

USE AGREEMENT

between

CITY OF HAINES CITY

and

HAINES CITY LITTLE LEAGUE, INC.

for Youth Baseball League

This Agreement, made and entered into this _____ day of _____, 2022, by and between the CITY OF HAINES CITY, FLORIDA, a municipal corporation of the State of Florida (hereinafter the "CITY"), through its City Commission;

AND

HAINES CITY LITTLE LEAGUE, INC., a Florida corporation, its successors and assigns, (hereinafter "CONTRACTOR").

WHEREAS, the CITY owns athletic facilities located within the city limits of the City of Haines City; and

WHEREAS, the CITY has entered into an Interlocal Agreement with the CITY OF DAVENPORT to utilize baseball and softball fields located at the Lewis Mathews Complex in Davenport, Florida; and

WHEREAS, the Indemnification and Insurance obligations related to both the CITY OF HAINES CITY and the CITY OF DAVENPORT, as set forth in this Agreement, are material terms of this Agreement; and

WHEREAS, CONTRACTOR is a duly organized youth athletic league providing athletic opportunities to youths in the Haines City area; and

WHEREAS, the City wishes to enter into an agreement with CONTRACTOR to organize, manage and administer a youth athletic league that utilizes facilities located at the Lewis Mathews Complex located in Davenport, Florida;

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payments hereinafter set forth, CITY and CONTRACTOR agree as follows:

**SECTION 1
SERVICES TO BE PROVIDED**

The services to be provided by CONTRACTOR include providing sufficient staff and resources to professionally organize, manage and operate a recreational youth athletic league for participants' ages Three (3) to sixteen (16) years at City facilities in accordance with the terms outlined herein.

CONTRACTOR shall be responsible for all aspects of the youth athletic league including, but not limited to providing screened coaches and officials, organizing team rosters, establishing practice and game schedules, furnishing t-shirts and/or uniforms, trophies, participant medals, athletic equipment, and all other materials and services required to successfully administer the youth athletic league.

FACILITY AVAILABILITY DATES

PRACTICE: CITY will make available to CONTRACTOR the following City facilities during the time period(s) specified:

Facility

- 1. Larry Parrish (February - November)
- 2. Lewis Mathews (Davenport)

GAMES: CITY will make available to CONTRACTOR the following City facilities during the time period(s) specified:

Facility

- | | |
|--|---------------------|
| 1. Larry Parrish (February - November) | February - November |
| 2. Lewis Mathews (Davenport) | TBD |

**SECTION 2
TERM**

The effective date of this Agreement shall be when the last party executes and dates same. The term of this Agreement shall be for one (1) season beginning on the effective date.

**SECTION 3
CONTRACTOR RESPONSIBILITIES**

CONTRACTOR shall be responsible for all aspects related to the organization, management, coordination, and operation of the recreational youth athletic league as specified herein:

1. In accordance with the CITY's policies set forth in Resolution No. 17-240 (City of Haines City Volunteer Sports Program Background Screening Policy) and in Resolution No. 17-241 (City of Haines City Community Organization Volunteer and Instructor Background Screening Policy), copies of which are attached as Exhibit A, the CONTRACTOR shall (i) secure certified and trained officials, staff, and volunteers for the youth athletic league that have successfully passed a minimum of a State of Florida (FDLE) background screening, and (ii) secure youth athletic coaches that have successfully complied with all background screening requirements specified by Section 943.0438, Florida Statutes. The CONTRACTOR shall (i) provide the CITY Contract Coordinator with written confirmation of the information necessary for the CITY to conduct the background screenings, or (ii) provide the CITY Contract Coordinator with written confirmation that the CONTRACTOR has previously conducted the background screenings, by March 31, 2022. In the event that the CONTRACTOR fails to timely provide such written confirmation to the CITY's Contract Coordinator, this Agreement may be immediately terminated as set forth in Section 7.1 below.
2. Market the program by creating and distributing flyers in schools, and obtain business/partner sponsorships to enhance the quality of the league.
3. Coordinate program drafts, parent meetings and coaches meetings.
4. Collect fees, register participants using CONTRACTOR's registration forms.
5. Within sixty (60) days of the Effective Date of this Agreement, the CONTRACTOR shall ensure that all coaches attend the CITY's Coaches Education and Training Session and sign the CITY's Coaches Code of Conduct. The CONTRACTOR shall ensure that all parents, players, and coaches adhere to the Code of Conduct.
6. Create practice, game and field schedules, including lighting, and provide schedules to the CITY Contract Coordinator at least two (2) weeks before the start of the program.
7. Provide CITY Contract Coordinator with team rosters and contact information for participants and coaches within two (2) weeks of the registration completion date.
8. Order and distribute team jerseys based on sizing requirements and distribute to participants prior to the first game.
9. Ensure that coaches and officials are available for scheduled play, are dressed in proper uniforms, and conduct themselves professionally.

10. The CONTRACTOR shall provide, at its expense, the chalk and paint to line fields for practice and games.
11. The Contractor shall obtain and possess all applicable food handling certificates concerning food and concessions served or sold at its events.
12. Inspect and document conditions of athletic fields, equipment (goals, benches, tables, fencing, grills, irrigation system, concession stands, restrooms - including supplies), and notify CITY Contract Coordinator of damage, deficiencies and/or graffiti noted within 24 hours.
13. The CONTRACTOR shall clean-up all players/spectators areas immediately after usage.
14. Adhere to all CITY field and facility rules, and utilize fields/facilities for the intended sport for which it was designed and built within the pre-established scope and permitted date/time parameters only. Parking on the grass, playing fields, sidewalks, or pathways in any park facility is prohibited.
15. Purchase trophies/medals and other equipment necessary for team games and practice.
16. CONTRACTOR shall remain off of the fields, and make no effort to remove water or rake fields when notified by CITY about field closure due to weather or hazardous conditions.
17. Meet with CITY Contract Coordinator and CITY representatives to address service concerns and ensure all tasks are performed adequately and according to schedule.
18. CONTRACTOR shall respond to and correct any deficiencies in performance of the services as identified by the CITY Contract Coordinator. Deficiencies shall be corrected within the time limits agreed upon with CITY Contract Coordinator based on the complexity of the corrective action.
19. Ensure that a Board Member of the CONTRACTOR is present at every function, practice, league meeting, and games.
20. Ensure that (i) the key(s) for access to CITY facilities shall remain in sole and exclusive possession and use by the CONTRACTOR's President and or designee, (ii) no key(s) to CITY facilities shall be copied and/or distributed to anyone, and (iii) no locks to CITY facilities are changed without the express written consent of the CITY Contract Coordinator. The CONTRACTOR's failure to strictly comply with this provision shall constitute a material breach of this Agreement and shall result in the immediate termination of this Agreement.
21. Ensure that no exhibitor representing a competing youth athletic league located outside of Haines City, shall be allowed to establish or operate a recruitment table or tent at CONTRACTOR's events, including CONTRACTOR's jamboree event.

22. If the CONTRACTOR requests that the CITY provide its law enforcement officer(s) to coordinate traffic and public safety at CONTRACTOR's event, the CITY and the CONTRACTOR shall agree and confirm by written confirmation at least ten (10) business days prior to the event:
- a. The number of law enforcement officer(s) to be present at the event;
 - b. The exact schedule when the law enforcement officer(s) shall be present at the event;
 - c. The name and active cell phone number of the CONTRACTOR's contact person who shall be present at CONTRACTOR's event for the entire time period that law enforcement officers shall be present at the event; and
 - d. The hourly expense and the total cost of having the CITY's law enforcement officer(s) coordinate traffic and public safety at CONTRACTOR's event. CONTRACTOR shall remit payment for the law enforcement officer(s) costs to the CITY within ten (10) days of the CONTRACTOR's event.

SECTION 4 CITY RESPONSIBILITIES

1. Monitor CONTRACTOR performance and compliance with the terms of the Agreement.
2. Prepare and line fields with chalk provided by CONTRACTOR for practices and games.
3. Advertise league in City website, marquee, and through press releases and Flyers provided by CONTRACTOR.
4. Schedule usage and lighting of the City facilities.
5. Coordinate field maintenance with the Parks Supervisor in the Parks and Recreation Department.
6. Open concession stands at City facilities based on schedule provided by CONTRACTOR.
7. Provide City facilities for contractor to conduct parent and coaches meetings, drafts, training clinics and the end of the league ceremony.

**SECTION 5
COMPENSATION AND METHOD OF PAYMENT**

The total compensation to be paid to the CITY by the CONTRACTOR shall be Four Dollars (\$4.00) for each individual participant registered for CONTRACTOR's youth athletic league.

CONTRACTOR shall remit payment to CITY within thirty (30) days of the CONTRACTOR's close of registration for participation in its youth athletic league.

Registration fees may be adjusted at CITY'S discretion upon action by the City Commission.

**SECTION 6
MODIFICATION OF AGREEMENT TERMS**

The terms of this agreement may be modified by mutual consent to increase or decrease the scope of work, adjust prices in subsequent agreement periods, or for such other purposes as shall become necessary during the conduct of the agreement period. Such amendments shall be accomplished in writing as an addendum to the Agreement.

**SECTION 7
MISCELLANEOUS**

7.1 TERMINATION

This Agreement may be terminated by either party for cause, or by CITY for convenience, upon thirty (30) days written notice from the terminating party to other party. In the event of such termination, CITY shall be paid its compensation for services performed to termination date. In the event that CONTRACTOR abandons this Agreement or causes it to be terminated by CITY, CONTRACTOR shall indemnify CITY against any loss pertaining to this termination. For purposes of this Agreement, termination by CITY for cause includes, but is not limited to, the following:

1. CONTRACTOR'S failure to keep, perform and observe each and every provision of this
2. Agreement and such failure continues for a period of more than seven (7) days after delivery to CONTRACTOR of a written notice of such breach or default; and/or
3. CONTRACTOR'S abandonment of the work for a period of seven (7) days or more during the course of a year. Such days need not be consecutive; and/or
4. Any material misrepresentation, written or oral, made by the CONTRACTOR to the CITY; and/or

5. Failure by the CONTRACTOR to timely perform and/or observe any or all of the covenants, rules, regulations, guidelines or terms and conditions of this Agreement; and/or
6. Insolvency, bankruptcy, and/or suggestion of bankruptcy on the part of the CONTRACTOR or the assignment of assets for the benefit of creditors by the CONTRACTOR. CONTRACTOR recognizes and agrees that in the event of the termination or expiration of this Agreement, it will be necessary to assist the CITY and/or a selected successor to CONTRACTOR with an orderly transition of work. CITY shall be paid in accordance with Article IV for all services rendered through the date of termination. All CITY facilities, equipment, materials, and supplies provided to CONTRACTOR during the course of the work shall be returned in good condition (except for normal wear and tear) upon termination.

In addition, this Agreement may be immediately terminated by the CITY without further notice, for CONTRACTOR's failure to timely comply with the background screening requirements set forth in Section 3 (1) above.

7.2 EQUAL OPPORTUNITY EMPLOYMENT

CONTRACTOR agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement because of race, color, religion, sex, age, and national origin, disability and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin or disability. This provision shall include, but not be limited to, the following: employment upgrading, demotion or transfer; recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships.

7.3 PUBLIC ENTITY CRIMES ACT

In accordance with Section 287.133, Florida Statutes, CONTRACTOR through execution of this agreement, certifies that it is not listed on the convicted vendors list maintained by the State of Florida, Department of General Services.

7.4 ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered by CONTRACTOR, under any circumstances, without the prior written consent of CITY.

7.5 INDEMNIFICATION OF CITY

CONTRACTOR shall at all times hereafter, indemnify, hold harmless, and defend CITY, its agents, and employees from and against any claim, demand, or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, or employees in the performance of services under this Agreement.

CONTRACTOR further agrees, at all times hereafter, to indemnify, hold harmless and defend CITY, its agents, and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under this Agreement for which CITY, its agents, or employees are alleged to be liable.

CONTRACTOR acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of CITY by CONTRACTOR, and that CITY'S entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way the CITY'S rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

7.6 INDEMNIFICATION OF THE CITY OF DAVENPORT

CONTRACTOR shall at all times hereafter, indemnify, hold harmless, and defend the CITY OF DAVENPORT (“DAVENPORT”), its agents, and employees from and against any claim, demand, or cause of action of any kind or nature arising out of error, omission or negligent act of CONTRACTOR, its agents, or employees in the performance of services under this Agreement.

CONTRACTOR further agrees, at all times hereafter, to indemnify, hold harmless and defend DAVENPORT, its agents, and employees from and against any claim, demand or cause of action of any kind or nature arising out of any conduct or misconduct of CONTRACTOR resulting from the performance of services under this Agreement for which DAVENPORT, its agents, or employees are alleged to be liable.

CONTRACTOR acknowledges and agrees that CITY would not enter into this Agreement without this indemnification of DAVENPORT by CONTRACTOR, and that the CITY entering into this Agreement shall constitute good and sufficient consideration for this indemnification. These provisions shall survive the expiration or earlier termination of this Agreement. Nothing in this Agreement shall be construed to affect in any way DAVENPORT'S rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

In the event that CONTRACTOR materially breaches this Agreement with respect to its Indemnification obligations related to DAVENPORT, the CITY shall initiate a breach of contract action or other legal proceeding against CONTRACTOR to enforce such obligations.

7.7 INSURANCE

CONTRACTOR shall provide, pay for, and maintain in force at all times during the services to be performed, such insurance as required below, including Workers' Compensation Insurance and Comprehensive General Liability Insurance.

Such policy or policies shall be issued by United States Treasury-approved companies authorized to do business in the State of Florida, and having agents upon whom service of process may be made in the State of Florida. CONTRACTOR shall specifically protect CITY by naming both the

CITY OF HAINES CITY and CITY OF DAVENPORT, as additional insured parties under the insurance policies hereinafter described.

7.7.1 Worker's Compensation Insurance to apply for all employees in compliance with the Workers Compensation Law of the State of Florida and all applicable federal laws.

Notice of Cancellation and/or Restriction: The policy(ies) must be endorsed to provide CITY with thirty (30) days' notice of cancellation and/or restriction.

7.7.2 Comprehensive General Liability Insurance with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability, and \$1,000,000 for General Aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

- Premises and/or Operations.
- Independent Contractors.
- Broad Form Property Damage.
- Broad Form Contractual Coverage applicable to this specific Agreement.
- Personal Injury Coverage with Employee and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

The CITY OF HAINES CITY and the CITY OF DAVENPORT are to be named as additional insured with CONTRACTOR to liability arising out of operations performed for CITY, by or on behalf of CONTRACTOR, or acts or omissions of CONTRACTOR in connection with such operation.

Notice of Cancellation and/or Restriction: The policy(ies) must be endorsed to provide CITY and DAVENPORT with thirty (30) days' notice of cancellation and/or restriction.

CONTRACTOR shall provide to CITY and DAVENPORT, prior to the effective date of this Agreement, a Certificate of Insurance or a copy of all insurance policies required by Section 7.7, including any subsection there under. CITY reserves the right to require a certified copy of such policies upon request. All endorsements and certificates shall state that CITY and DAVENPORT shall be given thirty (30) days' notice prior to expiration or cancellation of the policy.

In the event that CONTRACTOR materially breaches this Agreement with respect to its Insurance obligations related to DAVENPORT, the CITY shall initiate a breach of contract action or other legal proceeding against CONTRACTOR to enforce such obligations.

7.8 PERFORMANCE OF WORK BY CONTRACTOR/SUBCONTRACTORS

It is expressly agreed that CONTRACTOR is and shall be in the performance of all work, services, and activities under this Agreement, an independent contractor and not an employee, agent, or servant of CITY. All persons engaged in any work, service or activity performed pursuant to this

Agreement shall at all times and in all places be subject to CONTRACTOR'S sole direction, supervision and control. CONTRACTOR shall exercise control over the means and manner in which it and its employees perform and work, and in all CONTRACTOR'S relationships and the relationships of its employees to CITY, shall be that of an independent contractor and not as employees or agents of CITY.

In the event CONTRACTOR, during the term of this Agreement, requires the services of any subcontractors or other professional associates, in connection with services covered under this Agreement, CONTRACTOR must secure the prior written approval of CITY'S Purchasing Agent. Any subcontractor authorized to perform under this Agreement shall be required to possess the same insurance coverage as enumerated in section 7.6 herein.

7.9 LAWS AND REGULATIONS

It is further understood by the parties that CONTRACTOR will, in carrying out the duties and responsibilities under this Agreement, abide by all federal, state, and local laws.

7.10 CONTRACT COORDINATOR

The CITY'S Contractor Coordinator during the performance of services pursuant to this Agreement shall be the CITY'S Parks and Recreation Director, telephone number, (863) 421-3700.

7.11 NO CONTINGENT FEE

CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for CONTRACTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

7.12 GOVERNING LAW AND VENUE

This agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Polk County, and the Agreement will be interpreted according to the laws of Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other of further exercise thereof.

7.13 ATTORNEY'S FEES

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.

7.14 AUTHORITY TO ENGAGE IN BUSINESS

CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the CITY'S representative upon request.

7.15 ALL PRIOR AGREEMENTS SUPERSEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements whether oral or written. It is further agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document.

7.16 PUBLIC RECORDS COMPLIANCE

CONTRACTOR understands that the public shall have access, at all reasonable times, to documents and information pertaining to the City, subject to the provisions of Florida Statutes Chapter 119; and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law. CONTRACTOR's failure or refusal to comply with the provisions of this Section shall result in the immediate termination of this Agreement by the City. CONTRACTOR agrees to retain all public records in accordance with the City's records retention and disposal policies per the State of Florida Administrative Code Rule; 1B-24.003 and Florida Statutes 119.021(2)(a).

7.17 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement, or the occurrence of any event rendering any portion or provision of this Agreement void, shall in no way affect the validity or enforceability of any other portion or provision of the Agreement. Any void provision shall be deemed severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion or provision held to be void. The parties further agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

The provisions of this section shall not prevent the entire Agreement from being void should a provision which is of the essence of the Agreement be determined to be void.

7.18 NOTICES

Whenever either party desires to give notice unto the other, such notice must be in writing, sent by certified United States mail, return receipt requested, addressed to the party for whom it is intended at the place last specified; and the place for giving of notice shall remain such until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving of notice:

FOR CITY OF HAINES CITY:

City Manager
City of Haines City
620 East Main Street
Haines City, FL 33844

FOR CONTRACTOR:

Suzanne Armstrong

FOR CITY OF DAVENPORT:

City Manager
City of Davenport
P. O. Box 125
Davenport, FL 33836

IN WITNESS WHEREOF, the parties hereto have set their hands and official seals this ____ day
of _____, 2022.

CITY OF HAINES CITY a Municipal Corporation of the State of Florida.

APPROVED:

Morris L. West, Mayor-Commissioner: _____

ATTEST:

Erica Anderson, City Clerk: _____

ENDORSED AS TO FORM AND SUFFICIENCY:

Fred Reilly, City Attorney: _____

HAINES CITY LITTLE LEAGUE, INC.

By: _____

Print name: Suzanne Armstrong

Title: President

WITNESSES:

Signature: _____

Print Name: _____

Signature: _____

Print Name: _____

SWORN TO and SUBSCRIBED before me this _____ day of _____, 2022.

Signature: _____

(Notary Public - State of Florida)

(Notary Seal) Printed Name: _____

Commission No.: _____

Commission Expires: _____