



City of Boynton Beach Special Meeting

Date: Tuesday, April 11, 2023

Time: 5:30 PM

Place: City Hall Commission Chambers

1. Agenda Items

A. Call to Order - Mayor Ty Penserga

Roll Call

Invocation by Commissioner Woodrow Hay

Pledge of Allegiance to the Flag led by Commissioner Woodrow Hay

Agenda Approval:

1. Adoption

B. Informational items by the Members of the City Commission.

C. **Proposed Resolution No. R23-044-** Approve and authorize the Mayor to Sign a Sports Facility Use Agreement with Athletic Angels Foundation, Inc., a Florida Not for Profit Corporation to use appropriately, operate, and perform maintenance of Field 1 at Little League Park. **Tabled from the April 4, 2023, Commission Meeting.**

2. Adjourn

Notice

Notice if a person decides to appeal any decision made by the city commission with respect to any matter considered at this meeting, he/she will need a record of the proceedings and for such purpose, he/she may need to ensure that a verbatim record of the proceeding is made, which record includes the testimony and evidence upon which the appeal is to be based. (F.S. 286.0105)

The city shall furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in and enjoy the benefits of a service, program, or activity conducted by the city. Please contact the City Clerk's office, (561) 742-6060 or (TTY) 1-800-955-8771, at least 48 hours prior to the program or activity in order for the city to reasonably accommodate your request. Additional agenda items may be added subsequent to the publication of the agenda on the city's web site. Information regarding items added to the agenda after it is published on the city's web site can be obtained from the Office of the City Clerk.



CITY OF BOYNTON BEACH AGENDA ITEM REQUEST FORM

REQUESTED ACTION BY COMMISSION: **Proposed Resolution No. R23-044-** Approve and authorize the Mayor to Sign a Sports Facility Use Agreement with Athletic Angels Foundation, Inc., a Florida Not for Profit Corporation to use appropriately, operate, and perform maintenance of Field 1 at Little League Park. **Tabled from the April 4, 2023, Commission Meeting.**

EXPLANATION OF REQUEST:

After discussions and negotiations, the City and Athletic Angels Foundation, Inc. agreed, in principle, to move forward with authorizing Athletic Angels Foundation, Inc.'s appropriate use, operation and sole responsibility of field maintenance and Utilities of Field #1 at Little League Park.

As part of the agreement Athletic Angels has agreed to complete the following Little League Park improvements:

- Repair and/or replace all infield and outfield surface area for Field #1,
- Repair and/or Replace all fencing and netting as required by Angels' assessment for Field #1,
- Enhance existing dugouts for Field #1,
- Install new outfield feature wall with high netting for Field #1,
- The construction, renovation, and repair of existing Field #4 (Proposed Field #5), to convert and install ADA accessible synthetic turf.

Athletic Angels Foundation, Inc.'s proposed operations, Field #1 maintenance, and Little League Park improvements will complement the City of Boynton Beach operations of Little League Park which will enhance facility usage for the program participants and City residents. The Sports Facility Use agreement includes field usage restrictions that will not impact City of Boynton Beach Recreation & Parks Department Sports Provider East Boynton Beach Little League. The City will continue to own and operate Little League Park.

HOW WILL THIS AFFECT CITY PROGRAMS OR SERVICES? Athletic Angels Foundation, Inc. will operate and be responsible for the cost of maintenance and utilities of Little League Park Field #1 without impacting the City of Boynton Beach Recreation & Parks Department Sports Provider East Boynton Beach Little League. The City will continue to operate, schedule, and maintain the remaining fields and amenities at Little League Park.

FISCAL IMPACT: Sports Facility Use Agreement with Athletic Angels Foundation, Inc., will provide an estimated cost savings to the City of \$75,000 annually by allowing Athletic Angels Foundation, Inc. to be responsible for the cost of maintenance and utilities of Little League Park Field # 1 and converting Little League Park Field #5 to synthetic turf decreasing the maintenance cost.

ALTERNATIVES: To request revisions of the Sports Facility, Use Agreement.

STRATEGIC PLAN:

STRATEGIC PLAN APPLICATION:

CLIMATE ACTION APPLICATION:

Is this a grant?

Grant Amount:

ATTACHMENTS:

Type	Description
<input type="checkbox"/> Resolution	Resolution approving Agreement with Athletic Angels
<input type="checkbox"/> Agreement	Sports Facility Use Agreement with Athletic Angels
<input type="checkbox"/> Drawings	Proposed Phase 1 Site Plan
<input type="checkbox"/> Other	Existing Park Aerial Photo

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RESOLUTION R23-044

**A RESOLUTION OF THE CITY OF BOYNTON BEACH, FLORIDA,
APPROVING AND AUTHORIZING THE MAYOR TO SIGN A
FACILITY USE AGREEMENT WITH ATHLETIC ANGELS
FOUNDATION, INC, A FLORIDA NOT FOR PROFIT
CORPORATION TO USE APPROPRIATELY, OPERATE, AND
PERFORM MAINTENANCE OF FIELD #1 AT LITTLE LEAGUE
PARK; AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City and Athletic Angels Foundation, Inc. agreed, in principle, to move forward with authorizing Athletic Angels Foundation, Inc. use of Field #1 at Little League Park for appropriate use, operation, and sole responsibility of field maintenance; and

WHEREAS, Athletic Angels has agreed to complete Little League Park improvements that include: repair and/or replace all infield and outfield surface area for Field #1, repair and/or replace all fencing and netting as required by assessment for Field #1, enhance existing dugouts for Field #1, install new outfield feature wall with high netting for Field #1, construction, renovation, and repair of existing Field #4 (proposed Field #5), to convert and install ADA accessible synthetic turf; and

WHEREAS, proposed operations, Field #1 field maintenance, and Little League Park improvements will complement the City of Boynton Beach operations of Little League Park which will enhance facility usage for the program participants and City residents; and

WHEREAS, the City Commission has determined that it is in the best interests of the residents of the City to approve and authorize the Mayor to Sign a Facility Use Agreement with Athletic Angels Foundation, Inc. a Florida Not for Profit Corporation to use appropriately, operate, and perform maintenance of Field 1 at Little League Park.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF BOYNTON BEACH, FLORIDA, THAT:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption hereof.

Section 2. The City Commission hereby approves and authorizes the Mayor to Sign a Facility Use Agreement with Athletic Angels Foundation, Inc. a Florida Not for Profit

34 Corporation to use appropriately, operate, and perform maintenance of Field 1 at Little
35 League Park. A copy of the Agreement is attached hereto and incorporated herein by
36 reference as Exhibit "A".

37 **Section 3.** This Resolution shall become effective immediately upon passage.

38 **PASSED AND ADOPTED** this 11th day of April, 2023.

39 CITY OF BOYNTON BEACH, FLORIDA

40		YES	NO
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42			
43	Mayor – Ty Penserga	_____	_____
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45	Vice Mayor – Thomas Turkin	_____	_____
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47	Commissioner – Angela Cruz	_____	_____
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49	Commissioner – Woodrow L. Hay	_____	_____
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51	Commissioner – Aimee Kelley	_____	_____
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53	VOTE	_____	

54
55 ATTEST:

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57 _____
58 Maylee De Jesús, MPA, MMC
59 City Clerk

Ty Penserga
Mayor

60
61 APPROVED AS TO FORM:
62 (Corporate Seal)

63
64 _____
65 Michael D. Cirullo, Jr.
66 City Attorney

SPORTS FACILITY USE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2023 (the "Effective Date") by and between the **City of Boynton Beach**, a Florida municipal corporation (hereinafter referred to as the "City"), and **Athletic Angels Foundation, Inc.**, a Florida not for profit corporation (hereinafter referred to as "Angels").

WHEREAS, the City is the owner of that certain parcel of real property located at 300 W. Woolbright Rd., Boynton Beach, Palm Beach County, Florida more fully depicted as Exhibit "A" ("Property"); and

WHEREAS, to facilitate the operation, and maintenance of Field 1 by Angels, the City agrees to lease a portion of, and grant certain rights, and privileges with respect to, the Property ("Facility Property") as shown on Exhibit "A" to Angels upon and subject to the conditions and limitations hereinafter expressed (such lease being referred to herein as the "Ground Lease").

NOW, THEREFORE, in consideration of the mutual covenants and promises hereafter set forth, the City and Angels agree as follows:

ARTICLE 1. DEFINITIONS.

For the purposes of this Agreement and the various covenants, conditions, terms, and provisions that follow, the Definitions set forth below are assumed to be true and correct and are agreed upon by the parties:

- 1.1 CITY: The City of Boynton Beach, a Florida municipal corporation.
- 1.2 CITY'S DESIGNATED REPRESENTATIVE: Director of Recreation and Parks Department.
- 1.3 CONSULTANT: A registered architect, professional engineer, professional land surveyor, civil engineer, and/or registered landscape architect who has contracted with or who is employed by the City or Angels to provide professional services for the design or construction of the Project and who is licensed by the State of Florida to provide said services.
- 1.4 CONTRACT: This Agreement between the City and Angels for this Project, all as defined herein. As used herein, the term Contract shall mean the same as Agreement.
- 1.5 CONTRACTOR: A general contractor hired by Angels for the construction of the Project and who is licensed by the State of Florida to provide said services.
- 1.6 CONTRACT DOCUMENTS: Angels' plans, specifications, drawings, and/or

other written or graphic materials that are to be developed by the Consultant as part of the record of this Agreement; this Agreement, the performance and payment bond, the design documents, the construction documents, the Purchase Order, and any additional documents relevant to the Project and are required by this Agreement.

- 1.7 COMMISSION: The City Commission, which is the governing body of the City of Boynton Beach, Florida.
- 1.8 ANGELS: Athletic Angels Foundation, Inc.
- 1.9 ANGELS' DESIGNATED REPRESENTATIVE: Mike Barwis
- 1.10 FACILITY: Field 1 at the East Boynton Little League complex, as further depicted in Exhibit "A".
- 1.11 FINAL COMPLETION: The date certified by the City that all construction work on the Project is fully and finally complete under this Agreement.
- 1.12 FORCE MAJEURE: Acts of God; hurricane; war; acts of terrorism; civil commotion; fire or other casualty; labor difficulties; shortages of labor, materials or equipment or any inability to obtain necessary materials, goods, equipment, services, utilities or labor; government regulations; or other causes beyond such party's reasonable control.
- 1.13 INSPECTOR: An authorized representative of the City assigned to make necessary inspections of materials furnished by Angels and of the work performed by Angels.
- 1.14 MATERIAL: Materials incorporated in this Project that are used or consumed in the performance of the work.
- 1.15 NOTICE OF COMPLETION: The date certified by the Consultant that all conditions of the permits and regulatory agencies have been met, all construction, reconstruction, or rehabilitation, including corrective work, has been performed, and all administrative requirements of the Contract Documents have been completed, and the City has received from Angels a release of all liens, release of surety, certificate of indemnification by Angels, release of claims by Angels, and corrected as- built drawings.
- 1.16 NOTICE TO PROCEED: A written Notice to Proceed (or a Purchase Order) issued by the Project Manager.
- 1.17 PLANS AND/OR DRAWINGS: The official graphic representations of this Project that, upon written approval of the Project Manager, shall become a part of the Contract Documents, as well as the preliminary plans and drawings and

renderings of the Project and the preliminary outline specifications and plans for the design-build services for the Project that shall be prepared by Angels, and shall be made a part of the Contract Documents upon approval by the Project Manager. The plans and specifications shall include the design development documents and construction documents to be approved by the Project Manager as provided in this Agreement.

- 1.18 **PROJECT:** The Project is the construction, renovation, and repair of Field 1 of the Facility as follows: repair and/or replace all infield and outfield surface areas to include the mound, warning track, and foul territory; repair and/or replace all fencing and netting as required via Angels' assessment; enlarge / enhance the existing dugouts; Install new outfield feature wall with high netting; reconfigure the outfield fence as needed via Angels' assessment; Install awning-type shade at seating areas; evaluate and upgrade existing lighting conditions as needed to meet safe baseball field lighting standards, as described herein and in accordance with the Contract Documents, complete with all appurtenances required to perform the work, including without limitation, construction services and labor, materials, and equipment necessary or used or incorporated in the construction, in accordance with the Contract Documents and as is required or reasonably inferred from them. The Project includes the work, services, and labor, and the goods, materials, tools, supervision, and equipment to be provided, and the cleanup, removal, and disposal of all debris, trash, and other material so as to leave the facilities in a clean and ready-to-use condition; and the operation and maintenance thereof by Angels.
- 1.19 **PROJECT MANAGER:** Unless otherwise explicitly stated, all contract duties, contract responsibilities, and contract communications of the City shall be made through the City's Engineer as Project Manager. The foregoing sentence shall not apply to the City construction inspections made to assure compliance with applicable regulatory law and which the City conducts in a governmental regulatory capacity.
- 1.20 **SUBCONTRACTOR:** The person or corporation having a direct contract with the Contractor, including one who furnishes material worked to a special design according to the Contract Documents for this Project, but does not include one who merely furnishes material not so worked.
- 1.21 **SUBSTANTIAL COMPLETION:** The date certified by the City that all conditions of the permits and regulatory agencies have been met, and all construction, reconstruction, or rehabilitation (except minor corrective work) has been performed in accordance with the Contract Documents, and the Facility and Project are able to be used for their intended use, subject to any Force Majeure event or weather delay.
- 1.22 **SURETY:** The surety company or individual that is bound by a contract bond with and for the Contractor who is primarily liable, and which surety company or

individual is responsible for the Contractor's acceptable performance of the work under the contract and for the payment of all debts pertaining thereto per Chapter 255.05, *Florida Statutes*.

ARTICLE 2. GENERAL INTENTION AND UNDERSTANDING.

- 2.1 It is the intent of the Contract Documents to describe a functionally complete Project to be designed, constructed, operated, and maintained by Angels in accordance with the Contract Documents. Any work, materials, or equipment that may reasonably be inferred from the Contract Documents, as being required to produce the intended result, shall be supplied whether or not specifically called for. However, shall any materials not be available, Angels may substitute materials of equal quality. When words that have a well-known technical or trade meaning are used to describe work, materials, or equipment, such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to laws or regulations of any governmental authority, whether such reference is specific or by implication, shall mean the standard specification, manual, code, laws, or regulations in effect at the time of the date of the execution of this Agreement.
- 2.2 The parties agree and understand that the ownership of the Facility and Project that shall lie with the City, free and clear of all claims by Angels or any other entity.
- 2.3 The City shall not provide any financial assistance or monetary support for the development of this Project. The City shall not be liable for any financial costs related to the design, permitting, construction, operation, or maintenance of the Facility or the Projects during the term of this Agreement, except as specifically set forth herein.
- 2.4 Angels shall design, construct, operate, and maintain the Facility and Project to the reasonable satisfaction and standards of the City.
- 2.5 Angels shall have the exclusive right to use the Facility and Project for its Intended Use ("Angels' Exclusive"). Furthermore, Angels shall have the right to provide certain third-party organizations access to use the Facility and Project ("Facility Third Party Usage"). Subject to Angels' Exclusive and the Facility Third Party Usage, the public may have access and use of the Facility upon prior written approval from Angels. Angels shall develop a non-discrimination policy and applicable processes and procedures to allow the public to access and use the Facility, subject to the Angels' Exclusive and Facility Third Party Usage, and Angels shall make commercially reasonable efforts to enforce the policy for similarly situated individuals in a similar fashion. If adopted by Angels, monetary fee schedules for the Facility shall be subject to annual approval by the City and shall be based on the fee schedules of similar fields and facilities located in the

State of Florida.

- 2.6 Teams from the East Boynton Beach Little League that meet all of the following requirements shall be eligible to use the Facility and Project ("East Boynton Beach Little League Usage"). At least thirty (30) days prior to East Boynton Beach Little League Usage, the City shall provide the dates and times necessary to utilize the Facility. Such access rights shall be subject to the prior review and approval rights of Angels, in its reasonable discretion, which shall include consideration of the below East Boynton Little League requirements.

For a team to qualify for East Boynton Beach Little League Usage, it shall be:

- (a) an East Boynton Beach official Little League team in the senior league division;
- (b) registered with the East Boynton Beach Little League; and
- (c) the team, or in the event of a game, the team and its opponent, are in compliance with any and all national little league rules and regulations, including, but not limited to, any registration, insurance or maximum game and practice requirements.

In accordance with the above, East Boynton Beach Little League Usage shall be permitted during the dates of January 23 to May 14th for the East Boynton Little League baseball Senior League Spring season (subject to any All-Star Permitted Extension as defined below) and September 1st to December 14th for the East Boynton Little League baseball Senior League Fall season. If during the East Boynton Little League baseball Senior League Spring season the East Boynton Beach Little League fields an All-Star team for the Senior Division and the All-Star team requests access to use the Project, Angels may, in its sole discretion and on a case by case basis, extend the Spring season access period ("All-Star Permitted Extension"). However, no All-Star Permitted Extension shall allow for East Boynton Beach Little League Usage after July 30th of any calendar year.

- 2.7 The individual and group programming that is offered by Angels shall be available at such times Angels deems appropriate in its sole discretion. The training for adults and youth shall be conducted according to policies, procedures, and costs developed by Angels. The City shall not be responsible for providing staff, additional facilities (outside of this Agreement), additional permitting, or the collection of fees for Angels.
- 2.8 The Facility shall be used for athletic programs in the areas of semi-private group training, strength camps, individual and/or personal training, team practices, games or other forms of competition against teams or organizations not associated with

Angels, performance consulting, manual and physical therapy, nutrition consulting, elite sport training, apparel sales, and symposiums related to the uses referenced in this section (the "Intended Use").

The fees associated with this Agreement are specifically related to the Intended Use. Angels shall retain all revenues collected as part of its business operations.

- 2.9 After the construction phase of the Project is completed and Angels has begun operating in full at the Facility, the City's Recreation and Parks Director or designee shall perform the functions of Contract/Project Manager during the remaining term of the Agreement. All issues related to the operation and maintenance of the Facility shall be handled through the Recreation and Parks Department and the City's Recreation and Parks Director or designee shall make reasonable efforts not to interfere with the daily operations of Angels and the Facility's Intended Use.

ARTICLE 3. CONTRACT DOCUMENTS.

- 3.1 The Contract Documents shall be followed in strict accordance as to work, material, and dimensions, except when the Project Manager may authorize an exception in writing.
- 3.2 Dimensions given in figures are to hold preference over scaled measurements from the drawings; however, all discrepancies shall be decided upon by the Project Manager. The Contractor shall not proceed when in doubt as to any dimension or measurement but shall seek clarification from the Project Manager.
- 3.3 Angels shall maintain four (4) copies of the Contract Documents, two (2) of which shall be preserved and always kept accessible to the Project Manager or his/her authorized representative.

ARTICLE 4. OWNERSHIP OF DESIGN MATERIALS AND DOCUMENTS.

All design materials and documents shall remain the property of Angels. However, Angels shall provide to the City copies of all such design materials and documents, including any updates or changes during the term of this Agreement.

ARTICLE 5. PROJECT DEVELOPMENT SCOPE.

- 5.1 Angels hereby agrees to engage the Consultants and the Contractor necessary for the design and construction, inclusive of furnishing land surveying, labor, materials, equipment, and other services necessary to perform all of the work to operate the Facility including completion of the Project. The Facility is located

in the area identified as Field 1 on Exhibit "A", including any additional drawings and addenda thereto, to be constructed in accordance with the requirements and provisions of the Contract Documents.

- 5.2 Angels agrees to meet with the City at reasonable times and with reasonable advance notice, which shall be no less than five (5) business days, during the term of this Agreement, and specifically during the design and construction phase of the Project.
- 5.3 Prior to the Final Completion of construction services under this Agreement, there shall be established a record set of plans and specifications, that shall bear the approval of Angels and the Project Manager.

In addition, prior to the commencement of construction services under this Agreement, Angels shall submit to the Project Manager a Construction Schedule for the planning and execution of the Construction Phase of the Project. The Construction Schedule shall be updated regularly and submitted to the Project Manager.

ARTICLE 6. COMPLETION DATE - CONSTRUCTION PHASE.

- 6.1 Upon execution of this Agreement by both parties, the Angels shall have one hundred eighty (180) calendar days to submit all required documents and receive any and all permits for the Project. Prior to receipt of any permits for the Project from the City, the Angels shall be required to receive final site plan approval from the City Commission of the City of Boynton Beach. Upon approval of the final site plan by the City Commission and once the permits are received by the Angels, the Project Manager shall instruct Angels to commence the Construction Phase of the Project by written instructions in the form of a Notice to Proceed issued by the City. Construction of the Project shall commence within seven (7) calendar days of the Project initiation date specified in the Notice to Proceed (the "Construction Commencement Date"). The Notice to Proceed will not be issued until after execution of this Agreement by both parties and receipt and approval by the City of all required documents, including a task and delivery-oriented project timeline.
- 6.2 The Project shall be substantially constructed no later than one hundred eighty (180) calendar days after the Construction Commencement Date, and final completion shall be no later than two hundred ten (210) calendar days after the Construction Commencement Date, subject to approved extensions and Force Majeure. Upon failure of Angels to substantially complete the Project within thirty (30) days following the City's notice of Angels' failure to complete the Project within the specified period of time (plus approved extensions and Force Majeure, if any), Angels shall reimburse the City for any reasonable and documented monetary losses, including fines, in an amount equal to \$250.00 per day, in a cumulative maximum reimbursement amount not to exceed \$75,000.00, that the

City experiences for each calendar day (plus any approved extensions) after the time specified for substantial completion (collectively, the "Failure to Complete Fees"). Such reasonable and documented monetary losses shall be reimbursed with fifteen (15) days after the City's delivery to Angels of a statement of such costs. As used herein "Substantial Construction," "Substantially Constructed," and any derivations thereof mean the Construction Phase of the Project is substantially completed (as reasonably determined by the City) in substantial accordance with the site plan, as further evidenced by a certificate of completion provided by the Consultant attesting to the Project's Substantial Construction. Substantial Construction shall have occurred even though minor details of construction, decoration, landscaping and mechanical adjustments remain to be completed.

- 6.3 No extension of time shall be granted for delays resulting from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded for the City of Boynton Beach.

ARTICLE 7. ANGELS'S RESPONSIBILITIES.

- 7.1 Angels will engage and contractually require licensed professionals to complete the construction work in accordance with the requirements of this Agreement, and will enforce such contracts and administer any claims process associated with such contracts as set forth herein. Angels shall require each Contractor and each design Consultant to provide customary warranties, enforce said warranties, and name the City as a third-party beneficiary of all such warranties. The foregoing notwithstanding, Angels shall be obligated to enforce the provisions of each Consultant Contract and each Construction Contract as set forth herein.
- 7.2 Local Business Tax Receipts (formerly Occupational Licenses) are required to be provided by Angels pursuant to Chapter 205, *Florida Statutes*.
- 7.3 Nothing in this Agreement shall create any contractual relationship between any consultant or subcontractor and the City or any obligation on the part of the City to pay or to see to the payment of any monies due to any consultant or subcontractor of Angels.
- 7.4 Angels agrees to bind specifically the Contractor and Consultants to the applicable terms and conditions of this Agreement for the benefit of the City and shall ensure the Contractor or Consultants prohibit any liens on the City's Property.
- 7.5 Unless otherwise provided herein, Angels shall provide and pay for all land surveying services, materials, labor, water, tools, equipment, light, power, transportation, and other facilities and services necessary for the proper execution and completion of solely the Project, whether or not incorporated or to be incorporated in the Project.

- 7.6 Angels shall cause all its agents, employees, Contractor, subcontractors, and Consultants to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees, at no additional cost to the City.
- 7.7 Angels shall pay all applicable sales, consumer, use, and other taxes directly related to the Project and Intended Use of the Facility as required by law.
- 7.8 In connection with the City's Renovation (as defined in Section 10.4 herein), Angels agrees to install, at its sole cost and expense, synthetic turf on Field 5, as identified on Exhibit "D" attached hereto. The installation of the synthetic turf shall be completed in a good and workmanlike manner using synthetic turf of a quality that is customary to baseball fields of similar design and use. Notwithstanding the foregoing, after the installation of the synthetic turf on Field 5, the City shall be responsible, at its sole cost and expense, for all future maintenance and repairs of Field 5 and the synthetic turf installed thereon.

ARTICLE 8. FINANCIAL SUPPORT.

- 8.1 The City shall have no financial obligation for the permitting, construction, operation, and maintenance of the Facility or the Project. The City shall not be obligated to provide any kind of bonding support, credit guarantees or any type of financial commitments for the development of this Project.
- 8.2 Intentionally Omitted.

ARTICLE 9. USE OF FACILITY.

- 9.1 The intent of the parties to this Agreement is that the Facility will be used for the Intended Use, and primarily to provide high-performance training to elite professional, amateur, and youth athletes. The Facility shall be operated subject to the City's applicable codes and its rules regarding recreation and park activities.
- 9.2 The programmatic operation of the Facility shall be governed by Angels in its reasonable discretion. Angels shall have the exclusive right to use the Facility, subject to the East Boynton Beach Little League Usage, any Facility Third Party Usage, or public usage, which shall be subject to Section 2.5 and Section 2.6 herein.

ARTICLE 10. THE CITY'S RESPONSIBILITIES.

- 10.1 The City shall assist Angels by placing at its disposal any available information pertinent to the Project, including previous reports, laboratory tests, and inspections of samples, materials, and equipment; property, boundary, easement, rights-of-way, topographic and utility surveys; property descriptions; and known zoning, deed, and other land-use restrictions.

- 10.2 The City shall arrange for access to and make all provisions for Angels to enter upon the public property as required for Angels to perform its services.
- 10.3 Without invalidating this Agreement and without notice to any surety, the City reserves and shall have the right to make such changes from time to time as may be reasonably considered necessary to complete fully and acceptably the proposed construction in accordance with applicable law. Any other changes (that are not required for compliance with applicable law) proposed by the City shall be paid for by the City at its sole cost and expense. Any extra or additional work during the construction of the Project may be accomplished by means of appropriate field orders and supplemental instructions subject to the provisions herein.
- 10.4 Angels acknowledges and agrees that portions of the Property not included in the Project are being renovated and further developed by the City as of the Effective Date, in accordance with the East Boynton Beach Little League Master Plan, as may be further amended, attached hereto as Exhibit "D" ("City's Renovation"). The City shall be responsible for any and all excess costs or expenses incurred by Angels during the Term for which Angels would not have incurred but for the City's Renovation. If the City's Renovation cause a delay to the Project, preventing Angels from completing the Project prior to the expiration of the specified construction period provided in Section 6.2 of this Agreement, Angels shall not be responsible for payment of any Failure to Complete Fees, and Angels shall receive a day-for-day extension for any delays due to the City's Renovation. If the City's Renovation damages, moves or otherwise infringes on or under any existing improvement or system serving the Facility, not otherwise in accordance with Exhibit "D", the City shall be responsible for any excess costs resulting from such damage, movement or infringement incurred to complete the Project in accordance with the specifications provided herein. For example, if the City changes the orientation of Field 1, then the City shall be required, at its sole cost and expense, to relocate and reinstall the lighting system serving Field 1.

ARTICLE 11. RESOLUTION OF DISPUTES.

In order to prevent all disputes and litigation, it is agreed by the parties hereto that during the construction phase of the Project, the City Engineer shall decide all questions, difficulties, and disputes of whatever nature that may arise relative to the technical interpretation of the Contract Documents and fulfillment of this Agreement as to the character, quality, amount, and value of any work done and materials furnished under or by reason of this Agreement, and the City Engineer's estimates and decisions upon all claims, questions, and disputes shall be final and conclusive upon the parties hereto. This Article does not preclude either or both parties from seeking any and all remedies available at law or in equity. The parties hereto may also, if mutually agreed, seek mediation to resolve any dispute related to this Contract.

ARTICLE 12. ASSIGNMENT.

Except as provided herein with respect to subleasing, neither party to this Agreement shall assign this Agreement without the prior written consent of the other party, nor shall Angels assign any monies due or to become due to the City hereunder without the prior written consent of the City.

ARTICLE 13. CONSTRUCTION PROGRESS PROJECT MEETINGS.

Angels shall schedule periodic work progress meetings, to be held no more than twice in any thirty (30) day period, and specially called meetings as needed with the City's Designated Representative relating to the construction services under this Agreement. Angels shall record the minutes of such meetings, include significant proceedings and decision(s) within the minutes, and reproduce and distribute copies of minutes within fifteen (15) business days after each meeting, plus incorporate comments received or exceptions taken by those present who have reviewed and commented on the minutes.

ARTICLE 14. SECURITY.

Angels or its Contractor shall use commercially reasonable efforts to provide a project security program to protect work, stored products, and construction equipment from theft and vandalism, and to protect premises from entry by unauthorized persons. In the event any such materials, equipment, and supplies are lost, stolen, damaged, or destroyed prior to final completion, Angels, or its insurance provider, shall replace same without cost to the City.

ARTICLE 15. INSPECTION OF CONSTRUCTION.

15.1 During the construction phase, the City Engineer or designee shall, at all times, have access to the Facility and the Project, and Angels shall provide proper facilities for such access.

15.1.1 Should the Contract Documents, instructions, any laws, ordinances, or any public authority require any work for the Project to be specially tested or approved, Angels shall give to the City timely notice of readiness of the work for inspection. If the testing or approval is to be made by an authority other than the City, timely notice shall be given of the date fixed for such testing. Inspections shall be made promptly, and where practicable, at the source of supply. If any work on the Project are covered up without approval or consent of the Project Manager, it shall, if required by the City, be uncovered for examination and properly restored at Angels' expense.

- 15.1.2 Re-examination and re-testing of any work on the construction of the Project may be ordered by the Project Manager, and if so ordered, such work shall be uncovered by Angels. If work is found defective, Angels shall bear all reasonable direct, indirect, and consequential expenses of such removal or correction. If such work is found to be in accordance with the Contract Documents, the City shall pay the cost of re-examination, re-testing, and replacement.
- 15.2 The payment of any compensation, regardless of its character or form, or the giving of any gratuity or the granting of any valuable favor by Angels to any inspector other than its consultant, is forbidden, and any such act on the part of Angels shall constitute a breach of this Agreement.

ARTICLE 16. SUPERINTENDENCE AND SUPERVISION.

- 16.1 The orders of the City shall be given through the Project Manager, whose instructions are to be strictly and promptly followed in every case. Angels shall maintain a competent resident supervisor, who shall serve as the Designated Representative, and any necessary assistants on the construction site throughout the duration of the construction phase of the Project. The Designated Representative shall serve as the Superintendent on site and shall be responsible for continuous field supervision, coordination, and completion of the work. The Designated Representative shall not be changed except with the consent of the Project Manager, unless the Designated Representative proves to be unsatisfactory to Angels and ceases to be in its employ. The Project Representative shall represent Angels, and all direction given to the Designated Representative shall be as binding as if given to Angels. Directions shall be confirmed in writing to Angels. Other directions will be so confirmed on written request in each case.
- 16.2 Angels' Designated Representative shall prepare, on a daily basis and keep on the construction site, a bound log setting forth, at a minimum for each day: the weather conditions and how any weather conditions affected progress of the work; work performed; equipment utilized for the work; any idle equipment and reasons for idleness; visitors to the site; labor utilized for the work; and any materials delivered to the construction site. The daily log shall be available for inspection by the Project Manager at all times during the construction phase of the Project.
- 16.3 If Angels, in the course of constructing the Project, finds any discrepancy between the Contract Documents and the physical conditions of the locality, or any errors or omissions in the Contract Documents, including drawings (plans) and specifications, it shall be Angels' duty to promptly inform the Project Manager in writing, and the Project Manager shall promptly verify the same. Any work done prior to or after such discovery shall be done at Angels' sole risk.

ARTICLE 17. THE CITY'S RIGHT TO TERMINATE AGREEMENT DURING DEVELOPMENT AND CONSTRUCTION.

- 17.1 The following shall give the City the right to terminate this Agreement after written notice to the Angels prior to completion of construction of the Project ("Notice of Termination"):
- 17.1.1 Construction of the Project does not commence within the time specified or is not performed to ensure the prompt completion of the Project, subject to any Force Majeure events or weather delays, or Angels fails to correct the construction work within twenty (20) calendar days following notice from the City that the construction work is defective and/or unsuitable.
- 17.1.2 If Angels becomes insolvent, is declared bankrupt, commits any act of bankruptcy or insolvency, makes an assignment for the benefit of creditors, or as a result of any other cause whatsoever resulting in Angels not carrying on the construction of the Project in an acceptable manner, the Project Manager may give notice in writing to Angels and its Surety of such delay, neglect, or default, specifying the same. If Angels, within a period of twenty (20) calendar days after such notice, does not proceed in accordance therewith, then the City may, upon written certificate from the Project Manager of the fact of such delay, neglect or default and Angels' failure to comply with such notice, terminate the Agreement, exclude Angels from the site and take the construction of the Project out of the hands of Angels, and appropriate or use any or all materials and equipment on the site as may be suitable and acceptable.
- 17.2 In the event of an occurrence under Section 17.1 above, the City may enter into a separate agreement for the completion of the Project according to the terms and provisions of the Contract Documents or use such other methods as in the City's opinion is required for the completion of the construction in an acceptable manner.
- 17.3 In the event of an occurrence under Section 17.1 above, all reasonable and documented damages, costs, and charges incurred by the City shall be deducted from any monies due or that may become due to Angels. The City shall provide Angels with a statement of costs documenting such damages, costs and/or charges incurred. Actions may be instituted to recover on the posted bonds. In case of damages and expenses incurred by the City, Angels shall be liable and shall pay to the City the amount of such costs.
- 17.4 Upon receipt of the Notice of Termination pursuant to Article 17.1, Angels shall promptly discontinue all affected work, unless the Notice of Termination directs otherwise, and deliver or otherwise make available to the Project Manager all data, drawings, specifications, reports, estimates, summaries, and such other information as may have been required by the Contract Documents, whether completed or in process.

ARTICLE 18. ANGELS' RIGHT TO STOP WORK OR TERMINATE AGREEMENT.

- 18.1 If the construction of the Project should be stopped under an order of any court or other public authority for a period of more than ninety (90) calendar days, through no act or fault of Angels or of anyone employed by Angels, then Angels may, upon three (3) calendar days' written notice to the City and the Project Manager, stop work on the construction of the Project, without any penalties hereunder, until such time Angels is legally allowed to commence performance under this Agreement.
- 18.2 If the City fails to perform its obligations under this Agreement, Angels must provide five (5) calendar days' written notice of such failure, after which the City shall have ten (10) days to cure. If the City fails to cure the subject default, Angels may terminate the Agreement.
- 18.3 In the event the City Commission denies the final site plan for the Project in accordance with Article 6, the Angels shall have the right to immediately terminate this Agreement and shall have no further financial obligation to the City for the development and usage of the Project or Facility.

ARTICLE 19. PLANS AND WORKING DRAWINGS.

The City and Angels will review and revise construction plans prior to submittal for permitting. All approved plans, general and detail, are to be deemed a part of this Agreement, and the plans and specifications and Agreement are to be considered together and are intended to be mutually complementary so that any work shown on the plans, though not specified in the specifications, and any work specified in the specifications, though not shown on the plans, is to be executed by Angels as part of this Agreement. All things that in the opinion of the Project Manager may reasonably be inferred from this Agreement and plans, as developed by Angels and approved by the Project Manager, are to be executed by Angels under the terms of this Agreement; and the Project Manager shall determine whether the detail plans conform to the Contract Documents, except as may be otherwise determined by the Project Manager. All plans, specifications, and related technical documentation should be in the form of an electronic CADD drawing file and paper copy.

ARTICLE 20. SUBCONTRACTS.

Angels shall cause the Contractor, prior to the start of construction, to notify the Project Manager in writing of the names of the subcontractors who will be used to construct the Project, and identify the portion of the work that each will perform. The Contractor shall have a continuing obligation to notify the Project Manager of any change in the subcontractors.

ARTICLE 21. SEPARATE CONTRACTS.

- 21.1 The City reserves the right to let other contracts that may impact work in the general area of the construction site. Angels shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate this work with theirs. Notwithstanding the foregoing, the City shall extend the timelines set forth in Article 6, on a day for day basis, for the time Angels' construction schedule for the Project is impacted.
- 21.2 Angels shall use commercially reasonable efforts to require the Contractor to perform the obligations described on Exhibit "B" attached hereto and incorporated herein.
- 21.3 To ensure the proper execution of its subsequent work, Angels shall inspect the work already in place and shall at once report to the Project Manager any discrepancy between the executed work and the requirements of the Contract Documents. However, Angels shall not be responsible to correct any existing problems at the Property.
- 21.4 No claim for damages or any claim other than for an extension of time shall be made or asserted against the City by reason of any delays due to work of other contractors, unless such delays result in the de-mobilization of Angels' work crew and there is an attendant cost to re-mobilize.

ARTICLE 22. USE OF COMPLETED PORTIONS.

- 22.1 The City may inform Angels if any portion of the Project may be utilized by Angels prior to normal construction completion. Such possession and use shall not be deemed an acceptance of any work not completed in accordance with the Contract Documents. If such possession and use delay the construction of the Project, Angels shall be liable for any reasonable and documented costs incurred by the City.
- 22.2 In the event Angels takes possession of a completed portion, the following shall occur:
 - 22.2.1 Angels shall give notice to the City at least five (5) calendar days in advance of intent to occupy a designated area.
 - 22.2.2 Angels shall bring the designated area to the point of Substantial Completion. When the City considers that the designated area of the Project are substantially complete, the City shall notify Angels, in writing, and shall prepare a list of items to be completed or corrected. The failure to include any items on such list

does not alter the responsibility of Angels to complete work on the designated area in accordance with the Contract Documents. The Project Manager shall conduct an inspection to determine that the designated portion of the Project are substantially complete. The Project Manager and Angels shall agree on the time within which Angels shall complete the items listed.

22.2.3 Upon issuance and acceptance of the Certificate of Substantial Completion, Angels shall assume full responsibility for the operation, maintenance, utilities, and all related expenses. Angels shall remain responsible for all items listed to be completed or corrected as submitted to the Project Manager as required in the substantial completion process.

22.2.4 If Angels finds it necessary to use a portion or portions of the Project prior to Substantial Completion thereof, such use shall not commence prior to a time mutually agreed upon by the Project Manager and Angels. Any insurance in effect shall not be canceled or lapsed on account of such partial use.

ARTICLE 23. LANDS FOR WORK.

The City shall provide, as indicated in the Contract Documents, the lands upon which the Project are to be constructed, rights-of-way, and easements for access thereto, and such other lands as are designated for the use of Angels. No claim for damages or other claim other than for an extension of time shall be made or asserted against the City by reason of any delay arising as a result of any failure of the City to provide such lands on the date needed by Angels.

ARTICLE 24. FIELD ORDERS AND SUPPLEMENTAL INSTRUCTIONS.

24.1 The Project Manager shall have the right to approve and issue field orders setting forth written interpretations of the intent of the Contract Documents and ordering minor changes in contract execution, provided the field order involves no change in the total cost of the construction of the Project or the time of performance.

24.2 The Project Manager shall have the right to approve and issue supplemental instructions setting forth written orders, instructions, or interpretations concerning this Agreement or its performance, provided they make no major changes in contract execution and involve no change in the total cost of the construction of the Project or the time of performance.

ARTICLE 25. CHANGE OF CONTRACT TIME.

25.1 Any claim for an extension of the contract time shall be based on written notice

delivered by the party making the claim to the Project Manager promptly (but in no event later than ten (10) calendar days after the occurrence of the event giving rise to the claim and stating the general nature of the claim). Notice of the extent of the claim with supporting data shall be delivered within seventy-five (75) calendar days after such occurrence (unless the Project Manager allows, in writing, an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the contract time shall be determined by the Project Manager in accordance with the terms herein. No claim for an adjustment in the contract time shall be valid if not submitted in strict accordance with the requirements of this Article.

- 25.2 The contract time will be extended in an amount equal to time lost due to delays beyond the control of and through no fault or negligence of Angels if a claim is made therefor as provided herein. Such delays shall include, but not be limited to, acts of neglect by the City, or by any employee of the City, or any separate contractor employed by the City, or due to a Force Majeure or weather-related delay.

ARTICLE 26. NO DAMAGES FOR DELAY.

Angels shall not be entitled to any payment or compensation of any kind from the City for direct, indirect, consequential, impact, or other costs, expenses, or damages, including, but not limited to, costs of acceleration or inefficiency arising because of delay, disruption, interference, or hindrance from any cause whatsoever, whether such delay, disruption, interference, or hindrance be reasonable or unreasonable, foreseeable or unforeseeable, or avoidable or unavoidable. Angels shall be entitled to terminate this Agreement or have an extension of time to complete its obligations hereunder as a choice of remedies hereunder for such resulting in delays in accordance with and to the extent specifically provided above.

ARTICLE 27. SUBSTANTIAL COMPLETION.

- 27.1 When Angels considers that the construction of the Project, or a designated portion thereof which is acceptable to the City, is substantially complete, Angels shall notify the Project Manager and shall instruct the Contractor to prepare for submission to the Project Manager a thorough list of items to be completed or corrected, together with a schedule for completion of all items.
- 27.2 The Project Manager shall conduct an inspection to determine that the Project or designated portion thereof is substantially complete. The Project Manager will then instruct Angels to prepare and deliver to the Project Manager a Certificate of Substantial Completion that shall establish the date of Substantial Completion. After review of the Certificate by the Project Manager, the City will either accept

or reject the Certificate. The Project Manager, with the concurrence of Angels, shall fix the time within which Angels shall complete the items listed therein. Warranties required by the Contract Documents shall commence on the date of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the City through the Project Manager and Angels for its written acceptance of the responsibilities assigned to them in such Certificate.

ARTICLE 28. FIELD ENGINEERING.

Angels shall provide and pay for field engineering services required for the construction of the Project. This work shall include the survey work required in execution of the construction of the Project.

ARTICLE 29. FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS.

- 29.1 Angels shall maintain in a safe place at the site one (1) record copy of all drawings (plans), specifications, addenda, written amendments, Change Orders, and written interpretations and clarifications in good order, annotated to show all changes made during construction, and in a format compatible with GADD equipment. These record documents, together with all approved samples and a counterpart of all approved Shop Drawings, shall be available to the Project Manager for reference. Upon completion of the construction, these record documents, samples, and Shop Drawings shall be delivered to the Project Manager.
- 29.2 At the completion of the construction of the Project, Angels shall turn over to the City a set of reproducible drawings that accurately reflect the "as-built" conditions of the Project and in a format compatible with the City's GADD equipment. All changes made to the construction documents, either as clarifications or as changes, shall be reflected in the plans. The changes shall be submitted on Mylar at least monthly to the Project Manager. These "as-built" drawings shall be signed and sealed by a registered Florida engineer or architect and shall be delivered and found to be acceptable.

ARTICLE 30. PROJECT SIGNAGE.

Angels and/or the Contractor shall furnish and erect signs, subject to the approval by the City, at the construction site, as directed by the Project Manager. Angels and/or the Contractor may install additional signage at the site, subject to approval by the Project Manager.

ARTICLE 31. CLEANING UP AND REMOVAL OF EQUIPMENT.

- 31.1 The City's Right to Clean Up. If a dispute arises between Angels and separate

contractors as to the responsibility for cleaning up, the City may clean up and charge the reasonable and documented cost thereof to contractors, including Angels, responsible therefor, as the Project Manager shall determine to be just.

- 31.2 Removal of Equipment. In case of termination of this Agreement before completion for any cause whatever, Angels, if notified to do so by the City, shall promptly remove any part or all of Angels' equipment and supplies from the property of the City, failing which the City shall have the right to remove such equipment and supplies at the expense of Angels.

ARTICLE 32. MISCELLANEOUS.

- 32.1 Rights of Various Interests. Whenever work being done by the City or by City contractors is contiguous to work covered by this Agreement, the respective rights of the various interests involved shall be established by the Project Manager to secure the completion of the various portions of the work in general harmony.
- 32.2 Records. Angels shall keep such records and accounts and require any and all architects, consultants, Contractor and subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel hours charged to this engagement. Such books and records shall be available at all reasonable times for examination and audit by the City and for the required retention period of the Florida Public Records Act (Chapter 119, *Florida Statutes*), if applicable, or if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings. If the Florida Public Records Act is determined by the City to be applicable to Angels' records, Angels shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Angels.
- 32.3 No Contingent Fee. Angels warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Angels, 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 Angels, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate this Agreement without liability, at its discretion, and to recover the full amount of such fee, commission, percentage, gift, or consideration.

32.4 Representative of the City and Angels.

32.4.1 It is recognized that questions in the day-to-day course of the construction of the Project will arise. All communications pertaining to the day-to-day conduct of the work shall be addressed to the Project Manager.

32.4.2 Angels shall inform the Project Manager in writing of the representative of Angels to whom matters involving the day-to-day conduct of the construction shall be addressed.

32.5 All Prior Agreements Superseded; Amendments. The Contract Documents incorporate and include 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 the Contract Documents. Accordingly, it is agreed 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 executed with the same formality and of equal dignity herewith.

32.6 Notices. Whenever either party desires to give notice unto the other, it shall be given by written notice, sent by certified United States mail, with 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, to-wit:

As to the City: Attn: Dan Dugger, City Manager
City of Boynton Beach
100 East Ocean Avenue
Boynton Beach, FL 33435
duggerd@bbfl.us

With a copy to: Michael D. Cirullo, Jr., Esq.
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone: (954) 771-4500
Facsimile: (954) 771-4923
Email: mcirullo@gorencherof.com

As to Angels: Mike Barwis
378 Hillsboro Technology Drive
Deerfield Beach, Florida 33441
Telephone:
Facsimile:
Email: michael@barwis.com

With a copy to: Nicholas Milano, Esq.
Holland & Knight LLP
515 East Las Olas Boulevard, Suite 1200
Fort Lauderdale, Florida 33301
Telephone: (954) 468-7804
Facsimile: (954) 463-2030
Email: nick.milano@hklaw.com

32.7 Truth-In-Negotiation Certificate

Signature of this Agreement by Angels shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the costs for the design and construction of the Project are accurate, complete, and current at the time of contracting. The original pricing and any additions thereto shall be adjusted to exclude any significant sums, by which the City determines the prices were increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such pricing adjustments shall be made within one (1) year following the end of this Agreement.

32.8 Interpretation. The parties hereto acknowledge and agree that the language used in this Agreement expresses their mutual intent, and no rule of strict construction shall apply to either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to the particular sentence, paragraph, Section, or Article where they appear, unless the context requires otherwise. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections and subparagraphs of such Section or Article, unless the reference is expressly made to a particular subsection or subparagraph of such Section or Article.

32.9 Applicable Law and Venue. This Agreement shall be interpreted and construed

in accordance with and governed by the laws of the State of Florida. Venue for litigation concerning this Agreement shall be in Palm Beach County, Florida.

- 32.10 Public Entity Crime Statement. Angels acknowledges the existence of Chapter 287.133(2)(a), *Florida Statutes* ("Public Entity Crimes Act"), which provides, in part, that a person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to the City; may not submit a bid on a contract with the City for the construction or repair of a public building or public work; may not submit bids on leases of real property to the City; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with the City; and may not transact business with the City in excess of the threshold amount provided in Chapter 287.017, *Florida Statutes*, for Category Two for a period of thirty- six (36) months from the date of being placed on the Convicted Vendor List. Violation of this Section by Angels shall result in termination of this Agreement by the City without penalty.
- 32.11 Joint Preparation. The preparation of this Agreement has been a joint effort of the parties, 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 by virtue of the fact that it may have been physically prepared by one party or its attorneys.
- 32.12 Severance. In the event this Agreement or a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless the City or Angels elects to terminate this Agreement. The election to terminate this Agreement based upon this provision shall be made within seven (7) calendar days after the finding by the court becomes final.
- 32.13 Waiver. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which it relates and shall not be deemed to be a continuing or future waiver.
- 32.14 Drug-Free Workplace. Execution of this Agreement by Angels shall serve as Angels' certification that it either has or that it will establish a drug-free workplace consistent with Chapter 112.0455, *Florida Statutes*.
- 32.15 Conflicts. Neither Angels nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Angels' loyal and conscientious exercise of judgment related to its performance under this Agreement.

Angels agrees that none of its employees shall, during the term of this

Agreement, serve as an adverse or hostile expert witness against the City in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, that is adverse or prejudicial to the interests of the City in any such pending or threatened legal or administrative proceeding. The limitations of this Article shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement.

In the event Angels is permitted to utilize subcontractors to perform any services required by this Agreement, Angels agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this Article.

- 32.16 Background Checks. Prior to hiring any employee, subcontractor, or consultant to provide services at the Facility, the Angels shall conduct a comprehensive criminal background check by accessing any Federal, State, or local law enforcement database available. The individual shall sign an authorization for the Angels to access criminal background information as provided in Exhibit "C" attached hereto and incorporated herein. The costs for the background checks shall be borne by the Angels.

ARTICLE 33. PUBLIC RECORDS.

The City is public agency subject to Chapter 119, Florida Statutes. Angels shall comply with Florida's Public Records Law, as applicable. Specifically, Angels shall:

- a. Keep and maintain public records required by the City to perform the service.
- b. 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.
- c. Ensure that public records that are exempt or that are confidential and exempt from public record 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 Angels does not transfer the records to the City.
- d. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Angels or keep and maintain public records required by the City to perform the service. If the Angels transfers all public records to the City upon completion of the contract, Angels shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- e. If the Angels keeps and maintains public records upon completion of the

contract, the Angels shall meet all applicable requirements for retaining public records. All records stored electronically by Angels 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.

The failure of Angels to comply with the provisions set forth in the Agreement shall constitute a Default and Breach of the Agreement, for which, the City may terminate the Agreement.

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

**CITY CLERK
PO BOX 310
BOYNTON BEACH, FLORIDA, 33425
561-742-6061
CITYCLERK@BBFL.US**

ARTICLE 34. GROUND LEASE.

Once the Facility has been completed in accordance with the terms herein, the City hereby demises and leases to Angels, and Angels hereby hires and takes from the City, subject to and with the benefit of the terms, covenants, conditions, and provisions of this Agreement, the property located at the Facility.

The initial term of this Agreement (the "Term") shall be for a period of thirty (30) calendar years from the Effective Date unless terminated sooner pursuant to the terms herein.

At least one (1) year prior to the expiration date of the Agreement or any extension period, the City and Angels shall have the option, to renew the Agreement for two (2) additional ten (10) year periods; provided the terms and conditions of the new Agreement are mutually agreeable to Angels and the City.

Angels shall be responsible for performing all maintenance, repair and replacement for the Facility during the Term, at its sole cost and expense. Angels shall maintain the Facility to the same as the City maintains the surrounding East Boynton Beach Little League complex including cleanliness.

ARTICLE 35. TERMINATION BY THE CITY POST-CONSTRUCTION.

Following Final Completion, the City shall have the right to terminate this Agreement if any of the following shall occur.

- 35.1 If Angels at any time is in default of its material obligations, including payment or maintenance obligations, under this Agreement, and such default persists for thirty (30) days after written notice thereof is given by the City, or if such default cannot be cured within thirty (30) days, or such time as may be reasonably necessary to cure so long as Angels is diligently prosecuting to cure but not to exceed an additional thirty (30) days;
- 35.2 If Angels fails to pay to the City any amounts or taxes due or any other undisputed amounts required to be paid hereunder when due and such failure to pay persists for twenty (20) business days after written notice thereof;
- 35.3 The filing by or against Angels of a bankruptcy, insolvency, receivership, reorganization or arrangement proceeding, or the initiation of any similar type of proceeding (if involuntary, the same not having been dismissed after sixty (60) days from the date of filing), or if Angels shall be unable or unwilling to pay its debts when due; or
- 35.4 Any breach in any representation or warranty made by Angels.
- 35.5 If the City and public's use of the East Boynton Little League Complex is substantially impaired in the City's reasonable discretion, the City shall have a one-time right to terminate this Agreement prior to the expiration of the Term ("Early Termination Option"), effective as of the last day of the nineteenth (19th) full calendar year following the Effective Date ("Early Termination Date") by providing Angels with written notice on or before twelve (12) months prior to the expiration of the Early Termination Date ("Early Termination Notice"). In consideration for exercising the Early Termination Option, the City shall pay to Angels concurrent with the Early Termination Notice an amount equal to 200% of Angels' direct costs of the Project. Shall the City fail to timely deliver the Early Termination Notice in connection with its Early Termination Option, the City's Early Termination Option shall be deemed waived and of no further force and effect, and this Agreement shall continue for the duration of the Term.

Subject to the provisions of this Section and the terms of this Agreement, any termination by City shall result in the ownership and possession of the Facility and the Project being forfeited to the City, and the City shall have the right to finish any incomplete construction of the Project, or operate the Facility as the City deems in its best interest. Regardless of the foregoing, the City shall not be subject to any financial obligations or any debts owed by Angels related to the design, construction, operation, or maintenance of the Facility and the Project.

ARTICLE 36. TERMINATION BY ANGELS.

Following Final Completion, Angels shall have the right to terminate this Agreement if any of the following shall occur:

- 36.1 If the City at any time is in default of its material obligations under this Agreement, and such default persists for thirty (30) days after written notice thereof is given by Angels, or if such default cannot be cured within thirty (30) days, or such time as may be reasonably necessary to cure so long as City is diligently prosecuting to cure but not to exceed an additional thirty (30) days;
- 36.2 Any breach in any material respect of any representation or warranty made by the City herein.

ARTICLE 37. WINDING-UP AND COOPERATION.

If this Agreement expires or is otherwise terminated, the Parties shall promptly and cooperatively work together in the process of winding-up of Angels' operations under this Agreement, including (i) notification of staff, subcontractors, vendors, suppliers, and others having contractual or other arrangements with respect to the operation of the Facility and the construction of the Project, pursuant to the terms of the Agreement; (ii) completion of all calculations and schedules for reconciliations, inventory, accounting, claims, and payments arising under this Agreement; and (iii) transition, as applicable, to any third Person that will take over the operation of the Facility. The City and Angels shall use best reasonable commercial efforts to complete and constructively cooperate in the winding-up process as expeditiously as possible.

ARTICLE 38. DUTIES UPON TERMINATION.

Upon termination, Angels shall be required to:

- 38.1 Vacate the premises and leave the Facility in good repair and operating condition, reasonable wear and tear excepted. Angels shall not have the right to remove any capital improvements, equipment, fixtures, or other assets or property belonging to City, or any of their respective agents or representatives; and
- 38.2 Remove all trash, stacks of material, supplies, tools, equipment, etc., belonging to Angels or its agents. Costs of such removals and restoration shall be borne by Angels. If such trash, stacks of materials, supplies, tools, equipment, etc., placed in the Facility by Angels or its agents have not been removed by Angels by the date of termination, it will be the option of the City to remove the same at Angels' cost, risk, and expense or to retain or dispose of the same or any part thereof, without payment or reimbursement to Angels, unless other arrangements have been made in writing between the City and Angels with regards to the removal thereof.

ARTICLE 39. REMEDIES.

- 39.1 Opportunity to Cure. Notwithstanding any other provisions in this Agreement, the City shall allow Angels at least sixty (60) calendar days to cure any deficiency in

the operation and maintenance of the Facility other than the payment by the Angels of any fees required under the terms of this Agreement, subsequent to the provision of written notice to Angels regarding the deficiency. Except in an event of Termination for Cause, Angels shall be allowed to use the sixty (60) days' period as an Opportunity to Cure the deficiency.

- 39.2 Remedies Upon Default. Upon the occurrence of any of the events of default, and following any applicable cure period, then in addition to any other rights and remedies that either Party may have hereunder, at law, in equity, or otherwise, the non-defaulting Party may declare this Agreement terminated and recover Damages permitted by Applicable Law and/or seek specific performance or other injunctive or equitable relief.

ARTICLE 40. GROUND LEASE FEE.

- 40.1 During the construction phase of the Project, Angels shall not be required to make any payments towards the Ground Lease Fee.
- 40.2 No later than thirty (30) days after substantial completion of the Project, or on a later date determined by the City, Angels shall pay an annual Ground Lease Fee of One Dollar (\$1.00) per year for each and every year this Agreement remains in effect, payable in advance, to the City of Boynton Beach, Florida.

All payments are due payable by the 10th day of January at the start of each calendar year.

ARTICLE 41. OWNERSHIP OF FACILITY AND THE PROPERTY CONTEMPLATED UNDER THE PROJECT.

The City shall own the property contemplated by the Project and the Facility, free and clear of all claims by Angels or any other entity. Full legal ownership of the property contemplated by the Project shall lie with the City of Boynton Beach, Florida.

ARTICLE 42. TAXES AND FINES.

Angels shall pay all taxes that may be assessed on its design and construction of the Project and the operation, lease, and maintenance of the Facility. The City shall not be liable for any taxes, fines, or penalties that may be levied against the Project or Angels' use of the Facility.

ARTICLE 43. UTILITIES.

It shall be the responsibility of Angels to pay for and sign up for an account for all utility service for the Facility required during the construction phase of the Facility. To the extent reasonably possible, utilities to the Facility shall be separately metered or submetered at

Angel's sole expense. In the event that any such utilities cannot be or are not separately metered or assessed or the City elects to supply any utilities, then, insofar as and to the extent that such is permitted pursuant to applicable law and the regulations of the applicable utility company, Angels agrees to purchase the same from the City, provided the rate does not exceed the rate which Angels would be required to pay on a metered basis to the utility company furnishing the same to the Facility. Upon completion of construction and during the operation at the Facility, Angels shall be responsible for the payment of all permanent utility service solely to the Facility. From time to time, the City may perform a reconciliation of all or any of Angels' charges and usage for any prior billing period and the City shall provide Angels a copy of the reconciliation within ten (10) days of the date the City received the reconciliation. If during the reconciliation it is determined that Angels had been overbilled for its usage or that the estimate did not accurately calculate Angels' usage, then the City shall cause the overbilling or estimate to be correctly adjusted and the City will, at its option, within thirty (30) days after the City's receipt of such reconciliation remit or credit to Angels the total sums of the overbilling.

ARTICLE 44. INDEMNIFICATION OF THE CITY AND INSURANCE.

- 44.1 Angels shall indemnify and hold harmless the City, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Angels and other persons employed or utilized by Angels in the construction of the Project and the operation and maintenance of the Facility.

Required Insurance.

Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence, general aggregate, personal advertising injury combined single limit for Bodily Injury Liability and Property Damage Liability shall include:

- Premises and/or Operations on an occurrence basis.
- Independent Contractors.
- Explosion, Collapse, and Underground Coverages.
- Broad Form Property Damage.
- Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
- Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.

Business Automobile Liability with minimum limits of One Million Dollars (\$1,00,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include:

Owned vehicles.

Non owned and hired vehicles

- 44.2 Notice of Cancellation, Expiration, and/or Restriction: The policy(ies) shall be endorsed to provide the City with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Project Manager, c/o Risk Management, City of Boynton Beach, 100 East Ocean Avenue, Boynton Beach, FL 33435.
- 44.3 Angels shall furnish to the Project Manager Certificate(s) of Insurance evidencing the insurance coverages required herein prior to commencement of any work on this Project. Such certificate(s) shall reference this Agreement. The City reserves the right to require a certified copy of such policies upon request. All certificates shall state that the City shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.
- 44.4 The official title of the City is "City of Boynton Beach." This official title shall be used in all insurance or other legal documentation. The City shall be included as "Additional Insured" with respect to General Liability arising out of operations performed for the City by or on behalf of Angels or acts or omissions of Angels in connection with such operation.

ARTICLE 45. ENVIRONMENTAL MATTERS.

City represents and warrants to Angels that, to the best of the City's knowledge, (i) the Property is in full compliance with all Environmental Laws; (ii) there has been no discharge of Hazardous Materials at the Property; (iii) there are no underground storage tanks, septic tanks, potable water well or septic fields in, on, at, under, or about the Property; and (iv) no claim, action, suit, or proceeding is pending or threatened against the City or any third party arising directly or indirectly out of the discharge of Hazardous Materials at the Property, or the presence of underground storage tanks beneath the Property. Simultaneously with the execution of this Lease, City shall deliver to Angels all environmental reports concerning the Property in City's possession. Further, the City agrees to indemnify, defend, and hold Angels harmless from any claims, judgments, damages (including, without limitation, natural resource damages), fines, penalties, costs, liabilities, and/or losses, including, without limitation, reasonable attorney's fees, reasonable consultants fees, and reasonable expert fees that arise during or after the term of this Lease by reason of the presence of Hazardous Materials in the

soil, groundwater, soil vapor, or other environmental media at, on, under, to or from the Property based on or in connection with events occurring or conditions arising or accruing (a) prior to the Commencement Date or (b) during the term of this Lease that are not caused or introduced by Angels, its assignees, subtenants or licensees, clients, or the employees or agents of any of them.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, codes, rules, regulations, ordinances, environmental permits, guidelines, standards, and directives and all applicable agreements and judicial and administrative orders and decrees pertaining to health, safety, or the environment, and all common law providing for any right or remedy with respect to environmental matters, each as currently in effect or hereinafter amended, adopted, promulgated, or enacted.

"Hazardous Materials" means any and all materials, pollutants, contaminants, wastes, chemicals, or substances listed, defined, designated, classified, or considered or regulated as dangerous, special, hazardous, toxic, or radioactive, or any terms of similar import, under any applicable Environmental Laws, including petroleum and any derivation or by-product thereof, asbestos and asbestos-containing materials, lead-based paint, PCBs, and perchlorethylene or related or similar dry cleaning.

ARTICLE 46. REPRESENTATION AND WARRANTIES OF THE CITY.

The City hereby represents and warrants to Angels that (i) the City has full power and authority to enter into this Agreement; (ii) the City is the sole fee owner of the Property; (iii) to the City's knowledge, the Property complies with all environmental laws and regulations, and all other federal, state, and local rules, regulations, laws, statutes, and ordinances; (iv) the City has obtained all required consents and approvals in order to enter into this Lease (including from all Major Title Document Holders, as hereinafter defined);

The City shall have an affirmative obligation to immediately provide Angels with written notice in the event of any change with regard to the representations set forth above.

ARTICLE 47. QUIET ENJOYMENT.

The City agrees that Angels shall and may peaceably and quietly have, hold, and enjoy the Facility during the Term, subject to the covenants and conditions of this Ground Lease.

[This Space is Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto certify that they have read and understand this Agreement and all Contract Documents and attachments hereto and have caused this Agreement to be executed by their duly authorized officers on the date hereinabove first written.

**CITY OF BOYNTON BEACH, a Florida
municipal corporation**

MAYOR TY PENSERGA

Signed, sealed and delivered
in the presence of:

(Witness signature)

(Print name of Witness)

(Witness signature)

(Print name of Witness)

APPROVED AS TO FORM:

CITY ATTORNEY'S OFFICE

STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY, that on _____, before me by means of _____ online notarization, or _____ physical presence, an officer duly authorized in the State and County aforesaid to take acknowledgments, _____ personally appeared as Ty Penserga, Mayor, of the City of Boynton Beach on behalf of the City, and said person(s) either () produced the following as identification _____, or () are personally known to me.

WITNESS my hand and official seal in the County and State as listed above, this _____ day of _____, 2023.

Notary Public Signature

Print Name of Notary Public

My Commission Expires: _____

[Seal]

ANGELS:

BY: _____

Print Name: Brian Casey

Title: Director

STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY, that on 03/29/2023, before me by means of _____ online notarization, or ☒ physical presence, an officer duly authorized in the State and County aforesaid to take acknowledgments, Brian Casey personally appeared as Director, and said person(s) either () produced the following as identification Florida Driver License, or () are personally known to me.

WITNESS my hand and official seal in the County and State as listed above, this 29th day of March, 2023.

Notary Public Signature

Martha Montego
Print Name of Notary Public

My Commission Expires: 12/16/2024

[Seal]

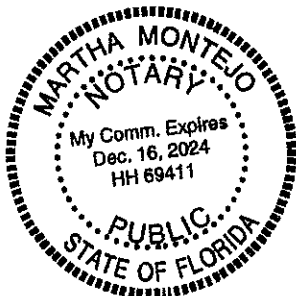
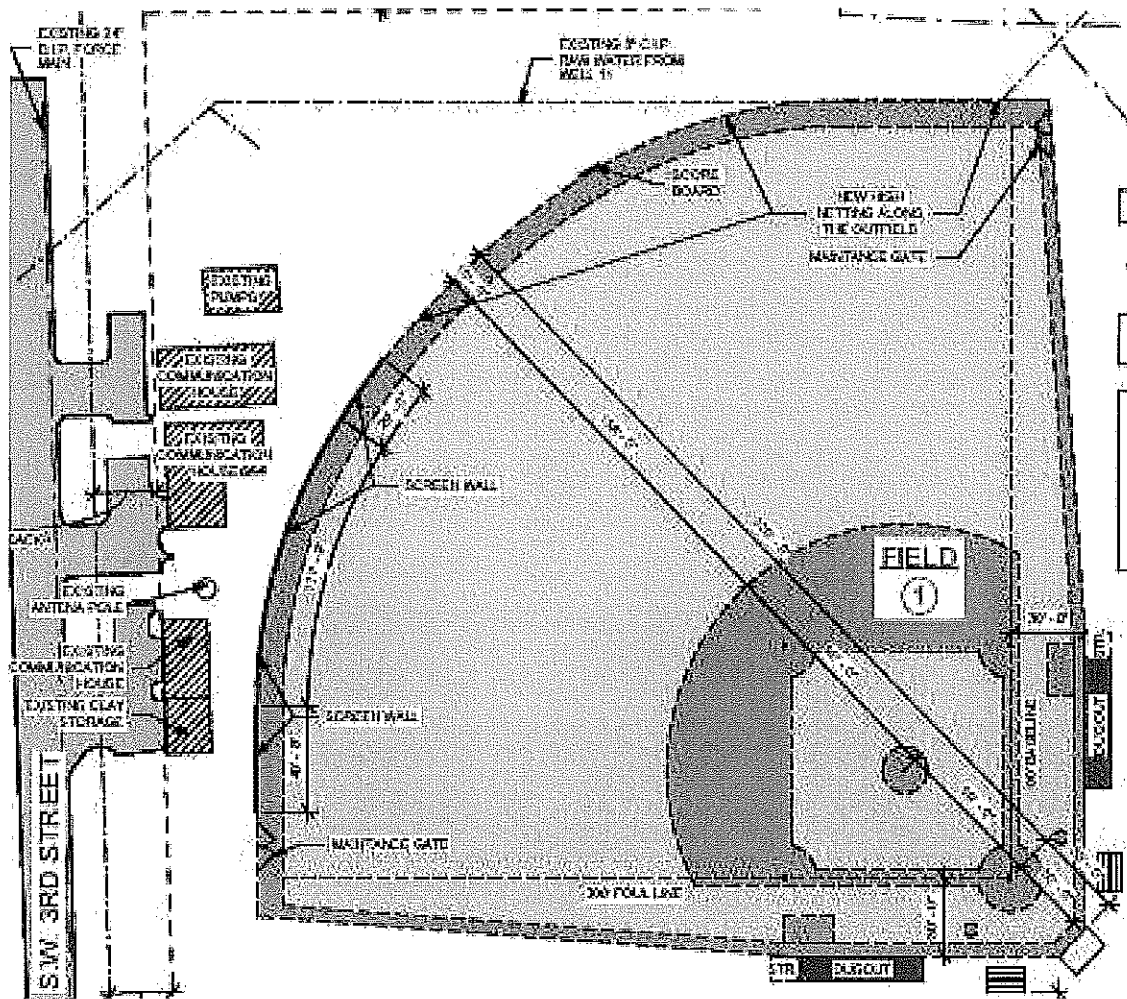


EXHIBIT
"A"
PROPERTY



**EXHIBIT
"B"
CONTRACTOR REQUIREMENTS**

1. GENERAL QUALITY OF WORK.

- a. Articles, materials, and equipment specified or shown on drawings shall be new and shall be applied, installed, connected, erected, used, cleaned, and conditioned for proper forming, as per the manufacturer's directions, and as approved by the Project Manager. The Contractor shall, if required, furnish satisfactory evidence as to kind and quality of the materials.
- b. The Contractor shall apply, install, connect, and erect manufactured items or materials according to the recommendations of the manufacturer when such recommendations are not in conflict with the Contract Documents. The Contractor shall furnish copies of the manufacturer's recommendations to the Project Manager before proceeding with the work.
- c. The Contractor shall at all times enforce strict discipline and good order among its employees, consultants, and subcontractors at the Project site and shall not employ on the Project any unfit person or anyone not skilled in the work assigned to him or her.
- d. The Contractor shall maintain suitable and sufficient guards and barriers, and at night suitable and sufficient lighting for the prevention of accidents and thefts.

2. CHECK DRAWINGS AND DATA

- a. The Contractor shall take measurements and verify all dimensions, conditions, quantities and details shown on the drawings, schedules, or other data, and shall notify the Project Manager of all errors, omissions, conflicts, and discrepancies found therein. Failure to discover or correct errors, conflicts, or discrepancies shall not relieve the Contractor of full responsibility for unsatisfactory work, faulty construction, or improper operation resulting therefrom nor from rectifying such condition at the Contractor's own expense. The Contractor will not be allowed to take advantage of any error or omission.

3. WARRANTY

The Contractor shall warrant to the City and Angels that all materials and equipment furnished for the Project shall be new, unless otherwise specified, and that all work for the construction of the Project shall be of good quality, free from faults and defects, and in conformance with the Contract Documents. All work for the Project not conforming to these requirements, including substitutions not properly approved

and authorized, may be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

4. DELIVERY AND STORAGE OF MATERIALS.

- a. Material stored on the job site shall be verified as to quantity and condition by the Contractor, prior to acceptance. Safeguarding the material shall be the responsibility of the Contractor. Any materials that are lost, stolen, damaged, or otherwise deemed unacceptable by the Project Manager shall be replaced at no cost to the City.
- b. Materials stored off the job site shall be stored in a bonded warehouse. Safeguarding the material shall be the responsibility of the Contractor.

5. DEFECTIVE WORK.

- a. The Project Manager shall have the authority to reject or disapprove work for the Project that the Project Manager finds to be defective. If required by the Project Manager, the Contractor shall promptly, as directed, correct all defective work or remove it from the construction site and replace it with nondefective work.

6. CONSTRUCTION AREA

- a. The Contractor shall use areas approved by the City for deliveries and personnel. Contract limits of construction area shall be indicated on the drawings. Equipment, material, and personnel shall be in conformance with this Contract.
- b. To provide for maximum safety and security, the Contractor shall erect and maintain all necessary barricades and any other temporary walls and structures, and boarding, as required, to protect life and property during the period of construction.

7. LEGAL RESTRICTIONS AND TRAFFIC PROVISIONS.

- a. The Contractor shall conform to all applicable laws, regulations, or ordinances with regard to labor employed, hours of work, and its contractor's general operations. The Contractor shall also conduct its operations so as not to close any thoroughfare nor interfere in any way with traffic on highways without the written consent of the proper authorities.

8. DAMAGE TO EXISTING FACILITIES, EQUIPMENT, OR UTILITIES.

- a. Existing utilities have been identified insofar as information is reasonably available; however, it will be the Contractor's responsibility to verify such information and to preserve all existing utilities whether shown on the drawings or not. If utility conflicts are encountered by the Contractor during construction, the Contractor shall give sufficient notice to the owners of the utilities so that they may make the necessary adjustments.
- b. The Contractor shall exercise care and take all precautions during construction operations to prevent damage to any existing facilities, equipment, or utilities. Any damage caused by the Contractor shall be reported immediately to the Project Manager, and such work shall be repaired and/or replaced by the Contractor in a manner approved by the City. All costs to repair and/or replace any damage to existing facilities, equipment, or utilities shall be the sole responsibility of the Contractor, and such repair or replacement shall be performed expeditiously without cost to the City.
- c. The Contractor shall provide the type of required protection for finished work at all times and protect adjacent work during cleaning operations and make good any damage resulting from neglect of this precaution.
- d. Protection of work shall include protecting work that is factory finished during transportation, storage, and during and after installation. Where applicable and as required, the Contractor shall close off areas where certain work has been completed to protect it from any damages caused by others during their operations.
- e. The Contractor shall store materials and shall be responsible for and shall maintain partly or wholly finished work during the construction of the Project until the final acceptance of the structure. If any materials or part of the work should be lost, damaged, or destroyed by any cause or means whatsoever, the Contractor shall satisfactorily repair and replace the same at its own cost. The Contractor shall maintain suitable and sufficient guards and barriers, and at night, suitable and sufficient lighting for the prevention of accidents.
- f. To all applicable Sections where preparatory work is part of work thereon, the Contractor shall carefully examine surfaces over which its finished work is to be installed, laid, or applied before commencing with the work. The Contractor shall not proceed with said work until defective surfaces on which work is to be applied are corrected satisfactorily to the Project Manager's satisfaction. Commencement of work shall be considered acceptance of surfaces and conditions.

9. CONTINUATION OF WORK.

The Contractor shall carry on construction and adhere to the progress schedule

during all disputes or disagreements between Angels and the City. No work shall be delayed or postponed pending resolution of any disputes or disagreements.

10. SHOP DRAWINGS.

- a. The Contractor shall submit Shop Drawings for all equipment, apparatus, machinery, piping, wiring, fabricated structures, and manufactured articles. The purpose of the Shop Drawings is to show the suitability, efficiency, technique of manufacture, installation requirements, details of the item, and evidence of its compliance or noncompliance with the Contract Documents.
- b. The Contractor shall submit to the Project Manager a complete list of preliminary data on items for which the Shop Drawings are to be submitted. Approval of this list by the Project Manager shall in no way relieve the Contractor from submitting complete Shop Drawings and providing materials, equipment, etc., fully in accordance with the Contract Documents. This procedure is required in order to expedite final approval of the Shop Drawings.
- c. After the approval of the list of items required in 5(b) above, the Contractor shall promptly request the Shop Drawings from the various manufacturers and suppliers.
- d. The Contractor shall thoroughly review and check the Shop Drawings, and each and every copy shall show its approval thereon.
- e. If the Shop Drawings show or indicate departures from the Contract requirements, the Contractor shall make specific mention thereof in its letter of transmittal. Failure to point out such departures shall not relieve the Contractor from its responsibility to comply with the Contract Documents.
- f. No work called for by the Shop Drawings shall be done until the Drawings have been approved by the Project Manager. Approval shall not relieve the Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.
- g. No approval will be given to partial submittal of the Shop Drawings for items that interconnect and/or are interdependent. It is the Contractor's responsibility to assemble the Shop Drawings for all such interconnecting and/or interdependent items, check them, and then make one (1) submittal to the Project Manager along with the Contractor's comments as to compliance, noncompliance, or features requiring special attention.
- h. If catalog sheets or prints of the manufacturers' standard drawings are submitted as Shop Drawings, any additional information or changes on such drawings shall be typewritten or lettered in ink.

- i. The Contractor shall submit to the Project Manager the number of copies required by the Project Manager. Resubmissions of Shop Drawings shall be made in the same quantity until final approval is obtained.
- j. The Project Manager's approval of the Shop Drawings will be general and shall not relieve the Contractor of responsibility for the accuracy of such Drawings, nor for the proper fittings and construction of the work, nor for the furnishing of the materials or work required by the Contract and not indicated on the Drawings. No work called for by the Shop Drawings shall be done until the Drawings have been approved by the Project Manager. Approval shall not relieve the Contractor from responsibility for errors or omissions of any sort on the Shop Drawings.
- k. The Contractor shall keep one (1) set of the Shop Drawings marked with the Project Manager's approval at the construction site at all times.

11. FIELD LAYOUT OF THE WORK AND RECORD DRAWINGS.

- a. The entire responsibility for establishing and maintaining a line and grade in the field lies with the Contractor. The Contractor shall maintain an accurate and precise record of the location and elevation of all pipelines, conduits, structures, manholes, handholds, fittings, and the like and shall deliver these records in good order to the Project Manager as the work is completed. These records shall serve as a basis for record drawings. The cost of all such field layout and recording work shall be paid by Angels.

12. SAFETY AND PROTECTION.

- a. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the construction of the Project. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
 - i. All employees on the construction site and other persons who may be affected thereby;
 - (1) All the work and all materials or equipment to be incorporated therein, whether in storage on or off the construction site; and
 - (2) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

- ii. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss, and shall erect and maintain all necessary safeguards for such safety and protection. The Contractor shall notify owners of adjacent property and utilities when prosecution of the work may affect them. All damage, injury, or loss to any property referred to in herein, caused directly or indirectly, in whole or in part, by the Contractor, any subcontractors or consultant, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, shall be remedied by the Contractor. The Contractor's duties and responsibilities for the safety and protection of the construction site shall continue until the construction of the Project are completed, and the Project Manager has issued a notice to the Contractor that the Project is acceptable, except as otherwise provided herein, Use of Completed Portions.
- iii. The Contractor shall designate a responsible member of its organization at the Project site whose duty shall be the prevention of accidents. This person shall be the Contractor's Designated Representative unless otherwise designated in writing by Contractor to the City.

13. CLEANING UP AND REMOVAL OF EQUIPMENT.

- a. The Contractor shall at all times keep the construction site free from accumulation of waste materials or rubbish caused by the Contractor's operations. At the completion of the construction, the Contractor shall remove all its waste materials and rubbish from and about the site, as well as its tools, construction equipment, machinery, and surplus materials. If the Contractor fails to clean up at the completion of the construction, the City may do so, and the cost thereof shall be charged to the Contractor.

14. BONDS, INDEMNIFICATION, AND INSURANCE.

Prior to commencement of any work on the construction of the Project, the Contractor shall furnish a Performance and Payment Guaranty consisting of either:

- a. Performance and Payment Bond (Surety)
 - i. A Performance and Payment Bond (separate Performance Bond and separate Payment Bond) of the form and containing all the provisions of the Performance and Payment Bond (Performance Bond and Payment Bond forms), attached hereto and made a part hereof.

- ii. The Bonds shall be in the amount of one hundred ten percent (110%) of the Contract amount guaranteeing to the City the completion and performance of the Project covered in this Agreement, as well as full payment of all suppliers, materialmen, laborers, or subcontractors employed pursuant to the construction of the Project. Such Bonds shall be with a surety company that is qualified pursuant to Section c. Qualifications of Surety below.
 - iii. Such Bonds shall be in effect for one (1) year after completion and acceptance of the Project with liability equal to one hundred ten percent (110%) of the Contract price, or an additional Bond shall be conditioned that the Contractor shall, upon notification by the City, correct any defective or faulty work or materials that appear within one (1) year after completion of the construction.
 - iv. The Payment and Performance Bond required herein shall be in conformance with Chapter 255.051, *Florida Statutes*, and shall be on such forms provided by the City.
 - v. The City shall not be responsible for the cost to secure the Performance and Payment Bonds required for the construction of the Project.
- b. Performance and Payment Guaranty. In lieu of a Performance and Payment Bond, the Contractor may furnish an alternate form of security that may be in the form of cash, money order, certified check, cashier's check, or irrevocable letter of credit. Such alternate forms of security shall be for the same purpose and shall be subject to the same conditions as those applicable above and shall be held by the City for one (1) year after completion and acceptance of the Project.
- c. Qualifications of Surety
- i. A Performance Bond and separate Payment Bond shall be executed by a surety company shown on the United States Treasury approved list of companies and also authorized to do business in the State of Florida. Both Bonds shall show the City as obligee.
 - ii. The surety company shall have at least the following minimum ratings in the latest version of AM. Best's Insurance Report:

Amount of Bond	Policyholder's Ratings	Best's Financial Size Category
500,001 to 1,000,000	B+	Class I

1,000,001 to 2,000,000	B+	Class II
2,000,001 to 5,000,000	A	Class III
5,000,001 to 10,000,000	A	Class IV
10,000,001 to 25,000,000	A	Class V
25,000,001 to 50,000,000	A	Class VI
50,000,001 or more	A	Class VII

iii. Indemnification of the City

- (1) The Contractor shall indemnify and hold harmless the City, its officers, and employees from liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of the Contractor and other persons employed or utilized by the Contractor in the design and construction of the Project. The indemnification herein is limited to the greater of the Insurance of the Contractor for such claim or Five Million Dollars (\$5,000,000.00), whichever is greater. Regardless of the foregoing, this provision shall be limited by Chapter 725.06, *Florida Statutes*.
- (2) The indemnification provided above shall obligate the Contractor to defend at its own expense to and through appellate, supplemental, or bankruptcy proceeding, or to provide for such defense, at the City Attorney's option, any and all claims of liability and all suits and actions of every name and description that may be brought against the City that may result from the operations and activities under this Agreement, whether performed by the Contractor, its subcontractors, its consultants, or by anyone directly or indirectly employed by any of the above.
- (3) The execution of this Agreement by the Contractor shall obligate the Contractor to comply with the foregoing indemnification provision; however, the collateral obligation of insuring this indemnity shall be complied with as set forth herein.

d. Insurance

The Contractor shall provide, pay for, and maintain in force at all times such insurance, including Workers' Compensation Insurance, Employer's Liability Insurance, Comprehensive General Liability Insurance, and shall provide, pay for, and maintain in force at all times during the construction of the Projects, Professional Liability Insurance to assure to the City the protection contained in the foregoing indemnification and save harmless clauses undertaken by the Contractor. The Comprehensive General Liability Policy shall clearly identify the foregoing indemnification and save harmless clauses by the additional named insured

endorsement under this Article.

Such policy or policies shall be issued by companies authorized to do business in the State of Florida and have a resident agent licensed in Florida. The Contractor shall specifically protect the City by naming the City as an additional named insured under the Comprehensive General Liability Insurance Policy hereinafter described.

- i. Professional Liability (Errors and Omissions), Intentionally Omitted.
- ii. Workers' Compensation Insurance, to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) shall include Employer's Liability with limits of One Million Dollars (\$1,000,000.00) each accident, One Million Dollars (\$1,000,000.00) each disease, and One Million Dollars (\$1,000,000.00) aggregate by disease.
- iii. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability shall include:
 - (1) Premises and/or Operations on an occurrence basis.
 - (2) Independent Contractors.
 - (3) Products and/or Completed Operations Liability on an occurrence basis.
 - (4) Explosion, Collapse, and Underground Coverages.
 - (5) Broad Form Property Damage.
 - (6) Broad Form Contractual Coverage applicable to this specific Agreement, including any hold harmless and/or indemnification agreement.
 - (7) Personal Injury Coverage with Employees and Contractual Exclusions removed with minimum limits of coverage equal to those required for Bodily Injury Liability and Property Damage Liability.
- iv. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage shall be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability Policy, without restrictive endorsements, as filed by the Insurance Services Office and shall include:

Owned vehicles.
Non-owned and hired vehicles.
- v. Builder's Risk Insurance - Coverage shall be "All Risk" coverage for one hundred percent (100%) of the completed value of the structure(s), building(s) or addition(s). Where contract calls for install of machinery or equipment, the policy must be endorsed to provide coverage on "All Risk" basis during transit and installation. The policy must be issued with a deductible of not more than \$50,000 per claim.

Builders Risk/ Installation Floater - The Contractor shall take out and maintain, as applicable, during the construction of the Project, "all risk" type builders risk insurance satisfactory to the City for the completed value of the Project that shall protect the Contractor and the City as their interests may appear, for the following hazards to the work, encompassing structures in the course of construction, including foundations, additions, attachments and all permanent fixtures belonging to and constituting a part of said structures, as well as materials and equipment suitably stored at the site and the Contractor's construction equipment, materials, and temporary structures:

- (1) Fire and lightning, vandalism, and malicious mischief;
 - (2) Extended coverage including windstorm, hail, flood, explosion, riot, civil commotion, aircraft, vehicle, and smoke damage.
- e. Notice of Cancellation, Expiration, and/or Restriction: The policy(ies) shall be endorsed to provide the City with thirty (30) calendar days' advanced written notice of cancellation, expiration, and/or restriction to the attention of the Project Manager, c/o Risk Management Coordinator, City of Boynton Beach, 100 East Ocean Avenue, Boynton Beach, FL 33435.
- f. The Contractor shall furnish to the Project Manager Certificate(s) of Insurance evidencing the insurance coverages required herein prior to commencement of any work on this Project. Such certificate(s) shall reference this Agreement. The City reserves the right to require a certified copy of such policies upon request. All certificates shall state that the City shall be given thirty (30) calendar days' prior written notice of cancellation and/or expiration.
- g. The official title of the City is "City of Boynton Beach" This official title shall be used in all insurance or other legal documentation. The City shall be included as "Additional Insured" with respect to liability arising out of operations performed for the City by or on behalf of the Contractor or acts or omissions of the Contractor in connection with such operation.



**CITY OF BOYNTON BEACH RECREATION
& PARKS DEPARTMENT**



EXHIBIT "C"
Background Screening Acknowledgement

This Exhibit "C" is attached to and shall be considered as part of the Agreement between the CITY and Angels. The Angels through the undersigned named below, hereby attests that Angels understands and agrees to comply with the Level II background screening requirements more particularly described in Section 435.04, Florida Statutes. Angels acknowledges and agrees no person other than those whom have successfully passed all aspects of the Florida Department of Law Enforcement Level II background screening process within the previous five (5) years shall be permitted to act on behalf of or in any official capacity with Angels for Programming at the Little League Park and/or any City Owned Facility during the term of Agreement. Angels acknowledges and agrees that it is responsible for ensuring all instructors, teachers, staff, volunteers and agents of Angels successfully complete and pass the Level II background screening in advance of all authorized activities. CITY shall not be responsible for the costs associated with the Level II background screening required herein. Angels agrees to indemnify CITY against any claims or cause of action arising from or related to Angels's failure to ensure all individuals acting on behalf of or in any official capacity with Angels have completed and passed the required Level II background screening as required herein.

Signature _____ Date _____

Name (Print) _____

Phone Number _____

Email _____

STATE OF FLORIDA

COUNTY OF _____

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this d a y of _____, 201 by _____ as

_____ for Primetime Sports Group, LLC.

(NOTARY SEAL)

(Signature of Notary Public-State of Florida)
(Name of Notary Typed, Printed, or Stamped)

Personally, Known _____ OR Produced Identification _____ Type of Identification Produced _____

EAST BOYNTON BEACH LITTLE LEAGUE MASTER PLAN





WEST
ARCHITECTURE
+ DESIGN, LLC
AA26001503

820 NORTH 4TH. STREET
LANTANA, FL 33462
561-588-2027 T
561-582-9419 F

www.west-arch.com

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AND IN CONNECTION WITH THE SPECIFIED PROJECT.
NONE OF THE IDEAS, DESIGN, ARRANGEMENTS OR
PLANS SHALL BE USED BY OR DISCLOSED TO ANY
PERSONS, FIRM OR CORPORATION FOR ANY
PURPOSE WITHOUT THE WRITTEN PERMISSION OF
WEST ARCHITECTURE + DESIGN, LLC.

CONSULTANT:

PARK IMPROVEMENT
FOR

BOYNTON BEACH LITTLE LEAGUE PARK

300 W WOOLBRIGHT RD
BOYNTON BEACH, FL. 33425

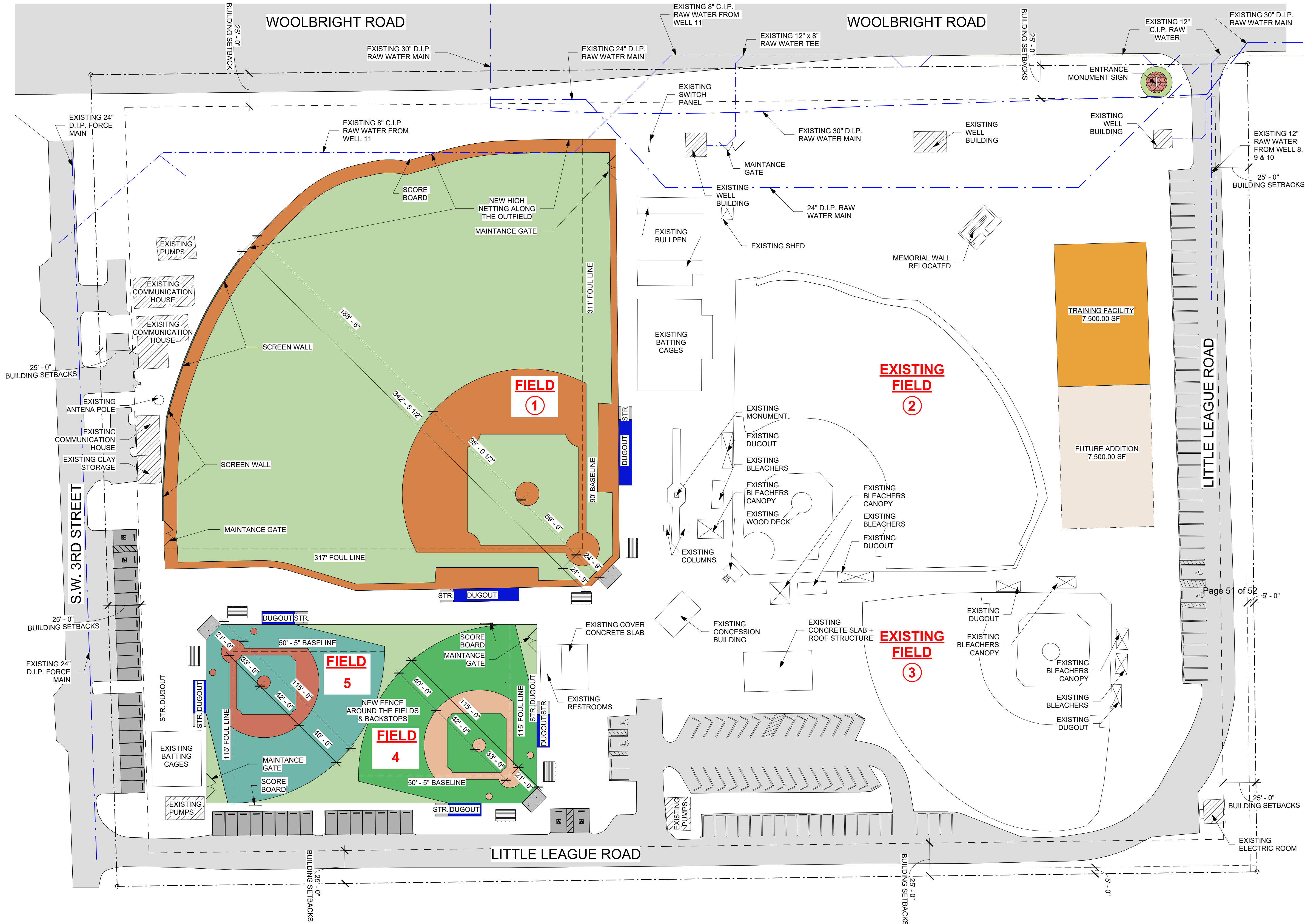
DATE: 03-29-23
NUMBER: A22-046
REVIEWED: MW
MANAGED: PG
DRAWN: SP
REVISION:

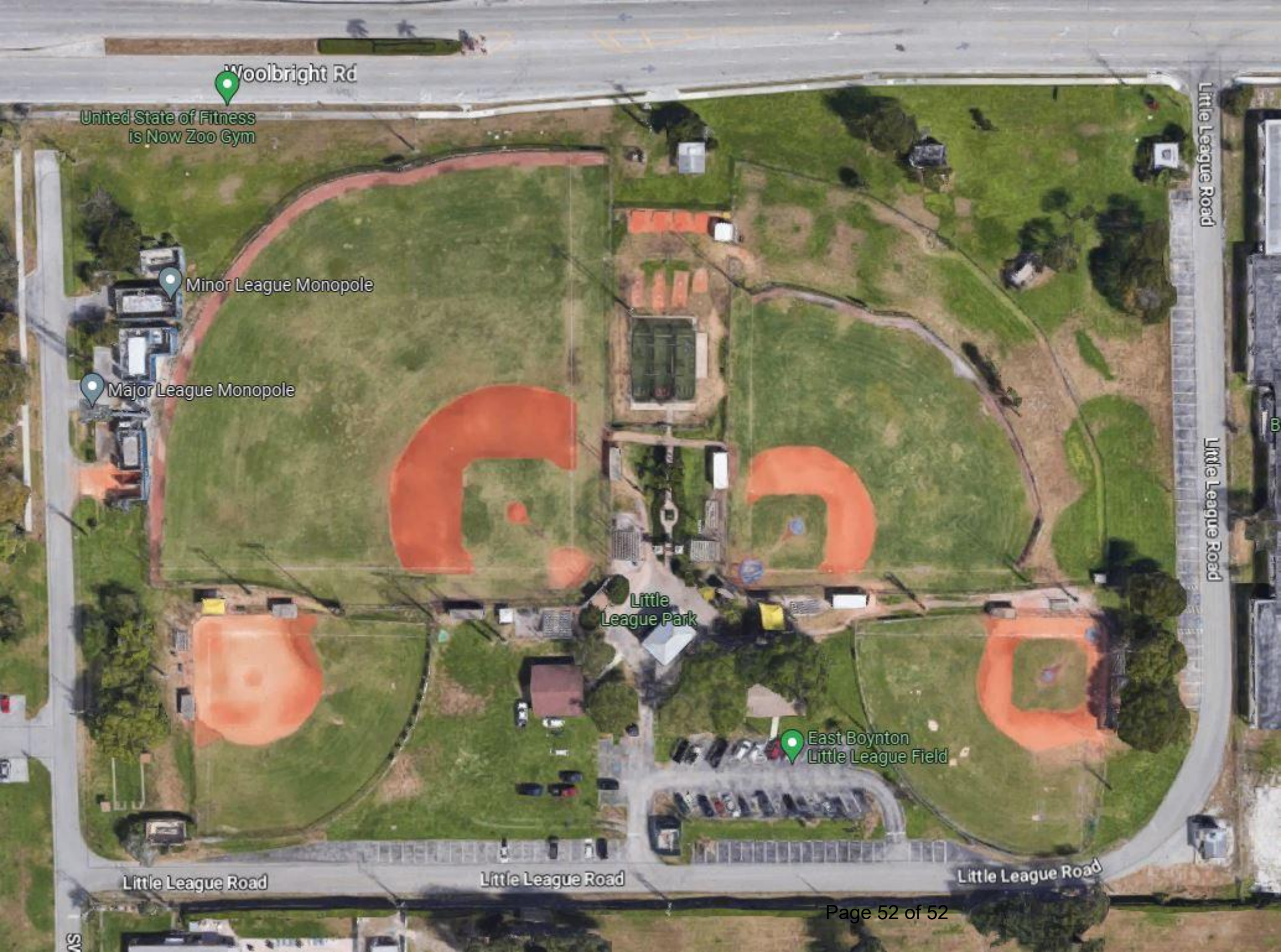
CONCEPTUAL
SITE PLAN

PHASE - 1

OPTION E.1-REV

AS-1.01





Woolbright Rd

United State of Fitness
is Now Zoo Gym

Minor League Monopole

Major League Monopole

Little
League Park

East Boynton
Little League Field

Little League Road

Little League Road

Little League Road

Little League Road

Little League Road