

AGREEMENT

BETWEEN

THE CITY OF DELRAY BEACH

AND

Dubin & Associates, Inc. dba JCD Sports Group

FOR

Management Services for Delray Beach
Tennis Center and Delray Swim and Tennis Club

This is an Agreement ("Agreement"), made and entered into by and between: Delray Beach, a municipal corporation of the State of Florida, hereinafter referred to as "City,"

And

Dubin & Associates, Inc. dba JCD Sports Group, a Florida corporation, hereinafter referred to as "Contractor," (collectively referred to as the "Parties").

WITNESSETH:

In consideration of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, the Parties agree as follows:

ARTICLE 1
DEFINITIONS AND IDENTIFICATIONS

The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - This Agreement includes Articles 1 through 11, the exhibits and documents that are expressly incorporated herein by reference.
- 1.2 **Board** - The City Commission of Delray Beach, Florida.
- 1.3 **Contract Administrator** - The Delray Beach City Manager or the Director of the Delray Beach Parks and Recreation Department. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Contractor and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the

administration of this Agreement, as contrasted with matters of policy, all Parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services.

- 1.4 **City Manager** - The administrative head of City appointed by the Board.
- 1.5 **City Attorney** - The chief legal counsel for City appointed by the Board.
- 1.6 **Project** - The Project consists of the Delray Beach Tennis Center and Delray Swim & Tennis Club management services described in Exhibit A, Scope of Services.

ARTICLE 2 SCOPE OF SERVICES

- 2.1 Contractor shall perform all work identified in this Agreement and as detailed in Exhibit A, Scope of Services. The Scope of Services is a description of Contractor's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by Contractor impractical, illogical, or unconscionable.
- 2.2 Contractor acknowledges that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement.

ARTICLE 3 TERM AND TIME OF PERFORMANCE

- 3.1 This contract is in full force and effect upon full contract execution by the City of Delray Beach. The term of the Agreement shall be effective from July 1, 2017 through June 30, 2019 with two, one-year renewal option. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.
- 3.2 In the event services are scheduled to end due to the expiration of this Agreement, the Contractor agrees that it shall continue service upon the request of the Contract Administrator. The extension period shall not extend for greater than six months beyond the term of the Agreement. The Contractor shall be compensated for the service at the rate in effect when the extension is invoked by the City upon the same terms and conditions as contained in this Agreement as amended. The Chief Purchasing Officer shall notify Contractor of an extension authorized herein by written notice delivered prior to the end of the term of the Agreement.

ARTICLE 4 COMPENSATION

- 4.1 City will pay Contractor, in the manner specified in Section 4.2, the total annual amount of Seventy Thousand Dollars (\$70,000) per year for management services for the work actually performed and completed pursuant to this Agreement per Exhibit D, Fees. Contractor acknowledges that this amount is the maximum payable, except as otherwise noted in Exhibit C, Performance Measures, and constitutes a limitation upon City's obligation to compensate Contractor for its services related to this Agreement. This maximum amount, however, does not constitute a limitation, of any sort, upon Contractor's obligation to perform all items of work required by or which can be reasonably inferred from the Scope of Services.

4.2 METHOD OF BILLING AND PAYMENT

- 4.2.1 Contractor may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed.

Invoices must be sent to:
City of Delray Beach
ATTN: Finance Department
100 N.W. 4th Ave.
Delray Beach, FL 33444

- 4.2.2 Invoices, including those for insurances but excluding those for payroll, will be paid within ten calendar days of receipt of a proper invoice. Contractor's invoice for payroll, a payroll register, and payment request must be submitted to the City no later than 3:00 p.m. on Tuesdays prior to Contractor's Friday payroll distribution date. If invoice for payroll and supporting documents are received prior to the deadline, invoices for payroll will be paid via electronic payment method by Thursday prior to Contractor's Friday payroll distribution date. Invoices for payroll received after the deadline will be processed for payment within ten calendar days of receipt.

To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of Contractor to comply with a term, condition, or requirement of this Agreement.

- 4.3 Notwithstanding any provision of this Agreement to the contrary, City may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with this Agreement. The amount withheld shall not be subject to payment of interest by City.
- 4.4 Payment shall be made to Contractor at the address below or via electronic payment methods to Contractor's designated financial institution:

Dubin & Associates, Inc.
dba JCD Sports Group
1300 Park of Commerce, Suite 272
Delray Beach, FL 33445

ARTICLE 5 INDEMNIFICATION

Contractor shall at all times hereafter indemnify, hold harmless and, at the City Attorney's option, defend or pay for an attorney selected by the City Attorney to defend City, its officers, agents, servants, and employees from and against any and all causes of action, demands, claims, losses, liabilities and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by any intentional, negligent, or reckless act of, or omission of, Contractor, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against City by reason of any such claim, cause of action, or demand, Contractor shall, upon written notice from City, resist and defend such lawsuit or proceeding by counsel satisfactory to City or, at City's option, pay for an attorney selected by City Attorney to defend City. The obligations of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the City Attorney, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved. Any amount withheld shall not be subject to payment of interest by City.

ARTICLE 6 INSURANCE

- 6.1 Contractor shall maintain, at all times during the term of this Agreement, at least the minimum insurance coverage designated in Exhibit B in accordance with the terms and conditions stated in this Article. Contractor's cost of the required insurances shall be paid directly by the City.

ARTICLE 7 TERMINATION

- 7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by the Board. Termination for convenience by the Board shall be effective on the termination date stated in written notice provided by City, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the City Manager upon such notice as the City Manager deems appropriate under the circumstances in the event the City Manager determines that termination is necessary to protect the public health, safety, or welfare. If City erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 7.2 This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement. The Agreement may also be terminated for cause if the Contractor is placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List created pursuant to Section 215.473, Florida Statutes, or if the Contractor provides a false certification submitted pursuant to Section 287.135, Florida Statutes. This Agreement may also be terminated by the Board.
- 7.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the City Manager, which the City Manager deems necessary to protect the public health, safety, or welfare may be verbal notice that shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.
- 7.4 In the event this Agreement is terminated for convenience, Contractor shall be paid for any services properly performed under the Agreement through the termination date specified in the written notice of termination. Contractor acknowledges that it has received good, valuable and sufficient consideration from City, the receipt and adequacy of which are, hereby acknowledged by Contractor, for City's right to terminate this Agreement for convenience.
- 7.5 In the event this Agreement is terminated for any reason, any amounts due Contractor shall be withheld by City until all documents are provided to City pursuant to Section 9.1 of Article 9.

ARTICLE 8 NON-DISCRIMINATION

- 8.1 No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. Failure by Contractor to carry out any of these requirements shall constitute a material breach of this Agreement, which shall permit the City, to terminate this Agreement or to exercise any other remedy provided under this Agreement, or under the Delray Beach Code of Ordinances or under applicable law, with all of such remedies being cumulative.

Contractor shall include the foregoing or similar language in its contracts with any subcontractors or subconsultants, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 C.F.R. Parts 23 and 26. Failure to comply with the foregoing requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as City deems appropriate.

Contractor shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of any State or Federal law. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded by City, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to prevent discrimination in employment against disabled persons.

By execution of this Agreement, Contractor represents that it has not been placed on the discriminatory vendor list as provided in Section 287.134, Florida Statutes. City hereby materially relies on such representation in entering into this Agreement. An untrue representation of the foregoing shall entitle City to terminate this Agreement and recover from Contractor all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

ARTICLE 9
MISCELLANEOUS

9.1 RIGHTS IN DOCUMENTS AND WORK

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of City, and, if a copyright is claimed, Contractor grants to City a non-exclusive license to use the copyrighted item(s) indefinitely, to prepare derivative works, and to make and distribute copies to the public. In the event of termination of this Agreement, any reports, photographs, surveys, and other data and documents prepared by Contractor, whether finished or unfinished, shall become the property of City and shall be delivered by Contractor to the Contract Administrator within seven (7) days of termination of this Agreement by either party. Any compensation due to Contractor shall be withheld until all documents are received as provided herein.

9.2 PUBLIC RECORDS

9.2.1 IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK MAY BE REACH VIA TELEPHONE AT 561-243-7060 OR BY EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

9.2.2 Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by the City to perform the service.
- ii. 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 Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the City.
- iv. Upon completion of the Agreement, transfer, at no cost, to the City all public

records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

If the Contractor does not comply with this section, the City shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

9.3 INSPECTOR GENERAL

Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its sub licensees and lower tier sub licensees. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its sub licensee or lower tier sub licensees to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Agreement justifying its termination.

9.4 AUDIT RIGHTS, AND RETENTION OF RECORDS

City shall have the right to audit the books, records, and accounts of Contractor and its subcontractors that are related to this Project. Contractor and its subcontractors shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Project. All books, records, and accounts of Contractor and its subcontractors shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, Contractor or its subcontractor, as applicable, shall make same available at no cost to City in written form.

Contractor and its subcontractors shall preserve and make available, at reasonable times for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement 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. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for City's disallowance and recovery of any payment upon such entry.

Contractor shall ensure that the requirements of this Section 9.3 are included in all agreements with its subcontractor(s).

9.5 TRUTH-IN-NEGOTIATION REPRESENTATION

Contractor's compensation under this Agreement is based upon representations supplied to City by Contractor, and Contractor certifies that the information supplied is accurate, complete, and current at the time of contracting. City shall be entitled to recover any damages it incurs to the extent such representation is untrue.

9.6 PUBLIC ENTITY CRIME ACT

Contractor represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and 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 City, may not submit a bid on a contract with City for the construction or repair of a public building or public work, may not submit bids on leases of real property to City, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with City, and may not transact any business with City in excess of the threshold amount provided in Section 287.017, Florida Statutes, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by City pursuant to this Agreement, and may result in debarment from City's competitive procurement activities.

In addition to the foregoing, Contractor further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Contractor has been placed on the convicted vendor list.

9.7 INDEPENDENT CONTRACTOR

Contractor is an independent contractor under this Agreement. Services provided by Contractor pursuant to this Agreement shall be subject to the supervision of Contractor. In providing such services, neither Contractor nor its agents shall act as officers, employees, or agents of City. No partnership, joint venture, or other joint relationship is created hereby. City does not extend to Contractor or Contractor's agents any authority of any kind to bind City in any respect whatsoever.

9.8 THIRD PARTY BENEFICIARIES

Neither Contractor nor City intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

9.9 NOTICES

Whenever either Party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

For City:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
ATTN: City Manager

For Contractor:

Dubin & Associates, Inc.
dba JCD Sports Group
1300 Park of Commerce, Suite 272
Delray Beach, FL 33445
ATTN: Sharon Painter

9.10 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other Party. In addition, Contractor shall not subcontract any portion of the work required by this Agreement, except as may specifically provided for herein. Notwithstanding the Termination provision of this Agreement, City may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without City's written consent.

Contractor represents that each person who will render services pursuant to this Agreement is duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services.

Contractor shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Contractor's performance and all interim and final product(s) provided to or on behalf of City shall be comparable to the best local and national standards.

9.11 CONFLICTS

Neither Contractor nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with Contractor's loyal and conscientious exercise of judgment and care related to its performance under this Agreement.

None of Contractor's officers or employees shall, during the term of this Agreement, serve as an expert witness against City in any legal or administrative proceeding in which he, she, or Contractor is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude Contractor or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

In the event Contractor is permitted pursuant to this Agreement to utilize subcontractors to perform any services required by this Agreement, Contractor shall require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as Contractor.

9.12 MATERIALITY AND WAIVER OF BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and each is, therefore, a material term hereof.

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

9.13 COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERANCE

In the event 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 City or Contractor elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days of final court action, including all available appeals.

9.15 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

9.16 INTERPRETATION

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 any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. 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 of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

9.17 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of Articles 1 through 10 of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 shall prevail and be given effect.

9.18 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. All Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Fifteenth Judicial Circuit in Palm Beach County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND CITY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.

9.19 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the Board and Contractor or others delegated authority to or otherwise authorized to execute same on their behalf.

9.20 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations,

agreements, and understandings applicable to the matters contained herein. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

9.21 PAYABLE INTEREST

9.21.1 Payment of Interest. Except as required by the Prompt Payment laws, City shall not be liable for interest for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof Contractor waives, rejects, disclaims and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim based on or related to this Agreement.

9.21.2 Rate of Interest. In any instance where the prohibition or limitations of Section 9.21.1 are determined to be invalid or unenforceable, the annual rate of interest payable by City under this Agreement, whether as prejudgment interest or for any other purpose, shall be .025 percent simple interest (uncompounded).

9.22 INCORPORATION BY REFERENCE

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. All Exhibits are incorporated into and made a part of this Agreement.

9.23 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

9.25 MULTIPLE ORIGINALS

Multiple copies of this Agreement may be executed by all Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

ARTICLE 10 CITY'S USE OF PREMISES

10.1 City shall, at its sole and absolute discretion and upon reasonable prior notice to Contractor, have the right to fully use of any or all facilities at the Delray Beach Tennis Center and Delray Swim and Tennis Club for events or meetings at no rental charge to the City. The Contractor will assume set up and clean up

responsibilities for said events or meetings.

- 10.2 Contractor agrees that in the event of any catastrophe, including but not limited to natural disasters such as hurricanes and other weather-related events, the City shall have the right to take immediate occupancy of the Delray Beach Tennis Center and the Delray Swim and Tennis Club and to utilize the Delray Beach Tennis Center and the Delray Swim and Tennis Club as a City shelter during and subsequent to any such emergency. City shall occupy the Delray Beach Tennis Center and the Delray Swim and Tennis Club for only such time as is reasonably necessary. City shall be responsible for any damage caused to the Delray Beach Tennis Center and the Delray Swim and Tennis Club reasonably resulting from any such emergency.

ARTICLE 11 ORDER OF PRECEDENCE

The documents listed below are a part of this Agreement and are hereby incorporated by reference. In the event of inconsistency between the documents, unless otherwise provided herein, the terms of the following documents will govern in the following order of precedence:

- A. Terms and conditions as contained in this Agreement;
- B. RFP No. 2016-86-2, Management Services for Delray Beach Tennis Center and the Delray Swim and Tennis Club dated June 27, 2016, and all its addenda;
- C. Contractor's response to RFP No. 2016-86-2, Management Services for Delray Beach Tennis Center and the Delray Swim and Tennis Club, and any subsequent information submitted by Contractor during the evaluation and negotiation process.

IN WITNESS WHEREOF, the City and the Contractor executed this Agreement as of the day and year first above written.

ATTEST:

CITY OF DELRAY BEACH, FLORIDA

Katerri Johnson, City Clerk

By _____
Cary D. Glickstein, Mayor

____ day of _____, 20____.

APPROVED AS TO FORM:

R. Max Lohman, City Attorney

AGREEMENT BETWEEN DELRAY BEACH, FLORIDA

AND

DUBIN & ASSOCIATES, INC. DBA JCD SPORTS GROUP

CONTRACTOR

WITNESS:

(Signature)

(Printed name)

WITNESS:

(Signature)

(Printed name)

By _____
(Signature)

(Printed name)

____ day of _____, 20____

(SEAL)

Exhibit A Scope of Services

The Contractor will provide management services for the Delray Beach Tennis Center (hereinafter in this Scope referred to as Center) and the Delray Beach Swim & Tennis Club (hereinafter in this Scope referred to as Club) to include, but not limited to, the following:

- A. Administrative oversight of all key operating areas such as pro-shop services, court maintenance, lessons, site and building maintenance.
- B. Ensure security and protection of all physical, informational, and monetary assets of the City.
- C. Employ a Head Pro that has been USTA or USPTA Certified for a minimum of five years and who has at least five years of tennis facility management experience, preferably in South Florida, to maintain and care for the Club and Center according to the requirements of this Scope.
- D. Supervision and direct the administration of all Center and Club operations, including, but not limited to, the timely operation, completion and/or provision of the following:
 - i. Collection of revenues through use of City assigned Point-of-Sale (POS) software system
 - ii. Deposit of all collected revenues on each banking business day into an account and at the banking institution approved by the City
 - iii. Monthly reporting of revenue through use of City assigned Point-of-Sale software system
 - iv. Procurement of all materials and services required for the operation of the Center and Club
 - v. Submitting timely payment authorization to the City for, all materials and services required for the operation of the Center and Club.
 - vi. Administration of tennis merchandise sales, rentals and repair, tournament management, junior tennis programming, tennis lessons and clinics programming, and the storage and repair of items related to the game of tennis
 - vii. Coordination of Club and Center activities with film production companies and/or lessors of the Center main stadium
 - viii. Coordination of Club and Center activities with rentals by commercial film productions
 - ix. Any incidental services as may be directed by the City
- E. Recruit, hire, train personnel to operate and maintain the Center and Club.
- F. Evaluate personnel performance and as necessary, terminate personnel and hire replacements.

- G. Upon request by the City, Contractor shall immediately terminate any of its employees assigned to the Center or the Club and hire replacements.
- H. Have full authority over all personnel decisions.
- I. Respond in writing to customer inquiries and complaints received directly or through the Parks & Recreation Department within 48 hours of receipt of the inquiry or complaint.
- J. On a monthly basis provide a report Contract Administrator of all complaints and the resolution of each to Parks & Recreation Department.
- K. Complete an annual fee and rate market analysis and submit a written report to Parks & Recreation Department no later than March 1st of each year.
- L. Make recommendations annually, no later than March 1st of each year, regarding maximum fees and rates for use of the Center and Club by patrons, for equipment rental, racquet repairs and memberships to include annual permit fees to assist the City in developing the coming fiscal year budget.
- M. Make recommendations and assist the City annually in planning and implementing capital improvements related to the Center and Club.
- N. As needed, make recommendations to the City related to operational policy for the Center and Club.
- O. In a City approved format, provide reports on a monthly basis, by the 15th of each month for the previous month's activities to include, but not be limited to:
 - i. Financial information such as revenues and expenses by location and by type
 - ii. Utilization rate of the Center and Club and current trends based on history and market information
 - iii. Summary of all maintenance performed
 - iv. Data regarding all tennis programs
 - v. Marketing/promotional initiatives
 - vi. Number of daily matches, lessons and court rentals by type, revenue generated and daily court conditions.
- P. Provide response and backup response to answer all alarms, such as security and fire, at the Center and Club 24 hours per day, 365 days per year.
- Q. Ensure all operations and activities, including those of Contractors subcontractors, are conducted in compliance with all laws, statutes, and ordinances including minimum wage requirements, US Citizenship and Immigration Services requirements such as E-Verify, Environmental Protection Agency (EPA), the American Disabilities Act (ADA), and Occupational Safety and Hazard Administration (OSHA) requirements such as safety data sheets (SDS).

- R. Maintain pro-shop inventory to ensure customer needs are met and keep a perpetual inventory of merchandise for resale.
- S. Maintain all chemical and pesticide application licenses as required by law.
- T. Management services on behalf of the City, for all contractual tennis events and tournaments at the Center and Club.
- U. Provide routine preventive facility and building maintenance services on the Club and Center facilities.
- V. Prepare and submit an annual marketing plan for City approval as part of the annual business plan.
- W. Maintain online presence through website, Facebook, Twitter, Instagram, Tumblr and other social media accounts with daily postings.
- X. Conduct annual customer satisfaction surveys and file a report with the City of changes that will be implemented as a result of the feedback.
- Y. Develop and implement first class quality court management programs that are sensitive to environmental conditions to ensure quality playing conditions.
- Z. Develop and conduct youth programs and clinics to include a minimum of 1 youth clinic per month.
- AA. Develop and conduct youth tennis summer camp to include a minimum of 1 week of half day camp (15 hours of tennis instruction).
- BB. Management and coordination for all film production.
- CC. Coordination with all film production companies, event management companies, and other various facility rental representatives.
- DD. Develop and implement tennis teaching programs.
- EE. Develop and implement junior tennis league.
- FF. Promote and develop a wide variety of events and programs, including junior tennis, charity events, and programs for underprivileged youth.
- GG. Management and promotion of tournaments.
- HH. Ensure other structures, equipment and irrigation systems are maintained and repaired as needed including clubhouse furniture, fixtures and equipment.
- II. Provide daily janitorial services to all restrooms.

- JJ. Act as the City liaison to all tennis events and tournaments located at the Center and Club.
- KK. Represent the City tennis, tournament and sport specific commissions.
- LL. Recruit and book collegiate tennis rentals, leagues and tournaments for the Center and Club.
- MM. Recruit and manage court and/or facility sponsorships for the Center and Club.
- NN. Each banking business day deposit all gross revenues in account of and to the credit of the City without regard to any adjustments that may be made.
- OO. Perform and report monthly inventory counts to ensure proper accountability.
- PP. Ensure that adequate internal control systems are in place in all areas of the operation.

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Exhibit B

INSURANCE REQUIREMENTS OF THE CITY OF DELRAY BEACH

The following insurance coverage shall be required.

- A. Workers' Compensation Insurance: with the statutory limits.
- B. Employers' Liability Insurance: with a limit of not less than \$100,000 for each accident, \$100,000 for each disease, and \$500,000 for aggregate disease.
- C. Comprehensive General Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence and two million (\$2,000,000) in the aggregate for Bodily Injury and Property Damage.

The Comprehensive General Liability insurance policy must include coverage that is not more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Services Offices, and the policy must include coverage's for premises and/or operations, independent contractors, products and/or completed operations for contracts, contractual liability, broad form contractual coverage, broad form property damage, products, completed operations, and personal injury. Personal injury coverage shall include coverage that has the Employee and Contractual Exclusions removed.

- D. Commercial Crime Insurance: with minimum limits of \$1,000,000 per occurrence for commercial crime covering, but not limited to, loss arising from employee theft, employee dishonesty, forgery or alteration, robbery, burglary, embezzlement, disappearance, destruction; money orders and counterfeit currency; depositors forgery; computer fraud, on-premises and in-transit.
- E. Professional Liability Insurance: with limits of not less than one million (\$1,000,000) dollars per occurrence
- F. Motor Vehicle Liability Insurance: covering all vehicles associated with Proposer's operations to include all owned, non-owned and hired vehicles. The coverage will be written on an occurrence basis with limits of liability not less than \$1,000,000.00 combined single limit per each occurrence.

All insurance policies shall be issued by companies that (a) are authorized to do business in the State of Florida; (b) have agents upon whom service of process may be made in Palm Beach County, Florida; and (c) have a Best's rating of A- VIII or better. All General Liability and Motor Vehicle Liability insurance policies shall name the City of Delray Beach as an additional insured.

Further modification of the insurance requirements may be made at the sole discretion of the City Risk Manager. Proposer agrees to abide by such modifications.

Within ten (10) days of notification of award, Contractor shall provide to City proof of insurance in the form of Certificate(s) of Insurance and applicable endorsements,

Declaration pages, or insurance policies evidencing all insurance required by this Exhibit. City reserves the right to obtain a certified copy of all policies required by this Exhibit.

Contractor shall not commence operations under the terms of this Agreement until certification or proof of insurance, detailing terms and provisions of coverage, has been received and approved by the City Risk Manager. Questions regarding insurances should be directed to the Risk Management Division at (561) 243-7150.

Coverage shall remain in force for the term of this Agreement. The Contractor agrees to notify the City within (5) business days of coverage cancellation, lapse or material modification. Proof of insurance renewal shall be provided to City prior to the expiration date. All renewal or replacement certificates of insurance shall be forwarded to the Purchasing Department located at 100 N.W. 1st Ave., Delray Beach, FL 33444.

Professional Liability Insurance, coverage shall remain in force for two (2) years after the completion of services. City shall be notified of any restriction or cancellation of coverage within ten (10) days. .

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EXHIBIT C

PERFORMANCE MEASURES

Contractor will be responsible for reporting to the City on these performance measures in a format acceptable to the City. Contractor will provide a quarterly status report that indicates current progress and identifies any deficient areas or areas of concern. Contractor shall provide an annual report every twelve months of actual performance towards these measurements. Preferably, surveys should be conducted electronically and be received from unique customer IP addresses.

Performance Measurements – Failure by Contractor to meet two or more of the Performance Measurements outlined in this Exhibit C during each one-year period of the Agreement will result in a 10% reduction in the Management Fee Contractor is entitled to receive for the successive year. In the event such failure occurs in the final year of the Agreement, Contractor shall make payment to the City in the amount of 10% of the final year's Management Fee within 30 days of Agreement termination.

If Contractor meets all performance measures in this Exhibit C during each one-year period of the Agreement, Contractor is entitled to a 10% increase in the Management Fee for the successive year. If Contractor meets all performance measures in the final year of the Agreement, the City shall make payment to Contractor in the amount of 10% of the final year's Management Fee within 30 days of Agreement termination.

Performance Measurement 1: On the customer satisfaction surveys, obtain an overall quarterly average rating of 4.2 or better on a scale of 1 to 5, with 5 being the highest.

Performance Standard 1: Conduct a random customer satisfaction survey of customers of the Delray Beach Tennis Center and Delray Swim and Tennis Club and retail operations one time every quarter issued to a minimum of 100 unique customers who have utilized the tennis courts and/or swim club during the past twelve months.

Performance Measurement 2: On the customer satisfaction surveys, obtain an overall quarterly average rating of 4.2 or better on a scale of 1 to 5, with 5 being the highest.

Performance Standard 2: Conduct a focus group discussion with players of the Delray Beach Tennis Center and Delray Swim & Tennis Club one time every quarter issued to a minimum of 50 unique customers who have utilized the tennis courts, leagues, or lessons during the past twelve months.

Performance Measurement 3: Maintain an enrollment at each clinic/special program and camp of at least 15 participants.

Performance Standard 3: Conduct a minimum of 1 youth clinic/special program per month and 1 youth summer camp especially targeting those in community groups or underserved populations who would not otherwise be able to participate in the programs (1 week of half day camp with a minimum of 15 hours of tennis instruction) at the Delray Beach Tennis Center and at the Delray Beach Swim and Tennis Club.

Performance Measurement 4: Maintain an enrollment level of at least 70,200 participants in tennis programs, court rentals, and league play at Delray Tennis Center and Delray Beach Swim & Tennis Club combined.

Standard: Conduct a variety of tennis programs geared to all demographics including seniors, youth and underprivileged families.

Performance Measurement 5: Achieve gross tennis revenue of at least \$920,000 per year at Delray Beach Tennis Center and Delray Beach Swim and Tennis Center combined with a 2% increase over the previous year for each subsequent year after 2017. Must be submitted on Monthly Report.

Standard: Market and promote the Delray Beach Tennis Center and Delray Swim and Tennis Club to increase player activity. Market and promote the tennis courts to boost sales through quarterly promotions and activities.

Performance Measurement 6: Accuracy of retail merchandise inventory must be within 1% of the reported inventory (starting inventory count + inventory received – inventory sold). Inventory received and inventory sold must be reported on Monthly Report.

Standard: Conduct a quarterly inventory of merchandise in the retail operations (conducted by two people).

COURTS & CLUBHOUSE RESTROOM MAINTENANCE

Performance Measurement 7: No more than two occurrences in any three month period in which cleanliness and stocking of the Courts and Clubhouse Restrooms and/or water coolers does not meet the standards below. The City will conduct periodic inspections to confirm stocking of supplies and cleanliness is consistently maintained. Proof of inspections and completion of tasks shall be indicated on the Daily Facility Maintenance form and will be verified by City staff during regular inspections.

(a) Courts, Clubhouse Restrooms, Stadium, & Court Maintenance Standards:

- (1) Hourly Inspections and cleaning of restrooms for the courts and in clubhouse. As required during each hourly inspection but no less than three times per day;
 - (2) Complete the tasks below to ensure restrooms are fully stocked, clean, and orderly.
- Restock supply of paper towels near sinks
 - Restock toilet tissue to include a second roll for each toilet.
 - Clean mirrors with glass cleaner

- Clean and wipe down sinks with disinfectant cleaner
- Restock toiletries
- Clean toilets and urinals with disinfectant cleaner
- Mop floors with a disinfectant cleaner
- Wipe down all shelves with disinfectant cleaner
- Wipe down all stall doors and walls with disinfectant cleaner.
- Daily court maintenance – twice daily (morning & after lunch) brushing and sweeping lines, watering of clay courts. Hard courts will be swept/blown to ensure that they are free of debris. Nets will also be checked daily and on-court cabanas will be cleaned throughout the day to ensure that they are free of debris. All court maintenance will be noted on daily inspection sheet. Water coolers will be filled each morning and checked each hour.
- Weekly inspection and removal of any weeds or algae should be manually removed and controlled with an approved chemical agent. Maintenance of drainage collection areas should take place weekly and be noted in the Maintenance section of the monthly report. Routine maintenance of irrigation system (weekly) to test lines, repair damages, must be noted in monthly report. Windscreen assessment, repair, and replacement must be completed weekly and noted in monthly report. Inspection of court lighting, replacement of bulbs as needed to ensure player safety.
- The elevator, fire alarm and stadium seats should be inspected and documented on a quarterly basis. Inspections sent to City for retention.
(b) Court Water Coolers Standard: (1) Hourly inspection of water levels in the water coolers on the courts; (2) As required during each hourly inspection but no less than three times per day, discard remaining water and replacing with fresh water; (3) One time per day prior to opening, clean and sanitize water coolers.

Exhibit D
FEES

The City will pay Contractor a flat management fee as shown below. Under this fee structure, all expenses for the Center and Club will be paid directly by the City as pass-through expenses.

Year 1	Management Fee	\$70,000
Year 2	Management Fee	\$70,000
Renewal Year 3	Management Fee	\$70,000
Renewal Year 4	Management Fee	\$70,000