

**TOWN OF CUTLER BAY
BASEBALL FIELD REPAIRS AGREEMENT**

This Agreement (the "Agreement") is dated as of the _____ day of ____ 2017 by and between the Town of Cutler Bay (the "Town") and Ballpark Maintenance, Inc. (the "Contractor") located at 8836 SW 131 Street, Miami, Florida 33176.

1. The Work. The scope of the work (the "Work") is generally described as excavate the excessive clay lip build-up on the outside edges of the baseball field out three and a half foot (3.5') from the clay edge and level the areas with existing turf at Lakes by the Bay Park, Cutler Bay, Florida. Work shall commence within three (3) days after notice to proceed is provided by Town to Contractor, and all Work and requirements of this Agreement shall be completed within sixty days (60) days thereafter. The Contractor shall supply and the Work shall include all labor, materials, tools, apparatus, means of transportation, services, methods and incidentals necessary for completion of the Work. Contractor shall be accountable for the safe and proper installation of the playground equipment and related improvements in accord with this Agreement. Contractor shall ensure removal of all equipment, tools and apparatus and any debris upon delivery of the Work to the Town. Contractor shall perform all Work in the best and most workmanlike manner. Special care shall be taken in placing and removing material or equipment to avoid unnecessary injury to either persons or to property. The "Work" shall be installed as reflected in the Site Plan. Contractor shall provide Town a written warranty for the Work and all equipment incorporated therein, which warranty shall remain for the period of one (1) year after Town's acceptance of the Work.
2. Compensation. Town agrees to pay Contractor as compensation for all services provided hereunder the lump sum amount of Twenty-Six Thousand Three Hundred Six Dollars and Sixteen Cents (\$26,306.16) which shall be payable within thirty (30) days of Town's acceptance of the Work and receipt of the warranty.
3. Required Documentation. The Contractor shall provide proof of authorization to transact business in Florida, evidence of compliance with all license requirements for the Work and evidence of all insurance required prior to commencing any Work hereunder. Failure to timely return this executed Agreement and evidence of required licensure and insurance shall result in cancellation of this Agreement, at Town's option.

4. Liquidated Damages. Unless otherwise excused by the Town in writing, in the event that the Contractor fails to meet the time specified herein for completion of the Work, the Contractor shall pay to the Town one hundred dollars (\$100.00) per day for each and every unexcused calendar day of delay beyond the required completion date, until completion of the Work. Any sums due and payable hereunder by the Contractor shall be payable not as a penalty, but as liquidated damages representing an estimate at or before the time of this Agreement. The Town shall be entitled but not required to withhold from any amounts due otherwise to Contractor an amount then believed by the Town to be adequate to recover liquidated damages applicable to unexcused delays. All limitations of time set forth herein are of the essence.
5. Insurance. Contractor shall secure and maintain throughout the duration of this Agreement insurance of such types and in such amounts as specified below, naming the Town as a named insured, underwritten by a firm qualified to do business in the State of Florida. Each certificate of insurance shall include a (30) thirty-day advance notice of cancellation provision in favor of the Town. All subcontractors must provide Town evidence of compliance with all insurance requirements herein, including without limitation, the required certificates, before commencing any Work.
 - A. Commercial general liability coverage with limits of liability of not less than \$1,000,000 per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability and general aggregate in the amount of \$1,000,000. This liability insurance shall also include completed operations and product liability coverages and eliminate the exclusion with respect to property under the care, custody and control of Contractor.
 - B. Workers compensation insurance as required by law.
 - C. Business automobile liability with minimum limits of \$1,000,000 per person, per occurrence, combined single limit for bodily injury liability and property damage liability each. Coverage must be afforded on a form no more restrictive than the latest edition of the business automobile liability policy, without restrictive endorsements and must include owned vehicles, hired and non-owned vehicles and employers' non-ownership.
6. Clean-Up. Immediately following completion of the Work, Contractor shall remove any debris related to the Work from Town premises, using its own labor, material and tools. Town premises shall be left in the same or better condition as provided to Contractor. Prior to commencement of the Work, Contractor shall provide Town the name and location of the facility that will be used for debris placement. The Contractor shall provide the Town with copies of receipts for debris placement from the disposal facility. The Work shall be performed in such a manner as to provide a minimum of inconvenience to the residents and workers in the area. The area where Work occurs shall be cleaned daily to the satisfaction of the Town.

7. Hours. All Work must be performed between the hours of 7:30 A.M. and 6:00 P.M., Monday through Saturday. Any Work to be performed outside of these days and hours must be approved in advance, in writing, by the Town Manager.
8. INDEMNIFICATION. CONTRACTOR HEREBY AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS TOWN, AND TOWN'S OFFICERS AND EMPLOYEES FROM ALL LIABILITIES, DAMAGES, LOSSES AND COSTS (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEY'S FEES AT ANY LEVEL) ON ACCOUNT OF OR RELATING TO THE WORK, AND ANY ACTS OR FAILURES TO ACT BY THE CONTRACTOR OR ANY SUBCONTRACTOR RELATED THERETO.. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE TOWN AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.
9. Termination.
 - A. This Agreement may be terminated by Town upon five (5) calendar days' written notice to the Contractor for: (i) breach of any material term or condition of this Agreement; (ii) for failure to perform the Work in a diligent, efficient, workmanlike, skillful, careful manner and in accordance with the provisions hereof; or (iii) in the event the Contractor is adjudged bankrupt or has made an assignment for the benefit of creditors. In such event, Town shall provide a description of the nature of the default in writing to Contractor, and if Contractor has not fully cured such default within the aforesaid five (5) day period, the Town shall have the right to terminate this Agreement by written notice to Contractor. Without limitation of any other remedy for damages or otherwise that may also be available, in such event Town may make good all Work, may use all equipment left remaining at no cost to Town, and may take such action as may be necessary in the circumstances to resolve any public safety or welfare issues with no liability or consequences therefore. Town shall have no liability for services provided or goods ordered or any other expenses incurred by Contractor subsequent to notice to Contractor of termination. If, after such termination, it is determined that the Contractor was not in default or sufficient cause for termination did not exist, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of Town, as described below.
 - B. This Agreement may be terminated by the Town for convenience upon five (5) calendar days' written notice to the Contractor. In the event of such a termination, the Contractor shall incur no further obligations in connection with the Project and shall, to the extent possible, terminate any outstanding Subcontractor obligations.

The Contractor shall be compensated for all services performed to the satisfaction of the Town.

10. Assignment and Subcontractors. Contractor shall not sell, assign, transfer or convey this Agreement, in whole or in part, without the prior written consent of the Town Manager. Any such assignment without prior approval shall be void ab initio. All subcontractors shall be approved in advance by Town before providing any of the Work. The subcontractors listed below ("Approved Subcontractors") are approved by Town, subject to the insurance requirements of Article 5. The Contractor agrees and represents that the Approved Subcontractors possess the requisite skills to perform the Work and that the Work shall be executed in a good and workmanlike manner, free from defects, and that all materials shall be new and approved by or acceptable to Town.

Approved Subcontractors:

- TBA
- TBA
- TBA

11. Applicable Law. CONTRACTOR SHALL BE SOLELY RESPONSIBLE FOR AND SHALL COMPLY WITH ALL FEDERAL, STATE AND LOCAL LAWS REGARDING THE WORK REQUIRED HEREUNDER.
12. Entire Agreement. This Agreement together with exhibits and incorporated documents constitutes the final and entire agreement between the Contractor and Town and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding this Agreement or the Work shall be deemed to exist or to bind either party, unless same be in writing, dated subsequent to the date hereto, and duly executed by the party to be charged. In the event of any conflict in terms and provisions between this Agreement and the exhibits, the terms of those documents shall govern in the order of priority as set forth herein.
13. Location of Claims. This Agreement and all actions hereunder shall in all respects be governed by and interpreted and enforced pursuant to the laws of the State of Florida. Any suit arising out of this Agreement shall be brought in Miami-Dade County, Florida.
14. Expenses and Delay. The Town shall have no liability to the Contractor for any damages incurred by the Contractor for delay or interruption of the Work. The Contractor's sole and exclusive remedy for any such delay, if any, shall be an extension of the time required or allowed to complete the Work. In order to obtain an extension of time, the Contractor shall request same of the Town in writing within 24 hours of any delay or interruption of the Work. In the event performance is delayed such that Town does not

receive reimbursement due to Contractor's failure to meet requirements, Contractor shall be liable responsible for, and in all respects obligated to pay Town for any grant funding Town does not receive.

This obligation regarding grant funding is commutative and in addition to any liquidated damages due to Town.

15. Severability. Should any provision, paragraph, sentence, word, or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word, or phrase shall be deemed modified to the extent necessary in order to conform with such laws, and the remainder shall remain unmodified and in full force and effect.
16. Waiver of Jury Trial and Venue. The Town and Contractor knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in State and or Federal court proceedings in respect to any action, proceeding, lawsuit or counterclaim based upon this Agreement or arising out of, under, or in connection with the Work, or any course of conduct, course of dealing, statements or actions or inactions of any party.
17. Attorneys' Fees. If either the Town or Contractor is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, including, but not limited to, court costs, and reasonable attorneys' fees.
18. Public Records Law.
 - a) Contractor agrees to keep and maintain public records in Contractor's possession or control in connection with Contractor's performance under this Agreement. Contractor additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. Contractor shall 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 Agreement, and following completion of the Agreement until the records are transferred to the Town.
 - b) Upon request from the Town's custodian of public records, Contractor shall provide the Town 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 by Chapter 119, Florida Statutes, or as otherwise provided by law.
 - c) Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Town.

- d) Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the Contractor shall be delivered by the Contractor to the Town Manager, at no cost to the Town, within seven (7) days. All such records stored electronically by Contractor shall be delivered to the Town in a format that is compatible with the Town's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the Contractor shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e) Any compensation due to Contractor shall be withheld until all records are received as provided herein.
- f) Contractor's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Town.

Section 119.0701(2)(a), Florida Statutes

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 CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Debra E. Eastman, MMC

**Mailing address: 10720 Caribbean Blvd., Suite 105
Cutler Bay, Florida 33189**

Telephone number: (305) 234-4262

Email: deastman@cutlerbay-fl.gov

19. Notice. Notice hereunder shall be provided via certified mail or hand delivery to the following:

FOR CONTRACTOR:

Miami, Florida 33176

FOR TOWN:

Ballpark
Maintenance,
Inc.
8836 SW 131,
Street

FOR TOWN:

Town of Cutler Bay
Rafael G. Casals, Town Manager
10720 Caribbean Boulevard, Suite
105 Cutler Bay, Florida 33189

WITH COPY TO:

Weiss Serota Helfman Cole & Bierman
2525 Ponce de Leon Boulevard, Suite 700
Miami, Florida 33134

THE CONTRACTOR'S SIGNATURE BELOW INDICATES CONTRACTOR HAS READ, UNDERSTANDS, AND ACCEPTS ALL PROVISIONS CONTAINED HEREIN, INCLUDING THE EXHIBITS AND THAT THE CONTRACTOR HAS THE REQUISITE AUTHORITY TO SIGN THIS CONTRACT.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature.

ATTEST:
BAY

TOWN OF CUTLER

Town Clerk
Manager

By: _____
Town

_____ day of _____ 2017.

APPROVED AS TO FORM AND SUFFICIENCY:

By: _____
Town Attorney

Town Resolution #: _____

WITNESS

CONTRACTOR

Ballpark Maintenance, Inc.

By: _____

By: _____

(Signature and Title)

Print Name: _____

(Corporate Seal)

By: _____

(Type Name/Title signed above)

Print Name: _____

____ day of _____, 2017

STATE OF FLORIDA
COUNTY OF MIAMI- DADE

Sworn to and Subscribed before me this ____ day of _____, 2017.

My Commission Expires:

Notary Public

END OF AGREEMENT