

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH
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 _____ day of _____, 20____ ("Effective Date"), 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 (the "City"), **DANNY BERRY'S BASEBALL CAMP, INC.**, a Florida 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 includes any exhibits and amendments.

City Manager: The chief administrative officer of the City.

City Manager's Designee: The City staff member whom the City Manager designates to administer this Agreement on behalf of the City. The City Manager's designee shall be the Parks and Recreation Department Director ("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" or "Baseball 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 performed in accordance with the terms and conditions set forth in Exhibit "A" and 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:

Alan Alberta
Athletic Manager
1701 Meridian Avenue, Suite 401
Miami Beach, FL 33139
Alanalberta@miamibeachfl.gov

SECTION 3 **TERM**

- 1.1** The Agreement shall be for an initial term of three (3) years (the "Initial Term"). The Agreement shall be deemed by the parties hereto to have commenced on the Effective Date (the "Commencement Date"). The first contract year shall commence on the Commencement Date and expire at the end of one-year, with each subsequent contract year following consecutively during the Term, each a "Contract Year".
- 1.2** **OPTION TO RENEW WITH PRICE ADJUSTMENT:** The Agreement may be extended for two (2) additional one (1) year terms (each, a "Renewal Term"), on a year-to-year basis, at the sole discretion of the City Manager. Prior to expiration of the Initial Term and the first approved Renewal Term, the City, at the sole discretion of the City Manager, may consider an adjustment to price based on Consumer Price Index (CPI) increase for each approved Renewal Term. A change shall not be more than the percentage increase or decrease in the CPI Index, as described below.

It is the Contractor's responsibility to request any pricing adjustment under this provision. For any adjustment to commence on the first day of any approved Renewal Term, the Contractor's request for adjustment must be submitted at least sixty (60) days prior to the expiration of the then-current contract term.

The CPI increase shall be determined by using the applicable Bureau of Labor Statistics (www.bls.gov) CPI-U index and computing the percentage of increase from the Commencement Date, as the base month and year, as compared to the month and year that is sixty (60) days prior to the first day of each Renewal Term.

During the Renewal Term(s), the City may also, at the sole option and discretion of the City Manager, consider price increases based on increases mandated by the City's Living Wage Ordinance (as codified in Sections 2-407 through 2-410 of the City Code, and as may be amended from time to time); provided, however, that in considering cost escalations due to Living Wage increases, the City shall only consider the direct costs related to such increases, exclusive of overhead, profit, or any other related costs.

The adjustment request must clearly substantiate the requested increase. If no adjustment

request is received from the Contractor, the City will assume that the Contractor has agreed that the optional term may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new option period may not be considered. Continuation of the Agreement beyond the initial term, and any option subsequently exercised, is a City prerogative, and not a right of Contractor. The Initial Term and any approved Renewal Term, shall collectively be referred to as "Term".

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 financial reporting fee structure arrangement, in a total amount that shall not exceed \$777,500.00 per year.

- Annual Fee Breakdown
 - Maximum Expense Reimbursements of \$620,650.00
 - Management Fee of \$156,850.00

The City shall collect all of the programming revenues. The City shall pay, from the programming revenues the City collects: (1) the reimbursements to Contractor of the expenses associated with operating the Program ("Expense Reimbursements"), up to \$620,650.00 per Contract Year; and (2) a Management Fee, in the total amount of \$156,850.00 per Contract Year, payable as more particularly set forth below. These amounts shall be included in the overall financial reporting fee structure in the total amount not to exceed \$777,500.00 per Contract Year. Contractor to provide complete player roster ("Roster") of its registered players to the City no later than one (1) week following the start of the season. Any amendments to the Roster shall be submitted to the City no later than three (3) weeks following the start of the season.

4.2 Contractor shall grant a City representative administrative access to the baseball software utilized by the Contractor (currently Sports Connect) for effective oversight and coordination. Upon receipt of the certified roster, the City shall pay the Management Fee and Expense Reimbursements to the Contractor based upon the following payment schedule:

(A) Management Fee: The City shall pay Contractor the Management Fee, in the amount of \$156,850.00, in four (4) payment intervals, as follows:

(1) Forty percent (40%) of the total Management Fee, in the amount of \$62,740.00 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;

(2) Twenty percent (20%) of the total Management Fee, in the amount of \$31,370.00, 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;

(3) Twenty percent (20%) of the total Management Fee, in the amount of \$31,370.00, 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; and

(4) The remaining 20 percent (20%) of the total Management Fee, in the amount of \$31,370.00, for the season shall be due to the Contractor no later than two (2) weeks following the conclusion the season.

(B) Expense Reimbursements: The City shall provide payment to the Contractor for Expense Reimbursements on a monthly basis, by the 15th of the following month; provided that Contractor submits the Reporting Documents by the end of the month. In connection with an Expense Reimbursement request, Contractor shall submit to the Director a detailed financial report that includes an itemized breakdown of invoices and supporting documentation for each operating expense, and any additional documents which the Director may request (collectively, the "Reporting Documents"). Operating expenses may include, without limitation, umpire fees, uniforms costs, coaching salaries, purchase of trophies, purchase or repair of equipment, and insurance costs. Expense reimbursements for private coaching will be reimbursed bi-weekly, subsequent to the City's receipt of the (1) independent contract between the Contractor and the approved private coach; (2) registration revenues; and (3) certified rosters.

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 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 rights 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. ADDITIONALLY, IN THE EVENT OF A PUBLIC HEALTH, WELFARE OR SAFETY CONCERN, AS DETERMINED BY THE CITY MANAGER, IN THE CITY MANAGER'S SOLE DISCRETION, THE CITY MANAGER, PURSUANT TO A VERBAL OR WRITTEN NOTIFICATION TO CONTRACTOR, MAY IMMEDIATELY SUSPEND THE SERVICES UNDER THIS AGREEMENT FOR A TIME CERTAIN, OR IN THE ALTERNATIVE, TERMINATE THIS AGREEMENT ON A GIVEN DATE. IF THE AGREEMENT IS TERMINATED FOR CONVENIENCE BY THE CITY, 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, defend 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;
2. Contractor Professional Liability, in the amount of \$200,000; and
3. 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.

Timely renewal certificates will be provided to the City as coverage renews. The insurance certificates for General Liability shall include the City as an additional insured and shall contain a waiver of subrogation endorsement. Contractor's insurance shall be primary and not contributory for direct claims arising out of the Agreement under the Commercial General Liability policy. If the Professional Liability coverage is provided on a claims made basis, then such insurance shall continue for (3) years following the expiration or termination of the Agreement.

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. Contractor hereby expresses its willingness to enter into this Agreement with Contractor'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, Contractor hereby agrees that the City shall not be liable to the Contractor 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 work and/or 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 INSPECTOR GENERAL AUDIT RIGHTS

- (A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.
- (B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.
- (C) Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.

- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subContractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
- i. If this Agreement is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and
 - ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Contractor, its officers, agents, employees, subContractors and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the CONTRACTOR in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Contractor or third parties.

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 NO 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, public services, and in connection with its membership or policies, because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, hair texture and/or hairstyle 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

- (A) Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time.
- (B) 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.
- (C) 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 attorneys' 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

PHONE: 305-673-7411

10.8 FORCE MAJEURE

- (A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Contractor or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.
- (B) If the City or Contractor's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are

only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.

- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Contractor of such termination. If the Agreement is terminated pursuant to this section, 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. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

10.9 E-VERIFY

- (A) To the extent that Contractor provides labor, supplies, or services under this Agreement, Contractor shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Contractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Contractor shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor during the contract Term. If CONTRACTOR enters into a contract with an approved subcontractor, the subcontractor must provide the CONTRACTOR with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. CONTRACTOR shall maintain a copy of such affidavit for the duration of the Agreement or such other extended period as may be required under this Agreement.
- (B) **TERMINATION RIGHTS.**
 - (1) If the City has a good faith belief that Contractor has knowingly violated Section 448.09(1), Florida Statutes, which prohibits any person from knowingly employing, hiring, recruiting, or referring an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States, the City shall terminate this Agreement with Contractor for cause, and the City shall thereafter have or owe no further obligation or liability to Contractor.
 - (2) If the City has a good faith belief that a subcontractor has knowingly violated the

foregoing Subsection 10.9(A), but the Contractor otherwise complied with such subsection, the City will promptly notify the Contractor and order the Contractor to immediately terminate the agreement with the subcontractor. Contractor's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate the Contractor's contract for cause.

- (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
- (4) The City or Contractor or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
- (5) If the City terminates the Agreement with Contractor under the foregoing Subsection (B)(1), Contractor may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
- (6) Contractor is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

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.

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 WAIVER OF BREACH

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

12.4 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12.5 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.

12.6 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, 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.

The City will conduct backgrounds for the first 30 days from the start of each season Limiting up to five volunteer coaches per team. Contractor must prevent all of its personnel, including volunteers, from engaging in any activities involving the baseball program without having passed a background screening to the satisfaction of the City. The City reserves the right to approve or disapprove whether the Contractor's employees perform the services for the City. Disapproval would apply solely to this contract and shall have no bearing on the contractor's employment of an individual outside of this contract.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

DRAFT

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: _____
City Clerk

City Manager

Date: _____

FOR CONTRACTOR:

DANNY BERRY'S BASEBALL CAMP, INC.

ATTEST:

By: _____

Print Name and Title

Print Name and Title

Date: _____

EXHIBIT "A"
DESCRIPTION OF SERVICES

The Contractor shall establish and administer year-round youth Baseball Program each year for Miami Beach residents and non-residents between the ages of three (3) and fourteen (14) 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 the Contractor's Program, 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 operate the Program successfully.
- Consistent with Section 12.4 of this Agreement, the 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 the 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 must wear a City-issued Identification card while performing or participating in Contractor's Program activities.
- Contractor is responsible for managing the registration process using Sport Connect software (or any future approved software), with no cost involved. Contractor must have a City representative provided with admin rights.
- Contractor and/or Contractor's league representative shall ensure that Program staff wear proper identification while participating in Contractor's Program.
- Contractor shall procure all uniforms and equipment for Contractor's Program.
- Contractor shall be responsible for having a league representative present at all games and practices.
- Contractor shall provide a safe, high-quality, customer-oriented operation with well-maintained equipment.
- Any equipment purchased by Contractor and for which the City reimburses the cost thereof, shall remain property of the City. Contractor shall maintain an inventory of the equipment that belongs to the City.
- Contractor must maintain the fields in a safe, clean, sanitary, and workable condition, including assisting with the management of the daily maintenance of the fields by keeping up with field prep and post-games/post/practices. City will continue to groom fields.
- No rec games/practices to be held outside of the designated fields in Miami Beach unless approved by City.

- Program fees to be in accordance with similar baseball programs in South Florida. Fees are to be negotiated with the City. An increase in fees is at the City's discretion and approval.
- Contractor to provide the City with Coaching Contracts for those individuals receiving payment for coaching in the Danny Berry Baseball Programs. This includes but is not limited to private coaching, travel baseball, camps, tournaments, classes, clinics, etc.
- Contractor to train all volunteer coaches on the fundamentals of baseball. Coaches should have basic first-aid training. Coaches must sign a code of conduct to ensure fair and equitable treatment of Program participants and parents.
- Contractor must always have a physical presence on the field, this includes games and practices. If the Contractor is not available, a representative authorized by the Contractor who is able to make decisions on behalf of the Program, must be present.
- The City reserves the right to approve or disapprove of Contractor's employees/volunteers who perform Services under this Agreement. Disapproval would apply solely to this Agreement and shall have no bearing on the Contractor's employment of an individual outside of this Agreement.
- Contractor must submit any documents and/or marketing materials, not limited to flyers, banners, and advertisements related to Baseball Programs to the City Manager's designee for final approval prior to distribution.
- The City will determine any potential food and beverage concessionaire for baseball programming.
- The City will determine whether the condition of the fields is safe and appropriate for play. This includes determining playability after a weather event. The City has the right to close fields at any time.
- Contractor must provide an incident report detailing the nature of any incident that occurs during scheduled programming to be reviewed with the City before taking any permanent action within a 48-hour window.
- Contractor shall designate a qualified designee available for emergencies or other matters related to the Baseball Program and who will ensure that all on-site volunteers have First Aid, CPR, and AED Certifications.
- Contractor shall prevent all its personnel, including volunteers, from engaging in any activities involving the Baseball Program without having passed a background screening to the satisfaction of the City of Miami Beach.
- The Contractor shall offer, manage, and oversee a competitive Travel Baseball Program.
- Contractor will ensure that the coaches/volunteers are uniformed to be recognizable as the selected Contractor staff.
- Contractor must ensure at least 75% of participants in the Contractor's Program shall be Miami Beach residents.
- Contractor shall also coordinate staffing and ensure programming is adequately supervised. The City's standards are a Toddler (2-4 years old) 15:1 and School-aged (K-12th grade) 25:1 child-to-instructor ratio.

2. Program Schedule

- Contractor shall be responsible for scheduling games and practices ("Activities") at times and locations pre-approved in writing by the Director or the Director's designee.
- 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 or Director's designee's prior written approval.

- Contractor shall provide scheduling of fields and batting cages for practices, games, and private lessons, which will be negotiated with the City and at the City’s discretion. A City designee must approve any field used for private lessons offered by DBB staff.
- Contractor’s Program activities shall be conducted at times and locations as determined by the Director or Director’s designee.
- Any proposed Schedule changes shall first be submitted in writing to the Director or Director’s designee and, following the Director’s or Director’s designee’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 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 or Director’s designee and evidenced in writing.
- 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 season shall begin and end as follows:

- **Recreation Teams:**

Season	Begins	Ends
Fall	August	December
Spring	January	May

- **Travel Teams:**

Season	Begins	Ends
Fall	August	December
Spring	January	May

- **Travel Tournaments Teams:**

Season	Begins	Ends
Year round	August	September

- **Summer Camps**

Season	Begins	Ends
Summer	June	August

- **Winter and Spring Camps**

Season	Begins	Ends
Winter/Spring	December	May

3. Fees and Scholarships

- The fees to participate in Contractor’s Program (“Participant Fees”) are as follows:
All fees reflect per player.

Fees Collected by the City:

REC TEAMS:

- Miami Beach Residents: \$140.00 per season
- Non-Residents: \$280.00 per season

TRAVEL TEAMS: 3 Seasons (Aug – Dec) (Jan – May) (Jun – Aug)

- \$1,675 per season per player
- Contractor fee = \$125.00 per player
- Grapeland League Fee = \$200 per player
- Uniform = \$100 per player
- Monthly General Manager Fee = \$250.00 per player per month (5 months)
- Summer Travel Teams (*fee structure different from other seasons*)
 - \$975.00 per player
 - Contractor fee = \$125.00 per player
 - New players = \$100.00 uniforms – 1-time fee

ALL CAMPS:

- Monday – Friday; 9:00 – 12:00 pm
- Miami Beach Residents Elite: \$400.00 per week
- Non-residents Elite: \$495.00 per week
- Miami Beach Residents Recreation Play: \$250.00 per week
- Non-residents Recreation Play: \$295.00 per week

TRAVEL TOURNAMENT TEAMS YEAR-ROUND:

- \$450 per tournament per team

PRIVATE COACHING:

- Based on the qualifications of coaches.
- Rate varies between \$50.00 - \$80.00.
- Packages 10 lessons \$450.00
- Team lessons \$150.00 per hour

NO SCHOOL DAYS (*except on legal holidays*)

- Half-day: 9:00 – 12:00 pm
- Miami Beach Residents: \$80.00 per day
- Miami Beach Non-residents: \$95.00 per day

- Any change to the participant fees must be pre-approved in writing by the Director or the Director’s designee.
- Participant fees shall be consistent with comparable South Florida cities offering the same or similar baseball program.
- 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. 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 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 and supporting documentation to the Director for review and approval before the beginning of each season.
- Contractor shall maintain a current list of all participants 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 or Director's designee 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 or Director's designee to establish a marketing strategy to promote the Program.
- All marketing materials and methods shall be pre-approved by the Director or Director's designee prior to being utilized.
- Contractor shall provide the Director or Director's designee with electronic copies of any and all marketing materials utilized to promote the Program. All electronic files shall be provided in a format 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.
- All marketing material must have the Contractor's contact information only. No volunteer or coach's contact information is allowed to be marketed.

5. Sponsorships

- Contractor shall use its best efforts to solicit and obtain sponsorships on behalf of the Baseball Program to raise funds to cover management costs or additional necessary/approved operational costs of the Program.
- All sponsorships shall require the prior approval of the Director.
- All funds raised from sponsorships shall be made payable directly to the City of Miami Beach.
- All proceeds 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 the any City of Miami Beach property.
- Contractor will provide quarterly reporting data of financial assistance granted.
- Participants who meet the stipulated requirements may qualify for financial assistance from the set foundation through the Danny Berry Baseball program.

6. City's Responsibilities

- The City will collect all fees associated with the Program.
- The City will have administrative access to Contractor registration software Sports Connect for effective oversight and coordination.
- The Director or Director's designee shall identify and determine the number of fields and field locations (the "Designated Premises") available to the Contractor to utilize for the Contractor's Program.
- Once the City has identified the Designated Premises, the City shall provide general field maintenance, facility access, lighting, and field marking/lining before 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 marketing resources to promote Contractor's Program, including securing sponsorships.
- The use of the Designated Premises by the Contractor for the Services will be limited to such times designated by the City and shall not conflict with use by City.
- Contractor expressly understands that from time to time, due to the necessity of using the Designated Premises, as determined by the Director or Director's designee, for the benefit of the citizens of the City, the Designated Premises may not be available for use by Contractor. However, in such event, the Director or Director's designee will make a reasonable effort to provide the Contractor with advance written notice of the unavailability 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.
- The City shall not permit competing or non-affiliated youth baseball teams/programs during the set contract.
- The City, upon approval from the Director or the Director's designee, will allow tournaments to be hosted at designated fields throughout the year.

TIMELINE FOR DELIVERABLES

Within 10 days from the effective date of this Agreement, the Contractor and the City Manager's Designee (as defined on Page 1 of this Agreement) shall agree upon a proposed schedule for all programming. Once approved, any changes to the schedule shall be coordinated through the Parks and Recreation Department Director or his or her designee and shall be subject to the written approval of the parties.