shop day
- Will promote on website, social page and any other means applicable to ensure turnout
- Provide Proof of Performance to include number of participants

3. Invoicing:

Recipient shall submit its invoice(s) and W9 for payment processing via email to: rick.burleson@academy.com

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
(RIDER AND SIGNATURE PAGE FOLLOWS)**

This **SPONSORSHIP RIDER** ("**Rider**") is entered into on 3/1/2022 (the "**Effective Date**") between **Academy, Ltd. d/b/a Academy Sports + Outdoors** ("**Academy**"), a Texas limited partnership located at 1800 North Mason Road, Katy, Texas, 77449 and the City of Nixa, Missouri ("**Recipient**"), located at 701 N. Taylor Way, Nixa, MO 65714. Academy and Recipient may sometimes be referenced herein individually as "**Party**" or collectively as the "**Parties**".

This Rider is made part of the Sponsorship Summary ("**Summary**") by and between Academy and Recipient dated 3/1/2022. This Rider, agreed to by both Parties, modifies the terms and conditions of the Summary. Should any conflict arise between the Summary and this Rider, this Rider shall control and supersede all prior agreements and understandings, with respect to the subject matter hereof. Academy and Recipient agree that the following provisions shall be included as a part of the Parties' sponsorship agreement, and that this sponsorship agreement consists of the Summary, this Rider, and any Exhibits or Schedules referenced therein (collectively, the "**Agreement**").

1. **PRICING AND INVOICING.** Nothing herein shall permit an increase in the price for promotional or sponsorship rights or consideration specified in any Summary unless approved in writing and signed by Academy. All invoices will be paid within ninety (90) days after Academy's receipt of a valid and correct invoice. Academy shall have the right at any time to set-off any amount owed by Recipient to Academy under this Agreement or any other agreements between the Parties from and against any amount due and owing by Academy to Recipient under this Agreement.

2. **INSURANCE.** Recipient shall, at its own cost and expense, procure and maintain adequate commercial general liability, umbrella, business auto, worker's compensation, and/or other insurance to cover all claims, lawsuits, judgments, losses, civil penalties, liabilities, damages, costs and expenses, including attorney's fees and court costs, arising out of or related to this Agreement, statement of work, or any event or activity sponsored or promoted by Academy under this Agreement. Any deductible applicable to the insurance shall be paid by Recipient.

3. **REPRESENTATIONS, WARRANTIES AND GUARANTEES.**

3.1 Each Party warrants, represents, and guarantees to the other that:

- a. The Party (i) understands all of the terms of this Agreement; (ii) has had the opportunity to review this Agreement with its counsel; (iii) has the full power and authority to enter and perform this Agreement; (iv) has completed all necessary action to duly authorize the execution, delivery and performance of this Agreement; and (v) confirms that this Agreement has been duly executed and delivered on behalf of Recipient and is the valid and binding obligation of Recipient;
- b. The Party shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, requirements, decrees, orders, judgments, injunctions, and all other government and/or regulatory directives (collectively, "**Laws**") at all times during the Term of this Agreement; and
- c. All services, consideration, or materials provided pursuant to the Agreement do not infringe any actual or alleged patent, design, trade name, trademark, copyright, intellectual property right, trade secret, or any other intellectual property right or entitlement of any third party.

3.2 Recipient warrants, represents, and guarantees to Academy that:

- a. Recipient shall, at all times during the term of this Agreement, comply with the provisions of Academy's Vendor Code of Conduct located at <http://vendor.academy.com>.

4. **FORCE MAJEURE.** In the event of unforeseen circumstances affecting the ability of the Parties to fulfill this Agreement which are not the result of a Party's fault or negligence, the Parties shall, within a commercially reasonable time, enter into good faith discussions regarding adjustments and/or amendments to this Agreement. If the Parties do not agree, this Agreement shall terminate and Recipient shall provide to Academy a refund equal to the value of sponsorship benefits Academy has prepaid but not received.
5. **MARKS.** Each Party grants to the other a limited, non-assignable, non-sublicensable, royalty free, non-exclusive license for the use of copyrights, service marks, logos, trademarks, word marks, symbols, emblems, designs, patents, or other intellectual property (collectively "**Marks**") for the duration of the Term and only as set forth in the Summary. Each Party's use of the Marks under trademark or copyright law or other property rights shall inure to the benefit of and be the exclusive property of the Party owning such Marks. Except as set forth herein, neither Party may use the other Party's Marks without prior written consent. Each Party agrees that nothing in this Agreement shall give one Party any right, title or interest in the other Party's Marks and nothing contained herein shall be construed as an assignment or grant from one Party to the other of any right, title or interest in or to the other Party's Marks.
6. **INDEMNIFICATION. TO THE EXTENT PERMITTED BY MISSOURI LAW, RECIPIENT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS ACADEMY, ITS OWNERS, PARENTS, AFFILIATES, SUBSIDIARIES, OFFICERS, MANAGERS, PARTNERS, EMPLOYEES, AND AGENTS FROM AND AGAINST ANY AND ALL ALLEGATIONS, CLAIMS, LAWSUITS, JUDGMENTS, LOSSES, CIVIL PENALTIES, LIABILITIES, DAMAGES, COSTS, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES AND COURT COSTS (EACH A "CLAIM"), ARISING OUT OF OR RELATED TO (A) ANY INJURY, DEATH, OR PROPERTY DAMAGE CAUSED BY ANY ACT OR OMISSION OF RECIPIENT OR RELATED TO A PROMOTIONAL EVENT UNDER THIS AGREEMENT; (B) ANY NEGLIGENT OR GROSSLY NEGLIGENT ACTION, INACTION, OMISSION OR INTENTIONAL MISCONDUCT OF RECIPIENT IN ITS PERFORMANCE OF THIS AGREEMENT; (C) RECIPIENT'S BREACH OF ANY REPRESENTATION, WARRANTY, TERM, COVENANT, OR OTHER OBLIGATION UNDER THIS AGREEMENT, INCLUDING COMPLIANCE WITH ALL LAWS; AND/OR (D) ANY INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS BY ANY PRODUCT OR SERVICE DELIVERED PURSUANT TO THIS AGREEMENT. NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER OF RECIPIENT'S SOVERIEGN OR GOVERNMENTAL IMMUNITY.**
7. **LIMITATIONS AND WAIVERS.**
 - 7.1 **DAMAGE LIMITATIONS.** REGARDLESS OF THE LEGAL OR EQUITABLE BASIS OF ANY CLAIM IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER DAMAGES (EXCEPT DIRECT DAMAGES), INCLUDING WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF REVENUES OR PROFITS, EVEN IF SUCH DAMAGES WERE FORESEEABLE OR THE ALLEGED BREACHING PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
 - 7.2 **LIMITATION OF LIABILITY.** EACH PARTY'S TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL NEVER EXCEED THE TOTAL AMOUNT PAID OR INCURRED BY ACADEMY TO RECIPIENT UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH ACTION. THE LIMITATION OF LIABILITY CONTAINED IN THIS SECTION IS CUMULATIVE WITH ALL OF ACADEMY'S EXPENDITURES BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. EACH PARTY HEREBY RELEASES THE OTHER PARTY FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR

DEMANDS IN EXCESS OF THIS LIMITATION. THE PARTIES ACKNOWLEDGE THAT EACH OF THEM RELIED UPON THE INCLUSION OF THIS LIMITATION IN CONSIDERATION FOR ENTERING INTO THIS AGREEMENT. THE LIMITATIONS IN THIS SECTION DO NOT APPLY TO THE INDEMNITY OBLIGATIONS THAT EACH PARTY MAY OWE TO THE OTHER UNDER THIS AGREEMENT.

8. **ACKNOWLEDGEMENT.** The Parties acknowledge that Academy has no responsibility or obligation to do or cause to be done anything in connection with any Recipient events or Recipient premises other than that which is specifically provided for in the Agreement. It is understood that, at all times as between Academy and Recipient, Recipient will control the Recipient events and/or Recipient premises.
9. **ASSIGNMENT.** Either Party may assign this Agreement to a present or future parent, subsidiary, or affiliated entity, including a future successor or party acquiring all or part of the Party's business. All other assignments, transfers, or delegations require written consent of both Parties. Any attempted assignment or transfer in contravention of this Section shall be void.
10. **ENTIRE AGREEMENT/CHANGES.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous agreements, understandings, negotiations, representations or proposals or any kind, whether written, oral or otherwise. Neither Party has relied upon any statements, representations or other communications that are not contained in this Agreement. This Agreement may not be modified or amended except in writing executed by the duly authorized representatives of each Party to this Agreement.
11. **RELATIONSHIP OF THE PARTIES.** The relationship of Academy and Recipient under this Agreement shall be that of independent contractors and nothing herein or in any related document or representation shall be construed to create or imply any relationship of employment, agency, partnership, exclusivity, or any other relationship other than that of independent contractors. Academy and Recipient acknowledge and agree that each is engaged in a separate and independent business and neither shall state, represent, or imply any interest in or control over the business of the other.
12. **CHOICE OF LAW AND FORUM.** **THE LAWS OF THE STATE OF MISSOURI GOVERN THIS AGREEMENT AND ANY DISPUTES RELATED TO THIS AGREEMENT WITHOUT REFERENCE TO PRINCIPLES OF CHOICE OR CONFLICTS OF LAW. EXCEPT WHERE INJUNCTIVE OR OTHER EQUITABLE RELIEF IS SOUGHT, THE PARTIES AGREE THAT, AS A CONDITION PRECEDENT TO ANY ACTION REGARDING DISPUTES ARISING UNDER THIS AGREEMENT, SUCH DISPUTES SHALL FIRST BE SUBMITTED TO MEDIATION BEFORE A PROFESSIONAL MEDIATOR SELECTED BY THE PARTIES, AT A MUTUALLY AGREED TIME AND PLACE, AND WITH THE MEDIATOR'S FEES SPLIT EQUALLY BETWEEN THE PARTIES.**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

ACADEMY:

Academy, Ltd. d/b/a
Academy Sports + Outdoors
By: Academy Managing Co., L.L.C.
Its General Partner

By: _____

Name: _____

Title: _____

RECIPIENT:

Nixa Parks & Recreation

By: _____

Name: _____

Title: _____