

**OFFICIATING SERVICES AGREEMENT
For Volleyball, Basketball, and Softball**

THIS AGREEMENT is made and entered into this ____ day of _____, 2012, by and between **the City of Overland Park, Kansas** (the "City"), and **John Dehan d/b/a Call the Game** (the "Contractor").

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the parties agree as follows:

1. Contractor Responsibilities.

- A. The Contractor shall provide trained and experience officials to work each City game/match in the City's league and tournament games/matches. A trained and experienced official is a person with one or more year's previous experience with the Contractor, or a person who has been adequately trained by the Contractor and has passed the current high school examination. Each official shall be in prescribed uniform and properly equipped.
- B. A representative of the Contractor will attend organizational and/or related volleyball, basketball or softball meetings as requested by the City.
- C. The Contractor will investigate and evaluate with the City each case of tardiness, misconduct, absenteeism, or other actions detrimental to the City's volleyball, basketball, or softball program. If upon completion of the investigation and evaluation, it is judged that the official(s) in question was at fault: (1) the Contractor will levy fines and/or issue a reprimand against the individual(s); and (2) the City may request that the official(s) work no more games/matches during the current season.

2. Fees.

- A. The Contractor shall provide officials to work the City's league and tournament games/matches for the following fees per official, per match/game, with a two-hour or two-game/match minimum, unless noted otherwise:

	<u>Volleyball</u>	<u>Basketball</u>	<u>Softball</u> <u>(60 min.)</u>	<u>Softball</u> <u>(90 min.)</u>	<u>Softball</u> <u>Senior</u>
January 1, 2013 - December 31, 2013	\$18/hr.	\$25.50/game	\$24/game	\$39/game	\$26/game
January 1, 2014 - December 31, 2014	\$18/hr.	\$25.50/game	\$24/game	\$39/game	\$26/game
January 1, 2015 - December 31, 2015	\$19/hr.	\$26.50/game	\$25/game	\$40/game	\$27/game
January 1, 2016 - December 31, 2016	\$19/hr.	\$26.50/game	\$25/game	\$40/game	\$27/game

- B. The above fees schedule shall take effect and be in force after December 31, 2012.
- C. The Contractor scheduler must be notified of any canceled or postponed game/match at least 60 minutes prior to the scheduled game/match time. If proper notification is not received and officials report to their assigned court or field, the Contractor shall receive a full game/hourly fee for each official so reporting.

- D. If a game/match must be canceled or postponed after the notification time specified above due to weather or other conditions beyond the control of the City and the game/match is not started, the Contractor shall receive one-half (1/2) of the one game/match per hour fee for officials reporting to their assigned facility.
- E. The Contractor shall receive full pay for a called or forfeited game/match.
- F. Officials assigned by the Contractor will not work forfeited games/matches.
- G. If an official is *late* for the game's/match's scheduled starting time, the City is only responsible for payment to the Contractor for one-half (1/2) of the official's fee for that game/match. The term "*late*" is defined as arriving less than 15 minutes before scheduled game/match and not more than 15 minutes after scheduled game/match time.
- H. If an official is *absent* for a game/match, the City is not responsible for the official's fee, and the Contractor will provide an official to work a rescheduled game/match at no charge. Additionally, the Contractor will credit the City \$10 on its next invoice as long as the City notified the Contractor of the official's absence 15 minutes before the game/match time. The term "*absent*" is defined as being absent more than 15 minutes after scheduled game/match time.
- I. The Contractor's scheduler shall be notified in writing at least 72 hours in advance of any rescheduled game/match. The scheduler shall confirm the rescheduled game/match to assure proper assignment of officials for the rescheduled game/match.
- J. The Contractor will have the Contractor's scheduler available by phone or a substitute on call each day games/matches are scheduled until 15 minutes after the scheduled starting time of the first game/match.
- K. The Contractor will submit invoices to the City every two weeks to reflect games/matches worked the previous two weeks (Sunday thru Saturday).

3. League Rules.

- A. The rulebook used for basketball and volleyball will be the current KSHSAA (Kansas State High School Athletic Contractor) Rule Book. The rulebook used for softball will be the current ASA (American Softball Association) Rule Book.
 - 1. Any changes made by the City to any rules in the applicable rulebook shall be specified in writing and these league rules shall supersede the rules in the applicable rulebook.
 - 2. The City's official ground rules, if any; will be adhered to.
 - 3. The City and the Contractor will review league rules relating to officials and, upon agreement, said rules will be incorporated herein by reference and become a part of this Agreement.

- B. The City will provide a sufficient number of copies of league and tournament rules to the Contractor on or before **January 1** of each year.
 - C. When requested by the City, the Contractor will advise and assist with the development of ground rules governing play on each of its volleyball courts, basketball courts and softball fields. The Contractor will also provide rules clinics for the team managers, when so requested by the City.
4. Reporting of Infractions. The parties agree that any gross infraction of the rules by managers, players, spectators, or officials shall be reported to both parties in writing and appropriate action taken.
 5. Independent Contractor. The Contractor is engaged and retained as an independent contractor and not as an officer, agent, servant, or employee of the City. Furthermore, the Contractor is not acting as a hiring agent for the City, and all officials provided under this Agreement are employees or agents of the Contractor. The Contractor shall be responsible for hiring its officials and other employees and shall provide all necessary worker's compensation insurance, all liability insurance for the wrongful or negligent acts of its officials and other employees, and for all other items incidental to the employment of said persons, such as but not limited to, federal and state withholding taxes and FICA. It is expressly agreed by the parties that the Contractor shall save and hold harmless the City from any and all claims and liability of any kind whatever arising from the conduct of the Contractor, its officials, agents, servants, subcontractors, vendors, officers, and employees in the performance of this Contractor. The Contractor cannot and will not obligate the City in any manner in the performance or attempted performance of its duties hereunder.
 6. Indemnification – In case any action in court is brought against the City or City's representative, or any officer or agent, for the failure, omission, or neglect of the Contractor or its officers, agents or employees to perform any of the covenants, acts, matters, or things by this Agreement undertaken, or for injury or damage caused, in whole or in part, by the alleged negligence or other actionable fault of the Contractor, its officers, agents and employees, the Contractor shall indemnify and save harmless the City and City's representative and its officers and agents, from all losses, damages, costs, expenses, judgments, or decrees, or portions thereof, arising out of such action and which arise from and are proximately caused by the negligent or other actionable fault of the Contractor, its officers, agents or employees, provided, however that nothing in this Agreement shall constitute a waiver by either party of any defense either party may have against a third party under the Kansas Tort Claims Act, K.S.A. 75-6101, et seq. and amendments thereto.
 7. Disclaimer of Liability – The City shall not be liable or obligated to the Contractor or its officials for damage incurred to the Contractor or its officials upon premises by fire, theft, casualty, acts of God, civil disaster, and such other occurrences and events beyond the control of the City.
 8. Insurance – The Contractor shall secure and maintain, or have maintained, throughout the duration of this Agreement, insurance of such types and in such amounts as may be necessary to protect the Contractor and its officials against all hazards or risks of loss as hereinafter specified, whether such hazards or risks be generated by the Contractor or any of its agents.

Contractor agrees to name Overland Park as an additional insured under its commercial general liability insurance policy. Contractor will provide a certificate of insurance showing Overland Park as an additional insured on a form acceptable to Overland Park's Risk Manager.

- A. General Liability - This insurance shall protect the Contractor and its officials against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of the Contractor or its agents or employees. In addition, this policy shall specifically insure the contractual liability assumed by the contractor under the paragraph entitled "Indemnification." The policy shall include Products/Completed Operations, Contractual Liability, Broad Form Property Damage, Personal Injury, Independent Contractor's Coverage, and "Hired" and "Non-owned" Automobile Liability coverage's. Following are the minimum amounts of coverage required:

Bodily Injury and Property Damage \$500,000 Each Occurrence
\$1,000,000 Aggregate

- B. Workers' Compensation and Employers' Liability - This insurance shall protect the Contractor against all claims under applicable state Workers' Compensation laws. The Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a Workers' Compensation law. The policy shall include other states' insurance. The liability limits shall not be less than the following:

Workers' Compensations	Statutory Employers' Liability:
Bodily Injury by Accident	\$500,000 Each Accident
Bodily Injury by Disease	\$500,000 Each Employee
Bodily Injury by Disease	\$500,000 Policy Limit

This only applies if the contractor has employees as defined by applicable law. At the time of execution of this Agreement, the Contractor does not have any employees.

- C. Industry Ratings – City will only accept coverage from an insurance carrier who carries a Best's policyholder rating of A:-VII or better; or is a company mutually agreed upon by the City and Contractor.
9. Termination. If the Contractor fails or refuses to perform or comply with any of the obligations, conditions, or duties herein agreed to by the Contractor, the City, through its City Manager or his/her designee, shall have the right to notify the Contractor in writing of such default; and upon 15 days' notice, the City Manager or his/her designee may elect to cancel this Agreement and notify the Contractor of such cancellation. Thereupon this Agreement will thereafter be deemed null and void at the election of the City. Additionally, during the terms of this Agreement, both parties shall have the right to terminate this Agreement without specifying the reason therefore by giving written notice to the other party 60 days prior to the date upon which the party desires to terminate this Agreement.

10. Nondiscrimination.

A. The Contractor agrees that:

1. During the performance of this Agreement or any subcontract resulting thereof, the Contractor, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
2. In all solicitations or advertisements for employees the Contractor, all subcontractors and vendors shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission;
3. If the Contractor, a subcontractor or vendor fails to comply with the manner in which the Contractor, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, the Contractor, subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
4. If the Contractor, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, the Contractor, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the City;
5. The Contractor shall include the provisions of paragraphs A1. through A4. above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

B. The Contractor further agrees that the Contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

11. Cash Basis Provision. Notwithstanding anything contained in the Agreement to the contrary, it is understood and agreed by the parties hereto that City is obligated only to make the payments under the Agreement as may lawfully be made from funds budgeted and appropriated for such purpose during the City’s then current budget Year (i.e. January 1 to December 31) or from funds made available from any lawfully operated,

revenue producing source. Should City fail to budget, appropriate or otherwise make available funds for payments due under the Agreement in any budget year, the Agreement shall be deemed terminated on the last day of the then current budget year for which appropriations were received without penalty or expense to the City of any kind whatsoever, except as to the portions of the recurring charges herein agreed upon for which funds have appropriated and budgeted or are otherwise made available. City agrees to notify the Contractor of such termination, which shall not constitute a default under the Agreement, as least sixty (60) days prior to the end of the City's then current budget year.

12. General Provisions.

- A. This Agreement contains the complete agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither of them has made any representation with respect to the subject matter of this Agreement except such representations as are specifically set forth in this document and each of the parties acknowledges that it has relied on its own judgment in entering into this Agreement.
- B. Any modification of this Agreement or additional obligation assumed by either party in connection herewith shall be binding only if evidenced in writing signed by each party or an authorized representative of each party.
- C. This Agreement shall not be transferred, assigned, conveyed, or otherwise disposed of without the prior written consent of the City and the Contractor.
- D. If any provision, or any portion thereof, contained in this Agreement is held to be unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- E. Formal notice to the Contractor will be in writing addressed to: John Dehan d/b/a Call the Game, 14003 W. 141st Place, Olathe, KS 66062. Formal notice to the City will be in writing addressed to the City Clerk, 8500 Santa Fe Dr., Overland Park, KS 66212.
- F. This Agreement shall not create any rights to enforcement of the provisions herein to any person or entity that is not a party to this Agreement.
- G. It is the intention of the parties that this Agreement and the performance hereunder, be construed in accordance with and under and pursuant to the laws of the State of Kansas and that, in any action, special proceeding or other proceeding that may be brought arising out of, in connection with, or by reason of this Agreement, the laws of the State of Kansas shall be applicable and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which any action or special proceeding may be instituted.

H. The titles to sections of this Agreement are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

CITY OF OVERLAND PARK

JOHN DEHAN, d/b/a CALL THE GAME

Carl Gerlach, Mayor

John Dehan

ATTEST:

Marian Cook
City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Sr. Assistant City Attorney

ACKNOWLEDGEMENT

STATE OF KANSAS)
) SS.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this _____day of _____, 2012, by John Dehan, d/b/a Call the Game.

Notary Public

My appointment expires: _____