City of Durham North Carolina

Service Contract Authorizaton

Note: Contract must be executed by Vendor prior to City Authorization

Department: Economic and Workforce Development Resource Person: Joy Mickle Date of Request: 11-16-07

Vendor: Minor League Baseball Management, LLC

Service(s) to be Provided: Operation of Durham Athletic Park

Type of Service: Routine SDBE Goals: Non Applicable
Selection Method: Other Method Other, please describe: Operating Agreement / Sole Source

Received
DEC 21 2007
Finance
Director's Office

Advertising Required: No If yes, where: _ When: _

Performance Bond Required: No

Privilege License: Yes Privilege License Number: 21014 Expiration Date: 06-30-08

Insurance Requirements: _

Contact Period Begin Date: 08-01-08 End Date: 07-31-11 Renewable Yes

Contract Amount $ 105,000 Contingency $ _ Reimbursable $ _ Total Cost $ 16,000

Multi-Year, How Many Years: 3 Current Fiscal Year Cost $ 0

Payment Terms: Montly Progress Payments: 29166.66 Responsibility Code/ Acct No. 0H070018-728600

Capital Project Ordinance # _ Grant Project Ordinance # _

Reminder of contract amt will be funded from revenues

Authorization:
City Council: Meeting Date 08-20-07 Agenda Item # 4235 City Manager: No Date: mm-dd-yy

Department Head or Designee Linda 12-11-07

Will the City Attorney's Office need to:
Review the way the Contractor has signed the contract? No
Review the way a bond has been signed? No

Does this contract have Audit Requirements? No

City Attorney Office Da

Please encumber $19562.68. The remainder will be paid from project receipts

Department of Finance Use

Contract Number 3231 Vendor# 12360 Fur

Encumbered: 12/20/07

Compliance (yes) (no) Return to Department for following correction:
per dept encumbered $19053.55

Pat Dickens

Reviewed By: LJ McClain Date: 12/20/07

NOV 26 2007 PURCHASING

NOV 16 2007 RECEIVED DEC 11 2007 PURCHASING

Sole Source Contract -

DAP OPERATING AGREEMENT

By and Between

THE CITY OF DURHAM, NORTH CAROLINA

and

MiLB MANAGEMENT LLC
A North Carolina Non Profit Subsidiary Limited Liability Company

This Operating Agreement (the "Agreement") is dated, made, and entered into as of the 31st day of December, 2007, (the "Effective Date") between the CITY OF DURHAM ("Owner" or "City") and MiLB MANAGEMENT LLC, a North Carolina non profit subsidiary limited liability company ("OPERATOR") of which THE NATIONAL ASSOCIATION OF PROFESSIONAL BASEBALL LEAGUES, INC.("NAPBL"), a non profit corporation organized under the laws of the State of Florida, having its principal place of business at 201 Bayshore Drive Southeast, St. Petersburg, FL 33701 is both the sole member and manager.

WITNESSETH:

WHEREAS, the Owner owns Durham Athletic Park (hereinafter "DAP") located in Durham, North Carolina; and

WHEREAS, the Owner is undertaking certain renovation to the DAP and desires to engage Operator to manage and operate the DAP.

NOW, THEREFORE, for and in consideration of the mutual terms and conditions hereinafter contained, and other good valuable consideration, the receipt and sufficiency all of which are hereby acknowledged, the Parties agree as follows:

1.0 PURPOSE AND ENGAGEMENT

The City of Durham, as owner of the DAP and DAP Real Property, is responsible for ensuring that the DAP is preserved for both public uses and uses that benefit the citizens of the City of Durham. The Owner finds that the Operator possesses highly-skilled and qualified management experience necessary to fully utilize and preserve the DAP as a unique and historic athletic facility for the City of Durham. In conjunction with the planned renovation of the DAP, the City hereby engages the Operator, subject to the terms and conditions of this Agreement, and Operator hereby accepts such engagement, to be the sole and exclusive manager of Events to be held during the Term of this Agreement with sole responsibility, control and discretion in the operation, direction, management and supervision of the Events.

2.0 DEFINED TERMS

2.1 Acceptance Date. "Acceptance Date" shall mean the date of issuance of the final unconditional Certificate of Compliance for the renovation of the DAP, issued by the Durham City/County Department of Inspections. The Acceptance Date may also be an earlier date mutually agreed to by the Parties.

2.2 Annual Independent Audit. "Annual Independent Audit" shall mean the audit of the DAP operations prepared by the Independent Accountant at the end of each Calendar Year, or in the event that the first year of operations is less than one full Calendar Year, at the end of such partial Calendar Year. The Annual Independent Audit shall contain the Certified Financial Statements including a report on the number and types of Events that were held.

2.3 Business Day. "Business Day" shall mean a day that is neither a Saturday, Sunday, nor a holiday observed by city government of the City of Durham. See City Code Sections 14-16(a) and 14-16(b), as amended from time to time, for information on such holidays.

2.4 Calendar Year. "Calendar Year" shall mean the period from January 1 of any year until December 31 of the same year.

2.5 Capital Expenditures Budget. "Capital Expenditures Budget" shall mean an annual budget prepared by Operator and approved by City as provided in section 15.2, reflecting the estimated costs for all Capital Expenditures planned for the next Calendar Year which, in the reasonable opinion of Operator, are necessary to keep and maintain the DAP during such Calendar Year in compliance with the Operating Standards.

2.6 Capital Expenditures. "Capital Expenditures" shall mean expenses for routine and non-routine repairs, alterations, renewals or replacements to or of the DAP Real Property or each Unit of FF&E that have a cost equal to or greater than $3,250 for each individual repair, alteration, renewal or replacement.

2.7 Certificate of Compliance. "Certificate of Compliance" shall mean the certificate referred to in N.C. General Statutes §160A-423.

2.8 Certified Financial Statements. "Certified Financial Statements" shall mean certified audited financial statements consisting of a balance sheet, a statement of earnings and retained earnings, and a statement of cash flows, accompanying footnotes to financial statements and an unqualified certificate of the Independent Accountant to the effect that the financial statements fairly present, in conformity with Generally Accepted Accounting Principles (but subject to this Agreement), the financial position, results of operations, and cash flows of the DAP for the Calendar Year then ended.

2.9 City Reserved Events. "City Reserved Events" shall be City authorized Events, including festivals, baseball games and City sponsored events held at the DAP. Such events include, but are not limited to, the Bimbe Festival, Blues Festival, Beer

Festival, and use of the DAP for baseball by the City Adult and Youth Leagues, Durham School of the Arts and American Legion.

2.10 Day. "Day" shall mean calendar day unless otherwise specified.

2.11 DAP. "DAP" shall mean the "Durham Athletic Park" name and physical structure and associated playing field located at 500 Corporation Street in Durham, NC. Throughout this Agreement, unless the context requires otherwise, "DAP" includes the DAP Real Property.

2.12 DAP Real Property. "DAP Real Property" shall mean the DAP Site and buildings and structures permanently affixed thereto, including all of the integral components, playing field and appurtenant structures and systems of such buildings or structures, including foundation, landscaping, structural, mechanical, electrical, heating, ventilating, and air conditioning systems. The DAP Real Property is further identified by the City of Durham and County of Durham as having a 6-Digit Parcel Tax ID reference number of 105169 and property PIN Parcel No. of 0822-20-80-8121. The Deed and legal description of the DAP Real Property is recorded with the Durham County Register of Deeds in Book 139, Page 489 and Plat Book 133, Page 160.

2.13 DAP Related Trademark. "DAP Related Trademark" shall mean the name "DAP" or "Durham Athletic Park" or graphic depiction, representation, logo or symbol of the DAP athletic facility used in association with the sale of a good or service. It is not necessary for a DAP Related Trademark to be actually registered (or even registerable) with a state or the United States Trademark Office to be considered a DAP Related Trademark for the purposes of this Agreement. For trademarks developed that include both DAP elements and non-DAP elements the City shall have sole ownership over the DAP elements and Operator or NAPBL shall have sole ownership over the non-DAP elements. Nothing in this Agreement shall be construed as limiting the ability of City to sell or license DAP Related Trademark goods or services in any manner.

2.14 DAP Trademark Revenue. "DAP Trademark Revenue" shall mean, with respect to any given period of time, (i) the net revenue from any sale or licensing, by the Operator, of DAP Related Trademarks to Persons other than the Owner or Operator, and (ii) the net revenue from Operator sales of goods or services using a DAP Related Trademark determined, subject to this Agreement, in accordance with Generally Accepted Accounting Principles.

2.15 Event. An "Event" shall mean any type operation or activity conducted or performed at the DAP that Operator, either on its own or in conjunction with others, arranges, and/or causes to be performed or otherwise conducted at the DAP. Events shall include (whether Minor League related or not) baseball games, baseball related practices or training, other sporting events and use, festivals, concerts, plays, operas, variety shows, cultural or arts events, exhibitions, recreational use, public meetings, rallies, group events, exhibitions, picnics, public service use, and any other permitted public and private gatherings anywhere within the DAP Real Property. Performance of such Events shall include any and all preparations, operations and cleanup before, during and after

such Event, in keeping with customary practice of similar event venues. Unless the context requires otherwise, "Event" includes the term "Event Block."

2.16 Event Block. "Event Block" shall mean a 5-hour unit of time in which an Event may occur during the portion of a Day when it is possible for multiple Events to occur in a single Day at the DAP. An example of an Event Block would be the unit of time for a baseball game, practice or training, in which such Event would occupy no more than a 5-hour unit of time during a Day of operations at the DAP.

2.17 City Reserved Events Calendar. "City Reserved Events Calendar" shall be the annual calendar prepared in association with the Operator Annual Programs List indicating in monthly calendar form, the dates and times of City Reserved Events and Event Blocks scheduled for the following Calendar Year.

2.18 Event Holder. "Event Holder" shall be the Person or Persons who use the DAP to hold an Event or Event Block whether part of a City Reserved Event or an Event organized, solicited or promoted by the Operator. An Event Holder may be the Owner or Operator.

2.19 Exempt City Reserved Events. "Exempt City Reserved Events" shall refer to non-baseball related City Reserved Events exempt from Operator responsibilities and reporting for which the Owner assumes oversight, accounting, management and responsibility. The Owner shall determine and receive any applicable Facility Rental Fee(s) from the Event Holders of Exempt City Reserved Events. Such Exempt City Reserved Events include the Bimbe Festival, Blues Festival, Beer Festival and other City sponsored events allowed under this Agreement.

2.20 Expense. "Expense" when capitalized shall mean every charge incurred by Operator in managing and operating the DAP that is reasonably necessary for the proper and efficient operation of the DAP in accordance with this Agreement, unless any such charge is specifically stated not to be an Expense under any provision of this Agreement.

The term "Expense" shall not include:

2.20.1 charges for any construction costs or improvements by City in the development of the DAP;

2.20.2 charges for any Capital Expenditures or any repair and maintenance charges or costs for Exempt City Reserved Events assumed by the City;

2.20.3 charges or costs related to the manufacture, creation or development of goods or services sold in association with a DAP Related Trademark; provided, however, that if Operator employs the services of artists to develop DAP Related Trademarks such development costs shall be included in Expenses;

2.20.4 other recurring or nonrecurring ownership costs, such as DAP debt service or DAP financing costs and expenses, administration or servicing costs associated with City's ownership activities (other than as may be specifically provided elsewhere in this Agreement), including legal and accounting fees incurred by City, all of which shall be paid by City from its own funds, and not from Gross Revenues;

2.20.5 costs and fees for legal services provided to or for Operator by individuals or firms retained by Operator prior to the Effective Date of this Agreement, regardless of whether such legal services are paid for before, on, or after the Effective Date; and

2.20.6 costs and fees for legal services provided to or for Operator by individuals or firms retained by Operator in connection with matters that are in dispute between City and Operator; all of which shall be paid by Operator from its own funds, and not from Gross Revenues, unless such costs or expenses are incurred by the Operator as a result of City's material breach of its obligations under this Agreement, subject to the applicable notice to be provided to City and City's right to cure.

2.21 **Facility Rental Chargebacks**. The charge to DAP users for rental of equipment owned by the City or Operator and used in the operation of the DAP and for labor to cover administrative and overhead costs associated with the rental of such equipment or usage of such labor. Facility Rental Chargebacks shall be treated as part of Gross Revenues.

2.22 **Facility Rental Fees**. The basic fees charged to Event Holders for the rental of the DAP.

2.23 **FF&E**. "FF&E" shall mean the furniture, fixtures and equipment necessary for or customary to the operation of similar event venues providing similar programming to the Operator-provided programming at the DAP.

Notwithstanding anything herein to the contrary, FF&E shall not include Inventories, which shall be supplied by Operator and the cost of which shall be paid from Gross Revenues and treated as an Expense.

2.24 **Force Majeure**. "Force Majeure" shall mean the acts or regulations of public authorities or labor unions, labor difficulties, strike, civil tumult, war, fire, severe weather, flood, national or local calamity, acts of public enemy or terrorism, epidemic, interruption or delay of transportation service, interruption of utilities or other municipal services, the breach of contract on the part of any third party, the unlawful act of any third party, or any cause beyond the reasonable control of the Parties. The City shall not assert in its favor that an event or act is a Force Majeure event or act to the extent that the event or act is substantially caused by the unreasonable act or omission of the City, or its officers, officials, employees, agents, contractors, or subcontractors of all tiers, but

excluding the Operator. The Operator shall not assert in its favor that an event or act is a Force Majeure event or act to the extent that the event or act is substantially caused by the unreasonable act or omission of the Operator, or its officers, members, managers, board members, employees, agents, contractors, subcontractors of all tiers, but excluding the City. Neither party shall assert in its favor that a labor dispute involving its own employees is a Force Majeure event.

2.25 "Generally Accepted Accounting Principles" or "GAAP". "Generally Accepted Accounting Principles" or "GAAP" shall mean those conventions, rules, procedures, and practices, consistently applied, affecting all aspects of recording and reporting financial transactions which are generally accepted by major independent accounting firms in the United States. Any financial or accounting terms not otherwise limited or defined in this Agreement shall be construed and applied according to Generally Accepted Accounting Principles.

2.26 Gross Revenues. "Gross Revenues" shall mean all revenues and receipts of every kind derived from Operator's operating the DAP, including: Operating Fee; Sponsorship Revenue; Net Event Concessions; Net Event Income; Net Program Advertising Income; Facility Rental Fees; Facility Rental Chargebacks; Ticket Fee income; Net Service Charge Revenue; DAP Trademark Revenue; proceeds from business interruption or other loss of income insurance; and interest received or accrued with respect to the funds in the operating accounts of the DAP; provided, however, that Gross Revenues shall not include the following: gratuities to Operator's employees; federal, state or municipal excise, sales or use taxes or any other taxes included as part of the sales price of any goods or services; proceeds from the sale of FF&E; insurance proceeds (other than proceeds from business interruption or other loss of income insurance); condemnation proceeds; or any proceeds from any sale of any part of or interest in the DAP or from the refinancing of any debt encumbering the DAP.

2.27 Including. The word "including" and any variants thereof, whether capitalized or not, shall mean "including, but not limited to" or otherwise imply that it is without limitation.

2.28 Independent Accountant. "Independent Accountant" means a firm of independent certified public accountants, or an independent certified public accountant, chosen by Operator and subject to the approval of City which shall not be unreasonably withheld, delayed or conditioned.

2.29 Inventory. "Inventory" means the goods, materials or supplies held by the Operator or made available to the Operator for day-to-day management of the DAP. Inventory includes those goods, materials or supplies necessary to meet the Operational Standards of the DAP, excluding FF&E and Capital Expenditures.

2.30 Legal Requirements. "Legal Requirements" means all material laws, statutes, ordinances, rules, regulations, permits, licenses, and requirements of all governments or regulatory authorities, that now or hereafter may be applicable to the DAP and the operation thereof, including those relating to employees, zoning, building,

health, safety and environmental matters, and accessibility of public facilities. "Legal Requirements" also includes intellectual property rights of third parties including copyright, trademarks and patents.

2.31 Operator Annual Programs List. "Operator Annual Programs List" shall mean the list of events developed by Operator identifying and scheduling Events to be held at the DAP during the subsequent Calendar Year. The Operator Annual Programs List shall include the number and description of Operator planned Events, including, where known, the dates of Events.

2.32 Operating Fee. "Operating Fee" shall mean the amount payable to Operator in accordance with section 10.1, ("Operating Fee") as compensation for Operator's management services.

2.33 Net Program Advertising Income. "Net Program Advertising Income" shall mean net income from the sale of program advertising.

2.34 Net Service Charge Revenue. "Net Service Charge Revenue" shall mean net income from the charging of a ticket service charge.

2.35 Net Event Concessions. "Net Event Concessions" shall mean net income from food, beverage, merchandise and novelty sales.

2.36 Net Event Income. "Net Event Income" shall mean the excess of Event revenues over Event expenses.

2.37 Operating Budget. "Operating Budget" shall mean the annual budget that delineates projected Gross Revenues and Expenses that is submitted to the City for informational purposes in accordance with section 10.3 (Operating Budget) in the format attached to this Agreement as "Exhibit B," which is the projected Operating Budget for the first full Calendar Year as of the Effective Date of this Agreement, and containing the information described therein.

2.38 Operating Deficit. "Operating Deficit" shall mean, with respect to any given period of time, an excess of Expenses over Gross Revenue, determined, subject to this Agreement, in accordance with Generally Accepted Accounting Principles.

2.39 Operating Profit. "Operating Profit" shall mean, with respect to any given period of time, the excess of Gross Revenues over Expenses, determined, subject to this Agreement, in accordance with Generally Accepted Accounting Principles.

2.40 Operating Standards. "Operating Standards" shall mean the operation of the DAP in a manner (i) consistent with the condition of the DAP as of the Acceptance Date (excepting normal wear and tear); (ii) consistent with the requirements and limitations set forth in this Agreement (including those relating to the Operating Budget and Capital Expenditures Budget); (iii) consistent with then current prudent business and management practices applicable to the operation, repair, maintenance and management

of a Professional Minor League Baseball stadium capable of hosting professional baseball games and Events; (iv) at least as good as standards applicable to other similar situated venues; (v) consistent with keeping the DAP in a clean, sanitary and attractive condition and (vi) reasonably calculated to protect and preserve the assets that comprise the DAP in compliance with Legal Requirements.

2.41 Parties. "Parties" shall mean the parties to this Agreement.

2.42 Person. "Person" shall mean an individual, corporation, limited liability company, firm, partnership, association, organization, any group acting as a unit, and any body politic or unit of government.

2.43 Plans and Specifications. "Plans and Specifications" means those certain plans and specifications relating to the renovation of the DAP prepared by an architect or engineer and approved by the City, including all change orders and amendments to the same.

2.44 Prohibited Uses. "Prohibited Uses" shall mean football, soccer, circuses, events that feature the operation of motor vehicles on the playing surface of the DAP, and events, which by their nature, will cause damage to the DAP playing surface and/or physical structures or events that may unreasonably disturb the neighboring businesses and residents near and around the DAP.

2.45 Repair and Maintenance. Subject to the definition of Capital Expenditures and additional description as provided under section 15 ("Repair, Maintenance and Improvements"), "Repair and Maintenance" shall generally refer to any and all repairs, maintenance, alterations, improvements, renewals or replacements to the DAP Real Property, FF&E or items to be leased, supplied, maintained and replaced.

2.46 Sponsorship Revenue. "Sponsorship Revenue" shall mean revenue from any advertising, sponsorship, promotion, marketing and naming rights in, on or around the DAP including the placement of any signage, including graphic or electronic communications, billboards or kiosks in, on or around the DAP. Any such signage place in, on or around the DAP shall be properly permitted and in keeping with the historic nature of the DAP and conform to Legal Requirements. Sponsorship Revenue shall include cash from the sponsor in return for various DAP related benefits.

2.47 Term. "Term" shall have the meaning defined in section 14.

2.48 Ticket Fees. "Ticket Fees" shall mean ticket fees charged, including any related surcharges, on all tickets sold for Events. There will be no Ticket Fee assessed on tickets given away as "comp" or "complimentary" tickets. Notwithstanding anything in this definition to the contrary, nothing in this definition shall prevent the Operator from charging any other surcharges on tickets for Events.

2.49 Unit of FF&E. A "Unit of FF&E" shall mean an individual item of FF&E, or compatible operating system of FF&E items, which is usable for its intended

function and cannot be separated without the diminishment in the usability of the item for its intended purpose. By way of example, each stadium seat shall each be treated as one Unit of FF&E.

3.0 OPERATOR RIGHTS AND RESPONSIBILITIES.

The Owner confers to the Operator powers and authority over management, control and operation of the DAP and DAP Real Property subject to the terms of this Agreement, existing deed restrictions and other restrictions described in attached hereto. Without limiting the generality of the foregoing, Operator shall be authorized to make decisions and take actions with respect to, among other matters:

3.1 Operator Employment Decisions and Control. Subject to the terms of this Agreement, Operator shall control and determine the hiring, supervision and replacement of its employees.

3.2 DAP Operating Policies and Procedures. Operator shall develop, establish and implement DAP operating policies and procedures for management and operation of Events to be held at the DAP. The DAP operating policies and procedures shall outline how the Operator will maintain the Operating Standards of the DAP for Events.

3.3 Ticket Sales and Content. With the exception of City Reserved Events, the Operator shall be responsible for all box office ticket sales operations for Events, including determination of ticket content and graphics.

3.4 DAP Real Property Sponsorship and Advertising. Except as otherwise provided herein, Owner grants to Operator the authority to determine and control advertising, sponsorships, promotions, marketing and naming rights in, on or about the DAP in connection with holding Events at the DAP, including the placement of additional graphic and electronic advertising signs, billboards and kiosks in, on or about the DAP consistent with Legal Requirements.

3.5 Concessions and Merchandise Sales. Except as otherwise provided herein, Operator shall control and determine concession and merchandise sales and all other revenue generating operations relating to Events. Such control shall include decisions regarding subcontractors or agents such as concession companies.

3.6 Event Determination and Promotion. Except as to City Reserved Events, Operator shall control and determine the character and nature of promotional events, contests and merchandise pertaining thereto, to be held at the DAP.

3.7 Inventories and Supplies. Except as to Exempt City Reserved Events, Operator shall be responsible for the creation and maintenance of Inventories and supplies and equipment relating to Events.

3.8 Utilities. Operator shall be responsible for the arrangement of gas, electricity, telephone and other utilities necessary for the Events. Operator shall be responsible for payment of all utility bills and arrangement of temporary utilities. In the event of an outage, the Operator shall be responsible for arranging for necessary repairs unless such outage is the result of a problem that would be a Capital Expense under this Agreement.

3.9 Revenue and Cash Management. Except as to Exempt City Reserved Events, Operator shall be responsible for the full accounting and management of all revenues and cash management relating to the Gross Revenues generated pursuant to this Agreement and such information shall be included as part of Operator's Certified Financial Statement.

3.10 Event Booking and Record Keeping. Except as to Exempt City Reserved Events, Operator shall maintain and keep records of all booking and records of maintenance of all Events, internal accounting and business administration. Such record keeping shall be included as part of Operator's Certified Financial Statement.

3.11 Financial Report of Events. In accordance with section 10, "DAP Operating Financial Terms," and except as to Exempt City Reserved Events, Operator shall be responsible for and maintain all financial reporting for Events including delivery to Owner of year audited Certified Financial Statements prepared in accordance with GAAP following the end of each Calendar Year during the Term.

3.12 Payment of DAP Related Operating Expenses. Except as to Exempt City Reserved Events, Operator shall be responsible for payment of all Expenses relating to the operations of the DAP pursuant to the Agreement.

3.13 Safety Program. Operator shall develop, implement and maintain in effect for the DAP a bona fide safety program in compliance with Legal Requirements to include employees and the public, and maintain an emergency evacuation plan for the DAP.

3.14 Waste Removal and Reduction Program. The Operator shall provide for trash and solid waste removal and disposal, and other related services. Operator agrees to develop and follow a solid waste reduction program to reduce the volume of solid waste generated from the use and occupancy of the DAP including, but not limited to, concessions and Operator administrative offices. This program shall include recycling.

3.15 Fireworks. The parties recognize that firework displays are customary outdoor entertainment in conjunction with baseball games. The parties also recognize that firework displays within the City require and are subject to the prior approval of the City on a case-by-case basis. Subject to such approval and Legal Requirements, firework displays may be held in or about the DAP.

4.0 LIMITATIONS ON OPERATORS AUTHORITY.

Notwithstanding section 3.0, Operator shall not take any action with respect to any of the following items without the prior written approval of Owner, which shall not be unreasonably withheld, delayed, or conditioned:

4.1 DAP Asset Encumbrances. Operator is prohibited from creating any encumbrance upon any DAP asset or property.

4.2 Debt Obligations. Operator is prohibited from entering into any guarantee of, or obligation for, borrowed money under which Owner has payment liability.

4.3 Future Contractual Obligations. Operator is prohibited from entering into any agreement or arrangement that provides for monetary or other commitments on the part of Owner after the Term without the written consent of Owner.

4.4 Prohibited Uses. The Operator shall neither engage in nor schedule any Prohibited Uses without the prior written approval of the Owner. Operator shall consult with Owner regarding any proposed Prohibited Uses.

4.5 DAP Name. The Operator may not alter, change or add to the name of athletic facility referred to as the "Durham Athletic Park" or "DAP." The City retains all ownership and rights in the use of the name "Durham Athletic Park" or "DAP."

5.0 MINOR LEAGUE BASEBALL LOGOS AND DAP BRANDING.

Subject to the City's Ownership rights in the use of the name "Durham Athletic Park" or "DAP," Operator shall have the right to develop and market DAP Related Trademarks for promotional and other purposes whether or not in connection with a Minor League Baseball Museum; provided however, that the name of the DAP or "Durham Athletic Park" may not be changed or altered in any way when making reference to the athletic facility. If Operator makes reference to the "DAP" or "Durham Athletic Park" in promotional, informational or advertising materials (in any media), the Operator will reference that the "DAP" or "Durham Athletic Park" is owned by or is the property of the City of Durham if Operator determines that it is reasonable to do so.

5.1 Use of DAP Related Trademarks. Operator shall not use, assign or license any DAP Related Trademark in association with the sale of any good or service without prior written consent of the Owner, unless such good or service is sold (i) in direct connection with an Event at the DAP, or (ii) the transaction occurs on, within or about the DAP Real Property.

5.2 [RESERVED]

6.0 CONDUCT OF OPERATOR

Operator shall at all times maintain its Operating Standards at a high professional, businesslike level consistent with comparable Minor League Baseball stadiums.

7.0 CITY RESERVED EVENTS

The Operator shall guarantee the availability of the DAP for City Reserved Events during each Calendar Year of the Term of the Agreement.

7.1 Exempt City Reserved Events. The Owner reserves and retains the right to use and occupy, and authorize the use and occupancy of, the DAP for City (or otherwise) sponsored Events, as indicated below, free of any Facility Rental Fee or use fee to the Operator. The Owner shall determine and receive, if appropriate, the applicable Facility Rental Fee(s) from the Event Holders of Exempt City Reserved Events. Event Holders are responsible for all setup and cleanup related to Exempt City Reserved Events. Such Exempt City Reserved Events shall include the following:

7.1.1 The Annual Bimbe Cultural Arts Festival ("Bimbe Festival") – The Operator shall make available the DAP for the City Sponsored Bimbe Festival to be held on the Saturday and Sunday the week prior to Memorial Day in May of each Calendar Year of the Term of the Agreement. The Bimbe Festival shall require one day of setup on the Friday prior to the Event and one day of cleanup on the Monday following the Event, for a total number of four (4) days.

7.1.2 Bull Durham Blues Festival ("Blues Festival") -- The Operator shall make available the DAP for the Bull Durham Blues Festival, currently sponsored by the St. Joseph's Historic Foundation Hayti Heritage Center, to be held, typically, on the Friday and Saturday of the 2nd week in September of each Calendar Year of the Term of this Agreement. The Blues Festival shall require two days of setup immediately prior to the Event days and two days of cleanup immediately following the Event days, for a total number of six (6) days. The Owner shall determine and receive any applicable Facility Rental Fee from the Event Holder for the Blues Festival.

7.1.3 World Beer Festival ("Beer Festival") -- The Operator shall make available the DAP for the Beer Festival to be held, typically, on the 1st Saturday in October of each Calendar Year of the Term of the Agreement. The Beer Festival shall require two Days of setup immediately prior to the Event day and two days of cleanup immediately following the Event day, for a total number of five (5) days. The Owner shall determine and receive any applicable Facility Rental Fee from the Event Holder for the Beer Festival.

7.1.4 Other City Sponsored Events – The Operator shall make available the DAP for up to ten (10) additional Days for Events sponsored by the City during the Calendar Year to be free of rental or use fees. Such City sponsored Events shall not be for profit, and the use or occupancy of the DAP for such City sponsored Events shall not conflict with previously scheduled Events. Owner may identify and schedule up to ten (10) additional Days during the development

of the Operator Annual Programs List prior to each Calendar Year or may schedule such additional Events during the Calendar Year after Owner has consulted with the Operator and the Operator has approved the date such that it does not conflict with a previously scheduled Event.

7.2 Baseball Related City Reserved Events. The Owner reserves and retains the right to use and occupy, and authorize the use and occupancy of, the DAP for baseball related City Reserved Events. The Event Holders for baseball related City Reserved Events shall have access to the field, dugouts, restrooms and parking areas but not the clubhouse or any Operator controlled office, administrative or storage areas. Such City Reserved Events and established rental fees, if applicable, are as follows:

7.2.1 City Parks and Recreation Sponsored Baseball League Games ("Adult and Youth Baseball League Games") – No Facility Rental Fees –The Operator shall make available the DAP for City Parks and Recreation sponsored Adult and Youth League Games be held during the baseball season on scheduled Event Days or Event Blocks. Adult and Youth Baseball League Games shall have use of the DAP free of any Facility Rental Fees. The total number and dates of such Events or Event Blocks shall be established by the Owner prior to the start of a Calendar Year during the development of the Operator Annual Programs List and the City Reserved Events Calendar and shall not exceed 22 days.

7.2.2 DSA and American Legion Baseball Games – Agreed to Facility Rental Fees -- The Operator shall make available the DAP for the baseball games for the Durham School of the Arts (DSA) and American Legion baseball games for the Term of this Agreement to be scheduled on the City Reserved Events Calendar prior to each Calendar Year. Operator shall charge the following Facility Rental Fees per 5-hour Event Block and hourly usage of stadium lights for night games. The total number and dates of such Events or Event Blocks shall be established by the Owner prior to the start of a Calendar Year during the development of the Operator Annual Programs List and the City Reserved Events Calendar and shall not exceed 24 days.

DSA AND AMERICAN LEGION BASEBALL GAME FACILITY RENTAL FEES	
Event Block Fee*	**Stadium Light Usage Fee**
$ 135.00 per Event Block	$18.00 per hour

* Event Block Fee and Stadium Light Usage Fee shall be assessed based upon the actual number of Event Blocks scheduled and actual hours of stadium light usage required.

7.3 Access During City Reserved Events. Operator's employees shall have access to the DAP and DAP Real Property at all times during City Reserved Events.

7.4 **Consultation with Operator.** The City and/or Event Holder of an Exempt City Reserved Event shall consult with Operator's DAP Operations Manager and Field Supervisor before engaging in setup or tear down for an Exempt City Reserved Event. The setup and tear down plan shall be subject to review by, and consultation with, Operator, which review and consultation shall not be unreasonably withheld, delayed or conditioned. Owner and Operator shall also consult regarding the areas of the DAP to have restricted access during Exempt City Reserved Events.

7.5 **Use of Vendors, Advertisers and Concessions for Exempt City Reserved Events**. The Operator shall allow the Event Holder of an Exempt City Reserved Event to use its own vendors, advertisers and concessions sales for its Event unless the Event Holder requests and Operator agrees to participate in providing such vendors or concessions sales. All expenses and proceeds for the use of Event Holder vendors and concessions at Exempt City Reserved Events shall belong to the Event Holder and shall not be considered an Expense or Operating Revenue pursuant to this Agreement. Advertising and other signage brought to the DAP for Exempt City Reserved Events by Event Holders shall not block or obscure the signage of Operator's sponsors.

7.6 **City Reserved Events Conflict Consultation**. Notwithstanding any other conflict resolution provision herein, if an Event Holder of a City Reserved Event has a conflict with any of the policies or procedures established by the Operator for use of the DAP for the City Reserved Event, the Event Holder may request that the Owner consult with the Operator to resolve any such conflict or dispute. The Owner and Operator agree to make all reasonable efforts to resolve such conflict or dispute.

7.7 **Preservation of City Reserved Events**. If during the Term of the Agreement, an Event Holder of a City Reserved Event (or Event Block(s)) elects to cancel or not use City Reserved Event date(s) as originally scheduled for the Calendar Year and described in this section 7.0, the City shall have a first option of filling such dates or vacancies subject to the consultation and Event non-conflict requirements of section 7.1.4.

7.8 **Costs Associated with Exempt City Reserved Events.** Unless explicitly specified otherwise in this Agreement, the City and the Event Holder of an Exempt City Reserved Event shall be solely responsible for all costs, including setup, cleanup, security, and wear and tear associated with such City Reserved Event.

7.9 **Damage to DAP or DAP Real Property.** The City and/or the Event Holder of an Exempt City Reserved Event shall be solely responsible for all costs and repairs relating to damage to the DAP, DAP Real Property or FF&E arising out of an Exempt City Reserved Event. Operator will consult and cooperate with City regarding such repairs and will use good faith efforts to promptly identify any such damage following an Exempt City Reserved Event. In the event of damage to the DAP, DAP Real Property or FF&E arising out of an Exempt City Reserved Event the City shall make repairs consistent with the requirements of Section 15.

7.10 Insurance and Indemnification. The City shall either require the Event Holder of the Exempt City Reserved Event to secure insurance relating to the Event Holder's use of the DAP or the City shall secure insurance for such Exempt City Reserved Event. Such insurance shall, at a minimum, meet the insurance requirements for Operator provided in section 17 of this Agreement, name Operator and NAPBL as additional insureds and provide that such additional insured coverage shall be primary and non-contributing.

Prior to holding an Exempt City Reserved Event the City shall require the Event Holder of the Exempt City Reserved Event to indemnify and hold the Operator Indemnitees (as defined in section 19) harmless in writing from and against any and all Claims (as defined in section 19) arising out of such Exempt City Reserved Event except for Claims arising out of the gross negligence or intentionally wrongful acts of Operator. The City shall provide a copy of such indemnification, along with an original copy of the insurance certificate naming Operator as an additional insured to Operator at least ten business days before the Exempt City Reserved Event.

The City or Operator may require the Event Holders of baseball related City Reserved Events to secure insurance relating to that Event Holder's use of the DAP.

8.0 USE OF DAP BY NORTH CAROLINA CENTRAL UNIVERSITY (NCCU)

Among other Events, Owner and Operator agree to work with North Carolina Central University ("NCCU") towards a usage agreement under which NCCU would pay Operator $20,000 per baseball season during the Term to play its men's varsity baseball games at the DAP. Operator shall reserve at least two (2) physical advertising or sponsor locations in the DAP Real Property in prominent locations to be used by NCCU sponsors or advertisers during NCCU's games for the purpose of generating advertising revenues exclusively for NCCU. The location, type and size of advertising space reserved for NCCU use shall be agreed upon between the Operator, Owner and NCCU.

9.0 OPERATOR ANNUAL PROGRAMS LIST AND CITY RESERVED EVENTS CALENDAR

Prior to January 1 of each Calendar Year, Owner and Operator shall meet and confer to develop calendaring of Events for the upcoming Calendar Year. The Operator Annual Programs List together with the City Reserved Events Calendar shall identify all known Events to be scheduled for the following Calendar Year including each calendar Day of the Event or Event Block(s) and times, where applicable. The combined annual Programs List and City Reserved Events Calendar shall include all Days required for Event setup and cleanup. If the subject Event or Event Block is a City Reserved Event, rental fees shall be indicated, if applicable. The City Reserved Events Calendar shall show each month of the Calendar Year and the date and time(s) of the Event or Event Block. A sample of the Operator Annual Programs List is provided as Exhibit C and the City Reserved Events Calendar as Exhibit D.

10.0 DAP OPERATING FINANCIAL TERMS

10.1 Operating Fee. Owner shall pay Operator an annual operating fee of Thirty-Five Thousand Dollars ($35,000.00) per Calendar Year during the Term of the Agreement. Payment of the Operating Fee shall be made in twelve (12) equal monthly installments, with the first payment due upon the Acceptance Date. The Operating Fee, and monthly installment (if applicable), shall be prorated, as appropriate, for any partial Calendar Year, or calendar month, that the Term may run.

10.2 Potential Operating Deficits. Except to the extent that (a) Force Majeure events and acts prevent Operator from holding Events safely and in compliance with Legal Requirements, and (b) except to the extent that City breaches its obligations under this Agreement to make Capital Expenditures that are necessary and which prevent the Operator from holding Events, Operator shall guarantee all annual Operating Deficits for the DAP for the duration of the Term. If Operator terminates this Agreement because of City's material breach of this Agreement, the preceding sentence does not require Operator to guarantee Operating Deficits that accrue after the termination. If there is an Operating Deficit in the operation of the DAP during the Term, Operator shall continue to fulfill all of its obligations in this Agreement and shall not look to the City for additional money to make up any of the Operating Deficit. For instance, if for any reason Gross Revenues are less than the cost borne by Operator to maintain and operate the DAP as required and to perform all of its other obligations under this Agreement, Operator shall not be entitled to receive any money from the City except whatever money the City is required to pay under this Agreement.

10.3 Operating Budget. Operator shall exclusively manage the day-to-day operations of the DAP. The Operating Budget shall be the responsibility of the Operator and funded from Gross Revenues, provided that the preceding clause does not limit section 10.2 (Potential Operating Deficits). A copy of the Operating Budget shall be provided by the Operator to the City for informational purposes not less than 60 days before the end of each Calendar Year. The Operator shall provide to the City for informational purposes, not less than 60 days before the Acceptance Date, the Operating Budget for the period from the Acceptance Date through the next December 31. The Operating Budget (Exhibit B) shall also include the projected number and types of Events for the first full Calendar Year.

10.4 Annual Independent Audit. Operator shall present to the City, within 120 days after the end of each Calendar Year, a draft Annual Independent Audit. The Parties shall have 30 days thereafter to review and comment. If neither Party provides comments for the Independent Accountant within that 30-day review and comment period, then the draft Annual Independent Audit shall be considered the final Annual Independent Audit. If either Party makes such comments, then the Operator shall present the final Annual Independent Audit to the City no later than 30 days from the end of the 30-day review and comment period. The cost of each Annual Independent Audit shall be treated as an Expense. Any additional audit work (not required as part of the Annual Independent Audit pursuant to other sections of this Agreement) will be paid for solely by the requesting Party. The City's communications to the Independent Auditor will be done through the Operator rather than directly to the Independent Auditor.

Notwithstanding the preceding sentence, the City shall be entitled to communicate directly with the Independent Auditor regarding inquiries and clarifications regarding the Annual Independent Audit.

10.5 Right to Inspect Financial Records and Accounting Information. Notwithstanding the Annual Independent Audit, and upon 5 days advance notice, the City shall have the right to inspect all of Operator's financial and accounting records relating to the operations and management of the DAP pursuant to this Agreement.

10.6 Distribution of Operating Profit to City. If an Operating Profit is made at the end of the Calendar Year during the Term of the Agreement, Operator shall make payment to the Owner equal to 30% of said Calendar Year Operating Profit within 30-days after the end of the subject Calendar Year. Operator shall retain the 70% remainder of the Operating Profit for the subject Calendar Year. If after the Annual Independent Audit, an adjustment is made to the Operating Profit for the subject Calendar Year, Operator and Owner agree to adjust the previously made Operating Profit payment to the Owner, as appropriate to reflect a payment of 30% of the Operating Profit amount determined by the Annual Independent Audit.

11.0 EXCUSED PERFORMANCE UNDER FORCE MAJEURE.

Neither the Operator nor Owner shall be liable for any failure or delay in the performance of its obligations pursuant to this Agreement (and such failure or delay shall not be deemed a default of this Agreement or grounds for termination hereunder) so long as the failure or delay in performance of any such obligation is caused by a Force Majeure.

12.0 OWNER OBLIGATION TO PROVIDE ACCESS: EXCLUSIVE POSSESSION AND USE.

Owner shall take all such action as shall be necessary or which Operator shall reasonably request in order to ensure that Operator and other persons providing services hereunder shall have access to the DAP and all surrounding areas owned or controlled by Owner for purposes of fulfilling Operator's obligations hereunder, and quietly enjoy the rights afforded to Operator without hindrance, disturbance or molestation by Owner or any other person. Subject to the terms of this Agreement, Operator shall be entitled to the possession and use of the DAP and all ancillary facilities (e.g. parking lots) during the Events.

13.0 ENCUMBRANCES

Owner represents there exist no encumbrances on the DAP Real Property and shall consult with Operator prior to creating any such encumbrances.

14.0 TERM; TERMINATION; OPERATION, NON-ABANDONMENT

14.1 Term; Option to Extend or Renegotiate New Term. The term of this Agreement shall be three (3) years from the Acceptance Date, unless earlier terminated as provided in this Agreement. If, prior to the expiration of the first Term of this Agreement, it is determined that a Minor League Baseball Museum will be built in Durham, Operator shall have a first right of refusal to extend this Agreement, subject to City approval, or renegotiate a new agreement with the Owner for two additional five (5) year terms. Operator must provide Owner at least 6-months prior written notice, if it elects not to extend or renegotiate the terms of the Agreement. Such option to extend or renegotiate does not restrict City's right to terminate this Agreement in accordance with the provisions of section 14.2. The Parties shall make a good faith effort to negotiate successive renewal options upon terms mutually agreeable to the Parties.

14.2 Termination. The City and Operator shall each have the right to terminate this Agreement upon 60 days advance notice in the event of a material breach of this Agreement by the other Party. Operator shall have the right to terminate this Agreement upon 60 days advance notice in the event City materially breaches its obligation to make a Capital Expenditure that is necessary to allow the Operator to perform its obligations hereunder. The 60-day notices shall describe all of the reasons for the termination. The Agreement shall not be terminated under this subsection for breaches as to which the Party receiving the notice commences correction or cure within 15 days of receiving notice, continues to diligently pursue correction or cure, and during the 60-day period makes substantial progress in correcting or curing (with delays caused by events of Force Majeure being excused with respect to all provisions of this subsection), or for breaches that are corrected or cured during the 60-day period.

14.3 Peaceful Surrender. The Operator shall, upon the expiration or earlier termination of this Agreement for any reason, peacefully surrender to the City the DAP.

14.4 Continuous Operation; Non-Abandonment. Regardless of operational results, Operator shall continuously operate the DAP and comply with its obligations under this Agreement during the Term, shall not abandon the DAP, and shall use commercially reasonable efforts to reasonably maximize DAP usage subject to Force Majeure.

15.0 REPAIR, MAINTENANCE AND IMPROVEMENTS

15.1 Operator Responsibility for Repairs and Maintenance. Operator shall maintain the DAP Real Property and make or cause to be made all Repairs and Maintenance necessary to keep the DAP Real Property in compliance with the Operating Standards. Operator shall be responsible for Repairs and Maintenance costs and operating fees and expenses that are related to, or arise in connection with operation of the DAP including necessary routine repairs and preventative maintenance, except for Repairs and Maintenance costs, operating fees and expenses that are related to, or arise in connection with the operation of Exempt City Reserved Events which shall be the responsibility of City consistent with the requirements of this Section 15. The Operator and City represent and warrant that any Repairs and Maintenance shall be completed in compliance with all Legal Requirements. The cost of Repairs and Maintenance incurred

by Operator shall be treated as an Expense in determining Operating Profit; provided, however, that in no event shall the responsibilities of Operator include the obligation to repair, or otherwise maintain, the structural integrity of the DAP that constitute Capital Expenditures or other matters relating to construction renovation defects. Construction renovation defects are defects in design, materials or workmanship in the renovation of the DAP.

Operator Repair and Maintenance responsibilities of the DAP Real Property shall include:

15.1.1 Keep and maintain the playing field in a good, first-class condition suitable for baseball games, including but not limited to all natural turf areas, all dirt areas, dugouts, foul lines and foul territory, base paths, pitcher's mound, bullpens, warning track, and coach's boxes. The Operator shall provide such field maintenance equipment (including a suitable covering for the playing field during inclement weather) and groundskeeping and other field maintenance services as are appropriate to maintain a quality playing surface for baseball game. Prior to baseball games for which the Operator may oversee pursuant to this Agreement with the Owner, the Operator shall prepare and line the playing field. The Operator shall perform and pay all costs of field restoration required as a result of damage to the playing field caused by, during or in connection with any baseball games and other Events performed at the DAP other than Exempt City Reserved Events for which the City will be responsible.

15.1.2 Keep and maintain in good repair and condition the hitting screen, batting cage and all other on-field baseball FF&E provided at the DAP by the Owner or Operator on the Acceptance Date. Unless initially provided by the Operator, the Operator shall not be responsible for replacement of such equipment if it becomes unrepairable through normal wear and tear.

15.1.3 Provide or cause to be provided all FF&E for the Operator administrative offices, Operator souvenir store, and any portion of the DAP Real Property occupied or controlled by the Operator. The Operator shall keep and maintain in good order, repair and condition the home and visiting team occupied spaces, manager's offices, and all other spaces occupied or controlled by the Operator (except for the structural components of the DAP Real Property subject to Capital Expenditures). The Operator shall be responsible for replacing burned out stadium light bulbs and light bulbs present in any scoreboard(s) and any portion of the DAP Real Property occupied or controlled by the Operator. The Operator agrees to subcontract for the replacement or repair of stadium and/or scoreboard light bulbs and associated routine replacement parts. The Operator shall be responsible for painting any areas of the Premises occupied or controlled by the Operator in colors satisfactory to the Owner.

15.1.4 Maintain, repair, and be responsible for replacement of any FF&E provided by the Operator.

15.1.5 For Events other than Exempt City Reserved Events, provide for, or cause to be provided, janitorial and housekeeping services and supplies in the all areas of the DAP Real Property. Janitorial services shall include dumpsters for waste removal and pest control services,

15.1.6 Operator shall have, on-call 24 hours a day, seven days a week, an employee available to respond to DAP Real Property related maintenance, repair and security issues that may arise.

15.2 Owner Responsibility for Improvements and Capital Expenditures. Owner shall make all Capital Expenditures to the DAP Real Property that are necessary in order not to interfere with the Operator's abilities (i) to comply with the Operating Standards and (ii) to safely operate the DAP. The Owner represents and warrants that any Capital Expenditure shall be completed in compliance with all Legal Requirements and subject to the discretionary authority of the City Council. Each Calendar Year after the Acceptance Date, Operator shall submit to the Owner, in accordance with the Owner's Capital Improvement Program (CIP) schedule (as the same may be amended from time to time), the Capital Expenditures Budget for the next Owner's fiscal Year. In preparing and submitting the Capital Expenditures Budget, Operator shall provide details requested by the Owner and any supporting documentation necessary and reasonably requested by the Owner to establish the need for the Capital Expenditure and the Operator's estimate of its cost, including all estimated soft costs, design fees, construction, permitting, fees, allowances, overhead and contingencies. The Owner shall have until the following June 30 to review and approve such Capital Expenditures Budget, such approval not to be unreasonably withheld with respect to Capital Expenditures that are required, in Operator's reasonable judgment, to keep the DAP in compliance with the Operating Standards. Thereafter, the Parties will attempt to resolve in good faith any objections so specified by Owner. Owner shall proceed with the implementation of any portion of such Capital Expenditures Budget that is not in dispute, subject to section 15.2.1. If Owner refuses to make any Capital Expenditure that it is required by this Agreement to make, then Owner shall assume the liability, if any, caused by that refusal.

15.2.1 The Parties acknowledge and agree that the implementation of approved Capital Expenditures may take months or even years to complete, depending upon the available funding and the activities taking place at the DAP. The Parties agree to work diligently and in good faith to arrange a reasonable schedule for the completion of Capital Expenditures that accommodates the Owner's funding schedule and minimizes disruption to DAP activities. The Owner shall be responsible for the procurement of contractors for Owner-approved Capital Expenditures, provided that Owner may, in its discretion, use its own forces instead of or in addition to contractors for such work.

15.2.2 Operator shall make no Capital Expenditures without the express written approval of Owner. Owner may, in its sole discretion, delegate authority to Operator to undertake any of the activities contemplated in undertaking a Capital Expenditure, on such terms and conditions as are mutually acceptable to

the Parties. In the event that a Capital Expenditure must be undertaken which has not been provided for in the Capital Expenditures Budget, including in an emergency situation, Operator shall notify the Owner General Services Department of such needed Capital Expenditure. Upon notice, Owner shall promptly and diligently take such actions as are reasonably necessary to complete such Capital Expenditure as quickly as reasonably possible, funding and DAP schedule permitting. If (i) the failure to complete such Capital Expenditure within a given period of time would necessitate the cancellation of the next Event scheduled after Operator notifies Owner of such needed Capital Expenditure; and (ii) the Capital Expenditure should reasonably be able to be completed within that period of time, then Owner shall be required to complete such Capital Expenditure within that period of time.

15.2.3 In an emergency situation, if (i) Operator has notified Owner of such needed Capital Expenditure, and (ii) Owner has not responded within a reasonable period of time, but in any event not later than 5 (five) Business Days, Operator shall be entitled to undertake such Capital Expenditure. Within a reasonable period of time after receipt from Operator of full and detailed documentation of any Capital Expenditure in the form of contracts, plans and specifications if any, and paid invoices, and other documentation reasonably requested by Owner, Owner shall reimburse Operator for Capital Expenditures undertaken by Operator pursuant to this section, provided that Operator has complied with applicable state procurement and contracting statutes. Operator shall take such reasonable measures to notify Owner of emergency repairs that may be an insurable loss, with the reasonable exigencies of operational needs. "Emergency" is used in this section means cases of special emergency involving the health and safety of the people or their property.

15.2.4 For purposes of interpreting this section 15.2.4, but only this section 15.2.4, the capitalized word "Repair" means "repair, maintenance, alteration, improvement, renewal or replacement." If (i) a Repair is necessary to keep the DAP in accordance with the Operating Standards, (ii) the Repair is not explicitly defined in this Agreement as a Capital Expenditure or as Repair and Maintenance, and (iii) Operator and Owner disagree as to whether it should be treated as a Capital Expenditure or as Repair and Maintenance, then such Repair may be undertaken and the cost thereof paid out of Gross Revenues as if it were Repair and Maintenance if it is less than $3,250 per each individual Repair of the DAP Real Property or each Unit of FF&E; or paid by the Owner as if it were a Capital Expenditure if it is equal to or greater than $3,250 per each individual Repair of the DAP Real Property or each Unit of FF&E. Whichever Party undertakes such a Repair shall make available and subject to audit full and detailed documentation in the form of contracts, plans and specifications if any, and paid invoices upon completion of each such Repair and such other documentation as the other Party reasonably requests. As part of the Annual Independent Audit performed after the end of each Calendar Year, the Independent Accountant shall determine whether such Repair should be treated as a Capital Expenditure or as Repair and Maintenance. If the Independent

Accountant determines that such Repair was treated as a Capital Expenditure and paid for by Owner when it should have been treated as Repair and Maintenance and paid for as an Expense, the Financial Statements shall be adjusted to correctly reflect the cost as an Expense, and the Operator shall reimburse the Owner for 100% of the cost, at the time that the Operator also remits to the Owner its 30% share of Operating Profit, or if there is no Operating Profit, at the time that the Operator would have been required to remit the 30% share. If the Independent Accountant determines that such Repair was treated as Repair and Maintenance and paid for as an Expense when it should have been treated as a Capital Expenditure and paid for by Owner, the Financial Statements shall be adjusted to remove the cost as an Expense, and the Owner will reimburse Operator for 100% of the cost, at the time that Operator remits to the Owner its 30% share of Operating Profit, or if there is no Operating Profit, at the time that the Operator would have been required to remit the 30% share. If the Owner owes the Operator for Capital Expenditures, the Operator shall have the right to withhold the amount due from the Owner's 30% share of Operating Profits should they exist.

15.3 Operator's Liability for Negligence. Subject to sections 7.10 and 19.2 (Indemnification by Operator), it is agreed that the cost of all Capital Expenditures shall be borne solely by Owner, shall not be paid from Gross Revenues, and shall not be treated as an Expense; provided, however, that, without limiting the effect of the provisions of sections 7.9, 7.10 and 19.0 (Indemnificaiton), it is agreed that Operator shall be solely financially responsible for the cost of all repairs, maintenance, alterations, improvements, renewals or replacements (including Capital Expenditures and Repairs and Maintenance), including fees and legal expenses, to the extent the cost results from willful, fraudulent or negligent acts or omissions of Operator, its employees or independent contractors.

15.4 Owner's Liability for Negligence. Without limiting the effect of the provisions of sections 7.9, 7.10 and 19.0 (Indemnification), it is agreed that Owner shall be solely financially responsible for the cost of all repairs, maintenance, alterations, improvements, renewals or replacements (including Capital Expenditures and Repairs and Maintenance), including fees and legal expenses, to the extent the cost results from willful, fraudulent or negligent acts or omissions of Owner, its employees or independent contractors.

15.5 Guaranties and Warranties. Owner shall furnish to Operator copies of all guaranties and warranties relating to the renovation project of the DAP in Owner's possession or control. Operator shall see that all work done to or in the DAP that is the Operator's responsibility includes obtaining guaranties and warranties that are consistent with industry standards and shall use all reasonable efforts to enforce all such guaranties or warranties. Owner shall cooperate with Operator in such efforts. During any applicable guaranty or warranty period, Operator shall maintain equipment in accordance with the terms of the guaranty or warranty including, if necessary, the negotiation, execution and administration of maintenance contracts as set forth in section 15.6 below. Upon expiration of any such guaranty or warranty, Operator shall, in its reasonable determination, either purchase an extension, if available, to such guaranty or warranty, or

maintain in accordance with the manufacturer's specifications and standards on the equipment no longer guaranteed or warrantied, including, if necessary, the negotiation, execution and administration of maintenance contracts as set forth in section 15.6 below. Operator shall see that all guaranties, warranties, service contracts, and licenses for which it is responsible pursuant to this section 15.5 are placed in the name of the Owner, or if placed in the name of the Operator, are assignable to the Owner.

15.6 Maintenance of Equipment. Operator shall be responsible for all reasonable normal and customary maintenance expenditures to be incurred in connection with its obligation to maintain the DAP in accordance with the Operating Standards. Such maintenance expenses shall be paid as an Expense. Operator shall at all times maintain DAP equipment in accordance with manufacturer's specifications and standards, including, if necessary, negotiating, executing or causing to be executed in its own name or in the name and on behalf of Owner (as Operator determines), and administering service contracts and licenses for DAP operations which are customary in operating and maintaining similar ballparks of the DAP's size and nature, including contracts and licenses for health and safety systems maintenance; electricity, gas, telephone, communication, cleaning, elevator and boiler maintenance; air conditioning maintenance; and other service contracts and licenses necessary to comply with the Operating Standards, under terms and conditions which are customary in operating and maintaining similar ballparks of the DAP's size and nature. Any contractors retained pursuant to this section 15.6 shall be bona fide service and repair contractor(s) who possess appropriate State licensure and factory certifications to perform maintenance services and shall be subject to Owner approval.

15.7 Alterations, Fixtures, Personal Property. Operator shall not mark, paint or drill into, or in any way mar or deface any part of the DAP except as necessary for conducting an Event, or make any alterations or improvements, without the prior written consent of the Owner. Without obtaining the Owner's consent, the Operator may install fixtures when appropriate to the operation of the DAP. Any such painting, alterations, and installation must be done in accordance with the Operating Standards. Operator may, prior to the expiration of the Term of this Agreement, remove from the DAP any of Operator's fixtures that the Operator may have installed pursuant to this section 15.7, whether affixed or not; provided, however, that any damage done to the DAP by the installation or removal of such fixture will be repaired as an Expense, regardless of the cost of such repair, provided, however, that any damage done to the DAP by the removal of any fixtures by the Operator related to contract termination shall be repaired at Operator's sole cost, and not as an Expense. Any fixtures or personal property remaining in the DAP after the expiration of the Term shall be the property of Owner.

15.8 FF&E to be Provided by Owner. All FF&E provided by Owner to Operator upon the Acceptance Date, excluding FF&E to be provided by Operator in accordance with section 15.9, is provided by Owner at Owner's sole expense and is specified as "Owner-Provided FF&E" in Exhibit A. Operator hereby represents that the FF&E specified as Owner-Provided FF&E in Exhibit A is a complete list of FF&E the Owner is required to provide to Operator upon the Acceptance Date of the DAP, and that such Owner-Provided FF&E, when combined with the Operator-Provided Equipment per section 15.9, is all of the equipment necessary for the operation of the DAP in accordance with the Operating Standards when the DAP is used for conducting Events.

15.9 FF&E to be Provided by Operator. Operator shall provide all other FF&E not listed in Exhibit A as Owner-Provided FF&E necessary maintaining the operations of the DAP in accordance with the Operating Standards. Operator shall provided to Owner a complete list of "Operator-Provided FF&E" prior to the Acceptance

Date of the Agreement. The FF&E specified as "Operator-Provided Equipment" shall be purchased or leased, and maintained and replaced by Operator, all costs of which purchase(s), lease(s), maintenance and replacement(s) shall be treated as an Expense. All such Operator-Provided Equipment is not an Owner asset and is excluded from Owner's Capital Expenditures replacement requirements. Operator shall fund replacement of all such Operator-Provided Equipment as necessary in order to ensure continuous and efficient DAP operations and availability of equipment for Events in accordance with the Operating Standards.

15.10 Janitorial and Cleaning Services. Operator shall develop, establish and follow a reasonable janitorial and cleaning program to maintain the DAP Real Property.

15.11 Security at the DAP. Operator shall provide reasonable security throughout the DAP Real Property excluding Exempt City Reserved Events.

15.10 Resource Conservation Program. Operator shall develop, establish and follow a resource conservation program to achieve the energy-efficient management and use of DAP utilities. This program shall include the procedures for heating and cooling, electrical and water usage. Operator's obligations under this section are subject to the Owner providing Operator with facilities and equipment which allow the Operator to achieve such standards of energy efficiency.

16.0 ALCOHOLIC BEVERAGES

Owner, to the extent of its authority, shall cooperate with Operator facilitating the application process necessary for the Operator or an entity designated by Operator ("Operator's Designee") to sell alcoholic beverages at Events during the Term consistent with all applicable laws regarding the sale of alcoholic beverages. Operator, Operator's Designees and any other user of the DAP that wish to sell or use alcoholic beverages at Events shall obtain necessary permits from the North Carolina Alcohol Beverage Control Commission.

17.0 OPERATOR'S INSURANCE

Insurance Requirements for DAP Operating Agreement

17.1 Operator shall maintain insurance not less than the following:

Commercial General Liability, covering

- premises/operations
- products/completed operations
- broad form property damage
- explosion, collapse, and underground hazards if the hazards exist in the performance of this contract
- contractual liability
- independent contractors, if any are used in the performance of this contract

- host liability, including but not limited to coverage for the sale and distribution of alcoholic beverages by Operator or Operator's employees, designees, agents, contractors or lessees
- employee dishonesty not less than $50,000.00
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement); additional insured coverage shall be primary and non-contributing
- combined single limit not less than $5,000,000 per occurrence; these limits may be reached by any combination of primary and excess insurance

Automobile Liability Insurance, covering

- owned, hired, or borrowed vehicles
- employee vehicles, if used in performance of this contract
- combined single limit not less than $1,000,000 per occurrence

Workers' Compensation Insurance, covering

- statutory benefits;
- covering employees; covering owners partners, officers, and relatives (who work on this contract)
- employers' liability, any limits

Property Insurance, covering

- business personal property of Operator
- any business interruption insurance desired by Operator.

17.2 Insurance shall be provided by:

- companies authorized to do business in the State of North Carolina
- companies with Best rating of A or better.

17.3 Insurance shall be evidenced by a certificate:

- providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- certificates shall be addressed to:
  City of Durham, North Carolina
  attention: Finance Director
  101 City Hall Plaza
  Durham, NC 27701
- both the insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Operator can begin any work under this contract.

18.0 OWNER'S INSURANCE OBLIGATIONS

During the Term Owner shall maintain the following types of insurance:

18.1 Property insurance against damage or destruction to the DAP on an "all risk" basis for the full replacement value thereof, including, without limitation, all materials, equipment, machinery and supplies for use in the operation of the DAP, including boiler and machinery insurance coverage, but excluding business interruption insurance coverage;

18.2 All insurance against loss or damage to property referred to in section 18.1 shall be endorsed to provide that any release from liability of, or waiver of claim for, recovery from Operator entered into writing by Owner prior to any loss or damage shall not affect the validity of said policy or the right of the insured to recover thereunder and providing, further, that the insurer waives all rights of subrogation which insurer might have against Operator; to that end, all insurance policies providing insurance coverage against loss or damage to property shall either be endorsed, or shall contain in the body of said policy, the following language: "This insurance shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party of loss occurring to the property described herein," or such other language substantially equivalent thereto.

18.3 Without limiting any release or waiver of liability or recovery set forth in any other provision of this Agreement, but rather in confirmation and furtherance thereof, each of the Parties hereto waives all claims for recovery from the other party for any loss or damage to any of its property or damages as a result of fire, business interruption, or other perils, events or happenings insured under valid and collectible insurance policies to the extent of any recovery collectible under such policies.

19.0 INDEMNIFICATION

19.1 Definitions. In this section 19.0, the following definitions shall apply:
"Claims" are claims, losses, damages, liabilities, fines, penalties, fees, royalties, costs, demands, actions, suits, and judgments of any kind or nature whatsoever, whether at law or in equity, including court costs and reasonable attorney's fees assessed as part of any of said items.
"Management, Use, or Operation of the DAP" includes the obligations of City or Operator, as applicable, under this Agreement, and City's or Operator's (as applicable) performance and attempted performance of its respective obligations under this Agreement.
"Persons Connected with Operator" are Operator's officers, members, managers, board members, employees, agents, contractors, subcontractors of all tiers, and invitees, but excluding the City.
"Persons Connected with City" are City's officers, officials, employees, agents, contractors, subcontractors of all tiers, and invitees, but excluding Operator.
"Volunteers" are individuals performing services related to the DAP (including direct services and serving as directors or trustees) who do not receive for those services

compensation other than a reasonable reimbursement or allowance for expenses he or she actually incurred.

19.2 Indemnification by Operator. "City Indemnitees" are defined as City, its officers, officials, employees, agents, Volunteers, and independent contractors, but excluding Operator. Operator shall indemnify, defend, and hold harmless the City Indemnitees from and against all Claims arising out of, relating to, or resulting from acts or omissions by Operator or Persons Connected with Operator arising out of, relating to, or resulting from the Operator's obligations with respect to Management, Use or Operation of the DAP. Without limiting the preceding sentence, and as an additional obligation of Operator, it is agreed that Operator shall indemnify, defend, and hold harmless the City Indemnitees from and against all Claims made by independent contractors, including subcontractors of all tiers, where the independent contractor was engaged by Operator to perform work on or in the DAP, except to the extent the Claim is the result of a negligent or wrongful act or omission by City. In performing its duties under this section 19.2, Operator shall defend City Indemnitees with legal counsel reasonably acceptable to City.

19.3 Indemnification by City. "Operator Indemnitees" are defined as Operator, its members, directors, officers, employees, agents, Volunteers, subsidiary and parent entities, and independent contractors, but excluding City. City shall indemnify, defend, and hold harmless the Operator Indemnitees from and against: (1) any and all Claims arising out of or relating to environmental issues at the DAP or DAP Real Property existing as of the Effective Date, whether or not such issues have been discovered, including without limitation Claims arising under CERCLA/RCRA or the Clean Water Act; (2) all Claims arising out of, relating to, or resulting from acts or omissions by City or Persons Connected with City arising out of, relating to, or resulting from the City's obligations with respect to Management, Use or Operation of the DAP. Without limiting the preceding sentence, and as an additional obligation of City, it is agreed that City shall indemnify, defend, and hold harmless the Operator Indemnitees from and against all Claims made by independent contractors, including subcontractors of all tiers, where the independent contractor was engaged by City to perform work on or in the DAP, except to the extent the Claim is the result of a negligent or wrongful act or omission by Operator. In performing its duties under this section 19.3, City shall defend Operator Indemnitees with legal counsel reasonably acceptable to Operator.

19.4 Notice and Cooperation. Operator and City agree to notify each other promptly of any claim or complaint that may require indemnification by the other. Operator and City agree to provide each other full and complete cooperate in addressing notices of potential claims or complaints that may require indemnification of the other party.

19.5 Limitation of Liability for Another's Negligence. Nothing in this section 19.0 shall require Operator to indemnify or hold harmless City Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of City Indemnitees. Nothing in this section 19.0 shall require City to indemnify or hold

harmless Operator Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Operator Indemnitees.

19.6 Other Provisions Separate. This Article is in addition to and shall be construed separately from any other indemnification provisions that may be in this Agreement.

19.7 Survival. This section 19.0 shall remain in force despite termination of this Agreement with respect to acts and omissions occurring before termination of this Agreement (whether by expiration of the term or otherwise) and termination of the services of Operator under this Agreement.

20.0 DISPUTE RESOLUTION

In the event of a controversy, claim, or dispute between Owner and Operator relating to this Agreement each party will set forth the dispute in writing and provide a copy to the other party. Following the delivery of the dispute notice the parties will negotiate in good faith to resolve the dispute. If the parties are unable to resolve the dispute through good faith negotiation within 30 days or such longer or shorter period as agreed upon by the Parties, the matter may be referred to non-binding mediation in accordance procedures accepted by the Parties. Such mediation shall be held in Durham, North Carolina and attended by representatives of Owner and Operator with decision-making authority. The mediator shall be an individual jointly agreed upon by Owner and Operator. If Owner and Operator are unable to timely resolve the dispute in mediation or if the Owner or Operator elect not to mediate the controversy, claim or dispute, then Owner and Operator shall have the right to institute legal proceedings provided that no admissions or offers (written, electronic, verbal or otherwise) made by Owner or Operator during negotiation or mediation may be used by the other in such legal proceeding. The fees and expenses of the mediation shall be borne equally by Owner and Operator.

21.0 RELATIONSHIP OF THE PARTIES

It is the express intention of the Parties hereto that Operator is and shall be deemed an independent contractor under this Agreement and that no partnership shall exist between Owner and Operator. Operator shall have full discretion in determining the method for performing its duties and obligations under this Agreement and shall be fully responsible for payment of any income taxes, Social Security taxes, unemployment compensations taxes, workers' compensation insurance premiums and other taxes with respect to itself and its employees. This Agreement does not constitute Operator as the agent, legal representative or employee of Owner for any purpose whatsoever. Operator has no ownership interest in the DAP.

22.0 AGREEMENT REPRESENTATIONS AND WARRANTIES

22.1 Operator Representations and Warranties. Operator hereby represents and warrants to Owner as follows:

22.1.1 Operator is a limited liability company duly organized, validly existing and in good standing under the laws of North Carolina and is a disregarded entity for tax purposes. Its sole member and manager the NAPBL is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of Florida, with full power and authority, and with all licenses, permits, certifications, registrations, approvals, and consents necessary to conduct business as currently conducted, execute deliver and perform this Agreement, and consummate the transactions contemplated hereby.

22.1.2 This Agreement is the valid and binding obligation of Operator, enforceable against it in accordance with the terms and conditions hereof, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally and the discretion of courts in granting equitable remedies.

22.1.3 The execution, delivery and performance of this Agreement by Operator does not and will not, with or without the giving of notice or the lapse of time, or both, (i) result in any violation of its constitutional documents; (ii) result in a breach of, or conflict with, any of the terms or provisions of, or constitute a default under, or result in the modification or termination of, or result in the creation or imposition of any encumbrance upon any of its properties or assets pursuant to any indenture, mortgage, note, contract, commitment or other agreement or instrument to which it is a party; or (iii) violate any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over it or its assets.

22.2 Owner Representations and Warranties. Owner hereby represents and warrants to Operator as follows:

22.2.1 Owner is a State of North Carolina municipal corporation having full power and authority, and with all licenses, permits, certifications, registrations, approvals, and consents necessary to conduct business as currently conducted, execute deliver and perform this Agreement, and consummate the transactions contemplated hereby.

22.2.2 This Agreement is the valid and binding obligation of Owner, enforceable against it in accordance with State law, the terms and conditions hereof, subject, as to enforcement of remedies, to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally and the discretion of courts in granting equitable remedies.

22.2.3 The execution, delivery and performance of this Agreement by Owner does not and will not, with or without the giving of notice or the lapse of time, or both, (i) result in any violation of its constitutional documents; (ii) result in a breach of, or conflict with, any of the terms or provisions of, or constitute a default under, or result in the modification or termination of, or result in the creation or imposition of any encumbrance upon any of its properties or assets pursuant to any indenture, mortgage, note, contract, commitment or other agreement or instrument to which it is a party; or (iii) violate any existing applicable law, rule, regulation, judgment, order or decree of any governmental agency or court, domestic or foreign, having jurisdiction over it or its assets.

22.2.4 Except for restrictions set forth in the recorded deed for the DAP Real Property, Owner knows of no contractual restriction or limitation that prohibits or adversely affects any right of Operator under this Agreement.

22.2.5 Except for the restrictions set forth in the recorded deed for the DAP Real Property, Owner is the sole owner of fee simple title to the DAP and such ownership is held by Owner free and clear or all encumbrances.

22.2.6 All improvements to the DAP as set forth in Owner's Capital Improvement Plan as approved by the governing body on June 18, 2007 will be substantially completed and available for occupancy on the Acceptance Date.

22.2.7 To the extent that Owner is knowledgeable of existence of such studies, Owner has provided the environmental studies listed below relating to the DAP and its ancillary facilities that are in Owner's possession or under Owner's control to Operator. Owner does not warrant that these studies are complete or comprehensive relative to the entire DAP Real Property.

(i) Letter report: Phase II Site Assessment Old Durham Athletic Park by Environmental Investigations dated November 3, 1999

(ii) Phase I Environmental Assessment by S&ME dated April 11, 2007

(iii) Letter report: Old Durham Athletic Park Facility [Structural] Assessment by Stewart Engineering dated April 27, 2007

(iv) Report of Asbestos Containing Materials Survey & Lead-Base Paint Screening Letter Report by S&ME dated May 3, 2007

(v) Limited Phase II Groundwater & Soil Sampling by SM&E dated, July 20, 2007

23.0 MISCELLANEOUS PROVISIONS

23.1 Annual Report to the City. After completion of the Annual Independent Audit but prior to the submission of the Capital Expenditures Budget, Operator shall prepare and submit an annual report to the City outlining operational performance of the DAP, financial and otherwise, for the prior Calendar Year. The annual report shall highlight successes and accomplishments and provide forecasts of performance for future Calendar Years of operation. The annual report shall also provide for any recommendations on how to improve the functionality of the DAP and operations.

23.2 NCCU Hospitality Program. Operator shall reasonably attempt to develop a program with NCCU to allow training and educational opportunities for NCCU students enrolled in NCCU's hospitality program.

23.3 Turnover of DAP to Operator. It is contemplated that the Operator may have the opportunity to occupy portions of the DAP that are able to be lawfully occupied prior to the issuance of the final Certificate of Compliance for the DAP. In such event, City, Operator and the DAP contractor will in good faith negotiate an agreement defining the rights and obligations of each party relative to a partial occupancy, if it shall occur. The remainder of the DAP (or, if the Operator has not occupied any portion before the issuance of the final Certificate of Compliance for the DAP, the DAP) shall be turned over to Operator on the Acceptance Date. When the Acceptance Date occurs, City shall deliver to Operator an executed Acceptance Date Certification.

23.4 City Access; Right of Inspection. City shall have the right to access and to inspect the DAP at reasonable hours with reasonable notice to Operator.

23.5 Equal Opportunity/Equity Assurance. The provisions of this section 23.5 shall apply only to contracts of $100,000 or more.

23.5.1 General Requirements.

(a) Operator shall meet with the Director of the City's Department of Equal Opportunity/Equity Assurance (EO/EA) annually to discuss potential contracting opportunities for goods and services for small disadvantaged businesses certified by the City (SDBEs).

(b) The Director may set project specific goals as the Director determines to be generally applicable under Chapter 26 (as amended from time to time) in City contracting.

(c) In all solicitations for which goal(s) are established, Operator will not enter into contracts for goods or services without first soliciting bids from SDBEs and requiring bidders to submit a Participation Plan to meet the goal(s). Bidders must state their SDBE participation in a manner like that required by bidders on contracts to be awarded by the City. If a bidder fails to achieve the goal(s), the bidder must submit documentation to Operator of its good faith efforts

to achieve the goal(s) within two working days after bid opening. Operator shall take all reasonable actions needed to see that bidders comply with this subsection. Operator shall make bids and documentation of good faith efforts available to the Director.

(d) Operator will notify the Director of EO/EA of upcoming contracting opportunities to ascertain the availability of SDBEs that might be capable of supplying the pertinent goods or services. Each such notice shall be given in a manner and schedule so that the SDBEs will have a reasonable amount of time to respond.

(e) Operator will provide quarterly reports using the attached form, "Exhibit E" (CITY OF DURHAM SUBCONTRACTOR QUARTERLY RECORD OF PAYMENT REPORT), on all contracting activity to the Director for reporting to the City Council. The reports are due the last day of April (for January – March), July (for April – June), October (for July – September) and January (for October – December).

(f) Operator shall comply with all applicable provisions of Chapter 26. The failure of Operator to comply with that chapter shall be a material breach of contract which may result in the rescission or termination of this Agreement and/or other appropriate remedies in accordance with the provisions of that chapter, this Agreement, and State law. The Participation Plan submitted by Operator in accordance with that chapter is binding on Operator.

(g) Section 26-10(f) of Chapter 26 provides, in part, "If the City Manager determines that [Operator] has failed to comply with the provisions of [this Agreement], the City Manager shall notify [Operator] in writing of the deficiencies. [Operator] shall have 14 days, or such time as specified in [this Agreement], to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to [Operator's] alleged violations of its obligations under Chapter 26 and not to [Operator's] alleged violations of other obligations.

23.5.2 Remedies. The Parties recognize that the City considers the obligations of Operator under subsection 23.5.1 above to (1) further an important policy of the City for the benefit of the public; (2) be material to this Agreement, and (3) be part of the reason that the City is willing to enter into this Agreement. The Parties recognize that the City will suffer financial loss if Operator does not comply with its obligations under subsection 23.5.1. The Parties recognize that the City could terminate this Agreement if Operator materially breaches its obligations under subsection 23.5.1, and that such a termination would result in monetary losses to the City. The Parties also recognize the delays, expense, and difficulty to both Parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of those amounts, it is agreed that Operator shall be liable for and shall pay the City the amount specified herein as liquidated damages, and not as a penalty. The amounts stated as liquidated damages are

agreed to be reasonable estimates of the City's losses and expenses for delays, including administrative costs. The City may collect liquidated damages by retaining moneys otherwise due Operator in the amount of such damages, and by other legal means. Nothing in this subsection 23.5.2 shall reduce the City's rights under other provisions of this Agreement, any applicable statutes or ordinances, or any applicable principle of law. In its discretion, the City may waive some or all liquidated damages against Operator. Such a waiver is valid only if done by a signed writing that refers specifically to this subsection 23.5.2 and specifically mentions "liquidated damages." If the City seeks an injunction to require compliance with any portion of subsection 23.5.1, Operator hereby agrees to waive any contention that the injury from the noncompliance would not be irreparable or that the City has an adequate remedy at law.

The damages shall be as follows:
For Operator's failure to comply with subsection 23.5.1(a): $200 for the first two weeks of noncompliance; $300 for the second two weeks of noncompliance; and $200 for each subsequent week.
For Operator's failure to comply with subsection 23.5.1(c), except for failure to make bids and documentation of good faith efforts available to the Director: One percent of the amount of the payments made by Operator under each contract entered into in violation of subsection 23.5.1(c), unless the goals were met or good faith efforts were made with respect to that contract.
For failure to make bids and documentation of good faith efforts available to the Director as required by subsection 23.5.1(c): $100 for the first week of noncompliance; $200 for the second week; and $300 for each subsequent week.
For noncompliance with subsection 23.5.1(d): One percent of the amount of the payments made by Operator under each contract entered into in violation of subsection 23.5.1(d), unless the goals were met or good faith efforts were made with respect to that contract.
For noncompliance with subsection 23.5.1(e): $200 for the first two weeks of noncompliance; $300 for the second two weeks of noncompliance; and $200 for each subsequent week.

23.5.3 Definitions. In this document, words, including "SDBE" and the "Director" shall have the meaning assigned in Chapter 26, unless the context requires otherwise. "Chapter 26" means Chapter 26 of the Durham City Code (Equal Business Opportunities Ordinance).

23.6 Non-Waiver. No action or failure to act by either Party shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

23.7 Severability. Any provision of this Agreement that is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions of this Agreement.

23.8 Notices. All notices and other communications required or permitted by this Agreement, unless otherwise provided for in this Agreement, shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:
City Manager
City of Durham
101 City Hall Plaza
Durham, NC 27701
Fax (919) 560-4949.

With a copy to:
Director of General Services
City of Durham
2011 Fay Street
Durham, NC 27704
Fax (919) 560-4196

With a copy to:
Director of Economic and Workforce Development
City of Durham
101 City Hall Plaza
Durham, NC 27701
Fax (919) 560-4986

To the Operator:
John Cook, Executive Director, Business Operations
MiLB Management LLC
201 Bayshore Drive Southeast
St. Petersburg, FL 33701
Fax (727) 821-5819

With a copy to:
D. Scott Poley, General Counsel
MiLB Management LLC
201 Bayshore Drive Southeast
St. Petersburg, FL 33701
Fax (727) 821-5819

23.9 Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this Agreement shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other

communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

23.10 Performance of Government Functions. Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

23.11 Compliance with Law. In performing all of their respective obligations under this Agreement, the Operator and the City shall comply with all Legal Requirements.

23.12 City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

23.13 EEO Provisions. In this section, "the Contractor" means the Operator, and "this Contract" means this Agreement. During the performance of this Contract the Contractor agrees as follows:

23.13.1 The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions.

23.13.2 The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

23.13.3 The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding.

23.13.4 In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this Contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts.

23.13.5 Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this Contract and in every subcontract related to this Contract so that these EEO provisions will be binding upon such subcontractors and vendors.

23.14 No Third Party Rights Created. This Agreement is intended for the benefit of the City and Operator and not any other person.

23.15 Modifications. Entire Agreement. A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This Agreement contains the entire agreement between the parties pertaining to the subject matter of this Agreement. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

23.16 Assignment. Successors and Assigns. Without the Owner's written consent, the Operator shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this Agreement. The City Manager may consent to an assignment without action by the City Council. Unless the Owner otherwise agrees in writing, the Agreement and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Operator's duties that arise out of this Agreement and all of the City's claims that arise out of this Agreement. Without granting the Operator the right to assign, it is agreed that the duties of the Operator that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

23.17 City's Manager's Authority. To the extent, if any, the City has the power to suspend or terminate this Agreement or the Operator's services under this Agreement, that power may be exercised by City Manager or a deputy or assistant City Manager without City Council action.

23.18 Principles of Interpretation. In this Agreement, unless the context requires otherwise: The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "shall" is mandatory.

23.19 North Carolina Right to Work. The parties hereto agree and understand that the law in effect as of the date of this Agreement provides that North Carolina is a right to work state and that the City is prohibited from collective bargaining. The parties agree that changes in those laws shall not affect the obligations of the parties to comply with this Agreement.

23.20 Arm's Length Transaction. The Parties agree that this Agreement is the result of arm's length negotiations, and that any ambiguity or uncertainty herein, if any, shall not be interpreted against either party.

23.21 Choice of Laws. The validity and construction of this Agreement shall be determined in all respects in accordance with the laws of the State of North Carolina.

IN WITNESS HEREOF, the parties have executed this Contract on the date set forth above.

ATTEST:

CITY OF DURHAM

By:

City Clerk

12-21-07 City Manager

MiLB MANAGEMENT LLC

By: (Affix corporate seal.)

Mike Moore, President
National Association of Professional Baseball Leagues, Inc.
(sole member and manager of MiLB Management LLC)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

FINANCE OFFICER 12/21/07 DATE

NORTH CAROLINA ACKNOWLEDGMENT BY CITY OF DURHAM

COUNTY of Durham

I, a Notary Public in and for the aforesaid County and State certify that D. Ann Gray personally appeared before me this day, and acknowledged that he or she is the — City Clerk of the City of Durham, a municipal corporation, and that by authority duly given and as the act of the City, the foregoing contract was signed in its corporate name by its — City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk. This the 7th day of Jan, 2008

Tonette Amos
Notary Public

My commission expires:
07-17-2012

TONETTE AMOS NOTARY PUBLIC DURHAM COUNTY, NC

State of ~~NORTH CAROLINA~~ Florida

ACKNOWLEDGMENT BY
MiLB MANAGEMENT LLC

County of Pinellas

I, a notary public in and for said county and state, certify that _____ personally (1) appeared before me this day, (2) stated that he or she is a manager of MiLB MANAGEMENT LLC, a non-profit subsidiary limited liability company organized and existing under the laws of the State of North Carolina, (3) acknowledged that the foregoing contract or agreement with the City of Durham carries on the company's business in the usual way, and (4) acknowledged the due execution of the contract on behalf of the company. This the 1st day of November, 2007.

My commission expires:

_____

_____
Notary Public

EXHIBIT A

OWNER-PROVIDED FF&E

1. Terra Plass or similar field protection system. This will cover at least 2,000 square feet of the playing field for events and concert use.

2. 25 lockers and 20 feet of benches for visiting and home clubhouses.

3. 5 lockers and one bench for umpire's clubhouse.

4. 5 concessions awnings and roll down grates/counters.

5. 1st and 3rd base foul line bullpens: pitching mound and home plate set up only, no additional benches or netting.

6. Broadcasting booth's fixed counters and shelves only. No broadcasting equipment.

7. Chain link outfield fence.

EXHIBIT B

OPERATING BUDGET

DAP Operating Budget
2008
(SAMPLE)

REVENUE

Item	Amount
Advertising/ Sponsorships	$ 136,000.00
Concessions	$ 15,000.00
MiLB Events	$ 50,000.00
Operating Agreement	$ 35,000.00
Stadium Rentals	$ 83,900.00
TOTAL	$ 319,900.00

EXPENSES

Item	Amount
Advertising Production	$ -
Concessions	$ (8,750.00)
Field & Stadium Maintenance and Operations	$ (164,150.00)
Insurance	tbd
Office	$ (4,000.00)
Salaries	$ (50,000.00)
Security & Monitoring	$ (5,950.00)
Utilities	$ (77,150.00)
TOTAL	$ (310,000.00)

PROFIT (LOSS) 9,900.00

EXHIBIT C

OPERATOR ANNUAL PROGRAMS LIST

Minor League Baseball Museum at Old Durham Athletic Park
Annual Programs

Minor League Baseball Promotional Seminar (SEPTEMBER):

Annual seminar held in rotating cities is moved permanently to Durham and will include meeting space/ rooms at local hotels, a welcome reception in the Museum, a ballpark event, tours of the museum and an off-site event in Durham.

Attendees include Minor League Baseball Clubs, NA Staff, Exhibitors, Sponsors and Job Seekers.

PBEO Events (ANNUAL):

Intern Academy- Post Graduate program for individuals looking to get into the baseball industry and center around Ballpark Operations for events held at Old DAP. These events include ticketing, concessions, grounds, promotions and sales to name a few. The timing of the academy will depend on activities at the Old DAP.

Business of Baseball Workshops- Mock workshops held quarterly based off the December event (BWM) topics. These will provide potential baseball professionals with a general idea of what to expect in baseball.

MiLB Groundskeeping Academy- One class per year for attendees interested in groundskeeping taught by the Head Groundskeeper. Utilize partnership with the Sports Turf Management Association to put together a training course for groundskeepers. We should use the games played at the old DAP as a timeline for this instructional program and look at several sessions during the calendar year.

Broadcaster University- Utilize games being held at Old DAP and possibly Capitol Broadcasting along with local college based programs to provide experience to those looking at a career in sports broadcast.

MiLB Umpire School:

June or July:
Summer Camp consisting of 2-4 weeks of training and evaluations for approximately 100 campers.

October:
Two separate one-week training courses at the old DAP during the month of October. Registration will be capped at 50-100 per session. Use of fields and batting tunnels along with exhibition games for evaluation and instruction. Mike Fitzpatrick will give further details on curriculum.

NC Central University Baseball (FEB-MAY):

Welcome the North Carolina Central University baseball team to the Old DAP as soon as possible. Home games will run from late February through mid-May and will consist of approx. 30-35 home games.

We can combine the Intern Academy (PBEO) along with NCCU Athletic Department to provide the game operations experience and to fulfill staffing needs for games.

MiLB Alumni Association Headquarters (YEAR ROUND):

Move official headquarters of the MiLB Alumni Association to Durham with offices in Museum.

Alumni events (welcome receptions, cocktail parties, etc.) can be held at the museum. Chapter Alumni events can be held at the ballpark.

MiLB Merchandise Manager Workshops (1-2 times per year):

MiLB will conduct Merchandise Manager Workshops 1-2 times per year for club merchandise personnel. The envisioned workshops will educate club personnel on purchasing budgets and plans, inventory management, latest trends in the sports licensing industry. Furthermore, the workshops will offer personnel a hands on learning experience using the Minor League Baseball Museum store designed with the latest enhancements offered in the industry.

MiLB Fantasy Camps (4-6 times per year):

MiLB will conduct Fantasy Camps 4-6 times per year for those interested in experiencing the "real" Minor League experience. These camps would bring approximately 40 campers each session and allow them to play games, meet famous ballplayers and socialize with fellow campers.

City of Durham Events (YEAR ROUND):

As determined by the City of Durham and in conjunction with our agreement with the city. These include but aren't limited to:

- *City/ County Leagues*
- *Local Colleges*
- *Little League (RBI) leagues*
- *Community baseball camps*
- *Concerts*

Other Events at the Old DAP:

As determined by Minor League Baseball including but not limited to the following:

- *League Championship Games*
- *All-Star Games*
- *Minor League Baseball Clubs Training (Staff Retreats)- option for clubs to bring their entire staff to Durham for a staff planning session and to absorb the atmosphere of Durham, the Museum and the Old DAP.*
- *Showing of the movie BULL DURHAM on a regular basis at the Old DAP.*
- *Durham Bulls Baseball League (inner-city youth initiative)*

Research Library:

With coordination from Duke University and North Carolina Central University, MiLB hopes to offer one of the premier library and reference collections on the history of baseball. A reference library for research purposes.

Museum Events:

The following events will be held at the Minor League Baseball Museum & Old DAP:

- *Educational programs with local schools*
- *Charity events- use of facility for Partners events and fundraising efforts (cocktail parties, silent auctions, etc).*
- *Use of Old DAP for Partner events (Special Olympics, Bigs vs. Littles, etc.)*
- *Tournaments to benefit Minor League Baseball Charity Partners and Museum.*
- *Brick Walkway campaign- Contribution to museum commemorated on bricks leading to an entrance way.*

- *MiLB Game/Museum Packages- promote trips to visit one of the many ballparks in locale to the museum along with a trip to the museum.*
- *Weekend programs at the Museum- in conjunction with the City of Durham (Museum District Program)*
- *General Attendance to Museum and Gift Shop.*

Durham, North Carolina
Home of the NA office from 1933-46
Judge Bramham
1933: office located at 402-404 First National Bank Building
1934-37: office located at 402-404 Depositors National Bank Building
1938-46: office located at 111 Corcoran Street

MiLB Event Schedule at DAP
(SAMPLE)

February 20-22	MiLB Groundskeeping Workshop
March ???	Intern Training Session (in conjunction with NCCU Baseball)
April 24- 26	MiLB Groundskeeping Workshop Fantasy Camp #1
May 23-25	MiLB Intern Academy MiLB Broadcaster University
June 20-22	MiLB Groundskeeper Workshop Fantasy Camp #2
June 23-27	MiLB Umpire School #1
August 22-24	MiLB Groundskeeper Workshop Fantasy Camp #3
October 13-17	MiLB Groundskeeper Academy
October 17-19	MiLB Groundskeeping Workshop Fantasy Camp #4
October 20-24	MiLB Umpire School #2

EXHIBIT D

CITY RESERVED EVENTS CALENDAR

DURHAM
1869
CITY OF MEDICINE

DAP January

DURHAM Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1—Closed	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

Model Schedule

Durham Parks and Recreation provides opportunities for our community to Play More

DURHAM
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CITY OF MEDICINE

DAP February

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Game Special Event					1	2
3	4 NCCU game 1:00pm	5	6 NCCU game 2:00pm	7	8	9 NCCU game 1:00pm
10 NCCU game 12:00pm	11	12	13 NCCU game 4:00pm	14	15	16
17	18	19 NCCU game 1:00pm	20	21	22	23
24	25	26	27	28		

Model Schedule

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DURHAM 1869 CITY OF MEDICINE

DAP March

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Game Special Event						1
2 NCCU game 12:00pm	3 NCCU game 1:00pm	4	5 NCCU game 2:00pm	6 NCCU game 2:00pm	7 DSA Baseball 4:30-9 pm	8 NCCU game 1:00pm
9	10	11	12	13	14	15
16	17	18	19	20	21	22 NCCU game 1:00pm
23/30	24/31	25 NCCU game 1:00pm	26	27 DSA Baseball 4:30-9 pm	28 NCCU game 2:00pm	29 NCCU game 1:00pm

Model Schedule

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DURHAM
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CITY OF MEDICINE

DAP April

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	3	4	5 DPR Youth (3 event blocks)
6	7	8	9	10	11	12 DPR Youth (3 event blocks)
13	14	15 DSA Baseball 7-10 pm	16 CIAA Spring Sports Championship DSA Baseball 7-10 pm	17 CIAA Spring Sports Championship	18 CIAA Spring Sports Championship	19 CIAA Spring Sports Championship
20 CIAA Spring Sports Championship	21	22 DSA Baseball 7-10 pm	23	24	25	26 DPR Youth (3 event blocks)
27	28	29	30	Game Special Event Not Confirmed		

Model Schedule

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DURHAM
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DAP May

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Game Special Event DPR Youth BB—will be held at Riverside High during the week prior to Bimbe.				1 DSA Baseball 7-10 pm	2	3 DPR Youth (3 event blocks)
4	5	6	7	8	9	10 DPR Youth (3 event blocks)
11	12 Bimbe—set up	13 Bimbe—set up	14 Bimbe—set up	15 Bimbe—set up	16 Bimbe—set up	17 Bimbe 10:00 am—10:00 pm
18 Bimbe 1:00—6:00 pm	19 Bimbe clean-up	20	21	22	23	24 DPR Youth (3 event blocks)
25	26—Closed	27	28	29	30	31 DPR Youth (3 event blocks)

Model Schedule

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CITY OF MEDICINE

DAP June

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
1	2	3 American Legion 7-10 pm	4 DPR Adult Baseball 7-10 pm	5 DPR Adult Baseball 7-10 pm	6	7 DPR Adult & youth Baseball (3 event blocks)
8	9	10 American Legion 7-10 pm	11	12 DPR Adult Baseball 7-10 pm	13	14 DPR Adult & youth Baseball (3 event blocks)
15	16	17 American Legion 7-10 pm	18 DPR Adult Baseball 7-10 pm	19 DPR Adult Baseball 7-10 pm	20	21 DPR Adult & youth Baseball (3 event blocks)
22	23	24 American Legion 7-10 pm	25 DPR Adult Baseball 7-10 pm	26 DPR Adult Baseball 7-10 pm	27	28 DPR Adult & youth Baseball (3 event blocks)
29	30	31 American Legion 7-10 pm	Game Special Event			

Model Schedule

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DAP July

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1 American Legion 7-10 pm	2	3	4 Closed	5 DPR Adult & youth Baseball (3 event blocks)
6	7	8 DPR Adult Baseball 7-10 pm	9 DPR Adult Baseball 7-10 pm	10 DPR Adult Baseball 7-10 pm	11 American Legion 7-10 pm	12 DPR Adult & youth Baseball (3 event blocks)
13	14	15 DPR Adult Baseball 7-10 pm	16 DPR Adult Baseball 7-10 pm	17 DPR Adult Baseball 7-10 pm	18 American Legion 7-10 pm	19 DPR Youth (3 event blocks)
20	21	22 DPR Adult Baseball 7-10 pm	23 DPR Adult Baseball 7-10 pm	24 DPR Adult Baseball 7-10 pm	25 American Legion 7-10 pm	26 DPR Youth (3 event blocks)
27	28	29 DPR Adult Baseball 7-10 pm	30 American Legion 7-10 pm	31 American Legion 7-10 pm	Game Special Event	

Model Schedule

Durham Parks and Recreation provides opportunities for our community to Play More

DAP August

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Game Special Event					1	2 DPR Youth (3 event blocks)
3	4	5 DPR Adult Baseball 7-10 pm	6 American Legion 7-10 pm	7 American Legion 7-10 pm	8	9 DPR Youth (3 event blocks)
10	11	12	13 American Legion 7-10 pm	14	15	16 DPR Youth (3 event blocks)
17	18	19	20	21	22	23 DPR Youth (3 event blocks)
24/31	25	26	27	28	29	30

Model Schedule

Durham Parks and Recreation provides opportunities for our community to Play More

DURHAM
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CITY OF MEDICINE

DAP September

DURHAM Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8 Blues Festival—set up	9 Blues Festival—set up	10 Blues Festival—set up	11 Blues Festival—set up	12 Blues Festival—set up Concert 5-12:00 a,m	13 Blues Festival—set up/clean up Concert 5:00-12:00
14 Blues Festival—clean up	15 Blues Festival—clean up	16	17	18	19	20
21	22	23	24	25	26	27
28	29 Beer Festival—set up	30 Beer Festival—set up				

Model Schedule

Game
Special Event

Durham Parks and Recreation provides opportunities for our community to Play More

DURHAM
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DAP October

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Game Special Event	Sept 29	Sept 30	1	2 Beer Festival—set up	3 Beer Festival—set up	4 Beer Festival—set up
5 Beer Festival—set up	6 Beer Festival—set up	7 Beer Festival—set up	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

Model Schedule

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DURHAM
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DAP November

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
Game Special Event						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20 CLOSED	21 CLOSED	22
23/30	24	25	26	27	28	29

Model Schedule

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DURHAM
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DAP December

DURHAM DPR Parks & Recreation

Sun	Mon	Tue	Wed	Thu	Fri	Sat
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

Model Schedule

Game
Special Event

Durham Parks and Recreation provides opportunities for our community to Play More

EXHIBIT E

CITY OF DURHAM SUBCONTRACTOR QUARTERLY RECORD OF PAYMENT REPORT

CITY OF DURHAM
SUBCONTRACTOR QUARTERLY RECORD OF PAYMENT REPORT

THIS DOCUMENT MUST REFLECT ALL SUBCONTRACTORS & MUST BE SUBMITTED QUARTERLY	
PROJECT NAME: CONTRACT#:	DATE FORM SUBMITTED: WORK PERIOD ENDING:
COMPANY NAME:	ADDRESS:
FEDERAL TAX ID#:	CONTACT PERSON:

Subcontractor/Vendor ID (Street Address/Zip/Telephone)	Indicate Ownership Status	Description Of Work	Total Sub-Contract Amount	Amount Paid For The Period	Total Amount Paid To-Date	Percentage Of Work Completed	Scheduled Start Date	Scheduled End Date

Total M/SDBE Subcontracts Awarded/%	$	%	Total W/SDBE Subcontracts Awarded/%	$	%
Total M/SDBE Dollars Paid-To-Date/%	$	%	Total W/SDBE Dollars Paid-To-Date/%	$	%
Total Non-Minority Subcontracts Awarded/%	$	%	Total Non-W/SDBE Subcontracts Awarded/%	$	%
Total Non-Minority Dollars Paid-To-Date/%	$	%	Total Non W/SDBE Dollars Paid-To-Date/%	$	%

The undersigned certifies that the information recorded above is correct, and that each of the representations set forth above is true. The undersigned further acknowledges that any misrepresentation hereon may result in termination of contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

Company Representative_____ **Title:** _____ **Date:** _____