

REQUESTED BY:  
COLBERT

LAW DEPARTMENT  
DRAFT NO. 3669

TITLE

AN ORDINANCE FOR THE PURPOSE OF AUTHORIZING THE MAYOR AND THE DIRECTOR OF PUBLIC SERVICE AND SAFETY, ON BEHALF OF THE CITY OF WARREN, TO ENTER INTO A PERSONAL SERVICE CONTRACT FOR THE PURPOSE OF COORDINATING, DIRECTING AND CONDUCTING ALL ADULT SOFTBALL PROGRAMS AND OPERATIONS IN CITY PARKS DURING 2017, AND DECLARING AN EMERGENCY.

ORDINANCE NO. 12712/17

WHEREAS, the City deems that the operation of Summer and Fall adult softball programs at public parks in the City of Warren is in the best interests of the citizenry; and

WHEREAS, the City desires that an Agent coordinate, direct and conduct said programs; NOW THEREFORE

BE IT ORDAINED by the Council of the City of Warren, State of Ohio:

Section 1: That the Mayor and the Director of Public Service and Safety be, and they hereby are, authorized, for and on behalf of the City of Warren, to enter into a personal service contract with an individual for the purpose of having that person, during 2017, coordinate, direct and conduct, under the auspices of the City of Warren, all adult softball programs and operations at the City parks.

Section 2: That any such contract as provided for in Section 1 of this Ordinance shall be in substantial compliance and conformity with the "CONTRACT" which is attached hereto as "EXHIBIT A", the terms and conditions of said attached "CONTRACT" being hereby approved and authorized by this Council. Said "EXHIBIT A" is hereby incorporated herein, for all purposes, as if fully rewritten herein.

Section 3: That the contract to be entered into pursuant to this Ordinance involves the performance of personal services of a specialized nature requiring the exercise of peculiar skill and aptitude, therefore obviating the necessity for formal bidding procedures.

Section 4: That the contract shall first be approved by the Law Director, and the City Auditor be, and hereby is, authorized to disburse said funds upon receipt of proper vouchers, signed by the proper persons, for the stated purpose and for no other purpose.

Section 5: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, welfare and safety, and for the further reason that the planning and coordinating for the programs and operations in question can begin for the 2017 season without unnecessary and undue delay. WHEREFORE, this Ordinance shall go into immediate effect.

Passed in Council this 12<sup>TH</sup> day of April, 2017.

SIGNED:  ATTEST   
PRESIDENT OF COUNCIL CLERK

FILED WITH THE MAYOR: 4-12-17

DATE APPROVED: 4-12-17

  
MAYOR, CITY OF WARREN, OHIO

CONTRACT

This contract is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 by and between City of Warren, Ohio (hereinafter referred to as "the City"), a Municipal Corporation, and Marc Morgan (hereinafter referred to as "the Agent"), presently residing at 1481 Butterfield Circle Niles, Ohio 44446.

WHEREAS, the City deems that the operation of Summer and Fall adult softball programs within the City of Warren is in the best interests of the citizenry; and

WHEREAS, the City desires that the Agent coordinate, direct and conduct said programs during 2017; and

WHEREAS, Ordinance No. \_\_\_\_\_/17 (passed by Warren City Council on \_\_\_\_\_, and signed by the Mayor on \_\_\_\_\_ authorizes contract(s) for the aforementioned purposes;

NOW THEREFORE, WITNESSETH, in consideration of the mutual promises and agreements made herein by the parties it is mutually agreed by and between the parties to this contract that:

(1) An agency relationship is hereby created by this Contract, with the City as the principal and said Marc Morgan as the Agent.

(2) Under the auspices of the City, and with the authorization of the City, the Agent shall, during 2017, coordinate, direct and conduct those Summer and Fall adult softball programs and operations in City parks, which have been previously coordinated, directed and conducted by virtue of previous contracts with the City therefor, including, but not necessarily limited to, the following programs and operations: all Adult Softball, Summer and Fall.

(3) As compensation for his services under this Contract, the Agent shall be entitled to keep the first Nine Thousand Dollars (\$9,000.00) of net income per annum generated by the programs and operations for which he is responsible under this Contract. All net income generated by the programs and operations for which the Agent is responsible under this Contract in addition to said \$9,000.00 of net income per annum shall be divided equally by and between the City and the Agent, but in no case shall the total compensation of the Agent exceed \$15,000.00. For purposes of ascertaining "net income" under this section (3), the City's users fees shall not be included, but all other regular season revenue and expenditures, and all tournament revenue and expenditures, if any, shall be included. Other than the compensation expressly provided for within this Contract, the Agent shall not be entitled to any other compensation, fees or benefits.

(4) The Agent shall prepare, keep and maintain records sufficient to accurately reflect any and all income and expenses as a result of, or incidental to, this Contract. The City shall be entitled, at any time, to review and copy any and all such records. The Agent shall provide a twenty-thousand dollar (\$20,000.) security bond for the benefit of the City within seven (7) days after the date that this Contract is made and entered into.

(5) The Agent may employ an assistant for aid in his responsibilities under this Contract. If an assistant is so employed, that assistant's name shall immediately be provided to the City's Superintendent of Operations. Any assistant shall be employed by the Agent at the Agent's sole expense.

(6) The Agent shall be responsible for:

(a) Promulgating and enforcing reasonable rules and regulations relative to the programs and operations for which he is responsible under this Contract; and

(b) Scheduling of all diamonds and fields to be used pursuant to this Contract, and all tournaments arising pursuant to this Contract; and

(c) Resolving all disputes which may arise between the Agent and third parties or between two or more third parties relative to the programs and operations for which the Agent is responsible under this Contract; and

(d) Setting all fees, except City's users fees, incidental to the programs and operations for which the Agent is responsible under this Contract; and

(e) Collecting, accounting for with a list of team rosters, and turning over to the City, any City's users fees incidental to the programs and operations for which he is responsible under this Contract (said City's users fees shall be calculated per team, per season, as follows:  $\$.75 \times 12 \times$  number of games to be played that season at the City's facilities by the team); and

(f) Collecting and accounting for all fees incidental to the programs and operations for which he is responsible under this Contract; and

(g) Paying to the City all of the City's users fees in full for regular league play, one-half thereof by opening day of the 2017 season and the remaining one-half thereof by October 15, 2017; and

(h) Consulting with the City's Superintendent of Operations, from time to time, relative to the programs and operations for which agent is responsible under this Contract; and

(i) Paying to the City, with an attached tournament schedule, tournament maintenance fees of \$25.00 per field/per day; and

(j) Paying to the City a ten percent (10%) penalty on all monies owed to the City but not turned over to the City on time; and

(k) Any other reasonable duties and responsibilities imposed upon the Agent by the City.

(7) The City's duties and responsibilities under this Contract are as follow:

(a) Between the hours of 7:00 a.m. and 3:00 p.m. during the days of Monday through Friday, the City shall, at its own expense and subject to the weather, prepare fields to be used pursuant to this Contract; and

(b) The City shall provide office space to the Agent at the City's Operations Department offices; and

(c) The City shall provide, subject to the needs of the City's Operations Department, the Agent with the use of the photocopy machine at the City's Operations Department offices.

(8)

(a) The City shall provide for the defense of the Agent and his assistant, in any state or federal court, in any civil action or proceeding to recover damages for injury, death, or loss to person(s) or property allegedly caused by an act or omission occurred, or is alleged to have occurred, while the Agent or his assistant was acting in good faith and not manifestly outside the scope of the Agent's duties and responsibilities under this Contract.

(b) The City shall indemnify and hold harmless the Agent or his assistant in the amount of any judgment, other than a judgment for punitive or exemplary damages, which is obtained against the Agent or his assistant in a state or federal court and that is for damages for injury, death, or loss to person(s) or property caused by an act or omission in connection with the Agent's or his assistant's pursuit of this Contract, if at the time of the act or omission the Agent or his assistant was acting in good faith and within the scope of his duties and responsibilities under this Contract.

(c) The Agent or his assistant shall fully cooperate with the City in the defense of any civil action or proceeding brought against the City, the Agent or his assistant and/or other agents or employees of the City which in any way results from this Contract.

(d) The City may, at its cost, acquire insurance for the purpose of complying with its obligations and responsibilities as set forth in paragraphs (a) and (b) of this section (8).

(9) By October 15, 2017, the Agent shall supply the City with a final financial report sufficient to accurately reflect all income and expenses which relate to this Contract and which were not previously reported to the City on a report of the City's choosing.

Except as otherwise expressly provided for elsewhere in this Contract, the Agent shall, by October 15, 2017, pay to the City all income, fees and payments to which the City is entitled by virtue of this Contract or otherwise.

The Agent shall also supply to the City a true copy of his complete 2017 Federal Income Tax return as supplied to the Internal Revenue Service. Such shall be supplied to the City no later than April 15, 2018. Any failure of the Agent to provide the proper documentation in a timely fashion shall, in addition to any other remedies and rights available to the City, constitute sufficient reason to prohibit any future consideration of the Agent for any contract the same as, or similar to, this Contract.

(10) This Contract shall be in full force and effect through December 31, 2017, except for duties otherwise provided.

IN WITNESS WHEREOF, the parties hereto have set their hands hereto on or before the date previously indicated.

Signed in the Presence of:

CITY OF WARREN, OHIO  
("The City")

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

BY: \_\_\_\_\_  
William D. Franklin  
Mayor\*

and

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

BY: \_\_\_\_\_  
Enzo C. Cantalamessa  
Director of Public  
Service and Safety\*

\*Per Warren City Ordinance  
No. \_\_\_\_\_/17

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

\_\_\_\_\_  
("the Agent")

#### CERTIFICATE OF AVAILABILITY OF FUNDS

I hereby certify that the money for the City's share is in the Treasury to the credit of the proper fund and not appropriated for any other purpose.

\_\_\_\_\_  
Auditor

APPROVED AS TO LEGAL FORM  
AND CORRECTNESS

\_\_\_\_\_  
Law Director  
Gregory V. Hicks