

**AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
DANNY BERRY'S BASEBALL CAMP, INC.  
TO ADMINISTER A YOUTH BASEBALL PROGRAM FOR THE CITY**

This Professional Services Agreement ("Agreement") is entered into this 26 day of MARCH, 2018, between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 ("City"), and **DANNY BERRY'S BASEBALL CAMP, INC.**, a Florida for profit corporation, whose address is 1225 NE 172 Street, North Miami Beach, FL 33162 ("Contractor").

**SECTION 1  
DEFINITIONS**

- Agreement:** This Agreement between the City and Contractor, including any exhibits and amendments thereto.
- City Manager:** The chief administrative officer of the City.
- City Manager's Designee:** The City staff member who is designated by the City Manager to administer this Agreement on behalf of the City. The City Manager's designee shall be the Parks and Recreation Department Director.
- Contractor:** For the purposes of this Agreement, Contractor shall be deemed to be an independent contractor, and not an agent or employee of the City.
- Services:** All services, work and actions by the Contractor performed or undertaken pursuant to the Agreement.
- Fee:** Amount paid to the Contractor as compensation for Services.
- Risk Manager:** The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139; telephone number (305) 673-7000, Ext. 6435; and fax number (305) 673-7023.

**SECTION 2  
SCOPE OF SERVICES**

**2.1** In consideration of the Fee to be paid to Contractor by the City, Contractor shall provide the work and services described in Exhibit "A" hereto (the "Services") in connection with the administration of a youth baseball program for the City (the "Program").

Although Contractor may be provided with a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services

performed by the Contractor; where the Services are performed (although the City will provide Contractor with the appropriate location to perform the Services); when the Services are performed, including how many days a week the Services are performed; how the Services are performed, or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Contractor shall be to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, Contractor should contact the following person:

Paul Di Muont  
Athletic Manager  
1701 Meridian Avenue, Suite 401  
Miami Beach, FL, 33139  
pauldimuont@miamibeachfl.gov

**2.2** Contractor's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in Exhibit "A" hereto.

**SECTION 3**  
**TERM**

The term of this Agreement ("Term") shall commence shall commence on August 1, 2018, for a three (3) year term, with two (2) additional one (1) year renewals options, to be exercised at the City Manager's sole option and discretion, by providing Contractor with written notice of same no less than thirty (30) days prior to the expiration of the initial term, (or of a renewal option, as the case may be).

Notwithstanding the Term provided herein, Contractor shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in Exhibit "A" hereto.

**SECTION 4**  
**FEE**

**4.1** In consideration of the Services to be provided, Contractor shall be compensated on a fixed fee basis, in a total amount not to exceed **\$70,200.00 annually**.

The City shall also pay the Contractor a Management Fee of \$1,250.00 per individual baseball team (as defined in Exhibit "A" hereto). Contractor's baseball Program shall consist of no more than 26 teams per season. Contractor shall submit a complete player roster of its registered players ("Roster") to the City no later than one (1) week following the start of the season. Contractor shall submit proof of team and/or individual payments, along with any amendments to the corresponding Roster, to the City no later than three (3) weeks following the start of the season. Upon receipt of the certified Roster, the City shall pay the Management Fee to the Contractor based upon the following payment schedule:

- Fifty percent (50%) of the total Management Fee shall be due to the Contractor no later than two (2) weeks following the City's receipt and acceptance of the certified Rosters for the season.

- Twenty percent (20%) of the total Management Fee shall be due to the Contractor no later than six (6) weeks following the City's receipt and acceptance of the certified Rosters for the season.
- Twenty percent (20%) of the total Management Fee for the season shall be due to the Contractor no later than ten (10) weeks following the City's receipt and acceptance of the certified Rosters for the season.
- The remaining ten percent (10%) of the total Management Fee for the season shall be due to the Contractor no later than two (2) weeks following the conclusion the season.

In addition to the Contractor's Management Fee, Contractor shall be paid a Clinic Fee of \$100.00 per baseball clinic conducted, at a maximum of one (1) clinic per team per season, during the Term of this Agreement.

## **SECTION 5** **TERMINATION**

### **5.1 TERMINATION FOR CAUSE**

If the Contractor shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, the City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Contractor of its violation of the particular term(s) of this Agreement, and shall grant Contractor ten (10) days to cure such default. If such default remains uncured after ten (10) days, the City may terminate this Agreement without further notice to Contractor. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by any breach of the Agreement by the Contractor. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's right and remedies against Contractor. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

### **5.2 TERMINATION FOR CONVENIENCE OF THE CITY**

**THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE AGREEMENT AT ANY TIME DURING THE TERM BY GIVING WRITTEN NOTICE TO CONTRACTOR OF SUCH TERMINATION; WHICH SHALL BECOME EFFECTIVE WITHIN THIRTY (30) DAYS FOLLOWING RECEIPT BY THE CONTRACTOR OF SUCH NOTICE. NOTWITHSTANDING THE FOREGOING, IF THE PERFORMANCE BY CONTRACTOR OF THE SERVICES UNDER THIS AGREEMENT IS CREATING A PUBLIC HEALTH, WELFARE OR SAFETY CONCERN, AS DETERMINED BY THE CITY MANAGER, IN THE CITY MANAGER'S SOLE DISCRETION, THE CITY MANAGER MAY IMMEDIATELY SUSPEND THE SERVICES UNDER THIS AGREEMENT FOR A TIME CERTAIN, OR, IN THE ALTERNATIVE, TERMINATE THIS AGREEMENT ON A GIVEN DATE, WITHOUT PROVIDING CONTRACTOR AN OPPORTUNITY TO CURE. IF THE AGREEMENT IS TERMINATED BY THE CITY PURSUANT TO THIS PARAGRAPH, CONTRACTOR SHALL BE PAID FOR ANY SERVICES SATISFACTORILY PERFORMED UP TO THE DATE OF TERMINATION; FOLLOWING WHICH THE CITY SHALL BE**

**DISCHARGED FROM ANY AND ALL LIABILITIES, DUTIES, AND TERMS ARISING OUT OF, OR BY VIRTUE OF, THIS AGREEMENT.**

### **5.3 TERMINATION FOR INSOLVENCY**

The City also reserves the right to terminate the Agreement in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 5.2.

## **SECTION 6** **INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **6.1 INDEMNIFICATION**

Contractor agrees to indemnify and hold harmless the City of Miami Beach and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from the negligent acts, errors, omissions or other wrongful conduct of the Contractor, its officers, employees, agents, contractors, or any other person or entity acting under Contractor's control or supervision, in connection with, related to, or as a result of the Contractor's performance of the Services pursuant to this Agreement. To that extent, the Contractor shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the City to the Contractor for the Contractor's indemnity agreement. The provisions of this Section 6.1 and of this indemnification shall survive termination or expiration of this Agreement.

### **6.2 INSURANCE REQUIREMENTS**

The Contractor shall maintain and carry in full force during the Term, the following insurance:

1. Contractor General Liability, in the amount of \$1,000,000; and
2. Workers Compensation & Employers Liability, as required pursuant to Florida Statutes.

The insurance must be furnished by insurance companies authorized to do business in the State of Florida. All insurance policies must be issued by companies rated no less than "B+" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent.

All of Contractor's certificates shall contain endorsements providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in

coverage in the policy. The insurance certificates for General Liability shall include the City as an additional insured and shall contain a waiver of subrogation endorsement.

Original certificates of insurance must be submitted to the City's Risk Manager for approval (prior to any work and/or services commencing) and will be kept on file in the Office of the Risk Manager. The City shall have the right to obtain from the Contractor specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

The Contractor is also solely responsible for obtaining and submitting all insurance certificates for any sub-contractors.

Compliance with the foregoing requirements shall not relieve the Contractor of the liabilities and obligations under this Section or under any other portion of this Agreement.

The Contractor shall not commence any work and or services pursuant to this Agreement until all insurance required under this Section has been obtained and such insurance has been approved by the City's Risk Manager.

**SECTION 7**  
**LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER**

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Contractor and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

**SECTION 8**  
**LIMITATION OF CITY'S LIABILITY**

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000. Consultant hereby expresses its willingness to enter into this Agreement with Consultant's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Consultant hereby agrees that the City shall not be liable to the Consultant for damages in an amount in excess of \$10,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

**SECTION 9**  
**DUTY OF CARE/COMPLIANCE WITH APPLICABLE LAWS/PATENT RIGHTS; COPYRIGHT;**  
**AND CONFIDENTIAL FINDINGS**

**9.1 DUTY OF CARE**

With respect to the performance of the Services contemplated herein, Contractor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable Services.

**9.2 COMPLIANCE WITH APPLICABLE LAWS**

In its performance of the Services, Contractor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

**9.3 PATENT RIGHTS; COPYRIGHT; CONFIDENTIAL FINDINGS**

Any work product arising out of this Agreement, as well as all information specifications, processes, data and findings, are intended to be the property of the City and shall not otherwise be made public and/or disseminated by Contractor, without the prior written consent of the City Manager, excepting any information, records etc. which are required to be disclosed pursuant to Court Order and/or Florida Public Records Law.

All reports, documents, articles, devices, and/or work produced in whole or in part under this Agreement are intended to be the sole and exclusive property of the City, and shall not be subject to any application for copyright or patent by or on behalf of the Contractor or its employees or sub-contractors, without the prior written consent of the City Manager.

**SECTION 10**  
**GENERAL PROVISIONS**

**10.1 AUDIT AND INSPECTIONS**

Upon reasonable verbal or written notice to Contractor, and at any time during normal business hours (i.e. 9AM – 5PM, Monday through Fridays, excluding nationally recognized holidays), and as often as the City Manager may, in his/her reasonable discretion and judgment, deem necessary, there shall be made available to the City Manager, and/or such representatives as the City Manager may deem to act on the City's behalf, to audit, examine, and/ or inspect, any and all other documents and/or records relating to all matters covered by this Agreement. Contractor shall maintain any and all such records at its place of business at the address set forth in the "Notices" section of this Agreement.

**10.2 [INTENTIONALLY DELETED]**

**10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING**

Contractor shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which

consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this Section, and any attempt to make such assignment (unless approved) shall be void.

#### **10.4 PUBLIC ENTITY CRIMES**

Prior to commencement of the Services, the Contractor shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

#### **10.5 NON-DISCRIMINATION**

In connection with the performance of the Services, the Contractor shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Contractor shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

#### **10.6 CONFLICT OF INTEREST**

Contractor herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, as may be amended from time to time; and by the City of Miami Beach Charter and Code, as may be amended from time to time; both of which are incorporated by reference as if fully set forth herein.

Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. Contractor further covenants that in the performance of this Agreement, Contractor shall not employ any person having any such interest. No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefits arising therefrom.

#### **10.7 CONTRACTOR'S COMPLIANCE WITH FLORIDA PUBLIC RECORDS LAW**

1. Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
2. The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.

3. Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Contractor shall:
- (1) Keep and maintain public records required by the City to perform the service;
  - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
  - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Contractor does not transfer the records to the City;
  - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

(D) REQUEST FOR RECORDS; NONCOMPLIANCE.

- (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.
- (2) Contractor's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. [119.10](#).

(E) CIVIL ACTION.

- (1) If a civil action is filed against a Contractor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
  - a. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
  - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the City or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express



Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

- (3) A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(F) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH  
ATTENTION: RAFAEL E. GRANADO, CITY CLERK  
1700 CONVENTION CENTER DRIVE  
MIAMI BEACH, FLORIDA 33139  
E-MAIL: [RAFAELGRANADO@MIAMIBEACHFL.GOV](mailto:RAFAELGRANADO@MIAMIBEACHFL.GOV)  
PHONE: 305-673-7411**

**SECTION 11  
NOTICES**

All notices and communications in writing required or permitted hereunder, shall be delivered personally to the representatives of the Contractor and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice, in writing, all such notices and communications shall be addressed as follows:

**TO CONTRACTOR:                   DANNY BERRY'S BASEBALL CAMP, INC.  
1225 NE 172 STREET  
NORTH MIAMI BEACH, FL, 33162  
ATTN: DANNY BERRY, PRESIDENT**

**TO CITY:                            CITY OF MIAMI BEACH  
PARKS AND RECREATION DEPARTMENT  
1701 MERIDIAN AVENUE, SUITE 401  
MIAMI BEACH, FL 33139  
ATTN: JOHN REBAR, DIRECTOR**

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternate address in addition to any other address which notice would otherwise be sent, unless other delivery instruction as specifically provided for by the party entitled to notice.

Notice shall be deemed given on the date of an acknowledged receipt, or, in all other cases, on the date of receipt or refusal.

## **SECTION 12** **MISCELLANEOUS PROVISIONS**

### **12.1 CHANGES AND ADDITIONS**

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith. The City Manager has the authority to execute amendments to the Agreement for additional programming (based on future growth of the Program), with such amendments not-to-exceed a total of \$25,000.00.

### **12.2 SEVERABILITY**

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

### **12.3 ENTIRETY OF AGREEMENT**

The City and Contractor agree that this is the entire Agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

### **12.4 BACKGROUND SCREENING**

In accordance with Sections 435.04 and 1012.465, Florida Statutes, employees, volunteers, contractors, and subcontracted personnel who work in direct contact with children or who come into direct contact with children must satisfactorily complete a Level 2 background screening investigation with the City of Miami Beach Human Resources Department, prior to commencing work pursuant to this Agreement.

Prior to performing any services under this Agreement, Contractor and Contractor's employees, contractors, and any other individuals performing work under this Agreement on behalf of Contractor must either (a) undergo and pass a Level 2 background check through the City's Human Resources Department, or (b) provide the City with an affidavit indicating that Contractor has undergone and passed, through Contractor's employment with Miami-Dade County Public Schools, a Level 2 background check pursuant to Chapters 435 or 1012, Florida Statutes, within the last 365 days.

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**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

**CITY OF MIAMI BEACH, FLORIDA**

ATTEST:

By: \_\_\_\_\_

Rafael E. Granado  
City Clerk

By: \_\_\_\_\_

Jimmy L. Morales  
City Manager

Date: 3/30/18



FOR CONTRACTOR:

**DANNY BERRY'S BASEBALL CAMP, INC.**

ATTEST:

By: \_\_\_\_\_

PAUL DE MOUNT / ATHLETIC MANAGER  
Print Name/Title

Date: 3/26/18

By: \_\_\_\_\_

Danny Berry  
President

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

Paul Ogilby 3-16-18  
City Attorney Date

**EXHIBIT "A"**  
**DESCRIPTION OF SERVICES**

The Contractor shall establish and administer two (2) youth baseball program seasons each year for Miami Beach residents and visitors between the ages of three (3) and fourteen (14) (the "Program") at the following locations:

- 1.) North Shore Park Youth Center (501 72nd Street, Miami Beach, FL 33141)
- 2.) Normandy Isle Park (7030 Trouville Esplanade, Miami Beach, FL 33141)
- 3.) Fairway Park (200 Fairway Dr, Miami Beach, FL 33141)
- 4.) Polo Park (4301 N Michigan Avenue, Miami Beach, FL 33140)
- 5.) Flamingo Park (1200 Meridian Avenue, Miami Beach, FL 33139)

Contractor's Services are described in greater detail below:

**1. General Terms**

- Contractor shall be responsible for the management of Contractor's Program, including registration of participants; establishing and designating teams; scheduling of practices and games; providing umpire services and coaching; conducting clinics; coordination of all umpires, coaches and volunteers; procuring and issuing uniforms and equipment; and any other duties required to successfully operate the Program.
- Contractor shall be responsible for having a league representative present at all games and practices.
- Consistent with Section 12.4 of this Agreement, Contractor's umpires, coaches, volunteers, and any other subcontractors or individuals performing work under this Agreement shall not participate in Contractor's Program or perform any work under this Agreement until Contractor submits written documentation to the City's Parks and Recreation Department Director or his/her designee (the "Director") evidencing that such individuals have passed a background screening investigation that is satisfactory to City. Contractor's umpires, coaches, and volunteers will be required to wear a City-issued Identification card while performing or participating in Contractor's Program activities.
- Contractor and/or Contractor's league representative shall ensure that Program participants are wearing proper identification while participating in Contractor's program.
- Contractor shall be responsible for procuring all uniforms and equipment for Contractor's Program.
- Contractor shall maintain any and all equipment in good working order.

**2. Program Schedule**

- Contractor shall be responsible for scheduling games and practices ("Activities") at times and locations that are pre-approved in writing by the Director.
- Contractor shall submit a written proposed schedule ("Schedule") of the times and dates of all Activities to the Director at least (2) weeks prior to the beginning of the season during the Term of this Agreement. The final Schedule shall be subject to the Director's prior written approval.
- Any proposed Schedule changes shall first be submitted in writing to the Director and, following the Director's approval, such changes shall be communicated to Program participants by the Contractor at least two (2) days before a scheduled game or practice; provided further that shorter notice may be given if circumstances outside the control of the parties do not permit the provision of at least two (2) days' notice.

- Contractor shall hold the City harmless in the event of any facility or field closures due to inclement weather and/or any other conditions that would render a facility unusable for Contractor's Program. Contractor agrees to adhere to the City's directives pertaining to field closures.
- Contractor shall cease all operation and use of the Designated Premises (as defined below) no later than one (1) week after the end date of the season, unless prior arrangements have been made with the Director and evidenced in writing.
- Contractor's Program Activities shall be conducted at times and locations as determined by the Director.
- Season start and end dates may be amended at any time by the City, or as approved in writing by the City and Contractor.
- Contractor's spring season shall begin and end as follows:

<b>Season</b>	<b>Begins</b>	<b>Ends</b>
Fall	August	December
Spring	January	May

### **3. Fees and Scholarships**

- The fees to participate in Contractor's Program ("Participant Fees") are as follows:
  - Miami Beach Residents: \$125.00 per season
  - Non-Residents: \$250.00 per season
  - Contractor shall offer discounted Participant Fees to Miami Beach residents. At least 75% of participants in Contractor's Program shall be Miami Beach residents. The City shall coordinate and/or provide facility access as necessary. Any change to the approved fees shall require prior written approval of the City Manager.
- Any change to the Participant Fees must be pre-approved in writing by the Director.
- Participant Fees shall be consistent with comparable South Florida cities offering the same or similar baseball program.
- Contractor shall be responsible for the collection of all Participant Fees. All Participant Fees collected by the Contractor shall be utilized to fund the operations of the Program. The total Participant Fees collected by Contractor shall not exceed the amount required to cover Contractor's direct Program operating costs such as equipment, uniforms, and other supplies. Contractor's Participant Fees shall not be used to cover Contractor's administrative costs.
- Contractor shall offer a 50% reduced registration rate ("Scholarships") for children where it can be demonstrated with supporting documentation that there is a financial need. In order to qualify for a Scholarship, the child participant must reside within the city limits of the City of Miami Beach. Supporting documentation shall include proof of one (1) of the following and shall be submitted to the Contractor at the time of registration in order to be considered:
  - Medicaid or Food Stamps Qualification;
  - Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) Recipient;
  - Unemployment Recipient;
  - Section 8 Housing Choice or Housing Assistance Voucher Recipient.

- Contractor shall submit all Scholarship applications, along with supporting documentation, to the Director for review and approval prior to the beginning of each season.
- Contractor shall maintain a current list of all participants who have been approved for a Scholarship by the City. The list shall indicate the participant's name, team, applicable season, and approved reduced rate (i.e. 50%). This list shall be mailed electronically to the Director as an Excel document no later than one week following the start of the season.

#### **4. Marketing**

- Contractor shall consult and collaborate with the Director in order to establish a marketing program aimed at promoting the Program.
- All marketing materials and methods shall be pre-approved by the Director prior to being utilized.
- Contractor shall provide the Director with electronic copies of any and all marketing materials utilized to promote the Program. All electronic files shall be provided in a format that is compatible with the City's software program(s).
- Contractor authorizes the City to utilize any and all Program-related marketing materials as the City deems appropriate for the purpose of promoting the Program.

#### **5. Sponsorships**

- Contractor shall use its best efforts to solicit and obtain sponsorships on behalf of the City for the sole purposes of raising funds to cover management costs or additional necessary/approved operational costs of the Program.
- All funds raised from sponsorships shall be made payable directly to the City of Miami Beach. The City will then take the donation to the City Commission for their approval to accept the sponsorship.
- All proceeds received from sponsorship fundraising shall be documented via a written report and maintained by the City.
- Contractor understands and agrees that permanent advertising from any Program Sponsor **shall not** be permitted on any City of Miami Beach property.

#### **6. City's Responsibilities**

- The Director shall identify and determine the number of fields and field locations (the "Designated Premises") available to the Contractor to utilize for Contractor's Program.
- Once the City has identified the Designated Premises, the City shall be responsible for providing general field maintenance, facility access, lighting, and field marking/lining prior to the first game.
- The City will, to the extent the applicable budget allows, provide the following: bases, pitching rubbers, base anchors, and dragging and marking of baseball lining of diamonds and outfield foul lines.
- The City agrees to utilize all applicable City methods to promote a marketing program for Contractor's Program, including security sponsorships.
- The use of the Designated Premises by Contractor for the Services will be limited to such times designated by the City and shall not conflict with use by City.
- It is expressly understood by Contractor that from time to time, due to the necessity of the use of the Designated Premises, as determined by the Director, for the benefit of the citizens of City, the Designated Premises may not be available for use by Contractor. However, in such event, the Director will make a reasonable effort to provide Contractor with advance written notice of such need for the use of the Designated Premises.

- The City shall cover the cost of any background checks for umpires, coaches and volunteers when the City requirements exceed those of the Little League standards.

**RESOLUTION NO. 2018-30240**

**A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, ACCEPTING THE RECOMMENDATION OF THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE AT ITS FEBRUARY 21, 2018 MEETING AND THE FINANCE AND CITYWIDE PROJECTS COMMITTEE AT ITS FEBRUARY 23, 2018 MEETING AND WAIVING, BY 5/7<sup>TH</sup> VOTE, THE COMPETITIVE BIDDING REQUIREMENT, FINDING SUCH WAIVER TO BE IN THE BEST INTEREST OF THE CITY, AND APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY AND DANNY BERRY'S BASEBALL CAMP, INC., FOR YOUTH BASEBALL PROGRAMMING, FOR A PERIOD OF THREE (3) YEARS, WITH TWO (2) ADDITIONAL ONE-YEAR RENEWAL OPTIONS, IN AN AMOUNT NOT TO EXCEED \$70,200.00 ANNUALLY, SUBJECT TO FINAL NEGOTIATION OF THE AGREEMENT BY THE ADMINISTRATION, AND LEGAL REVIEW AND FORM APPROVAL OF THE FINAL NEGOTIATED AGREEMENT BY THE CITY ATTORNEY; DELEGATING TO THE CITY MANAGER THE AUTHORITY TO EXECUTE AMENDMENTS TO THE AGREEMENT FOR ADDITIONAL PROGRAMMING (BASED ON FUTURE GROWTH OF THE PROGRAM), WITH SUCH AMENDMENTS NOT-TO-EXCEED A TOTAL OF \$25,000; AND FURTHER, ACCEPTING THE RECOMMENDATION OF THE NEIGHBORHOOD/COMMUNITY AFFAIRS COMMITTEE AT ITS FEBRUARY 21, 2018 MEETING FOR THE ADMINISTRATION TO ENGAGE DOVER, KOHL AND PARTNERS TO INCLUDE A STUDY ANALYZING THE POSSIBLE INCLUSION OF A LITTLE LEAGUE BASEBALL FIELD ON THE WEST LOTS.**

**WHEREAS,** Danny Berry has established and administered a Youth Baseball Program for Miami Beach residents and visitors ages 3-13 at North Shore Park since 2015 and has been one of the fastest growing programs offered through the Parks and Recreation Department; and

**WHEREAS,** during the 2015 winter inaugural season, Danny Berry Baseball consisted of 145 participants, 14 teams and 42 volunteer coaches. Every season the number of teams, coaches and volunteer participation has continued to grow. At the culmination of the fall 2017 baseball season the program has grown to 215 participants, 20 teams, and 70 volunteer coaches, with the winter 2018 season anticipating 23 teams; and

**WHEREAS,** during the fall 2017 season, Fairway and Normandy Isle Park hosted the program and potential games are set to occur at Flamingo and Polo Park during winter 2018 to assist with the growing demand for field space; and

**WHEREAS,** in the winter 2018 season growth is expected at the 11-13 year old Major's Division with the hopes of building this Division and essentially creating a Middle School League to be a feeder program for the Miami Beach Senior High Baseball Program; and

**WHEREAS,** currently the Danny Berry Baseball Program and the City of Miami Beach have entered into a Professional Services Agreement which began on January 1<sup>st</sup> 2018 and ends on May 31, 2018 (Exhibit A) which includes:



- In consideration for the services provided, Danny Berry is compensated on a fixed fee basis, in a total amount not to exceed \$35,100.00;
- The City pays Danny Berry a management fee of \$1,250.00 per individual baseball team, not to exceed 26 teams;
- In addition to the Management fee, Danny Berry is paid a Clinic Fee of \$100.00 per baseball clinic conducted, at a maximum of one (1) clinic per team during the term of the Agreement; and

**WHEREAS**, the Department has already paid Danny Berry Baseball approximately \$25,000.00 at the start of the current Fiscal Year for fall programming; which will exceed the City Manager's \$50,000 approval authority in a fiscal year for Professional Services Agreements; and

**WHEREAS**, the Administration desires to establish a three (3) year agreement, with two (2) additional one-year renewal options, with the Danny Berry Baseball program, beginning on August 1<sup>st</sup> 2018 (Exhibit B) and this will require a waiver of bid by the City Commission; and

**WHEREAS**, the compensation will continue to be on the fixed fee basis of \$1,250.00 per individual baseball team, not to exceed a total of \$70,200.00 annually; and delegating to the City Manager the authority to enter into amendments for additional City funding based on the future growth of the program, in an amount not to exceed \$25,000; and

**WHEREAS**, this initial total will fund up to 26 teams per season and in addition, the Contractor shall be paid a Clinic Fee of \$100.00 per baseball clinic conducted, at a maximum of one (1) clinic per team during the term of the Agreement; and

**WHEREAS**, at the February 21, 2018 Neighborhood/Community Affairs Committee ("NCAC") meeting, the NCAC supported the Administration's recommendation to waive bids for Danny Berry's Baseball Camp's Youth Baseball Program, and further, the NCAC directed the Administration to engage Dover, Kohl and Partners to include a study analyzing the possibility of including a Little League Baseball field on the West Lots; and

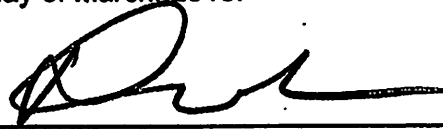
**WHEREAS**, at the February 23, 2018 Finance and Citywide Projects Committee ("Finance Committee") meeting, the Finance Committee supported the Administration's recommendation to waive bids for Danny Berry's Baseball Camp's Youth Baseball Program; and

**WHEREAS**, the City Manager recommends the waiver of bids for Danny Berry's Baseball Camp's Youth Baseball Program as being in the City's best interests, due to the success, popularity with the community and undeniable growth of the program; and

**WHEREAS**, based upon the foregoing and as permitted under Section 2-367(e) of the City Code, the City Manager recommends that the Mayor and City Commission waive, by a 5/7<sup>ths</sup> vote, the formal competitive bidding requirement, and find that such waiver is in the best interest of the City.

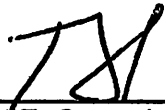
NOW, THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, that Mayor and City Commission hereby accept the recommendation of the Neighborhood/Community Affairs Committee at its February 21, 2018 meeting and the Finance and Citywide Projects Committee at its February 23, 2018 meeting and waive, by 5/7<sup>th</sup> vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City, and approve and authorize the City Manager to execute an agreement between the City and Danny Berry's Baseball Camp, Inc., for youth baseball programming, for a period of three (3) years, with two (2) additional one-year renewal options, in an amount not to exceed \$70,200.00 annually, subject to final negotiation of the agreement by the Administration, and legal review and form approval of the final negotiated agreement by the City Attorney; delegate to the City Manager the authority to execute amendments to the agreement for additional programming (based on future growth of the program), with such amendments not-to-exceed a total of \$25,000; and further, accept the February 21, 2018 recommendation of the Neighborhood/Community Affairs Committee for the Administration to engage Dover, Kohl and Partners to include a study analyzing the possible inclusion of a Little League Baseball field on the West Lots.

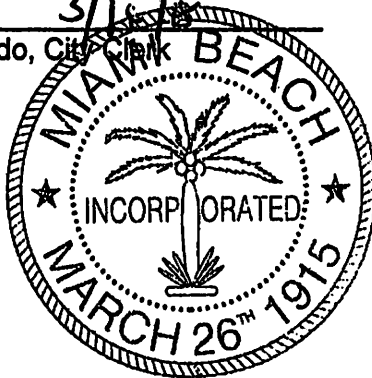
PASSED AND ADOPTED this 7<sup>th</sup> day of March, 2018.



Dan Gelber, Mayor

ATTEST:

  
3/15/18  
Rafael E. Granado, City Clerk



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
City Attorney PLP Date 2-27-18

**AMENDMENT NO. 1 TO THE AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
DANNY BERRY'S BASEBALL CAMP, INC.  
TO ADMINISTER A YOUTH BASEBALL PROGRAM FOR THE CITY**

This Amendment No. 1 ("Amendment") to the Agreement, dated July 25, 2018, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City"), and Danny Berry's Baseball Camp, Inc., a Florida for profit corporation, having its principal place of business at 1225 NE 172 Street, North Miami Beach, Florida 33162 ("Contractor"), is entered into this 29<sup>th</sup> day of August, 2018.

**RECITALS**

**WHEREAS**, on March 7, 2018, the Mayor and City Commission adopted Resolution Number 2018-30240, accepting the recommendation of the Neighborhood/Community Affairs Committee and the Finance and Citywide Projects Committee, and waiving, by 5/7<sup>th</sup> vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City; and approving and authorizing the City Manager to execute an Agreement between the City and Danny Berry's Baseball Camp, Inc. for youth baseball programming; and

**WHEREAS**, on March 26, 2018, the City and Contractor executed an agreement between the City and Danny Berry's Baseball Camp, Inc. to administer a youth baseball program for the City at North Shore Park (the "Agreement"); and

**WHEREAS**, on July 25, 2018, the Mayor and City Commission adopted Resolution No. 2018-30435, approving Amendment No. 1 to the Agreement, said Amendment, in material part, increasing the scope of the Agreement to provide for the operation, management and maintenance of the coin-operated automated batting cages once constructed at the City's North Shore Park, and the management and operation of the City's concession trailer currently used at the City's North Shore Park for the City's baseball program.

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Contractor hereby agree to amend the Agreement as follows:

**1. ABOVE RECITALS.**

The above recitals are true and correct and are incorporated as part of this Amendment.

**2. MODIFICATIONS.**

The Agreement is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

- (a) Exhibit "A" (Description of Services) is hereby amended to add the following new Section 7;

## **7. Additional Services for North Shore Park**

**7.1.1 Operation of Coin-Operated Automated Batting Cages.** The Contractor shall also operate, manage and maintain all fixtures and machinery associated with coin-operated automated batting cages once constructed at North Shore Park, to include:

- providing staff to operate the coin-operated automated batting cages during the hours of operation;
- purchasing all supplies related to the coin-operated automated batting cages such as: tokens, balls, bats and helmets and to maintain these in safe condition;
- providing maintenance to the coin-operated automated batting cages to include: service, parts and labor within a reasonable timeframe, as determined by the City Manager or his designee; and
- providing detailed maintenance reports to the City on the 1<sup>st</sup> of each month with corresponding work orders, invoices and receipts attached;

**7.1.2 Operation of Concession Trailer.** The Contractor shall also manage and operate the City's concession trailer currently used for the baseball program at North Shore Park, to include:

- providing staff to operate the concession trailer during the hours of operation;
- purchasing all supplies related to the concession trailer such as: food, beverage, cutlery, napkins, foil, etc.;
- continuing with the City's established menu (including healthy food options) and pricing for food and beverages currently in place at the City's concession trailer, with any changes in the menu options and increases in prices, being subject to the City Manager's review and approval; and
- complying with the City's exclusive vending contracts with Coca-Cola Refreshments, USA and Bettoli Trading Corp.

(b) Section 4 of the Agreement is hereby deleted in its entirety and replaced with the following:

**4.1 In consideration of the Services to be provided pursuant to Sections 1-6 of Exhibit "A", Contractor shall be compensated on a fixed fee basis, in a total amount not to exceed \$70,200.00 annually, consisting of a Management Fee and Clinic Fee, as more particularly described herein:**

**4.1.1 Management Fee.** The City shall pay the Contractor a Management Fee of \$1,250.00 per individual baseball team (as defined in Exhibit "A" hereto). Contractor's baseball program shall consist of no more than 26 teams per season. Contractor shall submit a complete player roster of its registered players ("Roster") to the City no later than one (1) week following the start of the season. Contractor shall submit proof of team and/or individual payments, along with any amendments to the corresponding Roster, to the City no later than three (3) weeks following the start of the season. Upon receipt of the certified Roster, the City shall pay the Management Fee to the Contractor based upon the following payment schedule:

- Fifty percent (50%) of the total Management Fee shall be due to the Contractor no later than two (2) weeks following the City's receipt and acceptance of the certified Rosters for the season.

- Twenty percent (20%) of the total Management Fee shall be due to the Contractor no later than six (6) weeks following the City's receipt and acceptance of the certified Rosters for the season.
- Twenty percent (20%) of the total Management Fee for the season shall be due to the Contractor no later than ten (10) weeks following the City's receipt and acceptance of the certified Rosters for the season.
- The remaining ten percent (10%) of the total Management Fee for the season shall be due to the Contractor no later than two (2) weeks following the conclusion the season.

**4.1.2 Clinic Fee.** In addition to the Contractor's Management Fee, Contractor shall be paid a Clinic Fee of \$100.00 per baseball clinic conducted, at a maximum of one (1) clinic per team per season during the Term of this Agreement.

**4.2 Batting Cages' Management Fee.** In consideration of the Services to be provided as described in subsection 7.1.1 of Exhibit "A", for the operation, management and maintenance of the coin-operated automated batting cages at North Shore Park, the Contractor shall pay the City a fee (the "City's Fee"), in the amount of 15% of all gross revenues collected by Contractor from the operation of the coin-operated automated batting cages at North Shore Park. The Contractor shall retain 85% of all gross revenues collected by Contractor from the operation of the coin-operated automated batting cages (the "Batting Cages' Management Fee"). By the 10<sup>th</sup> day of each month, Contractor shall remit the City's Fee for the immediately preceding month, along with monthly financial reports delineating all gross revenues collected by Contractor from the operation of the batting cages for the preceding month, subject to audit by the City, which will include participant residency information and proof of individual payments received by Contractor.

**4.3** In consideration of the Services to be provided as described in subsection 7.1.2 of Exhibit "A", for the management and operation of the City's concession trailer, Contractor shall retain all revenues collected from the operation of the City's concession trailer. Upon the City Manager or his designee's request, Contractor shall provide the City with monthly financial reports delineating all gross revenues received by Contractor from the operation of the City's concession trailer.

**4.4 Independent Contractor/No Joint Venture.** **THIS AGREEMENT SHALL NOT CONSTITUTE OR MAKE THE PARTIES A PARTNERSHIP OR JOINT VENTURE. FOR THE PURPOSES OF THIS AGREEMENT, THE CONTRACTOR SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR, AND NOT AN AGENT OR EMPLOYEE OF THE CITY, AND SHALL NOT ATTAIN ANY RIGHTS OR BENEFITS UNDER THE CIVIL SERVICE OR PENSION ORDINANCE OF THE CITY, OR ANY RIGHT GENERALLY AFFORDED CLASSIFIED OR UNCLASSIFIED EMPLOYEES INCLUDING ANNUAL AND SICK DAY ACCRUAL. FURTHER, THE CONTRACTOR SHALL NOT BE DEEMED ENTITLED TO FLORIDA WORKER'S COMPENSATION BENEFITS AS AN EMPLOYEE OF THE CITY OR ACCUMULATION OF SICK OR ANNUAL LEAVE.**

The Contractor shall be the sole party responsible for any and all employment taxes, unemployment compensation taxes or insurance, social security taxes, or other taxes, insurance payments, or otherwise whether levied by any country or any political subdivision thereof. The Contractor shall not, in any way, be considered to be, or be deemed to be, an employee of the City through the Services performed in this Agreement (e.g., including, but not limited to, for purposes of the Federal Insurance Contribution Act, the Social Security Act, the

Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state revenue and taxation code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code and other benefit payments and third party liability claims), and the Contractor shall indemnify and hold the City harmless from all costs, loss, damages or expenses (including but not limited to taxes, accounting fees, court costs, and attorney fees at all levels of litigation) in the event of any determination to the contrary by any court of competent jurisdiction or governmental authority. The Contractor recognizes and understands that it will receive an Internal Revenue Service Form 1099 statement and related tax statements in connection with the fees the City pays Contractor directly, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and state law as to all such fees received from the City and all revenues generated pursuant to this Agreement. The Contractor hereby promises and agrees to indemnify the City for any damages or expenses, including attorney's fees, and legal expenses, incurred by the City as a result of the Contractor's failure to make such required payments.

### **3. RATIFICATION.**

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By:

Rafael E. Granado, City Clerk

Dan Gelber, Mayor

Date

9/5/18

**FOR CONTRACTOR:**

**Danny Berry's Baseball Camp, Inc.**

**ATTEST:**

By:

Paul Dimont / ATHLETIC MANAGER

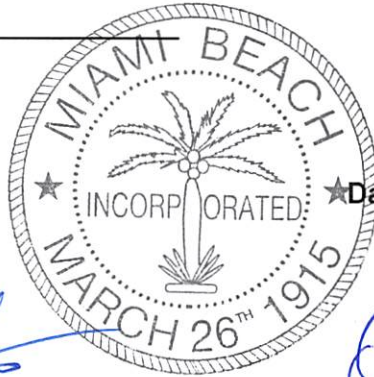
Date

8/29/18

President

Danny Berry

Print Name



APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

City Attorney

8/8/18  
Date

**AMENDMENT NO. 2 TO THE AGREEMENT  
BETWEEN  
THE CITY OF MIAMI BEACH, FLORIDA  
AND  
DANNY BERRY'S BASEBALL CAMP, INC.  
TO ADMINISTER A YOUTH BASEBALL PROGRAM FOR THE CITY**

This Amendment No. 2 ("Amendment") to the Agreement, dated March 26, 2018, by and between the City of Miami Beach, Florida, a municipal corporation organized and existing under the laws of the State of Florida, having its principal place of business at 1700 Convention Center Drive, Miami Beach, Florida 33139 (the "City"), and Danny Berry's Baseball Camp, Inc., a Florida for profit corporation, having its principal place of business at 1225 NE 172 Street, North Miami Beach, Florida 33162 ("Contractor"), is entered into this 12 day of September, 2019.

**RECITALS**

**WHEREAS**, on March 7, 2018, the Mayor and City Commission adopted Resolution Number 2018-30240, accepting the recommendation of the Neighborhood/Community Affairs Committee and the Finance and Citywide Projects Committee, and waiving, by 5/7<sup>th</sup> vote, the competitive bidding requirement, finding such waiver to be in the best interest of the City; and approving and authorizing the City Manager to execute an Agreement between the City and Danny Berry's Baseball Camp, Inc. for youth baseball programming; and

**WHEREAS**, on March 26, 2018, the City and Contractor executed an agreement between the City and Danny Berry's Baseball Camp, Inc. to administer a youth baseball program for the City (the "Agreement"); and

**WHEREAS**, on July 25, 2018, the Mayor and City Commission adopted Resolution No. 2018-30435, approving Amendment No. 1 to the Agreement, increasing the scope of the Agreement to provide for the operation, management and maintenance of the coin-operated automated batting cages once constructed at the City's North Shore Park, and the management and operation of the City's concession trailer currently used at the City's North Shore Park for the City's baseball program; and

**WHEREAS**, pursuant to Section 12.1 of the Agreement, the City Manager has the authority to execute amendments to the Agreement for additional programming (based upon future growth of the Program), if such amendments do not exceed a total of \$25,000.00; and

**WHEREAS**, the City and Contractor wish to amend the Agreement to incorporate a Travel Baseball Academy option to the City's baseball program for a total additional amount not to exceed \$25,000.00 during the Term of the Agreement, including any renewal options.

**NOW THEREFORE**, in consideration of the mutual promises and conditions contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the City and Contractor hereby agree to amend the Agreement as follows:

**1. ABOVE RECITALS.**

The above recitals are true and correct and are incorporated as part of this Amendment.



## 2. MODIFICATIONS.

The Agreement is hereby amended (deleted items ~~struck through~~ and inserted items underlined) as follows:

- (a) Exhibit "A" (Description of Services) is hereby amended to add the following new Section 7.1.3;

### 7.1.3. Additional Baseball Programming – Travel Baseball Academy

The Contractor shall also offer, manage and oversee a competitive Travel Baseball Program through a baseball academy.

- Contractor shall be responsible to provide knowledgeable committed staff to teach the fundamentals of baseball as well as the development of players to participate at a high competitive level.
- Consistent with Exhibit "A" section 1 of General Terms: Contractor will operate in the same format of procuring and issuing uniforms and equipment, scheduling of practices, establish and designate teams and any other duties required to assure success in the Baseball Academy.
- Consistent with Section 12.4 of the Agreement, Contractor's coaching staff shall not participate in Contractor's Program or perform and work under this Agreement until individuals have passed a background screening that is satisfactory to the City. Contractor's coaches will be required to wear a City-issued Identification card while performing or participating in Contractor's Program activities.
- Contractors programs will consist of two (2) teams in the Fall (age 11U/12U and 13U). Number of teams for programming in the Spring will be contingent on field availability.
- At least 75% of participants in Contractor's Program shall be Miami Beach residents. The City shall coordinate and/or provide facility access as necessary.

- (b) Section 4 of the Agreement is hereby deleted in its entirety and replaced with the following:

4.1 In consideration with the Services to be provided pursuant to Sections 1-7 of Exhibit "A", Contractor shall be compensated on a fixed fee basis, in a total amount not to exceed **\$70,200.00 annually**, consisting of a Management Fee, Clinic Fee and a Travel Baseball Team Fee, as more particularly described herein:

**4.1.1 Management Fee.** The City shall pay the Contractor a Management fee of \$1,250.00 per individual baseball team (as defined in Exhibit "A" hereto). Contractor's baseball program shall consist of no more than 26 teams per season. Contractor shall submit a complete player roster of its registered players ("Roster") to the City no later than one (1) week following the start of the season. Contractor shall submit proof of team and/or individual payments, along with any amendments to the corresponding Roster, to the City no later than three (3) weeks following the start of the season. Upon receipt of the certified Roster, the City shall pay the Management Fee to the Contractor based upon the following payment schedule:

- Fifty percent (50%) of the total Management Fee shall be due to the Contractor no later than two (2) weeks following the City's receipt and acceptance of the certified Rosters for the season.

- Twenty percent (20%) of the total Management Fee shall be due to the Contractor no later than six (6) weeks following the City's receipt and acceptance of the certified Rosters for the season.
- Twenty percent (20%) of the total Management Fee for the season shall be due to the Contractor no later than ten (10) weeks following the City's receipt and acceptance of the certified Rosters for the season.
- The remaining ten percent (10%) of the total Management Fee for the season shall be due to the Contractor no later than two (2) weeks following the conclusion the season.

**4.1.2 Clinic Fee.** In addition to the Contractor's Management Fee, Contractor shall be paid a Clinic Fee of \$100.00 per baseball clinic conducted, at a maximum of one (1) clinic per team per season during the Term of the Agreement.

**4.2 Batting Cages' Management Fee.** In consideration of the Services to be provided as described in subsection 7.1.1 of Exhibit "A", for the operation, management and maintenance of the coin-operated automated batting cages at North Shore Park, the Contractor shall pay the City a fee (the "City's Fee"), in the amount of 15% of all gross revenues collected by Contractor from the operation of the coin-operated automated batting cages at North Shore Park. The Contractor shall retain 85% of all gross revenues collected by Contractor from the operation of the coin-operated automated batting cages (the "Batting Cages' Management Fee"). By the 10th day of each month, Contractor shall remit the City's Fee for the immediately preceding month, along with monthly financial reports delineating all gross revenues collected by Contractor from the operation of the batting cages for the preceding month, subject to audit by the City, which will include participant residency information and proof of individual payments received by Contractor.

**4.3** In consideration of the Services to be provided as described in subsection 7.1.2 of Exhibit "A", for the management and operation of the City's concession trailer, Contractor shall retain all revenues collected from the operation of the City's concession trailer. Upon the City Manager or his designee's request, Contractor shall provide the City with monthly financial reports delineating all gross revenues received by Contractor from the operation of the City's concession trailer.

**4.4 Travel Baseball Academy Fees.** In consideration of the Services to be provided pursuant to Section 7.1.3 of Exhibit "A" hereto, for the implementation and management of the Travel Baseball Academy Program, Contractor agrees to the following compensation and fee provisions:

- The fees to participate in Contractor's Program ("Participant Fees") are as follow:  
Participant Fee: \$1,200.00 per season  
The Participant Fees include the following: Two (2) practices during the week and one (1) game, uniform, league registration, umpire fees and professional coaching
- Participants will directly pay Contractor for participation in the program.
- From the total of Participant Fees collected by the Contractor, the Contractor shall retain \$1,250.00 per team, per season as Contractor's fee for the management of the Travel Baseball Academy Program, which fee will not exceed a total of \$25,000.00 during the Term, including renewal terms. The Contractor will use the remainder of the fees collected to pay for uniforms, league registration, umpire fees and professional coaching fees.
- Tournaments. Participants will be responsible for all additional fees incurred from tournaments which includes, but is not limited to, registration fees, additional coaching fees, etc. These fees will be paid by the participants directly to the Contractor.

**4.5 Independent Contractor/No Joint Venture. THIS AGREEMENT SHALL NOT CONSTITUTE OR MAKE THE PARTIES A PARTNERSHIP OR JOINT VENTURE. FOR THE PURPOSES OF THIS AGREEMENT, THE CONTRACTOR SHALL BE DEEMED TO BE AN INDEPENDENT CONTRACTOR, AND NOT AN AGENT OR EMPLOYEE OF THE CITY, AND SHALL NOT ATTAIN ANY RIGHTS OR BENEFITS UNDER THE CIVIL SERVICE OR PENSION ORDINANCE OF THE CITY, OR ANY RIGHT GENERALLY AFFORDED CLASSIFIED OR UNCLASSIFIED EMPLOYEES INCLUDING ANNUAL AND SICK DAY ACCRUAL. FURTHER, THE CONTRACTOR SHALL NOT BE DEEMED ENTITLED TO FLORIDA WORKER'S COMPENSATION BENEFITS AS AN EMPLOYEE OF THE CITY OR ACCUMULATION OF SICK OR ANNUAL LEAVE.**

The Contractor shall be the sole Party responsible for any and all employment taxes, unemployment compensation taxes or insurance, social security taxes, or other taxes, insurance payments, or otherwise whether levied by any country or any political subdivision thereof. The Contractor shall not, in any way, be considered to be, or be deemed to be, an employee of the City through the Services performed in this Agreement (e.g., including, but not limited to, for purposes of the Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, any state revenue and taxation code relating to income tax withholding at the source of income, the Workers' Compensation Insurance Code and other benefit payments and third party liability claims), and the Contractor shall indemnify and hold the City harmless from all costs, loss, damages or expenses (including but not limited to taxes, accounting fees, court costs, and attorney fees at all levels of litigation . ) in the event of any determination to the contrary by any court of competent jurisdiction or governmental authority. The Contractor recognizes and understands that it will receive an Internal Revenue Service Form 1099 statement and related tax statements in connection with the fees the City pays Contractor directly, and will be required to file corporate and/or individual tax returns and to pay taxes in accordance with all provisions of applicable Federal and state law as to all such fees received from the City and all revenues generated pursuant to this Agreement. The Contractor hereby promises and agrees to indemnify the City for any damages or expenses, including attorney's fees, and legal expenses, incurred by the City as a result of the Contractor's failure to make such required payments.

### **3. RATIFICATION.**

Except as amended herein, all other terms and conditions of the Agreement shall remain unchanged and in full force and effect. In the event there is a conflict between the provisions of this Amendment and the Agreement, the provisions of this Amendment shall govern.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.**

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by their appropriate officials, as of the date first entered above.

**FOR CITY:**

**CITY OF MIAMI BEACH, FLORIDA**

**ATTEST:**

By:

  
\_\_\_\_\_  
Rafael E. Granado, City Clerk

  
\_\_\_\_\_  
Dan Gelber, Mayor

\_\_\_\_\_  
Date OCT - 1 2019

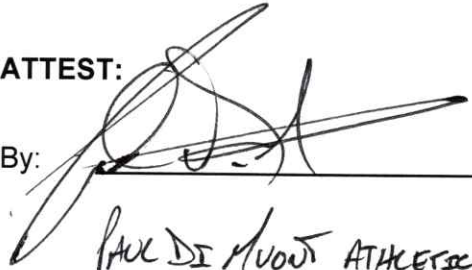


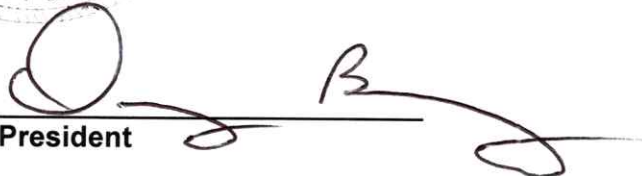
**Danny Berry's Baseball Camp, Inc.**

**FOR CONTRACTOR:**

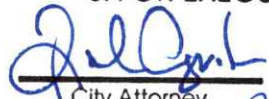
**ATTEST:**

By:

  
\_\_\_\_\_  
PAUL DI MURO ATHLETIC MANAGER  
Print Name and Title  
09/19/19  
Date

  
\_\_\_\_\_  
President  
\_\_\_\_\_  
Danny Berry  
Print Name

APPROVED AS TO  
FORM & LANGUAGE  
& FOR EXECUTION

  
\_\_\_\_\_  
City Attorney 8-26-19  
Date  
*RAP*