

OPERATIONAL/MANAGEMENT AGREEMENT BETWEEN
THE CITY OF HUNTINGTON BEACH
AND HBSC PARTNERS, LLC.
FOR FACILITY MANAGEMENT AND OPERATION SERVICES
OF THE HUNTINGTON CENTRAL PARK SPORTS COMPLEX

THIS AGREEMENT ("Agreement") is made and entered into by and between the City of Huntington Beach, a municipal corporation of the State of California, hereinafter referred to as "CITY", and HBSC Partners, an LLC hereinafter referred to as "CONTRACTOR" and collectively referred to as "PARTIES"

RECITALS

The CITY desires to retain a CONTRACTOR having special skill and knowledge in the field of sports activities, operations, and facility management; and

The CONTRACTOR, represents that CONTRACTOR is able and willing to provide such services to the CITY; and

CONTRACTOR has been selected to perform these activities, operations, and facility management services at the Huntington Central Park Sports Complex ("Premises" or "Sports Complex") pursuant to documentation on file in the office of the City Clerk, the provisions of the Huntington Beach Municipal Code, Chapter 3.02, relating to procurement of service contracts have been complied with; and

CITY and CONTRACTOR desire to enter into an Operational/Management Agreement to provide for such operations and management services of the Huntington Central Park Sports Complex.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the PARTIES agree as follows:

1. OPERATION AND MANAGEMENT

As part of management, CONTRACTOR may enter upon, use, and maintain the Premises as described herein.

2. PREMISES

The Huntington Central Park Sports Complex is located at 18100 Goldenwest Street, Huntington Beach, CA 92648. The property is within the boundaries of Huntington Central Park south of the Huntington Beach Central Park Library. The Premises is bordered by Goldenwest Street to the west, Talbert Avenue to the North, Gothard Street to the east, and Sully Miller Lake and the Ocean View Estates mobile home park area of Huntington Central Park to the south. CITY shall retain full possession of the Premises and Amenities, and CONTRACTOR shall not acquire any ownership interest, temporary, permanent, irrevocable, possessory, or otherwise, in the Premises and Amenities, by reason of this Agreement.

The Premises referred to in the Agreement consists of forty-five (45) acres and features eight (8) multi-use softball/soccer fields; seven (7) batting cages; three (3) open artificial turf fields; one (1) artificial arena turf field; one (1) team room/office building; one (1) concession building (at batting cage); two (2) attached restroom buildings; a maintenance yard; and over 800 parking spaces. Note that within the Premises, there are two (2) food and beverage concession buildings (with attached restrooms previously referred to), which are under separate operating agreement and (2) tot lots which are not included in this agreement.

3. TERM

The Term of this Agreement shall be for a period of three (3) years, commencing on _____ (the "Commencement Date") and ending on _____. The term of this Agreement may be extended up to two (2) additional three-year (3) terms upon mutual agreement of PARTIES evidenced in writing. CITY may withhold consent to extend this Agreement with or without cause, in which case this Agreement shall terminate. The time for performance of the tasks identified in **EXHIBIT "A"** are generally to be shown in **EXHIBIT "A."** This schedule may be amended to benefit the PROJECT if mutually agreed to in writing by PARTIES.

In the event the Commencement Date precedes the Effective Date, CONTRACTOR shall be bound by all terms and conditions as provided herein.

4. SCOPE OF SERVICES

CONTRACTOR shall provide all services as described in **EXHIBIT "A,"** which is attached hereto and incorporated into this Agreement by this reference. These services shall sometimes hereinafter be referred to as the "PROJECT."

CONTRACTOR hereby designates MATT OLMSTEAD, who shall represent it and be its sole contact and agent in all consultations with CITY during the performance of this Agreement.

5. CITY STAFF ASSISTANCE

CITY shall assign a staff coordinator to work directly with CONTRACTOR in the performance of this Agreement.

6. FEES AND PROFIT SHARING MODEL

a) Fees. Facility rentals and recreational program charges for use of the Premises shall continue at the rates included in the most current Master Fee and Charges Schedule as listed in **EXHIBIT "C"** through February 2022., Effective March 1, 2022, upon submission of satisfactory documentation of rates at similar facilities in Los Angeles and Orange Counties and upon approval by the Director of Community and Library Services (Director) fees may be adjusted. Thereafter, fees may be increased annually, effective January 1, at a rate no higher than the Consumer Price Index (CPI) and upon satisfactory documentation of fees at similar facilities in Los Angeles and Orange Counties upon approval by the Director.

CONTRACTOR may rent fields and event space at the Premises for Specific Events. Such Events shall be subject to the CITY's Specific Events permitting process and fees (H.B. Municipal Code 13.54 Specific Events) per the CITY's most current Master Fee and Charges Schedule. CONTRACTOR will refer all Specific Event customers to CITY for permit application

process and payment of fees.

Additional rental, program, services, and sponsorships fees not specifically listed in the CITY's most current Master Fee and Charges Schedule will be subject to the Profit Sharing Model shown in **EXHIBIT "B"**.

b) Profit Sharing. Profit Sharing revenue shall be paid at Huntington Beach City Hall, City Treasurer, 2000 Main Street, Huntington Beach, CA 92648, or the place CITY may designate in writing. CONTRACTOR shall pay CITY each month in accordance to **EXHIBIT "B"**.

c) Gross Sales Percentage Rates. Profit-Sharing Revenue shall be based on a Gross Sales Volume Percentage for standard services and events as set forth in **EXHIBIT "C"**. The initial percentage rate for all items and service, excluding concession merchandise, for year-one (1) shall be based on a rate of ten percent (10%); year-two (2) at twelve percent (12%), and year-three (3) at fourteen percent (14%) of Gross Sales. Profit-Sharing revenue for concession merchandise and sales products shall be based on Gross Sales at a rate of five percent (5%) upon commencement of operations. Should the PARTIES agree to extend the Agreement, thereafter, the percentage rate shall increase at a rate of two percent (2%) during each subsequent three-year (3) terms. The first extension shall be based on a flat rate of sixteen percent (16%) for the duration of the extension, with the second and final term extension not to exceed a maximum of eighteen percent (18%) flat Gross Sales Volume Percentage during the term extension. CONTRACTOR shall pay CITY in accordance to **EXHIBIT "B"**.

i. CONTRACTOR may increase rates as specified in Section 6a of this Agreement. Any rate changes shall be reflected as an addendum during the term of this Agreement.

ii. CONTRACTOR may propose a distribution system for the sale of Parking Passes. CITY has a right to accept, reject or modify methodology of said

system. Seasonal and Annual Parking Passes shall be sold on site and are subject to the most current version of the CITY's Master Fee and Charges Schedule. Oversized Vehicle Parking Permits will be available for events only, and not allowed for general daily use at the Premises in accordance with H.B. Municipal Code 10.44.060. CONTRACTOR shall pay CITY based on the Gross Sales Percentage Rate as referred to in **Exhibit "B"**.

iii. Parking Meter Revenue. City shall retain 100% of all metered parking funds.

d) Profit Sharing Distribution. CONTRACTOR shall pay CITY Profit-Sharing Revenue by the fifteenth (15th) day after the end of each month. CONTRACTOR shall transmit with payment, a Gross Receipts Report for the month in which payment is submitted. The Gross Receipts Report shall include a statement of the gross receipts by source of sales, and such other information as CITY may require. All payments and the Gross Receipts Report shall be sent to the CITY as provided for under this Agreement.

e) Late Charge. In the event that CITY does not receive the monthly Profit-Sharing Revenue on or before the fifteenth (15th) day after the end of each month, a late charge of ten percent (10%) of the monthly profit-sharing amount due shall be applied to any outstanding balance beginning the twentieth (20) day after the end of the month. If payment is received after the fifteenth (15th) day, but postmarked on or before the fifteenth (15th), the revenue shall be accepted without penalty. If payment is received thirty (30) or more days after the due date, an additional one-and-a-half percent (1.5%) penalty shall be assessed daily until paid in full.

f) Records and Audit.

i. Annual Statement. CONTRACTOR shall provide CITY an annual Statement of Gross Sales within fifteen (15) days after the end of each Operational

Year. An Operational Year is defined as twelve (12) months beginning July 1 and ending June 30.

ii. Sales and Charges. CONTRACTOR shall record all sales and charges by electronic means or cash registers that display the amount of the transaction certifying the amount recorded. The program or register shall be equipped with devices or systems which log in daily sales totals, and which shall record the transaction numbers and sales details. At the end of each day, the system will record the total sales for that day.

iii. Production of Statement. Records and Audits. CONTRACTOR shall make available for CITY inspection at the Premises a complete and accurate set of CONTRACTOR's and any sub-contractor's books and records of all sales of merchandise and revenue derived from the conduct of business at the Premises from which Gross Sales can be determined and all supporting sales records, including without limitation all federal and state tax returns. CONTRACTOR shall also furnish CITY copies of CONTRACTOR's quarterly California sales and use returns at the time each are filed with the State of California.

CONTRACTOR further agrees that it will keep, retain and preserve for at least three (3) years all records, books, bankbooks (statements) or duplicate deposit books and other evidence of Gross Sales.

CITY shall have the right, upon reasonable notice, during the Agreement Term and any extension thereof, and within three (3) years after Expiration or Termination of this Agreement to inspect and audit CONTRACTOR's books and records and to make transcripts therefrom to verify the payment due CITY. The CITY may conduct the audit at any reasonable time during normal business hours in a

manner that minimizes any interference with the conduct of CONTRACTOR's regular business operations. CONTRACTOR shall cooperate with CITY in making the inspection and audit.

CITY shall further be entitled, once during each Operational Year, and once within three (3) years of Expiration or Termination of the Agreement, to an independent audit of CONTRACTOR's books of account, records, cash receipts, and other pertinent data to determine CONTRACTOR's Gross Sales, by a certified public accountant to be designated by CITY, at CITY's sole cost and expense. The audit shall be limited to the determination of Gross Sales and shall be conducted during usual business.

If either audit shows a deficiency in the payment of any Profit-Sharing Revenue, the deficiency shall become immediately due and payable and if there is an overpayment, CITY shall immediately refund the amount of the overpayment to CONTRACTOR. CITY shall bear its costs of the audit unless the audit shows that CONTRACTOR understated Gross Sales by more than five percent (5%), in which case CONTRACTOR shall pay all CITY's reasonable costs of the audit.

iv. CONTRACTOR's Gross Sales Audit. CONTRACTOR may contest the results of CITY's audit by performing a confirmatory audit within thirty (30) days of receipt of CITY's audit results and supporting evidence, using an independent public accountant reasonably acceptable to CITY. If CONTRACTOR's audit discloses that CITY's audit was incorrect by more than five percent (5%), then CITY shall pay the cost of such audit and shall pay the cost of CITY's audit.

v. Acceptance. The acceptance by CITY of any monies paid to CITY by CONTRACTOR as Profit-Sharing Revenue from the Premises, as shown by any

statement furnished by CONTRACTOR, shall not be construed as an admission of the accuracy of said statement, or of the sufficiency of the amount of said Profit-Sharing Revenue, but CITY shall be entitled to review the adequacy of such payment pursuant to the above-described audit procedure.

7. GROSS SALES DEFINED

The term "Gross Sales" shall mean the total selling price of all items listed on the CITY's Master Fee and Charges Schedule as shown in **EXHIBIT "C"**, or of merchandise or services sold or rendered in, or from the Premises by CONTRACTOR, its sublessees, licensees, or concessionaires, whether for cash or on credit, and if on credit whether or not paid, and shall include without limitation:

(a) All other receipts of all business conducted in, at, or from the Premises, including all deposits not refunded to purchasers, proceeds, receipts or any revenue derived whatsoever from the use of Premises;

(b) Proceeds from sales based on orders solicited or taken from, in, or on the Premises for merchandise or services to be delivered or rendered off, or from sources outside, the Premises; and

(c) All other revenue or receipts generated by or arising from the use of the Premises.

8. GROSS SALES EXCLUSIONS

Notwithstanding the provisions of Section 7 of this Agreement, the term "Gross Sales" shall not include the following items and such items may be deducted from "Gross Sales" to the extent they have been included therein or have been included in a prior computation of "Gross Sales" on which Revenue has been paid under this Agreement to CITY:

(a) Any sales or use taxes imposed on the sale or rent of merchandise, or services that are added to the sales price collected from customers; and

(b) Any transfer of merchandise from the Premises to the manufacturer or supplier from whom it was obtained by CONTRACTOR.

9. BOOKS AND RECORDS

CONTRACTOR shall at all times keep or cause to be kept on the premises full, complete, and accurate records and books of account showing the total amount of Gross Sales as defined in this Agreement made each calendar month in, on or from the Premises. Furthermore, CONTRACTOR shall at the time of sale and in the presence of the customer cause the full selling price of each piece of merchandise and each service rendered in, on, or from the Premises to be recorded in an electronic system, or in a cash register or cash registers that have cumulative totals and are sealed in a manner approved by CITY. CONTRACTOR agrees to maintain on the Premises for a period of three (3) years following the close of each calendar month all records and books of account and all cash system or register tapes showing or in any way pertaining to the Gross Sales made in, or from the premises during such calendar month.

10. BUSINESS PURPOSES AND USE OF PREMISES

The Premises shall be operated and managed for the purpose of sports activities and events, including, but not limited to, league management, field maintenance, activity rentals, and concession sales of approved products and services. CONTRACTOR shall provide CITY with a list of products and services, and associated prices for approval prior to the onset of sales.

At all times, CONTRACTOR shall comply with the following requirements:

(a) CONTRACTOR, at its sole cost and expense shall equip, operate, manage, and maintain the Premises in a safe and good working condition as described in **EXHIBIT "A"**.

(b) At all times CONTRACTOR shall comply with all City, County, State and Federal laws and regulation, including but not limited to those regarding building permits, health and safety guidelines, and environmental regulations as applicable.

(c) CONTRACTOR shall be responsible for obtaining CITY approval of, and providing appropriate signage for the Premises, including way-finding signs. CONTRACTOR shall maintain all signage in good appearance at all times during the life of this Agreement. CITY shall have the right to approve or require CONTRACTOR to change or remove signs or any other advertising on the Premises that does not meet CITY approved and/or CITY Municipal Codes.

11. PAYMENT OF UTILITY CHARGES

CITY shall pay public utility charges, including water, sewer, gas, and electric. During the term of this Agreement or any extension thereof, CONTRACTOR shall pay, and hold CITY and the Premises free and harmless from all charges for the furnishing of garbage and rubbish services, telephone and internet services, and any other utilities to the Premises.

12. COMMUNICATIONS SERVICES

CITY will work with CONTRACTOR to develop and execute a plan for providing Premises with communication services for phone and internet needs. Costs to be determined, and mutually agreed upon, by PARTIES. The plan will include a method for the CONTRACTOR to receive calls from the already established telephone number for the Sports Complex, either directly from the customer or indirectly through the CITY's telecommunication system. CONTRACTOR will continue to conduct all Sports Complex business and marketing using the existing telephone number for the Sports Complex. The CITY will maintain ownership of the existing telephone number. Upon termination of the Agreement, CONTRACTOR shall cease any and all use of said telephone number.

13. EXTRA WORK

In the event CITY requires additional services not included in **EXHIBIT "A"** or changes in the scope of services described in **EXHIBIT "A,"** CONTRACTOR will undertake such work only after receiving written authorization from CITY. Compensation for such extra work shall be allowed only if the prior written approval of CITY is obtained and both parties have agreed upon the fees and compensation for such extra work.

14. MAINTENANCE AND REPAIR RESPONSIBILITIES

CITY's maintenance responsibilities of the Premises shall be limited to maintaining all sewers and drain lines, roofs, attached public restrooms, and Premises landscaping, which shall include, but is not limited to, outfield turf maintenance, and shrubbery, plants, and planter maintenance throughout the Premises. CITY will service parking lot trash receptacles. CONTRACTOR shall monitor parking lot trash receptacles between CITY servicing for overflow and empty if appropriate in order to maintain the cleanliness of the parking lots.

Except as set forth in the preceding paragraph, CONTRACTOR agrees to maintain the Premises in good order and repair at CONTRACTOR's sole cost and expense during the entire term of this Agreement or any renewals or extensions thereof or during any holdover period, pursuant to the CITY's maintenance standards. A copy of the weekly evaluation summary sheet to be completed by the CONTRACTOR is attached as **EXHIBIT "D"**, and incorporated herein by this reference.

CONTRACTOR may use mutually agreed upon CITY-owned maintenance equipment housed at Premises during the term of this Agreement or until the end of its useful purpose. Upon execution of the Agreement, CITY will work with CONTRACTOR to identify equipment for CONTRACTOR's use. Equipment shall be used in the course of daily maintenance of Premises and outlying CITY-owned fields in preparation for CONTRACTOR's use only. Once maintenance

equipment has exhausted its lifespan, any and all approved-replacement equipment shall be made at the sole cost and expense of CONTRACTOR.

CONTRACTOR's obligation includes, without limitation, maintaining and operating the Premises and adjacent areas, in a clean, safe, wholesome and sanitary condition free of trash, garbage or obstructions of any kind and in compliance with any and all present and future laws, general rules or regulations of any governmental authority now, or at any time during the entire Term of this Agreement or any renewals or extensions thereof or during any holdover period, in force, relating to sanitation or public health, safety or welfare, or for the protection of life, limb or property; and CONTRACTOR shall at all times faithfully obey and comply with all laws, rules and regulations applicable thereto. CONTRACTOR, at its sole cost and expense, shall remedy without delay any defective, dangerous or unsanitary condition(s) caused by CONTRACTOR or anyone related thereto. Provided, however, that CONTRACTOR shall have no obligation to repair or maintain sewer lines or respond to sewer leaks.

In addition to the Maintenance Responsibilities itemized in **EXHIBIT "A"**, Section B.5, CONTRACTOR shall paint, stain or seal the Premises' building exterior surfaces, amenities, such as the batting cages and concession building, a minimum of every three (3) years, unless CITY determines in its sole discretion that such work shall be done on a more frequent basis. All exterior metal surfaces, except the roof, shall be painted with rust resistant paint no less than once every other year. Any and all graffiti on the Premises shall be removed by within forty-eight (48) hours of CONTRACTOR receiving notice thereof or of CONTRACTOR becoming aware of such graffiti. CONTRACTOR may at its sole cost and expense remove the graffiti, or the CONTRACTOR may call the CITY's graffiti hotline to report the incident. In addition, with or without notice from CITY, CONTRACTOR shall, at its sole cost and expense, repair and/or replace any broken glass within forty-eight (48) hours of its becoming broken, regardless of cause, except by fault of CITY.

Except as provided above for graffiti and broken glass, CONTRACTOR, at its sole cost and expense and with or without notice from CITY, shall repair and/or replace all damage or destruction to the Premises caused by act(s) of vandalism as soon as possible but in no event later than fourteen (14) days after the date such damage or destruction occurred. CONTRACTOR, at its sole cost and expense, shall repair and/or replace all other damage or destruction to the Premises, regardless of cause, except by fault of CITY.

CONTRACTOR shall comply with all written notices served by CITY with regard to the care and maintenance of the Premises. Any written notice hereunder shall specify the work to be done and the period of time deemed to be reasonably necessary for completion of such work. Should CONTRACTOR fail to commence making the necessary repairs within seven (7) days after receiving such notice, or within twenty-four (24) hours of the glass becoming broken in the case of broken glass, or fail to diligently proceed to complete the necessary repairs within the period of time reasonably specified in the CITY'S notice, or within forty-eight (48) hours of the glass becoming broken in the case of broken glass, or within the forty-eight (48) hour time period for removing graffiti, or within fourteen (14) days of the date that the vandalism damage or destruction occurred, CITY shall proceed to cause the required work to be performed, and CONTRACTOR shall promptly reimburse CITY for the cost of labor and materials thereof and pay CITY a penalty on such costs at the penalty rate set forth in Section 6.e above from the date the costs were incurred by CITY to the date they are reimbursed to CITY by CONTRACTOR.

CONTRACTOR hereby expressly waives the right to make repairs at the expense of CITY and the benefit, if any, of the provisions of Sections 1941 and 1942 of the California Civil Code relating thereto.

15. SPONSORSHIP BANNERS AND SIGNS ON PREMISES

For purposes of this Agreement, CONTRACTOR shall be permitted to display sponsorship banners and signs within the Premises in compliance with the provisions of Zoning Code and Municipal Code. At its sole and absolute discretion, CITY may require removal of any banner or sign from the Premises.

16. ENTRY BY CITY

CITY reserves and shall at any and all times have the right to enter the Premises, without notice to CONTRACTOR, for the purposes of inspection, and any other service to be provided by CITY to CONTRACTOR hereunder, and to alter, improve, or repair the Premises, providing that the business of the CONTRACTOR shall not be interfered with unreasonably.

17. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS

CONTRACTOR hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation of every nature or liability of any kind or nature) arising out of or in connection with CONTRACTOR's (or CONTRACTOR's subcontractors, if any) negligent (or alleged negligent) performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement by CONTRACTOR, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of CITY. CONTRACTOR will conduct all defense at its sole cost and expense and CITY shall approve selection of CONTRACTOR's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by CONTRACTOR.

18. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE

CONTRACTOR acknowledges awareness of Section 3700 *et seq.* of the *California Labor Code*, which requires every employer to be insured against liability for workers' compensation. CONTRACTOR covenants that it shall comply with such provisions prior to the commencement of this Agreement. CONTRACTOR shall obtain and furnish to CITY workers' compensation and employers' liability insurance in amounts not less than the State statutory limits. CONTRACTOR shall require all subcontractors and contractors to provide such workers' compensation and employers' liability insurance for all of the subcontractors' and contractors' employees. CONTRACTOR shall furnish to CITY a certificate of waiver of subrogation under the terms of the workers' compensation and employers' liability insurance and CONTRACTOR shall similarly require all subcontractors and contractors to waive subrogation.

19. GENERAL PUBLIC LIABILITY INSURANCE

(a) In addition to the workers' compensation and employers' liability insurance and CONTRACTOR's covenant to defend, hold harmless and indemnify CITY, CONTRACTOR shall obtain and furnish to CITY, a policy of general liability insurance policy, including motor vehicle coverage against any and all claims arising out of or in connection with the Premises. This policy shall indemnify CONTRACTOR, its officers, employees and agents, while acting within the scope of their duties, against any and all claims arising out of or in connection with the Premises, and shall provide coverage in not less than the following amount: combined single limit bodily injury and property damage, including products/completed operations liability and blanket contractual liability, of One Million Dollars (\$1,000,000.00) per occurrence. If coverage is provided under a form which includes a designated general aggregate limit, the aggregate limit must be no less than One Million Dollars (\$1,000,000.00) for the Premises. This policy shall name CITY, its officers, elected or appointed officials, employees, agents, and volunteers as Additional Insureds, and shall specifically

provide that any other insurance coverage which may be applicable to the Agreement, shall be deemed excess coverage and that CONTRACOTR's insurance shall be primary.

(b) Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

20. PROPERTY INSURANCE

(a) CONTRACTOR shall provide before commencement of this Agreement and shall obtain and furnish to CITY, at CONTRACTOR's sole cost and expense, property and fire insurance with extended coverage endorsements thereon, by a company acceptable to CITY authorized to conduct insurance business in California, in an amount insuring for the full insurable value of the Premises, all improvements, trade fixtures, personal property whether or not owned or leased by CONTRACTOR, and all trade inventory in or on the Premises against damage or destruction by fire, theft, or elements. This policy shall contain a full replacement cost endorsement naming CONTRACTOR as the insured and shall not contain a coinsurance penalty provision. The policy shall also contain an endorsement naming CITY as an additional insured. The policy shall contain a special endorsement that such proceeds shall be used to repair, rebuild or replace any such improvements, trade fixtures, personal property whether or not owned or leased by CONTRACTOR, and all trade inventory so damaged or destroyed; and if not so used, such proceeds (excluding any insurance proceeds for trade fixtures, personal property whether or not owned or leased by CONTRACTOR, and trade inventory, but only to the extent the insurance proceeds specifically cover those items) shall be paid to CITY. The policy shall also contain a special endorsement that if the Premises are so destroyed triggering the PARTIES' ability to terminate as set forth in this Agreement, and either party elects to terminate the Agreement, the entire amount of any insurance proceeds (excluding such proceeds for trade fixtures, personal property whether or not owned or leased by CONTRACTOR and trade inventory, but only to the extent the insurance

proceeds specifically cover those items) shall be paid to CITY. The proceeds of any such insurance payable to CITY may be used, in the sole discretion of CITY, for rebuilding or repair as necessary to restore the Premises or for any such other purpose(s) as CITY sees fit.

(b) This policy shall also contain the following endorsements:

- i. CITY shall not be responsible for premiums or assessments on the policy.

A complete and signed certificate of insurance with all endorsements required by this Section shall be filed with CITY prior to the execution of this Agreement. At least thirty (30) days prior to the expiration or termination of any such policy, a signed and completed certificate of insurance showing that coverage has been renewed shall be filed with CITY.

21. INCREASE IN GENERAL PUBLIC LIABILITY AND PROPERTY INSURANCE

Not more frequent than once every two (2) years, if, in the sole opinion of CITY, the amount and/or scope of general public liability insurance in Section 21 above and/or property insurance coverage in Section 22 above at that time is not adequate, CONTRACTOR shall increase the insurance coverage as reasonably required by CITY.

22. CERTIFICATES OF INSURANCE/ADDITIONAL INSURED ENDORSEMENTS

(a) Prior to commencement of this Agreement, CONTRACTOR shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverage as required by this Agreement; these certificates shall:

1. provide the name and policy number of each carrier and policy;
2. state that the policy is currently in force.

(b) CONTRACTOR shall maintain the foregoing insurance coverage in force during the entire term of the Agreement or any renewals or extensions thereof or during any

holdover period. The requirement for carrying the foregoing insurance coverage shall not derogate from CONTRACTOR's defense, hold harmless and indemnification obligations as set forth in this Agreement. CITY or its representatives shall at all times have the right to demand the original or a copy of any or all the policies of insurance. CONTRACTOR shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

23. INSURANCE HAZARDS

CONTRACTOR shall not commit or permit the commission of any acts on the Premises nor use or permit to the use of the Premises in any manner that will increase the existing rates for, or cause the cancellation of any liability, property, or other insurance policy for the Premises or required by this Agreement. CONTRACTOR shall, at its sole cost and expense, comply with all requirements of any insurance carrier providing any insurance policy for the Premises or required by this Agreement necessary for the continued maintenance of these policies at reasonable rates.

24. INDEPENDENT CONTRACTOR

CONTRACTOR is, and shall be, acting at all times in the performance of this Agreement as an independent contractor herein and not as an employee of CITY. CONTRACTOR shall secure at its own cost and expense, and be responsible for any and all payment of all taxes, social security, state disability insurance compensation, unemployment compensation and other payroll deductions for CONTRACTOR and its officers, agents and employees and all business licenses, if any, in connection with the PROJECT and/or the services to be performed hereunder.

25. TERMINATION OF AGREEMENT

All work required hereunder shall be performed in a good and workmanlike manner. CITY may terminate CONSULTANT's services hereunder at any time with or without cause. Any termination of this Agreement by CITY shall be made in writing, notice of which shall be delivered to CONSULTANT as provided herein. In the event of termination, all finished and unfinished

documents, exhibits, report, and evidence shall, at the option of CITY, become its property and shall be promptly delivered to it by CONSULTANT.

(a) Remedies. In the event of termination, CONTRACTOR shall immediately stop work and surrender possession of the Premises to CITY. If CITY terminates this Agreement and in addition to any other remedies now or hereafter available to CITY under the laws or any judicial decision of the state in which the Premises is located, CITY may recover the following from CONTRACTOR:

- i. The worth at the time of award of the unpaid Profit Sharing Revenue which was due, owing and unpaid by CONTRACTOR to CITY at the time of termination;
- ii. The worth at the time of the award of the amount by which the unpaid Profit Sharing Revenue for the balance of the Agreement term after the time of award exceeds the amount of loss which CONTRACTOR proves could be reasonably avoided;

26. ASSIGNMENT AND DELEGATION

This Agreement is an operation and management agreement and the work hereunder shall not be assigned, delegated or subcontracted by CONTRACTOR to any other person or entity without the prior express written consent of CITY. If an assignment, delegation or subcontract is approved, all approved assignees, delegates and subcontractors must satisfy the insurance requirements as set forth in Sections 20, 21, 22, 23, and 24 hereinabove.

27. RIGHTS

CITY shall retain all rights to the Sports Complex, all of its amenities and improvements, as its sole property.

28. CITY EMPLOYEES AND OFFICIALS

CONTRACTOR shall employ no CITY official nor any regular CITY employee in the work performed pursuant to this Agreement. No officer or employee of CITY shall have any financial interest in this Agreement in violation of the applicable provisions of the California Government Code.

29. NOTICES

Any notices, certificates, or other communications hereunder shall be given either by personal delivery to CONTRACTOR's agent (as designated in Section 4 hereinabove) or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, to the addresses specified below. CITY and CONTRACTOR may designate different addresses to which subsequent notices, certificates or other communications will be sent by notifying the other party via personal delivery, a reputable overnight carrier or U. S. certified mail-return receipt requested:

TO CITY:

City of Huntington Beach
ATTN: Director of Community & Library Services
2000 Main Street
Huntington Beach, CA 92648

TO CONTRACTOR:

HBSC Partners, LLC
ATTN: Matt Olmstead
7076 Little Harbor Drive
Huntington Beach, CA 92648

30. CONSENT

When CITY's consent/approval is required under this Agreement, its consent/approval for one transaction or event shall not be deemed to be a consent/approval to any subsequent occurrence of the same or any other transaction or event.

31. MODIFICATION

No waiver or modification of any language in this Agreement shall be valid unless in writing and duly executed by both PARTIES.

32. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this Agreement are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this Agreement.

33. INTERPRETATION OF THIS AGREEMENT

The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this Agreement is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this Agreement. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in this Agreement, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this Agreement which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

34. DUPLICATE ORIGINAL

The original of this Agreement and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who has signed it.

35. IMMIGRATION

CONTRACTOR shall be responsible for full compliance with the immigration and naturalization laws of the United States and shall, in particular, comply with the provisions of the United States Code regarding employment verification.

36. LEGAL SERVICES SUBCONTRACTING PROHIBITED

CONTRACTOR and CITY agree that CITY is not liable for payment of any subcontractor work involving legal services, and that such legal services are expressly outside the scope of services contemplated hereunder. CONTRACTOR understands that pursuant to Huntington Beach City Charter Section 309, the City Attorney is the exclusive legal counsel for CITY; and CITY shall not be liable for payment of any legal services expenses incurred by CONTRACTOR.

37. ATTORNEY'S FEES

In the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

38. SURVIVAL

Terms and conditions of this Agreement, which by their sense and context survive the expiration or termination of this Agreement, shall so survive.

39. GOVERNING LAW

This Agreement shall be governed and construed in accordance with the laws of the State of California.

40. SIGNATORIES

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify CITY fully for any injuries or damages to CITY in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

CONTRACTOR'S INITIALS



41. ENTIRETY

The parties acknowledge and agree that they are entering into this Agreement freely and voluntarily following extensive arm's length negotiation, and that each has had the opportunity to consult with legal counsel prior to executing this Agreement. The parties also acknowledge and agree that no representations, inducements, promises, agreements or warranties, oral or otherwise, have been made by that party or anyone acting on that party's behalf, which are not embodied in this Agreement, and that that party has not executed this Agreement in reliance on any representation, inducement, promise, agreement, warranty, fact or circumstance not expressly set forth in this Agreement. This Agreement, and the attached exhibits, contain the entire agreement between the parties respecting the subject matter of this Agreement, and supersede all prior understandings and agreements whether oral or in writing between the parties respecting the subject matter hereof.

42. EFFECTIVE DATE

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers. This Agreement shall be effective on the date of its approval by the City Attorney. This Agreement shall expire when terminated as provided herein.

CONTRACTOR,

HBSC Partners, LLC.
Company Name

By: _____

SRGA
S Ryan Gole

Print Name

ITS: (circle one) Chairman/President/Vice President

By: _____

Matt Holmstead
Matt Holmstead

Print Name

ITS: (circle one) Secretary/Chief Financial Officer/Asst.
Secretary – Treasurer Partway uo

REVIEWED AND APPROVED:

City Manager

CITY OF HUNTINGTON BEACH,
a municipal corporation of the
State of California

Mayor

INITIATED AND APPROVED:

[Signature]

Director/Chief

APPROVED AS TO FORM:

[Signature]

City Attorney uv

Date _____

ATTEST:

City Clerk

SCOPE OF WORK

EXHIBIT A

SCOPE OF WORK

CONTRACTOR shall at all times during the term of the Agreement, at its own cost and expense, provide administration, marketing, field maintenance, personnel, supervision and management of day-to-day operation of the Sports Complex activities. If additional fields are needed, CONTRACTOR may coordinate reservations of outlying fields with CITY Recreation Supervisors overseeing Edison, Murdy, Greer and Worthy parks, respectively, at a rate consistent with the CITY Council approved Master Fee and Charges Schedule. .

The CITY reserves the right to change the operations schedule due to weather, natural disaster, health and safety, facility issues, or other acts beyond the control of the CITY. The CITY and CONTRACTOR shall follow all health and safety guidelines and regulations, put forth by the Federal, State, County, and other governmental health agencies.

The Sports Complex may operate seven days a week, year-round. CITY staff may not be available on federally observed holidays. In addition, the CONTRACTOR will offer areas of the Sports Complex for reservations when not in use for regular programming or scheduled events. Best industry practices and/or best management practices may require additional services not explicitly noted in this Agreement. The CONTRACTOR shall identify any new services to be added, provide pricing, and background information regarding the new service, prior to obtaining approval by the Director or designee.

The Community & Library Services Department will monitor the services provided by the CONTRACTOR. If the services are not deemed satisfactory, the CONTRACTOR may be given verbal and written notice or terminate the Agreement.

A. ADMINISTRATIVE:

1. Marketing and Community Outreach - CONTRACTOR shall provide the following minimum services:

- i. Design, publish and distribution of all league and recreational activity, marketing materials, and forms. Materials to include print and digital media platforms, and copy for the HB SANDS Recreation Guide.
- ii. Mailing list processing, maintenance, generation and all expenses related to mailing.
- iii. Design and operate a website for the Sports Complex activities that may include but are not limited to, activity registration, field schedules, statistics, and team standings. .

- iv. Dissemination of social media and public relations materials. CONTRACTOR shall obtain prior CITY staff approval of any press releases, marketing, promotions, etc. The CITY reserves the right to require CONTRACTOR remove any marketing or messaging.

2. Merchandise and Subcontracting Vendors

- i. CONTRACTOR shall not permit merchandise vendors unless written permission is obtained from the Director.
- ii. CONTRACTOR shall have revenue-generating opportunities through the Batting Cage Concession facility. Due to the CITY's contractual agreements with existing food and beverage concessionaires, no food or beverages may be sold through this Agreement. However, upon approval, the CONTRACTOR may provide concessions for merchandise, apparel, and supplies related to Sport Complex activities.
- iii. CITY retains the right to require CONTRACTOR to refrain from sale or use of items that are substandard quality or of objectionable character as determined by the CITY in the exercise of CONTRACTOR's judgement.

3. Reports and Allocation Schedules

- i. CONTRACTOR shall provide CITY with copies of schedules prior to the start of each season. Changes to game schedules will be provided to the CITY within three (3) days after their occurrence.
- ii. CONTRACTOR shall prepare and distribute any required forms, league schedules, and rosters, (verifying to the best of their ability that all players are of legal age, and have legally initialed and signed forms, ruling on player's eligibility, and addition and deletion of players as necessary).
- iii. CONTRACTOR will keep an open line of communication with the CITY's contracted food and beverage concessionaires in order to provide adequate services to Sports Complex guests and the general public.

4. Fees and Financial Terms

- i. **Fees Schedules** – CONTRACTOR shall use the CITY's most current approved Master Fee and Charges Schedule where applicable for parking fees, special and/or specific event fees, or other CITY programming fees.
- ii. **Fees.** Facility rentals and recreational program charges for use of the Premises shall continue at the current rates as listed in **EXHIBIT "C"** through February 2022., Effective March 1, 2022 fees may be adjusted by the City by the Director of Community and Library Services (Director). Thereafter, rates may be increased annually, effective January 1, at a rate no higher than the Consumer

Price Index (CPI) and upon satisfactory documentation of rates at similar facilities in Los Angeles and Orange Counties with prior approval of the Director.

- iii. **Profit Sharing Model** - Profit Sharing Percentage shall pertain to all sales, rentals, cash sponsorships, event revenues, tournament fees, league fees, batting cage fees, concession sales, etc. See Section 6 of the License Agreement for details.
- iv. **Financial Authorizations and Refunds** - CONTRACTOR is authorized to collect payments, deposits, issue refunds, and manage cancellations for Sports Complex recreational classes, leagues, tournaments, and event rentals. CONTRACTOR may accept one or more major credit cards for fees charged. All charges related to the acceptance of such cards shall be borne at the expense of the CONTRACTOR.

B. OPERATIONAL PLAN:

1. Management

CONTRACTOR agrees to operate and manage the Sports Complex facility and services offered in a high quality manner and shall maintain the Premises in accordance with the minimum maintenance standards as listed in this Agreement.

2. Goals and Objectives

CONTRACTOR shall incorporate the CITY's goals and objectives for the Sports Complex to be a fun, friendly, and safe environment for youth and adults alike to enjoy physical activity and promote sportsmanship and community connection.

3. Hours of Operation

Subject to CITY's approval, CONTRACTOR will establish days and hours of operation, as convenient for the needs of the community and approved by the City. CONTRACTOR may operate the Sports Complex seven days (7) a week, year-round. CONTRACTOR should note that CITY staff may not be available on federally observed holidays. CONTRACTOR may close for up to ten (10) verified increment weather days and up to twenty-eight (28) Operational Days for repair and maintenance of the Premises. Any closure beyond this must be approved by CITY. CITY reserves the right to change operational schedules or close the facility due to weather, natural disaster, public health and safety, facility issues or other acts beyond the CITY's control. An Operational Day is defined as the Premises being open for business a minimum of four (4) consecutive hours. Typical Hours of Operation shall be 7:00 AM – 10:00 PM. Extended Hours of Operation shall require approval from the Director or their designee.

4. Activity Equipment

CONTRACTOR shall:

- i. Provide all essential game materials that are in line with best management practices of a professionally run sports complex.
- ii. Provide "Jack Corbett Original Hollywood" style bases for each field as needed.
- iii. Provide maintenance equipment. (See License Agreement, Section 15. Maintenance and Repair Responsibilities, for equipment sharing details.)
- iv. Provide line up cards with hold harmless/release/assumption of risk language and ensure that each player (or coach) signs the agreement or does not play.

5. Contractors Employees

- i. CONTRACTOR shall ensure that its employees shall at all times conduct themselves in a creditable manner.
- ii. CONTRACTOR will maintain a staff adequate to operate and administer all facilities located on the Premises in meeting standards set forth in this Agreement

6. Staffing – Sports Activity Coordination

- i. CONTRACTOR or CONTRACTOR's staff shall provide general supervision of fields, games, disciplinary action of CONTRACTOR's staff, spectators and participants.
- ii. Provide staff and designate online platform and/or location to conduct team registration process.
- iii. CONTRACTOR or CONTRACTOR Staff shall be responsible for the scheduling of all game officials and pertinent personnel to conduct the respective activities at the Sports Complex.
- iv. In addition to the Huntington Central Park Sports Complex, softball fields utilized in the CITY include Edison, Murdy, Greer and Worthy parks. CONTRACTOR shall coordinate field reservations with Recreation Supervisors at outlying fields.
- v. CONTRACTOR to attend all meetings called by the league participants or CITY regarding sports activities or the Sports Complex.
- vi. CONTRACTOR shall administer and conduct tournament rentals in which teams are eligible to participate and that generate revenue for the CONTRACTOR and CITY.

- vii. CONTRACTOR shall collect team and tournament team registration fees via online, mail-in (checks only) or on-site. Provide a receipt for the participants and keep an account procedure acceptable to the CITY.

7. Statistical support to include:

- i. CONTRACTOR shall track team standings, game results, scores, and check for accuracy.
- ii. CONTRACTOR shall provide classification of league teams to ensure balanced competition.
- iii. CONTRACTOR shall be responsible for the preparation and printing of league schedules.
- iv. CONTRACTOR shall prepare statistical summary reports including league schedules.
- v. CONTRACTOR shall generate computerized mailing labels, rosters, summary report forms as may be required.
- vi. CONTRACTOR shall supply hardware and software support services to ensure proper, inventory, maintenance and immediate repair/replacement of inoperative equipment.

8. Rules/Regulations, Game Officials, and Scorekeepers

- i. CONTRACTOR may develop rules and regulations in accordance to prevailing rules in surrounding private or municipal adult and youth recreational sports leagues or programs (e.g., SCMAF, ASA, etc.), and establish appropriate ground rules for the Sports Complex in the interest of safety and fair play. The CITY reserves the right to modify any ground rule or "house rule" set forth by the CONTRACTOR.
- ii. CONTRACTOR shall be responsible for hiring, scheduling, supervising and paying certified game officials and/or scorekeepers for sports activities.
- iii. Game officials and scorekeepers are considered subcontractors of the CONTRACTOR. CONTRACTOR shall ensure proper LiveScan background checks are conducted for all staff, subcontractors, volunteers, etc., at no cost to the CITY, prior to commencement of games.
- iv. CONTRACTOR shall assume full responsibility for the conduct of staff, subcontractors, volunteers, etc. At its sole discretion, the CITY reserves the right to bar any of the aforementioned individuals if deemed necessary.

B. FACILITY:

1. Signage

CONTRACTOR shall observe all Municipal Codes regarding signage at the Sports Complex. All signage must be approved by the Director of Community & Library Services or designee.

2. Field Usage

CONTRACTOR shall provide field allocation schedules for various sports activities. Schedules shall include anticipated downtime for field repair and maintenance.

3. Batting Cage | Concession Building

CONTRACTOR shall have revenue generating opportunities (excluding food and beverage sales) and maintenance responsibility for the Batting Cage and Concession Building. The CONTRACTOR shall provide various batting cage services, and may provide merchandise concessions including, but not limited to:

- i. Drop-in batting practice opportunities to the public.
- ii. Cage rentals for team practices and parties.
- iii. Batting lesson opportunities.
- iv. Merchandise and apparel sales related to Sports Complex activities based on approval by CITY. Pricing of items shall be in accordance with similar facilities within the Orange County area. The CONTRACTOR shall have the ability to establish prices, but shall submit any changes to the CITY within thirty (30) days of their proposed change

4. Parking Lot Services

CONTRACTOR shall have non-exclusive use of the parking lot for Sports Complex activities. Use of the parking lot for other purposes other than to park cars shall be prohibited without prior approval by CITY. Sports Complex parking lot is a shared lot with other CITY facilities, such as the Huntington Central Park Library, Senior Center in Central Park, and Huntington Central Park as a whole. The parking lot is open for public use and overflow for Central Park activities and events.

5. CONTRACTOR Maintenance Responsibilities

CONTRACTOR shall provide and be responsible for all daily infield maintenance, which includes watering, dragging, chalking, etc. Additionally, CONTRACTOR shall be responsible for general infrastructure maintenance, which may include, but is not limited to, painting, upkeep of amenities, pitching machines repair, fence repair, and shall

maintain restrooms outside of contracted janitorial services, including cleaning and restocking of paper products as supplied by CITY. CONTRACTOR shall also provide the following to each field prior to the start of each game/season along with other facility maintenance provisions:

- i. CONTRACTOR shall not change field base peg settings, home plate, or pitcher's mound without prior approval from CITY staff. In the event that base pegs, home plates, or pitcher's mound need repair or replacement, the CONTRACTOR will be responsible for the cost.
- ii. CONTRACTOR shall fill low spots in all infield areas.
- iii. CONTRACTOR shall repack bases and batter's box areas, and pitcher's mound.
- iv. CONTRACTOR shall drag, water and line infields in advance of the game time.
- v. CONTRACTOR shall blow out debris, rake or sweep dugout areas.
- vi. CONTRACTOR may make additional field improvements subject to prior written approval of CITY. In addition, CITY may, from time to time, make certain improvements, which it deems to be advantageous or necessary for the protection of public property, or for the safety of ball field participants and spectators.
- vii. CONTRACTOR shall be required to provide laser leveling and removal of all "berms" that have accumulated around the infield and turf areas. The laser leveling of designated/approved fields should be performed on a mutually agreed upon schedule with CITY.
- viii. CONTRACTOR shall be required to provide CITY approved infield mix and apply as necessary, or as directed by CITY staff, in order to maintain the integrity of the fields.
- ix. CONTRACTOR shall only use approved equipment to maintain the fields. No pick-up trucks shall be permitted to drag infields for preparation of surface areas.
- x. CONTRACTOR shall be responsible for opening and closing of restroom outside of food and beverage concessionaire's operating hours.
- xi. CONTRACTOR shall report to CITY as soon as possible any items of health or safety, including issues with fencing, benches/bleachers, plumbing, electrical, and other items of public and staff safety concerns.

- xii. CONTRACTOR is responsible for daily and routine site maintenance and upkeep, which may include, but is not limited to, exterior walls, graffiti, electrical, heating, air conditioning or plumbing of the buildings.
- xiii. CONTRACTOR will be responsible for the repair and maintenance of all equipment, appliances and other items related to the batting cages area.
- xiv. CONTRACTOR shall keep the entire facility clean and properly maintained. The facility is subject to inspection by the CITY or designee with or without notice.
- xv. The CONTRACTOR will not make alterations, additions or improvements to the facility without prior written consent by the Community & Library Services Director or their designee. All alterations, additions and improvements shall be deemed to be the property of the CITY at the termination of the Agreement.
- xvi. CONTRACTOR shall be responsible for custodial maintenance of the parking lot resulting from scheduled CONTRACTOR and event activities, which at a minimum includes trash removal from the parking stalls, drive aisles, and the landscape area surrounding the lot.

**PROFIT SHARING MODEL
FOR THE HUNTINGTON CENTRAL PARK SPORTS COMPLEX**

EXHIBIT “B”

EXHIBIT "B"
PROFIT SHARING SCHEDULE

Utilizing the CONTRACTOR's Fee Schedule, attached herein and referenced as "EXHIBIT "C", CONTRACTOR shall charge for sports activities and services provided at the Huntington Central Park Sports Complex. A profit sharing program with the CITY shall commence upon execution of the agreement as listed below, with the exception of concession merchandise and apparel sales, which shall be subject to a five-percent (5%) Profit Sharing Percentage Rate. Should the CONTRACTOR offer services or items not listed in the CONTRACTOR's Fee Schedule, CONTRACTOR may set fees in accordance with standard market value of said products or services with prior approval of CITY, and subject to the Gross Sales Profit listed below.

CONTRACTOR shall furnish CITY with statements of CONTRACTOR's Gross Sales within Fifteen (15) days after the end of each month. CONTRACTOR shall sign and certify as correct each monthly Statement of Gross Sales and provide CITY with payment to match the corresponding profit percentage provided in the statement and in accordance to the Payment Schedule listed below.

GROSS SALES PROFIT

<u>Original Agreement 3-Year Term</u>	<u>Percentage Rate</u>
Year One (1)	10%
Year Two (2)	12%
Year Three (3)	14%
<u>First Extension – Additional 3-Year Term</u>	
Year Four - Six (4, 5, 6)	16%
<u>Second Extension – Additional 3-Year Term</u>	
Year Seven - Nine (7, 8, 9)	18%

CITY'S MASTER FEE SCHEDULE

EXHIBIT C

"EXHIBIT B-2"

Sports Complex Master Fee Schedule

Description		Adopted Charges
Courts and Fields Rentals (hourly)		
Edison/Murdy Tennis/Racquetball Court Reservations		\$4.00/hour + tournament fees
Field/Practice Lights: Hope View		\$15.00
<u>Soccer/Softball/Artificial Turf Fields (Edison, Murdy, Worthy, Greer, Sports Complex, Lamb - hourly)</u>		
Field without Lights:		
Adult/Youth		\$25.00
Nonprofit Youth or Organized 55+ Seniors		\$15.00
Field with Lights/Arena Field:		
Adult/Youth		\$35.00
Nonprofit Youth or Organized 55+ Seniors		\$25.00
After Business Hours (hourly rates)		\$20.00/per hour
Softball/Baseball Field Preparation Charge		\$25.00/field/per preparation
Sports Complex - Batting Cages		
One Token		\$1.00
Six Tokens		\$5.00
30 minutes		\$15.00
Adult Sports Programs		
Slo-Pitch Softball (per team)		\$420.00 (+\$25.00 if late)
Senior Softball (per team)		\$200.00
Adult Soccer (per team)		\$400.00
Tournaments		10% of gross receipts + rental fees
Team Room Rental – Hourly Rates		
Group 1 & II (Community/Library Services Sponsored)		None
Group III (Community/Library Co-Sponsored)		\$20.00
Group IV (Civic/Nonprofit Organization)		\$25.00
Group V (Non-Resident 2-hr. Min.)		\$35.00
Group VI (Commercial/Business/For Profit)		\$40.00

Sports Complex Master Fee Schedule – Parking

Day Use	\$1.00
Season Parking Pass – Per Each Season	\$10.00
Annual Parking Pass – Per Calendar Year (3 seasons)	
Vehicles over 20 feet, including extensions & trailers) – Day Use*	\$30.00
	\$10.00

* **Note:** Oversized Vehicles permits are exclusive to tournaments and special events only – not available for daily general parking.

MAINTENANCE CHECKLIST

EXHIBIT D

“EXHIBIT D”

SPORTS COMPLEX WEEKLY MAINTENANCE CHECKLIST

Inspection Date: _____ By: _____

HBSC Representative: _____

AREA	OK	NEEDS ATTENTION
<u>GENERAL GROUNDS</u>		
Artificial Turf		
Fencing		
Backstops		
Netting		
Storage Areas		
Infield Irrigation		
Trash Enclosure		
Parking Lot		
Banners/Signage		
Other		
<u>BATTING CAGES/ CONCESSION/RESTROOM BUILDINGS</u>		
Doors and Locks		
Exterior Walls		
Interior Walls		
Equipment		
Windows/Trim		
Roof		
Restroom Sinks		
Restroom Stalls/Urinals		
Storage Areas		

CONTRACTOR'S INSURANCE DOCUMENTS

ATTACHMENT #1



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/9/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER		CONTACT NAME: Dustin Keeney	
Western Republic Insurance Services		PHONE (A/C, No, Ext): 714.536.0500	FAX (A/C, No):
19900 Beach Blvd.		E-MAIL ADDRESS: dustin@wrinsurance.com	
Suite F1		INSURER(S) AFFORDING COVERAGE	
Huntington Beach CA 92648		INSURER A: HDI GLOBAL SPECIALTY SE	
		INSURER B: PHILADELPHIA IND INS CO	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	
INSURED		NAIC #	
HBSC Partners		134004	
18100 GOLDENWEST ST			
HUNTINGTON BEACH CA 92648-1101			

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY	Y		18LB3357	08/05/2021	08/05/2022	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
							MEOW EXP (Any one person) \$ Excluded
							PERSONAL & ADV INJURY \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	OTHER:						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY						PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						\$
	<input type="checkbox"/> NON-OWNED AUTOS ONLY						
	UMBRELLA LIAB						EACH OCCURRENCE \$
	EXCESS LIAB						AGGREGATE \$
	DED						\$
	RETENTION \$						
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N					OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
B	Accidental Medical			PHPA088401	08/05/2021	08/05/2022	Coverage \$25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Those usual to the insured's operations. The City of Huntington Beach, its officers, elected or appointed officials, employees, agents and volunteers are named as additional insured per the attached CG 20 26 04 13. Insurance is primary and non-contributory per the attached ECG 24 520 08 05. Location: 18100 Goldenwest Street, Huntington Beach, CA 92648.

CERTIFICATE HOLDER**CANCELLATION**

City of Huntington Beach	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
2000 Main Street	AUTHORIZED REPRESENTATIVE
Huntington Beach, CA 92148	

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

09/01/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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PRODUCER AP INTEGO INSURANCE GROUP, LLC 375 Woodcliff Dr. Suite 103 Fairport NY 14450		CONTACT NAME: AP Intego Insurance Group, LLC PHONE (A/C, No, Ext): 888-289-2939 FAX (A/C, No): E-MAIL ADDRESS: certs@apintego.com	
INSURED HBSC Partners LLC 18100 Goldenwest St Huntington Beach CA 92647		INSURER(S) AFFORDING COVERAGE INSURER A : State Compensation Insurance Fund-State Fund in California INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :	
		NAIC # 35076	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICE/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A <input type="checkbox"/>	9304684-2021	08/31/2021	08/31/2022	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Huntington Beach 2000 Main Street Huntington Beach CA 92648	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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ACORD 25 (2010/05)

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Clear All

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

City of Huntington Beach, its officers,
elected or appointed officials, employees,
agents and volunteers
2000 Main Street
Huntington Beach, CA 92148

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declaration.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT – OTHER INSURANCE (PRIMARY NONCONTRIBUTORY)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Condition 4. Other Insurance of SECTION IV COMMERCIAL GENERAL LIABILITY CONDITIONS is replaced by the following:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below, except that we will not seek contribution from any party with whom you have agreed in a written contract or agreement that this insurance will be primary and noncontributory, if the written contract or agreement was made prior to the subject "occurrence" or offense.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section I – Coverage A – Bodily Injury And Property Damage Liability.

- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.



CITY OF HUNTINGTON BEACH
2000 Main Street, Huntington Beach, CA 92648-2702

DECLARATION OF PERMITTEE

I certify that no vehicle(s) will be used or operated in the performance of the task(s) or event(s) for which this permit is granted.

I authorize the City of Huntington Beach to immediately and retroactively revoke the license or permit issued in connection with or in the performance of said task(s) or events(s) if any vehicle(s) is used.

Signature of Permittee: _____

Print Name: _____

Company Name (if applicable): _____

Date Signed: _____