# CONSULTING SERVICES AGREEMENT

**(CCDA / BIG LEAGUE DREAMS CLAY COUNTY)**

**THIS CONSULTING AND PROFESSIONAL SERVICES AGREEMENT** (this "Agreement") is entered effective \_\_\_\_\_\_\_\_\_\_\_\_\_, 2014, by and between the CLAY COUNTY DEVELOPMENT AUTHORITY, an independent special district of the State of Florida (the "CCDA") and BIG LEAGUE DREAMS CLAY COUNTY, LLC, a Florida limited liability company ("BLD Clay County").

## RECITALS

A. The CCDA, in partnership or otherwise in cooperation with another governmental entity in Clay County, Florida (a “Government Partner”), intends to develop and construct a recreational sports park on the east side of Branan Field-Chaffee Road, north of Blanding Boulevard, along the future First Coast Outer Beltway in Clay County (the “County”) featuring adult and youth softball/baseball diamonds; one or more restaurants and concession stands; a fieldhouse adaptable for indoor soccer and other sports, group events and functions; administration and maintenance facilities; parking; safety netting and fencing; a batting cage; a children's playground; and other amenities (the "Sports Park").

B. The Sports Park is intended to promote economic development in and to benefit citizens of the County. Accordingly, the CCDA and/or its Government Partner wish(es) to finance the construction of the Sports Park.

C. The CCDA and Big League Dreams USA, LLC ("BLD USA") entered a License Agreement effective December 14, 2011 by which BLD USA licensed the use of the name "Big League Dreams" and other intellectual property rights held by BLD USA to the CCDA for use in connection with the Sports Park and agreed not to operate another Big League Dreams facility within a specified radius from the Sports Park (as subsequently amended, the "License Agreement").

D. BLD Clay County has presented the CCDA with a unique and comprehensive proposal to maintain and operate the Sports Park.

E. Concurrently with the execution of this Agreement, the CCDA will enter a Maintenance and Operations Agreement (the "MOA") with BLD Clay County by which the CCDA will contract the maintenance and operation of the Sports Park, once constructed, to BLD Clay County.

F. The CCDA and BLD Clay County wish to enter this Agreement by which BLD Clay County will provide planning, design and construction consulting services as more particularly described in the attached Exhibit A (Scope of Services) during the term of this Agreement.

**NOW, THEREFORE,** in consideration of the foregoing, the parties agree as follows.

**AGREEMENT**

1. Scope of Services. The CCDA hereby retains BLD Clay County to provide the Services described in this Section 1 during the Term defined in Section 2 in return for the Fees and Expense Reimbursements set forth in Section 3.

1.1 Scope of Services. BLD Clay County shall provide to the CCDA those consulting and professional services (the "Services") set forth in the attached Exhibit A (Scope of Services).

1.2 Phases. The Services to be provided by BLD Clay County shall be in three phases.

(a) Phase 1 (Planning Consulting Services). Phase 1 consists of those master planning and conceptual (preliminary) design consulting Services set forth in Exhibit A (Scope of Services) to be performed by BLD Clay County. Phase 1 shall commence upon execution of this Agreement and continue for a period of ninety (90) days thereafter.

(b) Phase 2 (Design Consulting Services). Phase 2 consists of those design consulting Services set forth in Exhibit A (Scope of Services) to be performed by BLD Clay County. Unless this Agreement shall have been sooner terminated by the CCDA in accordance with Section 2.3(a) within the ninety (90) day period of Phase 1, Phase 2 shall commence upon the conclusion of Phase 1 and continue for a period of seven (7) months thereafter.

(c) Phase 3 (Construction Consulting Services). Phase 3 consists of those construction consulting Services set forth in Exhibit A (Scope of Services) to be performed by BLD Clay County during the construction of the Sports Park Improvements. Unless this Agreement shall have been sooner terminated by the CCDA in accordance with Section 2.3(b) within sixty (60) days after the conclusion of Phase 2 in the event the CCDA does not execute a contract (the “General Contractor Agreement”) with a general contractor of its selection (the “General Contractor”) for the construction of the above-ground Sports Park Improvements prior to the expiration of that time period,, Phase 3 shall commence upon the effective date of the General Contractor Agreement and continue through substantial completion of the Sports Park Improvements and related post-occupancy services.

(d) Limitations on BLD Clay County Services. BLD Clay County shall not be obligated to provide any services which may only be provided by holders of professional licenses. BLD Clay County shall provide its expertise with respect to the look, conceptual design and operational aspects of the Sports Park, but shall not be responsible for “plan checking” plans or drawings by licensed architects, engineers, building contractors or other professionals.

2.Term and Termination. Unless sooner terminated as otherwise provided in this Section 2, this Agreement shall commence on the effective date shown in the preamble above and continue until the last day of the month immediately following final payment for construction of the Sports Park Improvements (the "Term").

2.1 Bankruptcy or Dissolution. Either party may terminate this Agreement immediately upon written notice in the event the other files or has an action filed against it for bankruptcy which is not withdrawn or stayed within sixty (60) days. The CCDA may terminate this Agreement immediately upon written notice in the event of the dissolution of BLD Clay County.

2.2 Breach. If either party, after (a) receipt of written notice from the other specifying the nature of an actual breach of this Agreement and (b) the expiration of a fifteen (15) day period (which may be extended, as applicable, in the event the cure may not be completed within fifteen (15) days but the party seeking to cure the breach commences doing so within the fifteen (15) day period and thereafter diligently works to complete the cure until it has done so) during which the breach may be cured, fails or refuses to remedy the specified breach, the other party may terminate this Agreement immediately by giving written notice of termination to the party in breach.

2.3 Phase 1 and Post-Phase 2 CCDA Termination Rights.

(a) Phase 1. During Phase 1, on or prior to ninety (90) days after the effective date of this Agreement, the CCDA shall have the right to terminate this Agreement by written notice at any time for any reason effective as of the date of such notice, with no further obligation or liability to BLD Clay County except as provided in the following sentence. In the event of such a termination, the CCDA shall be obligated to pay BLD Clay County three (3) installments of the Phase 1 Fees (as hereinafter defined, totaling [$\_\_\_\_\_\_\_] regardless of the date of such termination.

(b) Post-Phase 2. During Phase 2 and for a period of sixty (60) days thereafter, the CCDA shall negotiate in good faith the General Contractor Agreement with the General Contractor. In the event the CCDA and the General Contractor cannot, despite such good faith efforts, reach agreement on the terms of and execute the General Contractor Agreement within such sixty (60) day period following the conclusion of Phase 2, the CCDA and BLD Clay County may mutually agree in writing to extend the time to negotiate the General Contractor Agreement or the CCDA may terminate this Agreement by written notice to BLD Clay County at any time after such sixty (60) day period shall have expired. Such notice shall be effective thirty (30) days after delivery thereof. In the event the CCDA so terminates the Agreement, neither party shall have any further obligation or liability one to another, provided that the CCDA shall be obligated to pay BLD Clay County all installments of the Fees due and owing BLD Clay County as of the effective date of such termination and all Expense Reimbursements (as hereinafter defined) incurred by BLD Clay County prior to the effective date of such notice.

3. Compensation.

3.1 Fees. For the Services described herein, the CCDA shall pay to BLD Clay County fees (the "Fees") as follows:

(a) Phase 1. The CCDA shall pay to BLD Clay County three (3) installments of Phase 1 Fees in equal payments of $\_\_\_\_\_\_\_\_\_\_\_ (for a total of $\_\_\_\_\_\_\_\_\_\_\_ in Phase 1 Fees) payable on or before the first day of the first, second and third months following the month during which the effective date of this Agreement falls.

(b) Phase 2. Provided this Agreement has not been terminated by the CCDA on or before the last day of Phase 1 pursuant to Section 2.3(a), the CCDA shall pay to BLD Clay County seven (7) installments of Phase 2 Fees in equal amounts of $\_\_\_\_\_\_\_\_\_ (for a total of $\_\_\_\_\_\_\_\_ in Phase 2 Fees) payable on or before the first day of the fourth month following the month during which the effective date of this Agreement falls and the first day of each of the six (6) months thereafter.

(c) Phase 3. In the event the CCDA and the General Contractor approve and enter the General Contractor Agreement, the CCDA shall pay to BLD Clay County ten (10) installments of Phase 3 Fees in equal amounts of $\_\_\_\_\_\_\_\_\_ (for a total of $\_\_\_\_\_\_\_ in Phase 3 Fees) payable on or before the first day of the first month following the effective date of the General Contractor Agreement and the first day of each of the eight (8) months thereafter. The tenth (10th) and final installment of Phase 3 Fees shall be paid on or before the first day of the month following substantial completion of the construction of the Sports Park Improvements.

(d) No Additional Fees. Phase 1 is estimated to take three (3) months to complete; Phase 2 seven (7) months; and Phase 3 ten (10) months. The actual time to complete these three Phases may be shorter as a result of efficiencies or longer as a result of third party delays or impediments to the project beyond the control of BLD Clay County. In the event the Services required from BLD Clay County with respect to any Phase of the project take less time to complete than the number of months during which installments of Fees are required to be paid to BLD Clay County for that Phase hereunder, BLD Clay County shall not be entitled to any acceleration of payments of the Fees. In the event the Services required from BLD Clay County with respect to any Phase of the project take longer to complete than the number of months during which installments of Fees are required to be paid to BLD Clay County for that Phase hereunder, BLD Clay County shall nonetheless be obligated to complete the Services contracted once the third party delays or impediments are over or are removed and shall be entitled to no additional Fees for such work beyond those required to be paid during the applicable Phase as provided in this Section 3.

3.2 Expense Reimbursements. The CCDA shall reimburse BLD Clay County for the air travel, ground travel and lodging expenses (but not meals) incurred by BLD Clay County representatives on trips made by such representatives to fulfill the terms of this Agreement (the "Expense Reimbursements"). BLD Clay County shall from time to time itemize and submit such Expense Reimbursements requests to the CCDA with receipts supporting such requests attached thereto. The CCDA shall reimburse Expense Reimbursements within thirty (30) days of receipt of such itemized reimbursement requests. During Phase 1 only, such expense reimbursements are included in the Phase 1 Fees.

4. Method of Payment.

4.1 Monthly Invoices. In advance of the payment due date, BLD Clay County shall submit monthly invoices for the Fees to the CCDA to facilitate the CCDA's timely payment of the Fees on the dates specified in Section 3.1.

4.2 Submission of Invoices. BLD Clay County shall submit invoices under this Agreement to:

Name:

Title:

Entity/Agency:

Address

City, State Zip

Telephone: (\_\_\_) \_\_\_-\_\_\_\_

e-mail:

5. Extra Work.

At any time during the Term, the CCDA may request that BLD Clay County perform Extra Work. As used herein, “Extra Work” means any work which is determined by the CCDA to be necessary for the proper completion of the Sports Park Improvements, but which is not included in the Services. BLD Clay County shall not perform, nor be compensated for, Extra Work without written authorization from the CCDA.

6. Plans and Specifications.

6.1 Use by the Parties. Subject to Section 6.2, this Agreement creates a non‑exclusive and perpetual right for the CCDA to copy, use, modify or reuse, but only in connection with the Sports Park and the Sports Park Improvements, any and all plans, specifications, studies, drawings, estimates and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on compact disks, flash drives or other means of mass data preservation, which are prepared or delivered to it pursuant to this Agreement. BLD Clay County shall have the right at any time, in connection with any other sports park or facility which BLD Clay County or any Affiliate may design, build, renovate, own, maintain, operate, lease, manage, consult with respect to or otherwise be associated with now or in the future, to use all design concepts, plans and project specifications prepared or delivered to the CCDA in connection with the Sports Park or the Sports Park Improvements as Previous Plans (as hereinafter defined) for such other sports park or facility.

6.2 Intellectual Property. BLD Clay County represents that it or its Affiliate BLD USA has a proprietary interest and intellectual property rights in the look, design, style, shape, color scheme and architecture of Big League Dreams Sports Parks, including, without limitation, the design of the concession facilities (collectively, the "Total Image"). Further, BLD Clay County represents that it or BLD USA has a proprietary interest and certain intellectual property rights in the name "Big League Dreams" and in the Big League Dreams Sports Park logos and marks (collectively the "Name and Marks"). BLD USA and the CCDA have entered the License Agreement, by which the CCDA was licensed certain rights with respect to the Total Image and the Name and Marks for use with the Sports Park. No license of any kind with respect to such is granted to the CCDA by this Agreement.

6.3 Previous Plans.Not later than seven (7) days after the commencement of Phase 2, BLD Clay County shall cause to be delivered to the Sports Park architects selected by the CCDA (the “Architects”), in digital format by electronic transmission at no expense to the CCDA, a copy (without architect or engineer signatures or stamps) of one complete set of construction documents, drawings and specifications for all architectural elements of an existing Big League Dreams Sports Park (the “Previous Plans”) for use and reference by the Architects in the design and construction of the Sports Park Improvements The Previous Plans shall cover the following Sports Park project elements at a minimum, as such were designed for use at the prior facility:

1. Stadium Club Sports-Themed Concession Facility with Indoor Seating

2. Entry Gate Building

3. Offices

4. Batting Cages

5. Fieldhouse

6. Dugouts

7. Fixed or Stadium Seating

8. Maintenance Buildings

9. Entry Fences and Gates

10. Stadium Design Features

11. Enclosures

12. Signage

13. Site Layout and Civil Drawings excluding Parking Areas

14. Landscape and Irrigation Plans for Fields

In the event this Agreement is terminated by the CCDA, neither the CCDA nor any contractor or design professional engaged by the CCDA or the County may use the Previous Plans in the construction of any other type of recreational sports facility the CCDA or the County may construct in the County.

7. Assignment. Each party shall have the right to assign its rights and obligations under this Agreement only to an Affiliate of such party. Affiliates of BLD Clay County shall include any entity which owns or controls, or which is owned or controlled by, or which is under common control with, BLD Clay County; any entity which purchases all or substantially all of the assets of BLD Clay County or BLD USA; and any entity in which BLD USA owns at least a fifty percent (50%) capital voting interest of the common stock, partnership units or limited liability company membership interests, as applicable. Affiliates of the CCDA include the County or any other Government Partner providing financing for the Sports Park.

9. Relationship of Parties. The relationship of BLD Clay County to the CCDA shall at all times be that of independent contractor. No partnership, joint venture or similar relationship has been formed or is contemplated. No employee of BLD Clay County shall be entitled to any benefits accorded by the CCDA or the County to the CCDA's or the County's employees, including, without limitation, workers' compensation, disability insurance, pension or retirement benefits, health insurance, vacation or sick pay, it being agreed that such benefits, if any, to be made available to employees of BLD Clay County shall be made available by BLD Clay County at BLD Clay County's own expense. This Agreement gives no rights or benefits to anyone who is not a party hereto.

10. Manner of Performance. BLD Clay County shall provide properly qualified and experienced personnel to perform BLD Clay County's obligations under this Agreement. BLD Clay County shall have the sole discretion and control over the manner, method, details and means of its performance of the Services called for under this Agreement.

11. Indemnification. BLD Clay County shall indemnify, defend and hold harmless the CCDA and its elected and appointed officials, officers, employees and volunteers (individually and collectively the "Indemnitees"), from and against any and all liabilities, claims (including any claim made against the CCDA by any individual or entity asserting any rights in the Previous Plans), actions, proceedings, suits, damages, judgments, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), which the Indemnitees may suffer and incur or to which the Indemnitees may become subject as a result of the breach of, or the negligence or willful acts or omissions of BLD Clay County, its agents, officers, members, directors or employees in performing any of the Services under, this Agreement during the Term. This indemnity shall not apply to any Claims which arise out of or otherwise occur as a result of the negligence or willful acts or omissions of the Indemnitees or any agent, representative or contractor of such Indemnitees or of any third party. This indemnity also shall not apply to any legal challenge to contest this Agreement, the MOA, the License Agreement or any other agreement which may be entered for the development of the Sports Park.

12. Insurance Requirements.

12.1 Required Insurance. During the Term, BLD Clay County shall procure and maintain the following noted insurance:

(a) Commercial General Liability Insurance. Commercial general liability insurance, in an amount not less than $1,000,000 per occurrence, $2,000,000 general aggregate for bodily injury, personal injury and property damage.

(b) Comprehensive Vehicle Liability Insurance. Comprehensive automobile liability insurance, which provides for total limits of not less than $1,000,000 combined single limits per accident applicable to all owned/non-owned and hired vehicles.

(c) Workers' Compensation Insurance. Statutory workers' compensation as required by Florida law and employers' liability insurance in an amount not less than $1,000,000 per occurrence.

12.2 Other Insurance Provisions. The general and vehicle liability insurance policies are to contain or be endorsed to contain the following provisions:

(a) Additional Insureds. The CCDA, its elected and appointed officials, officers, employees, agents and volunteers are to be covered as additional insureds by BLD Clay County on the general and vehicle liability policies of insurance. The coverage shall contain no special limitations on the scope of protection afforded to the CCDA, its elected and appointed officials, officers, employees, agents or volunteers.

(b) Primary Insurance. The insurance coverage of BLD Clay County shall be primary insurance as respects the CCDA, its elected and appointed officials, officers, employees, agents and volunteers. Any insurance or self-insurance maintained by the CCDA, its elected officials, officers, employees, agents or volunteers shall be in excess of such insurance maintained by BLD Clay County and shall not contribute with it.

12.3 Acceptability of Insurers. Insurance is to be placed with insurers with a Bests’ rating of no less than A-VII.

12.4 Verification of Coverage. BLD Clay County shall furnish the CCDA with certificates of insurance evidencing the coverage required by this section. Such certificates are to be endorsed by a person authorized by the insurer to bind coverage on its behalf.

13. Modification. No modification or extension of this Agreement shall be valid unless the same is in writing and executed by both parties.

14. Non-Exclusive Relationship. Affiliates of BLD Clay County may continue to conduct other business activities with other municipalities or counties.

15. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed to be effective on receipt if delivered by personal delivery; by depositing same in the United States mail, postage prepaid, certified mail, return receipt requested; or by overnight delivery service, addressed to the parties at the respective addresses set forth below or at such other addresses as may have been theretofore specified by written notice delivered in accordance herewith:

If to the CCDA: Executive Director

Clay County Development Authority

1734 Kingsley Ave.

Orange Park, FL 32073

If to BLD Clay County: Big League Dreams Clay County, LLC 16339 Fairfield Ranch Road

Chino Hills, California 91709

Attention: Scott Parks LeTellier

Chief Executive Officer

Either party may change its address for notice purposes by notifying the other party of such change in accordance with the provisions of this section.

16. No Discrimination. In the performance of this Agreement, BLD Clay County shall not discriminate against any employee or applicant for employment because of race, religion, color, creed, marital status, disability, gender, sexual orientation, national origin or ancestry or medical condition.

17. Compliance with Laws. BLD Clay County shall comply with all applicable laws, ordinances and codes of the federal, state and local governments.

18. Governing Law. This Agreement shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of Florida.

19. Dispute Resolution. For each claim or dispute arising between the parties, the parties shall attempt to resolve the matter through escalating levels of management. In the event the matter cannot successfully be resolved in this manner, either party may file a claim for arbitration against the other party with the American Arbitration Association under its then current Commercial Arbitration Rules, Expedited Procedures, regardless of the amount of the claim or dispute. Such arbitration shall be binding on the parties. Venue for purposes of any arbitration shall be in Jacksonville, Florida.

20. Attorneys' Fees. The party prevailing party in any arbitration which may be filed shall be entitled to reasonable attorneys' fees and all other expenses (including fees and costs related to discovery) reasonably incurred in connection with such dispute, in addition to all other relief to which the party is determined to be entitled.

21. Severability. If any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. Survival. The terms, provisions and representations contained in this Agreement, or inferable therefrom, shall survive the expiration of the Term or the earlier termination of this Agreement for a period of one (1) year.

23. Integration. This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter herein.

24. Nonrecourse. In the event of any dispute arising out of this Agreement, the CCDA shall look only to BLD Clay County for recourse**,** and covenants not to sue or otherwise look to the assets of BLD USA any other Affiliate of BLD Clay County or of any officer, director, member, manager, employee or agent of BLD Clay County, BLD USA or any Affiliate of BLD Clay County, and BLD Clay County shall look only to the CCDA for recourse, and covenants not to sue or otherwise look to the assets of any past or present elected official, officer, employee or agent of the CCDA.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective the date and year first set forth above.

**CLAY COUNTY DEVELOPMENT AUTHORITY**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Title]

**ATTEST:**

**By:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Title]

**APPROVED AS TO FORM:**

**By:**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Name]

[Title]

**BIG LEAGUE DREAMS CLAY COUNTY, LLC**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Scott Parks LeTellier

Title: Chief Executive Officer

**CONSULTING AND PROFESSIONAL SERVICES AGREEMENT**

**(CCDA / BIG LEAGUE DREAMS CLAY COUNTY)**

**EXHIBIT A**

**(SCOPE OF SERVICES)**

Based on the extensive recreational sports park operating experience of its Affiliates and with emphasis on maintenance and operations considerations, BLD Clay County shall provide the following planning, design and construction consulting Services:

**Phase 1 Services**

**Planning Consulting Services**

* Concept design:  Assist the CCDA in determining the features and amenities of the Sports Park (including site visits).
* Assist the CCDA with conceptual site development concerns including:  environmental, traffic circulation/parking and preliminary grading and drainage.
* Develop a project description sufficient for any required environmental reviews.
* Provide historic Big League Dreams Sports Park construction cost data and information to assist the Project Team in preparing a project budget.
* Financial forecasting: develop preliminary five (5) and thirty (30) year income/expense estimates.
* Define the scope of all on-site and, if applicable off-site improvements for the Sports Park.
* Assist the CCDA in selecting the Architects.
* Assist the CCDA in selecting the General Contractor.

**Phase 2 Services**

**Design Consulting Services**

* Attend “Kick-off” meeting with the Architects and the individual designated by the CCDA to represent its interests to review scope of work, preparation of project budget and schedule (collectively the “Project Team”).
* Attend regular meetings with the Project Team.
* Provide input to the Project Team throughout the design phase concerning Sports Park operational needs and revenue generation potential.
* Provide input to the Project Team in revising the project budget.
* Provide input to the Project Team in preparing scope list and specifications for all necessary furniture, fixtures and equipment.
* Participate in periodic value engineering with the Project Team to meet and maintain CCDA budget parameters.
* Provide input to the project schedules concerning timeframes for deliverables and design milestones.
* Provide input to the CCDA with respect to the selection of the General Contractor and the development of the General Contractor Agreement.
* Assist in public relations and project marketing.
* Financial forecasting: update and refine five (5) and thirty (30) year income/expense estimates.

**Phase 3 Services**

**Construction Consulting Services**

* Provide monthly (or more frequent) on-site visits and review.
* Public relations and project marketing.
* Provide input with respect to furniture, fixtures and equipment procurement for the Sports Park at competitive prices.
* Review and make recommendations as to any scope changes to the approved plans based on maintenance and operations considerations of the Sports Park Improvements.
* Provide value engineering based on maintenance and operations considerations of the Sports Park Improvements.
* Review the construction documents and specifications for compliance with the intent of the design development drawings (but not for plan checking purposes).
* Provide quality assurance and quality control input, particularly based on operating experience and with emphasis on maintenance and operations considerations.