

MASTER RECREATION SERVICES AGREEMENT

This MASTER SERVICES AGREEMENT (hereinafter "Agreement") is entered into by and between **Shelby County Board of Education, operating as Memphis-Shelby County Schools, 160 S. Hollywood Street, Memphis, TN 38112** (hereinafter "SCS") and _____, located at _____, (hereinafter "Provider").

WHEREAS, SCS is interested in obtaining one of the following services (the "Services") more specifically described in Exhibit A:

- Inflatable rentals
- Academic or recreational enrichment services
- Food concessions
- Other _____ (include description)

WHEREAS, Provider is interested in performing such Services, as may be mutually agreed upon by the parties.

In consideration of those mutual undertakings and covenants, the parties agree as follows:

Section 1. Provider Services. Provider hereby offers to perform, at the request of SCS, the Services set forth in Exhibit A to this Agreement. Provider understands that, by executing this Agreement, SCS makes no promises or representations whatsoever as to the frequency or dollar amount of business Provider can expect at any time during the term of this Agreement.

Section 2. Supervision. Provider represents that it has the specific skill and expertise to perform the Services and, if the Services require Provider's operation of equipment or direct provision of the Services to SCS students, that it has the personnel to adequately supervise the Services.

Section 3. Purchase Orders. SCS will issue a Purchase Order for each school location requesting Provider's Services (an "SCS School") authorizing the Provider to perform the Services. Each Purchase Order will describe the Services the Provider is to perform, as well as the location and duration of the Services. Each Purchase Order issued pursuant to this Agreement will incorporate the terms and conditions of this Agreement. **Effective from the date of this Agreement, SCS shall have no obligation to pay for Services that are not authorized in a Purchase Order.**

Section 4. Cancellation. Provider shall notify SCS of the Provider's cancellation policy in writing prior to scheduling the Services; provided that, (i) in no event shall a cancellation fee be imposed for Services cancelled within five (5) business days' prior to the scheduled date for the performance of the Services, and (ii) in no event shall any cancellation fee exceed twenty-five percent (25%) of the fee for the cancelled Services.

Section 5. Compensation. SCS shall pay Provider the maximum amount specified in a Purchase Order, based on the rates set forth in Exhibit A. Rates shall remain firm during each fiscal year period and may only be amended upon submission of a new Exhibit A. Provider shall not be entitled to any additional expenses or compensation related to the Services provided pursuant to this Agreement. Provider will submit invoices to SCS upon completion of the Services and SCS will pay invoices within

thirty (30) days following receipt of an accurate invoice bearing an approved purchase order number. SCS reserves the right to offset any amounts due by SCS against any amounts that may become due from Provider to SCS.

Section 6. Right to Audit. Provider shall, for a period of three (3) years, keep and maintain complete and accurate accounting records in accordance with generally accepted principles to support and document all amounts paid or payable to Provider hereunder. SCS may audit, upon reasonable prior written notice, and at its expense, Provider's records, which substantiate invoicing for Services.

Section 7. Subject to Funding. This Agreement and any Purchase Order issued under it is subject to the appropriation and availability of funds. In the event that the funds are not appropriated or are otherwise unavailable, SCS reserves the right to terminate this Agreement or any or all Services authorized in a Purchase Order upon written notice to Provider. Said termination shall not be deemed a breach of this Agreement or any Purchase Order issued hereunder. Upon receipt of written notice, Provider shall cease Services covered by such notice, but shall be entitled to compensation for all satisfactory and authorized Services completed as of the termination date. Provider shall have no right to recover from SCS any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

Section 8. Independent Contractor. Provider shall be an independent contractor and shall not be deemed to be an employee or agent of SCS for any purpose. Provider shall be responsible for all taxes and related payments and liabilities under State and Federal laws with respect to any compensation received. SCS will not withhold any taxes from Provider's fees, and Provider shall be solely responsible for the payment of all taxes arising out of the Services.

Section 9. Approved Vendor Status. During the term of this Agreement, Provider shall maintain its status as an approved vendor with the Procurement Department. Failure to meet vendor qualifications for the provision of the Services shall result in immediate termination of this Agreement.

Section 10. Ownership Rights. Provider agrees that the Services are deemed works made for hire and that, unless otherwise stated, all work products thereby created by the Provider pursuant to this Agreement and any Purchase Order issued under it, shall vest solely in SCS.

Section 11. Indemnity. SCS assumes no liability for any injury (including death) to any persons or damage to any property arising out of this Agreement not caused by the negligence or willful misconduct of SCS, its employees, agents or invitees. Further, to the extent permitted by law, Provider will defend, indemnify and hold SCS harmless from any and all demands, claims, suits, actions and legal proceedings brought against the SCS, its board members, officers, employees or agents arising out of alleged acts or omissions by Provider in the course of performing Services to SCS pursuant to this Agreement. The foregoing provisions shall include, but not be limited to, any judgments, awards, settlements, reasonable attorney fees, and costs and expenses incurred by SCS in connection with the defense of any actual or threatened action, proceeding or claim.

Section 12. Insurance. During the term of this Agreement and any Purchase Order issued under this Agreement, Provider shall maintain in full force and effect the insurance coverages and limits set forth in Exhibit B. Provider shall name SCS as an additional insured under the policy and furnish to SCS a certificate of such insurance prior to the Effective Date of this Agreement, any Purchase Order issued and any renewals thereof during the term of the Agreement. The certificate of insurance must provide for notice of cancellation at least thirty days prior to the effective date thereof.

Section 13. Term. The term of this Agreement shall commence upon the execution of this Agreement (the “Effective Date”)and shall continue until one (1) calendar year from its date of execution (the “Expiration Date”). Upon mutual agreement, Provider and SCS, or the successor entity to SCS, may renew this Agreement for additional terms of one year each.

Section 14. Termination. This Agreement may be terminated by SCS whenever, for any reason, SCS determines that such termination is in the best interests of SCS. Termination of this Agreement shall automatically terminate any Purchase Order issued pursuant to this Agreement. Provider shall be compensated for Services properly rendered prior to the effective date of termination. SCS will not be liable for Services performed after the effective date of termination.

Section 15. Compliance with Laws. Provider shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances in the performance of the Services.

Section 16. Governing Law. This Agreement and any Purchase Order issued under it shall be construed in accordance with and governed by the laws of Tennessee and a suit to enforce this Agreement or any Purchase Order issued hereunder, must be brought in an appropriate court of jurisdiction of Shelby County, Tennessee.

Section 17. Severability. If any terms or conditions of this Agreement are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect.

Section 18. Notice. Whenever any notice, statement or other communication is required under this Agreement and/or any purchase order issued under it, it shall be sent to the following addresses, unless otherwise specifically advised:

Notice to SCS shall be sent to the following:

**Office of Risk Management
Memphis-Shelby County Schools
160 S. Hollywood Street Memphis, TN 38112**

With a copy to:

**Office of the General Counsel
Memphis-Shelby County Schools
160 S. Hollywood Street, Room 206 Memphis, TN 38112**

Notice to Provider shall be sent to the following:

Attn: _____

Section 19. Non-Discrimination. To the extent applicable, Provider agrees, warrants and assures compliance with Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments

of 1972, Section 503/504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Executive Order 11,246 and 38 USC Section 4212, along with the related regulations and reporting requirements of each. Provider shall not discriminate against any individual including, but not limited to, employees or applicants for employment and/or students, because of race, religion, creed, color, sex, age, disability, national origin, or status as a disabled or Vietnam era veteran.

Section 20. Background Checks. Provider hereby agrees that it is aware of the provision of Tennessee Code Annotated §49-5-413 requiring the background check of any employee or subcontractor that works on school grounds at any time when students are present, and prohibiting any person with a history of the criminal offenses cited in the statute from working on a school campus during such times. Provider hereby certifies that it has, and will, at all times during the performance of the Services, comply with the provisions of this statute and will provide to SCS, upon request, proof of its compliance with this provision. A default by Provider of the provisions of this Section shall be automatic grounds for termination of this Agreement pursuant to the default terms herein.

Section 21. Representations and Warranties. Provider represents and warrants that Provider is fully authorized and empowered to enter into this Agreement and that the performance of its obligations under this Agreement and any Purchase Order issued pursuant to this Agreement, will not violate any agreement between Provider and any other person, firm or organization. Provider represents and warrants that Provider has the requisite experience, knowledge and expertise and qualified personnel to perform the Services.

Section 22. Attorneys' Fees. If SCS employs attorneys to enforce any of the provisions hereof, Provider agrees to pay SCS all reasonable costs, charges, and expenses, including attorneys' fees and costs, expended or incurred in connection therewith, as long as Provider is the party against whom any final judgment is entered.

Section 23. Assignment. Provider may not assign this Agreement or any of its rights or obligations hereunder, in whole or in part, without the prior written consent of SCS.

Section 24. Entire Agreement. This Agreement, together with other documents that may be executed pursuant to this Agreement and incorporated herein, constitute the entire Agreement between the parties and shall supersede any and all prior agreements, communications and understandings.

Section 25. Conflict of Interest. Provider warrants that no part of the compensation payable hereunder shall be paid directly or indirectly to an employee or official of SCS as wages, compensation, or gifts in exchange in connection with the Services contemplated or performed relative to this Agreement.

Section 26. Precedence. Any pre-printed or additional contract terms on Provider's order forms shall be inapplicable and of no force and effect except to confirm the date, time, cost and location of the Services.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed their signatures below.

Provider:

Shelby County Board of Education

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Exhibit A: Provider Services and Rates

EXHIBIT B

INSURANCE REQUIREMENTS FOR RECREATIONAL COMPANIES

The company shall not commence any work under this contract until it has obtained and caused its subcontractors to procure and keep in force all insurance required. The Company shall require all subcontractors to carry insurance as outlined below, in case they are not protected by the policies carried by the Company. The Company shall furnish the Risk Manager a Certificate of Insurance and/or policies attested by a duly authorized representative of the insurance carrier evidencing that the insurance required hereunder is in effect. All insurance companies must be acceptable to the Shelby County Board of Education and licensed in the state of Tennessee with a Best Insurance Rating of A and Class VII or better and authorized to do business in the state where the work is performed.

If any of the Insurance Requirements are non-renewed at the expiration dates, payment to the company may be withheld until those requirements have been met, or at the option of the Shelby County Board of Education. The Shelby County Board of Education may pay the renewal premiums and withhold such payments from any monies due the Company.

The Company shall indemnify, defend, save and hold harmless the Shelby County Board of Education, its officers, employees, and agents, from and against any and all claims, demands, suits, actions, penalties, damages, settlements, costs, expenses, or other liabilities of any kind and character arising out of or in connection with the breach of this Agreement by Company, its employees, subcontractors, or agents, or any negligent act or omission of Company, its employees, subcontractors, or agents, which occurs pursuant to the performance of this Agreement, and this indemnification shall survive the expiration or earlier termination of the Agreement. The provisions of this paragraph shall not apply to any loss or damage caused solely by the acts, errors, or omissions of the Shelby County Board of Education, its officers, employees and agents. Contracts for third party service providers should include indemnity provisions that protect the Shelby County Board of Education from any liability arising out of the Company's loss of sensitive information.

Each certificate or policy shall require and state in writing the following clauses:

Company shall provide notice to the Shelby County School Board of Education within three (3) business days following receipt of any notice of cancellation or material change in Company's insurance policy from Company's insurer. Such notice shall be provided to Shelby County Board of Education by registered mail, to the following addresses:

Shelby County Board of Education
Attn: Office of Risk Management
160 S. Hollywood, Room #152
Memphis, TN 38112

The Certificate of Insurance shall state the following: "The Shelby County Board of Education, its officials, agents, employees and representatives shall be named as additional insured on liability policies."

The additional insured endorsement shall be attached to the Certificate of Insurance and the Certificate of Insurance shall also state: "The additional insured endorsement is attached to the Certificate of Insurance."

WORKERS COMPENSATION:

The Company shall maintain in force Workers' Compensation coverage in accordance with the Statutory Requirements and Minimum Limits of the State of Tennessee and shall require all subcontractors to do likewise.

Employer's Liability	\$100,000	Each Accident
	\$500,000	Disease – Policy Limit
	\$100,000	Disease – Each Employee

AUTOMOBILE LIABILITY:

Covering owned, non-owned and hired vehicles with Minimum Limits of:

\$1,000,000 Each Occurrence Combined Single Limits

COMMERCIAL GENERAL LIABILITY:

Commercial General Liability Insurance, including Premises and Operations, Contractual Liability, Independent Contractor's Liability, and Broad Form Property Damage Liability coverage with Minimum Limits of:

\$2,000,000	General Aggregate
\$2,000,000	Products-Completed Operations
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence (Bodily Injury & Property Damage)
\$ 50,000	Fire Damage any One Fire
\$ 5,000	Medical Expense any One Person

PROPERTY INSURANCE:

The Company shall be responsible for maintaining any and all property insurance on their own equipment and shall require all subcontractors to do likewise. The Company shall require all subcontractors to carry insurance as outlined above, in case they are not protected by the policies carried by Company.

Any questions regarding these requirements should be directed to the Office of Risk Management please contact RiskManagement@scsk12.org .

Any approved provider that has not provided insurance coverage renewal by the expiration date will forfeit its approval, and the Provider will be removed from SCS' approved vendor listing.