

SERVICES AGREEMENT

This Services Agreement (this “Agreement”), dated as of February __ 2024 (the “Effective Date”), is by and between **KEENELAND ASSOCIATION, INC.**, a Kentucky corporation (“Service Provider”) and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, through its Division of Police (“Customer” and together with Service Provider, the “Parties”, and each a “Party”).

WHEREAS, Service Provider has the capability and capacity to provide certain professional equine riding surface renovation and installation services; and

WHEREAS, Customer desires to retain Service Provider to provide said services in connection with the re-surfacing of its mounted police indoor riding and training arena located at 575 West Sixth Street (the “Facility”) and Service Provider is willing to perform such services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Service Provider and Customer agree as follows:

1. Services. Service Provider shall provide to Customer the resurfacing services (the “Services”) and materials and equipment (the “Materials and Equipment”) more particularly described on the statement of work attached hereto as Exhibit A and incorporated herein by reference (“Statement of Work”). Changes to the Statement of Work shall be deemed issued and accepted only if signed by both Parties.

2. Fees and Expenses.

2.1 Service Provider shall not charge for any labor costs associated with the Services, provided that Customer shall be solely responsible for the costs associated with purchasing the required surface materials required for the resurfacing and those other costs expressly identified on Exhibit A.

2.2 Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any benefits received by Customer hereunder; provided, that, in no event shall Customer pay or be responsible for any taxes imposed on, or regarding, Service Provider’s personal property or other assets used or generated by Service Provider in connection with the Services.

3. Limited Warranty and Limitation of Liability.

3.1 Service Provider warrants that it shall perform the Services: (a) in accordance with the terms and subject to the conditions set out in the Statement of Work and this Agreement; (b) using personnel of appropriate skill, experience, and qualifications; and (c) in a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for professional equine entertainment services.

3.2 **SERVICE PROVIDER MAKES NO WARRANTIES EXCEPT AS PROVIDED IN SECTION 3.1 ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.**

4. Term, Termination, and Survival.

4.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services under the Statement of Work (the "Term"), unless sooner terminated pursuant to Section 4.2.

4.2 Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party") if the Defaulting Party:

(a) Materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within twenty-four (24) hours after receipt of written notice;

(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within seven business days or is not dismissed or vacated within forty-five (45) business days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

4.3 The rights and obligations of the parties set forth in Section 2, Section 4.3, Section 5, Section 6, Section 7, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

5. Limitation of Liability; Release and Indemnification.

5.1 IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. CUSTOMER AGREES TO FULLY INDEMNIFY AND DEFEND SERVICE PROVIDER, AT CUSTOMER'S SOLE COST, FROM AND AGAINST ANY THIRD PARTY CLAIMS, ACTIONS OR COSTS ASSERTED OR MAINTAINED AGAINST SERVICE PROVIDER WHICH ARISE OUT OF OR IN CONNECTION WITH PERFORMANCE OF THIS AGREEMENT. WITHOUT LIMITING THE FOREGOING, SERVICE PROVIDER SHALL NOT BE LIABLE FOR OR RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S REAL OR PERSONAL PROPERTY RESULTING FROM SERVICE PROVIDER'S PROVISION OF SERVICES HEREUNDER OR FROM ANY THIRD PARTY PROVIDERS, INCLUDING WITHOUT LIMITATION, DAMAGE TO THE FACILITY, THE ARENA OR TO THE ASPHALT, PARKING LOT OR DRIVEWAY OF CUSTOMER, WHETHER TO THE DELIVERY OR SAND AND EQUIPMENT, THE INSTALLATION OF SAND, OR OTHERWISE.

6. Force Majeure. Service Provider shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or

circumstances beyond the reasonable control of Service Provider including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic or pandemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage (each a "Force Majeure Event").

7. Entire Agreement. This Agreement, together with the Statement of Work, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

8. Severability. If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

9. Amendments. No amendment to or modification of or rescission, termination or discharge of this Agreement or the Statement of Work is effective unless it is in writing, identified as an amendment to or rescission, termination or discharge of this Agreement and signed by an authorized representative of each Party.

10. Waiver. No waiver by any Party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

11. Assignment. Neither Party shall assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party. Any purported assignment or delegation in violation of this section 11 shall be null and void. No assignment or delegation shall relieve the Parties of any of their respective obligations under this Agreement. Notwithstanding anything herein to the contrary, either Party may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of service provider's assets without the other Party's consent.

12. Successors and Assigns. This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

13. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

14. No Third-Party Beneficiaries. This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

15. Choice of Law; Choice of Forum. This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, tort, or statute are governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky, including its statutes of limitations, without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the Commonwealth of Kentucky. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement, including all exhibits, schedules, attachments and appendices attached to this Agreement, and all contemplated transactions, including contract, equity, tort, fraud and statutory claims, in any forum other than the U.S. District Court, Eastern District of Kentucky, or, if such court does not have subject matter jurisdiction, the courts of the Commonwealth of Kentucky sitting in Lexington, Fayette County, Kentucky, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in the aforesaid courts. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

16. Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

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

KEENELAND ASSOCIATION, INC.

By _____

Its: _____

**LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT**

By _____

Its: MAYOR

EXHIBIT A
STATEMENT OF WORK

1. Services: Service Provider agrees to provide the professional resurfacing services set forth in this Section 1 of Exhibit A (each, a “Service” and collectively, the “Services”), subject to Customer assuming the costs and obligations as also set forth in this Section 1:
 - (a) Service Provider to remove the existing sand surface at the Facility using Service Provider’s labor and equipment (skid steer loader, tractor with loader, dump truck and laborers) - approximately 125 tons of material - and dispose of it;
 - (b) Customer to purchase sand from Northern Kentucky Aggregates (anticipated to be approximately 125 tons) and have it delivered to the parking lot adjacent to the indoor arena at the Facility for use by Service Provider;
 - (c) Service Provider to install the new sand and level and groom it, using Service Provider’s own equipment;
 - (d) Service Provider to construct, at Customer’s sole cost, a five-foot harrow to be utilized by Customer for ongoing maintenance of the new surface. Service Provider shall provide Customer with a cost for the chain harrow prior to construction;
 - (e) Customer shall be solely responsible for cleaning up all leftover sand and debris from the indoor arena and adjacent parking lot area at its own cost.