

RESOLUTION NO. XX-19

A RESOLUTION OF THE CITY OF DELRAY BEACH, FLORIDA APPROVING AN AGREEMENT WITH SOUTH FLORIDA COLLEGIATE BASEBALL LEAGUE, INC., FOR USE OF ROBERT P. MILLER PARK; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT AND TAKE ALL ACTIONS NECESSARY TO EFFECTUATE THIS AGREEMENT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the City of Delray Beach ("City") is authorized to enter into agreements to provide services, programming and products in accordance with its Charter; and

WHEREAS, the League is a not-for-profit wood bat collegiate baseball league consisting of ten member-teams based in South Florida that provide amateur baseball players an opportunity to showcase themselves in hopes of reach the professional ranks; and

WHEREAS, beginning with the 2015 season, one of the League's member-teams was named the Delray Beach Lightning and played its home games at Little Fenway at Miller Park; and

WHEREAS, the City desires to enter into an agreement with South Florida Collegiate Baseball League, Inc., to permit them the continued use of the baseball fields at Robert P. Miller Park; and

WHEREAS, the City Commission deems approval of this Resolution to be in the best interest of the health, safety, and welfare of the residents and citizens of the City of Delray Beach and the public at large.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The foregoing recitals are hereby affirmed and ratified.

Section 2. The City Commission of the City of Delray Beach has reviewed and hereby approves this Agreement between the City and South Florida Collegiate Baseball League, Inc., attached hereto as Exhibit A.

Section 3. The City Commission authorizes the City Manager to execute the Agreement and any amendments and/or renewals thereto, and take any other actions necessary to effectuate this Agreement.

Section 4. This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED in regular session on the ____ day of _____, 2019.

ATTEST:

Katerri Johnson, City Clerk

Shelly Petrolia, Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, Interim City Attorney

AGREEMENT FOR USE OF ROBERT P. MILLER PARK

THIS AGREEMENT FOR USE OF ROBERT P. MILLER PARK, is entered into this _____ day of _____, 2018 by and between the CITY OF DELRAY BEACH, FLORIDA, a Florida municipal corporation (hereinafter referred to as "City") and SOUTH FLORIDA COLLEGIATE BASEBALL LEAGUE, INC., a Florida non-profit corporation, with an address of 401 Lantana Road, Suite 7, Lantana, Florida 33462 (hereinafter referred to as "League").

W I T N E S S E T H:

WHEREAS, the City owns and maintains the Robert P. Miller Park located at 1905 SW 4th Avenue, Delray Beach, FL (hereinafter referred to as "Miller Park"); and

WHEREAS, Miller Park is comprised of six lighted baseball fields, one soccer field, one multipurpose field, three concession stands, three press boxes, restrooms, a pavilion, and a playground area; and

WHEREAS, one of the baseball fields at Miller Park is a replica of Fenway Park and its "Green Monster" in Boston, Massachusetts (said field is hereinafter referred to as "Little Fenway at Miller Park"); and

WHEREAS, the League is a not-for-profit wood bat collegiate baseball league consisting of ten member-teams based in South Florida that provide amateur baseball players an opportunity to showcase themselves in hopes of reach the professional ranks; and

WHEREAS, the League's season each year lasts from June until August; and

WHEREAS, since 2014 the League used Little Fenway at Miller Park for certain games played by its member-teams; and

WHEREAS, beginning with the 2015 season, one of the League's member-teams was named the "Delray Beach Lightning" and played its "home" games at Little Fenway at Miller Park; and

WHEREAS, the City and the League desire to enter into an agreement that will grant the League first priority in scheduling games at Little Fenway at Miller Park during the period of June 1 through August 1 each year of the agreement, and to perform other functions to support the League; and

WHEREAS, all League games at Little Fenway at Miller Park will be free of any

admission fee and will offer a family-friendly outlet for entertainment during the summertime.

NOW, THEREFORE, for the mutual covenants and matters set forth herein, as of the date set forth above, the parties hereby agree as follows:

1. The recitations set forth above are incorporated herein.
2. Term. This agreement is in full force and effect upon full execution by the City and shall expire after three (3) years. This Agreement may be renewed by the Parties for up to two (2) one-year renewals upon the written consent of the Parties, which must be provided at least sixty (60) days before the expiration of this Agreement.
3. Use of Premises. The League shall be allowed to use Miller Park for the purpose of conducting its operations, as more specifically described below:
 - A. The League may use Little Fenway at Miller Park between the dates of June 1st and August 1st each year of this agreement for the purpose of conducting games of its member-teams, provided that such games must be properly scheduled in advance, in accordance with the time frames established by Subsection 2(B) below, within the discretion of the City's Director of Parks and Recreation.
 - B. The League shall have first priority in scheduling games at Little Fenway at Miller Park between the dates of June 1st and August 1st each year of this agreement. The League must advise the City no later than May 1st of each year of the schedule of games for its upcoming season.
 - C. All games conducted by the League pursuant to this agreement must be free of any admission fee to the public.
 - D. The League may sell concessions (food and non-alcoholic beverages) in order to generate revenue for fundraising purposes. All concessions must be prepared under conditions as approved by the Health Department. The League may use tents or other similar temporary structures for the sale of concessions, provided that all tents or other temporary structures must be approved in advance by the City's Director of Parks and Recreation, and by any other relevant City department.
 - E. The League may sell advertising banners in order to generate revenue for fundraising purposes. All such banners, and their placement within Miller Park, must be approved by the City's Director of Parks and Recreation in advance of

their use.

F. The League's use of Miller Park as specified in this agreement may not conflict with any other properly-scheduled use of Miller Park by any other party.

G. The League may use all other facilities at Miller Park in the same manner and to the same extent as members of the public.

4. Promises of the League. The League makes the following promises regarding its use of Miller Park as referenced above:

A. The League agrees to, at its own expense, purchase a windscreen for Odom Field at Pompey Park in 2019. The windscreen must be approved in advance by the City's Director of Parks and Recreation.

B. The League agrees to, at its own expense, condition the infield of Little Fenway at Miller Park twice per year, including but not limited to maintaining the field, drag, and add clay conditioner.

C. The League agrees to, at its own expense, purchase a new windscreen for Little Fenway at Miller Park prior to the 2022 season. Any such windscreen must be approved in advance by the City's Director of Parks and Recreation.

D. The League shall be solely responsible for all field preparations and maintenance related to its use of Little Fenway at Miller Park pursuant to this Agreement.

E. The League shall continue to support both Little Leagues and the Miracle League, by taking such action as donations, paying to attend events, hosting free clinics and special events, volunteering as umpires.

5. Rate. As further consideration for this agreement, the sufficiency of which is hereby acknowledged, the League shall pay to the City the sum of One Dollar (\$1.00) for each year of this agreement, which amount shall be due and payable to the City prior to June 1 of each year of this agreement.

6. City's right to Control Premises. The City or its designee at all times reserves the right to eject or cause to be ejected from the Premises any person or persons violating (or to keep persons from violating) any of the rules or regulations of Miller Park, or any city, county, state, or federal law, and neither the City, its designee, nor any of its officers, agents, or employees shall be liable in any manner to the League or its officers, agents, or employees for any damages which may be sustained by the League through the

exercise of this right by the City or its designee.

7. Alterations and Improvements to the Premises. Other than as specifically authorized by this agreement, the League may not make any alteration, adjustment, partition, addition, or improvement to Miller Park or Pompey Park, or any part thereof, without obtaining prior written consent of the City. All requests by the League shall be in writing and shall contain all pertinent plans and specifications. All alterations, adjustments, partitions, additions, or improvements shall, at the City's sole discretion, remain the exclusive property of the City or be removed by the League upon the City's request. In the event that the City shall request removal, the League shall perform, at its sole cost, removal in a manner that shall return Miller Park or Pompey Park to the condition in which it was received. Any cost necessary to restore or prepare Miller Park or Pompey Park for return shall be the sole responsibility of the League. All such alterations or improvements shall be made at the sole cost and expense of the League.
8. Personal Property. The League agrees that all personal property placed on or at Miller Park shall remain the property of the League, or any of its associated member-teams or invitees and shall be so placed at the risk of the League.
9. Damage and Repair of the Premises. The League shall be fully responsible for damage of any kind or nature to Miller Park caused by the use by the League or any of its associated member-teams or invitees. The League shall be fully responsible for any and all repairs or replacements deemed reasonably necessary by the City to return Miller Park to the condition existing prior to the League's use of Miller Park as specified in this agreement, normal wear and tear excluded. The League shall provide written notice to the City, in compliance with Section 22 below (Notice), of any occurrence, incident, or accident occurring on or at Miller Park or Pompey Park within 24 hours of the occurrence, incident, or accident. In the event any damage should occur to Miller Park, the League shall promptly notify the City.
10. Indemnification. The League, 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 the 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, the League, 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 the City by reason of any such claim, cause of action, or demand, the League shall, upon written notice from the City, resist and defend such lawsuit or proceeding by counsel satisfactory to the City or, at the City's option, pay for an attorney selected by the City Attorney to defend the City. The obligations of this section shall survive the expiration or earlier termination of this agreement. If the League, its agents, employees, or contractors damage or cause the destruction of any real or personal property at Miller Park or Pompey Park the League shall compensate the City for such damage or destruction within 10 days of receiving notification from the City. Nothing contained herein is intended nor shall be construed to waive the City's rights and immunities under the common law or Section 768.28, Florida Statutes, as amended from time to time.

11. Insurance. The League shall provide certificates of insurance to the City evidencing its insurance coverage and naming the City as an additional insured. Such insurance shall be in an amount and form that is acceptable to the City and shall be delivered to the City prior to the use of the Premises by the League. If the League fails to provide the certificates of insurances in a form acceptable to the City, the City may immediately terminate this agreement without notice.
12. Governing laws; venue. This agreement shall be governed by the laws of the State of Florida. Any proceeding initiated to enforce the provisions of this agreement shall be brought in the State or Federal courts located in Palm Beach County, Florida.
13. Binding Effect. All of the terms and provisions of this agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns.
14. Entire Agreement. This agreement shall constitute the entire agreement of the parties with respect to the subject matter of it. All prior understandings and agreements between the parties with respect to such matters are merged into this agreement, which

alone fully and completely expresses their understanding.

15. Amendments. This agreement may not be amended, modified, altered, or changed in any respect, except by a further agreement in writing duly executed by each of the parties hereto.
16. Third Parties. Nothing in this agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this agreement upon any person other than the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns, nor is anything in this agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this agreement, nor shall any provision thereof give any third person any right of subrogation or action over or against any party to this agreement.
17. Assignment. This agreement may not be assigned by the League without first obtaining written permission from the City, which permission shall be within the City's sole discretion.
18. Force Majeure. The City shall not be responsible for its failure to make the Premises available or to provide the facilities and services described herein, where such performance is rendered impossible and impractical due to strikes, walk-outs, acts of God, inability to obtain labor, materials or services, government restriction (other than the City), enemy action, civil commotion, fire, unavoidable casualty, utility disruptions or blackouts, or similar causes, or any other causes beyond the control of the City.
19. Inspector General. The League 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 agreement and may demand and obtain records and testimony from the League and its subcontractors and lower tier subcontractors. The League understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the League or its subcontractors or lower tier subcontractors 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.
20. Public Records. The League shall comply with all public records laws in accordance with Chapter 119, Fla. Stat. In accordance with state law, the League agrees

to:

- A. Keep and maintain all records that ordinarily and necessarily would be required by the City.
 - B. Provide the public with access to public records on the same terms and conditions that the City would provide for the records and at a cost that does not exceed the costs provided by Chapter 119, Fla. Stat., or as otherwise provided by law.
 - C. Ensure that public records that are exempt or confidential and exempt from public records disclosure are not disclosed except as authorized by law.
 - D. Meet all requirements for retaining public records and transfer, at no cost, to the City all records in possession of the League at the termination of the Agreement and destroy any public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the City in a format that is compatible with the information technology systems of the City.
 - E. If the League does not comply with this section, the City shall enforce the agreement provisions in accordance with the agreement and may unilaterally cancel this agreement in accordance with state law.
21. Termination. The City may terminate this Agreement with cause upon twenty-four (24) hours' notice, unless specified otherwise, for the League's failure to perform any of the terms or conditions of this agreement. Notwithstanding the foregoing, the City may terminate this agreement with or without cause upon sixty (60) days' notice.
22. Fiscal Funding. The City's obligation pursuant to this agreement is specifically contingent upon the lawful appropriation of funds. Failure to lawfully appropriate funds for any contract or agreement awarded shall result in automatic termination of the contract or agreement.
23. Fees and Costs. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs.
24. Notice. Any notice or communication under this agreement shall be in writing and may be

given by registered or certified mail. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given other than by registered or certified mail, it shall be deemed to have been given when delivered to and received by the party to whom it is addressed. The notices and communications shall be given to the particular parties at the following addresses:

For City:

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

With copy to:

City of Delray Beach
100 N.W. 1st Avenue
Delray Beach, Florida 33444
Attn: City Attorney

For League:

South Florida Collegiate Baseball League
401 Lantana Road, Suite 7
Lantana, Florida 33462

* * * * *

[THIS SPACE INTENTIONALLY LEFT BLANK]

* * * * *

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

ATTEST:

CITY OF DELRAY BEACH

Katerri Johnson, City Clerk

By: Mark. R Lauzier, City Manager

Approved as to form and legal sufficiency:

City Attorney

South Florida Collegiate Baseball League, Inc.

By:

Print Name: Vincent Farfaglia

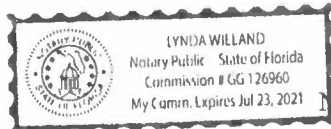
Title: President

(SEAL)

STATE OF
COUNTY OF

Florida
Palm Beach

The foregoing instrument was acknowledged before me this 30th day of January, 2021, by Vincent Farfaglia as President (name of officer or agent, title of officer or agent), of South Florida Collegiate Baseball (name of corporation acknowledging), a Florida (state or place of incorporation) corporation, on behalf of the corporation. He / She is personally known to me or has produced FOL FL 12-870-89-022-0 (type of identification) as identification.



Notary Public – State of Florida