

STATE OF TEXAS §
 § **AGREEMENT FOR SERVICES**
COUNTY OF DALLAS §

This Agreement for Arts Center Security Services (“Agreement”) is made by and between the City of Coppell, Texas (“City”) and Andy Frain Services, Inc. (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

Recitals:

WHEREAS City desires to engage the services of Professional as an independent contractor and not as an employee in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS Professional desires to render event production services for special events to the City, as more fully described in the Scope of Services attached hereto as Exhibit “A” and made a part herein by reference, and in accordance with the terms and conditions set forth in this Agreement; and

NOW THEREFORE, in exchange for the mutual covenants set forth herein and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

Article I
Term

1.1 The term of this Agreement shall commence on the last date of execution hereof and continue for a period of one year (the “Initial Term”), unless terminated earlier in accordance with the provisions of this Agreement. Thereafter, City may renew the term of this Agreement for four (4) successive terms of one (1) year each, (each a “Renewal Term”) unless either Party provides written notice to the other Party to terminate not later than thirty (30) days prior to the last day of the Initial Term or the then current Term (the Initial Term and Renewal Term collectively referred to herein as “Term”).

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination, Professional shall be entitled to compensation for any services completed to the reasonable satisfaction of the City in accordance with this Agreement prior to such termination including any non-refundable artist obligations.

Article II

Article II Contract Documents

- 2.1 This Agreement consists of the following items:
- A. This Agreement; and
 - B. Professional's Scope of Services for services provided to the city (attached as Exhibit "A") (the "Scope of Services")

Article III Scope of Services

2.1 Professional shall provide the services specifically set out in Scope of Services (i) with the skill and care ordinarily provided by similar professionals practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similarly competent professionals.

2.2 The City shall, prior to commencement of services, provide the Professional with the information set forth in the Scope of Services, if any.

2.3 Licenses. Professional represents to City that Professional possesses any and all licenses which may be required by the State of Texas or any other governmental entity having jurisdiction as may be necessary for the performance of Professional's services pursuant to this Agreement.

2.4 Information/Confidentiality. City will furnish to the Professional such information with respect to the Project as Professional may reasonably request in order to render Professional's services effectively. Professional will hold in strict confidence all information with respect to the Project which is furnished to Professional by City in confidence, and which is not otherwise publicly available and/or not required, as a matter of law or proper business practice, to be disclosed to a third party in connection with the services for the Project.

2.5 Conflict of Interest. Professional agrees to notify City and seek City's approval prior to Professional's retention by any other individuals or entities, which either directly or indirectly may create a conflict of interest in Professional's services under this Agreement. City may deny any such approval for Professional's retention set forth above, if it materially impacts Professional's ability to perform its obligations to the City in the event City, in City's sole and absolute discretion, should conclude that such retention would have an adverse effect on Professional's services under this Agreement, then City may terminate this Agreement.

**Article IV
Schedule of Work**

Professional agrees to commence services upon written direction from City and to complete the required services in accordance with a work schedule established by City (the "Work Schedule") in accordance with the Scope of Services.

**Article V
Compensation and Method of Payment**

5.1 City shall compensate Professional as set forth in Exhibit "A" and invoiced to the City. Payments shall be made to Professional within thirty (30) days of receiving Professional's invoice, provided there are no errors or discrepancies and that all work noted on the invoice has been completed. Professional shall not proceed with any event until receiving a work order from City. Issuance of work orders for an event under this Agreement shall be at the sole discretion of City.

5.2 Professional shall be responsible for all expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, telephone, internet, and email charges.

**Article VI
Suspension of Work**

The City shall have the right to immediately suspend work by Professional if the City determines in its sole discretion after consultation with Professional, that Professional has, or will fail to perform, in accordance with this Agreement. In such event, the Agreement may be suspended or terminated, and any payments due Professional shall be adjusted for non-performance under this Agreement or until has taken satisfactory corrective action.

**Article VII
Devotion of Time; Personnel; and Equipment**

7.1 Professional shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should City require additional services not included under this Agreement, Professional shall make reasonable effort to provide such additional services at mutually agreed charges or rates, and within the time schedule prescribed by City; and without decreasing the effectiveness of the performance of services required under this Agreement.

7.2 To the extent reasonably necessary for Professional to perform the services under this Agreement, Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that Professional may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by Professional.

7.3 Professional shall furnish the facilities, equipment, telephones, facsimile machines, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article VIII Relationship of Parties

It is understood and agreed by and between the Parties that in satisfying the conditions of this Agreement, Professional is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. As such, the City shall not: train Professional, require Professional to devote her full-time services to City, or dictate Professional's sequence of work or location at which Professional performs her work.

Article IX Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Professional may only be compensated for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article X Insurance

(a) Professional shall during the term hereof maintain in full force and effect the following insurance: (1) a Commercial General Liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000 per occurrence for injury to persons (including death), and for property damage; (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the performance of this Agreement; and (3) statutory Worker's Compensation Insurance covering all of Professional's employees involved in the provision of services under this Agreement.

(b) All insurance and certificate(s) of insurance shall contain the following provisions: (1) name City, its officers, agents and employees as additional insureds as to all applicable coverage with the exception of Workers Compensation Insurance; (2) provide for at least thirty (30) days prior written notice to City for cancellation, non-renewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(c) All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "B" by AM Best or other equivalent rating service, or approved by the City Risk Manager.

(d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of services.

**Article XI
Indemnification**

11.1 CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE SERVICES OF PROFESSIONAL PURSUANT TO THIS AGREEMENT. PROFESSIONAL HEREBY WAIVES ALL CLAIMS AGAINST THE CITY, ITS OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY REFERRED TO IN THIS SECTION AS "THE CITY") FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY. PROFESSIONAL AGREES TO INDEMNIFY AND SAVE HARMLESS THE CITY FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, CLAIMS, SUITS, COSTS (INCLUDING COURT COSTS, ATTORNEYS' FEES AND COSTS OF INVESTIGATION) AND ACTIONS BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR DAMAGE TO OR LOSS OF PROPERTY TO THE EXTENT CAUSED BY THE PROFESSIONAL'S NEGLIGENT PERFORMANCE OF SERVICES UNDER THIS AGREEMENT OR BY REASON OF ANY ACT OR OMISSION ON THE PART OF PROFESSIONAL, ITS OFFICERS, DIRECTORS, SERVANTS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, SUBCONTRACTORS, LICENSEES, SUCCESSORS OR PERMITTED ASSIGNS (EXCEPT WHEN SUCH LIABILITY, CLAIMS, SUITS, COSTS, INJURIES, DEATHS OR DAMAGES ARISE FROM OR ARE ATTRIBUTED TO SOLE NEGLIGENCE OF THE CITY). IF ANY ACTION OR PROCEEDING SHALL BE BROUGHT BY OR AGAINST THE CITY IN CONNECTION WITH ANY SUCH LIABILITY OR CLAIM, PROFESSIONAL, ON NOTICE FROM THE CITY, SHALL DEFEND SUCH ACTION OR PROCEEDINGS AT PROFESSIONAL'S EXPENSE, BY OR THROUGH ATTORNEYS REASONABLY SATISFACTORY TO THE CITY. PROFESSIONAL'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY PROFESSIONAL UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

11.2 ADDITIONALLY, PROFESSIONAL SHALL HOLD HARMLESS, DEFEND AND INDEMNIFY THE CITY OF COPPELL, ITS ELECTED OFFICIALS, MANAGERS, EMPLOYEES, AGENTS AND ASSIGNS (COLLECTIVELY REFERRED TO IN THIS SECTION AS "CITY") FROM ANY LOSS OF ANY KIND BASED ON A

CLAIM THAT THE WORK PERFORMED, OR PRODUCTS PROVIDED HEREUNDER, INCLUDING MATERIAL(S) OR ANY PART THEREOF, CONSTITUTES INFRINGEMENT OF ANY PATENT, TRADEMARK, TRADE-NAME, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING BUT NOT LIMITED TO CLAIMS ARISING OUT OF THE MANUFACTURE, SALE OR USE OF SUCH WORK, PRODUCTS OR MATERIALS. SUCH INDEMNIFICATION SHALL INCLUDE ALL DAMAGES AND COSTS INCURRED BY CITY AS THE RESULT OF THE CLAIM, INCLUDING ATTORNEY FEES AND EXPERT WITNESS FEES. PROFESSIONAL FURTHER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS CITY, ITS ELECTED OFFICIALS, MANAGERS, EMPLOYEES, AGENTS AND ASSIGNS, FROM AND AGAINST ANY DEMAND FOR PAYMENT FOR THE USE OF ANY PATENTED MATERIAL, PROCESS, DEVICE, ARTICLE, TRADEMARK, TRADE- NAME, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY INFRINGEMENT THAT MAY RESULT FROM THE WORK OR MATERIALS COVERED BY THIS AGREEMENT. PROVIDED, THE FOREGOING INDEMNITY SHALL NOT APPLY IF THE CLAIM RESULTS FROM DELIVERABLES THAT AS FURNISHED BY PROFESSIONAL TO CITY DO NOT INFRINGE UPON ANY U.S. LETTERS PATENT OR COPYRIGHT AND (1) CITY'S ALTERATION OF A DELIVERABLE, SUCH THAT SAID DELIVERABLE IN ITS ALTERED FORM INFRINGES UPON ANY PRESENTLY EXISTING U.S. LETTERS PATENT OR COPYRIGHT; OR (2) THE USE OF A DELIVERABLE IN COMBINATION WITH OTHER MATERIAL NOT PROVIDED BY PROFESSIONAL WHEN SUCH USE IN COMBINATION INFRINGES UPON AN EXISTING U.S. LETTER PATENT OR COPYRIGHT; OR (3) THE USE OF A DELIVERABLE IN A MANNER MATERIALLY INCONSISTENT WITH THE SPECIFICATIONS PROVIDED BY PROFESSIONAL.

Article XII Miscellaneous

12.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

12.2 Authorization. Each Party represents that it has full capacity and authority to grant all rights and assume all obligations granted and assumed under this Agreement.

12.3 Assignment. Professional may not assign this Agreement in whole or in part without the prior written consent of City. In the event of an assignment by the Professional to which City has consented, the assignee shall agree in writing with City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

12.4 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

12.5 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

12.6 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

12.7 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

12.8 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

12.9 Recitals. The recitals to this Agreement are incorporated herein.

12.10 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City, to:

With a copy to:

City of Coppell, Texas
Attn: City Manager
255 Parkway Blvd.
Coppell, Texas 75019

Robert E. Hager
Nichols | Jackson, L.L.P.
500 North Akard Street
1800 Ross Tower
Dallas, Texas 75201

If intended for Professional:

With a copy to:

Andy Frain Services, LLC. _____

Attn: _____

12.11 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

12.12 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

12.13 Audits and Records. Professional agrees that during the term hereof, City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of Professional's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

12.14 Conflicts of Interests. Professional represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

12.15 Compliance with Federal, State & Local Laws. Professional shall comply in performance of services under the terms of this Agreement with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances, and codes of federal, state and local governments, including all applicable federal clauses.

12.16 Force Majeure. No Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, acts of terrorism or any similar cause beyond the reasonable control of such party, provided that the non-performing party is without fault in causing such default or delay. The non-performing Party agrees to use commercially reasonable efforts to recommence performance as soon as possible.

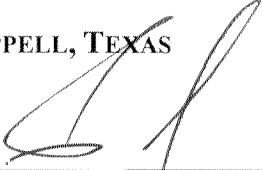
12.17 Boycott Israel; Boycott Energy Companies; and Prohibition of Discrimination against Firearm Entities and Firearm Trade Associations.

- (a) Professional verifies that it does not Boycott Israel and agrees that during the term of the Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.
- (b) Professional verifies that it does not Boycott Energy Companies and agrees that during the term of this Agreement will not Boycott Energy Companies as that term is defined in Texas Government Code Section 809.001, as amended.
- (c) Professional verifies that it does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association as those terms are defined in Texas Government Code Section 2274.001, as amended; and (ii) will not discriminate during the term of this Agreement against a firearm entity or firearm trade association.
- (d) This section does not apply if Professional is a sole proprietor, a non-profit entity, or a governmental entity; and only applies if: (i) Professional has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

EXECUTED this 13th day of September, 2023.

CITY OF COPPELL, TEXAS

By:


Mike Land, City Manager

Approved as to form:

By:


Robert E. Hager, City Attorney

EXECUTED this 16th day of October, 2023.

ANDY FRAIN SERVICES, INC.

DocuSigned by:

By:



Name: Laura Grund

Title: Executive VP

PRICING / SCOPE OF WORK DECLARATIVE STATEMENT

Attached are the exhibits for the pricing for the specific scope of work positions identified in the RFP. Given the 2023 contract execution we have made current wage determinations for the region including our present service locations in the region. We are comfortable that the pay and billing rates will generate qualified, capable event and site licensed security staff for the venue. You will notice variations in the billing rate for the positions. Those variations reflect the importance assigned to the requisite tasks of the position.

Operating costs and pricing are inclusive of;

- Uniforms - sample uniforms will be presented to Coppell Arts Center staff and any significant stakeholders management for approval.
- Training - Training is included in the pricing. Training is a six-hour customer service / post order module and is typically four hours for line staff and six hours for supervisors. It is standard and customary to identify staff to ensure ADA/ CPR / First Aid for supervisors and a core group on non-supervisory staff if not already in place.
- Recognition programs as defined in the RFP response.
- The training is covered under a proprietary Andy Frain Services training module - **"First Impressions."** Typically, the partner, in this case, Coppell Arts Center is asked to assist in the creation of the training content to ensure site and patron compliance needs. **"First Impressions"** is described in the response.
- Alignment to the **"Changing Lives"** initiative with two collegiate interns from the local colleges / universities.
- Recruiter / Trainer costs
- Scheduler costs
- All non-event day management and administration / compliance costs are included in the bill rate.
- Significant corporate support costs in anticipation of a small transition window.
- A senior site manager has been identified. AFS will present the candidate for Coppell Arts Center approval.
- Background checks managed by Redtail / NCS4 for every employee verifiable by approved Coppell Arts Center staff

It should be noted that any rate increases during the term of the relationship are passed to employee not the profit of Andy Frain Services. Due to the pandemic costs to the state SUTA funds it is certain that FUTA and SUTA rates increases will impact the pricing in the coming periods.

The pricing is driven by a four-hour minimum with staff redeployment anticipated.

The billing cycle is per event. The site contract is net 45 .

The pay rates are insulated from the pricing changes. We are projecting pay rates which should provide staff which will represent Coppell Arts Center and Andy Frain Services appropriately.

Holidays, as determined by the state of Texas calendar, will be billed, and paid to the employee at 1.5x. It carries a minimum exposure.

If an award were to be directed to Andy Frain Services (AFS) and the incumbent would not be able to fulfill its commitment, AFS would immediately initiate support for the balance of the contractual obligation. We have very local staff capable of doing so.

The pricing includes a budget \$35,000 sponsorship. The construction of the spend will determined if awarded post contract signing.

The pricing includes a WMS system as defined in the RFP response.

exhibit A

PRICING & TERM

Proposed term length is in accordance with the guidelines and regulations of the City of Coppell. Andy Frain Services proposes a 3-year partnership, with 2 one year renewal options for a total of a 5-year contracted agreement.

Position	Rate	Annual Escalation Rate
Event Guard	\$23.92	2%
Event Supervisor	\$25.57	2%
Event Manager	\$31.25	2%
Site Security	\$26.35	2%