



Additional Documents Distributed for the City Council Meetings of March 15, 2023

Item No.	Agenda Item Description	Distributor	Document
SP 02.	APPROVAL OF FY 2022-23 MID-YEAR BUDGET REPORT AND ADJUSTMENTS, CAPITAL IMPROVEMENT PROGRAM CARRYOVERS, CITY COUNCIL BUDGET POLICIES, CREATION OF THREE FUNDS, AND RESOLUTION	John Downs, Interim Finance Director	Memo Correction
02.	PUBLIC COMMENT - GENERAL	Yvonne La Rose	Email to Council
07.	APPROVAL OF A FACILITY LICENSE AND OPERATIONS AGREEMENT WITH SOUTH PASADENA BATTING CAGES, LLC FOR THE OPERATION OF THE BATTING CAGE FACILITY AND ADOPT THE FINDING OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT	Sheila Pautsch, Community Services Director	Agenda Report Attachment No. 1

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City of South Pasadena Finance Department

Memo

Date: March 15, 2023

To: The Honorable City Council

Via: Arminé Chaparyan, City Manager *TB for AC*

From: John Downs, Finance Director

March 15, 2023 Special Joint Meeting of the City Council and Finance Commission, Meeting Item No. 2 Approval of the 2022-23 Mid-Year Budget Report and Adjustments, CIP Carryovers and Budget Policies

The memo provides corrections to Item 2:

- Page 2-3: Reflects change to reflect increased expenditures from ~~\$44,688,982~~ to **\$44,690,482** and a net change of \$2,008,120.
- Page 2-3: Reflects change from appropriations adjustments are ~~\$2,006,620~~ to appropriations adjustments are **\$2,008,120**, and changes to one-time adjustments of ~~\$1,754,920~~ to **\$1,756,420**.
- Page 2-7: Reflects change in TABLE 4, adjustment in City Manager Operational Budget (Proposed) from ~~\$503,298~~ to **\$58,158** and a change in Management Services Operational Budget (Proposed) from ~~\$186,885~~ to **\$632,025**.
- Page 2-19: Reflects change in Attachment A in Departments General Fund table for same adjustments as mentioned on bullet point 3 (above) as well as adding in Police General Fund adjustments of **\$133,996**.

City of South Pasadena
FY 2022-23 Mid-Year Appropriation Adjustment
March 15, 2023

Fund Description	Fund	Total
General Fund	101	\$ 2,008,120.56
Insurance Fund	103	\$ 232,040.00
Street Improvements Program	104	\$ -
Facilities & Equip. Cap. Fund	105	\$ 35,000.00
OPEB Trust	110	\$ 1,000.00
Local Transit Return 'A'	205	\$ 7,600.00
SLFRF	206	\$ -
Prop C - Local Transit Return "C"	207	\$ 9,100.00
209 (Carlyle Library Bequest)	209	\$ -
Sewer	210	\$ 81,000.00
Street Light & Landscape	215	\$ 98,000.00
CalRecycle	219	\$ 37,204.00
Business Improvement Tax	220	\$ -
State Gas Tax	230	\$ 16,000.00
Street Light & Landscape	232	\$ 8,500.00
MSRC Grant Fund	238	\$ 4,550.00
Prop C Exchange Funds	242	\$ -
CDBG	260	\$ -
Park Impact Fees	275	\$ -
HSIP Grant	277	\$ -
Water	500	\$ 92,000.00
Water Efficiency Fund	503	\$ -
	Total Mid-Year Adjustments	\$ 2,630,114.56

Departments General Fund	GF Code	Total
City Manager's Office	101	\$ 58,157.83
Community Development	101	\$ 627,313.89
Community Services	101	\$ 32,142.00
Finance	101	\$ 330,786.11
Fire	101	\$ 5,000.00
Library	101	\$ 24,375.00
Management Services	101	\$ 632,024.73
PD	101	\$ 133,996.00
Public Works	101	\$ 164,325.00
	Total Mid-Year Adjustments	\$ 2,008,120.56

GF On-going	\$ 251,700.00
GF One-time	\$ 1,756,420.56
	\$ 2,008,120.56

Departments	Dept. Code	Total
City Manager's Office	2010	\$ 58,157.83
Community Development	7010	\$ 662,313.89
Community Services	8020	\$ 39,742.00
Finance	3010	\$ 573,826.11
Fire	5010	\$ 5,000.00
Library	8010	\$ 24,375.00
Management Services	2030	\$ 632,024.73
PD	4010	\$ 133,996.00
Public Works	6010	\$ 500,679.00
	Total Mid-Year Adjustments	\$ 2,630,114.56

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**Public Comment
March 15, 2023
Regular Meeting
General Comment**

From: [Yvonne LaRose](#)
To: [City Council Public Comment](#)
Subject: General Comment: Recognition of Women's History Month
Date: Wednesday, March 15, 2023 11:22:56 AM

CAUTION: This email originated from outside of the City of South Pasadena. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I come to you tonight as an Organization Development Consultant. However, tonight the diversity notch is in a new place. It's about Women's History Month and recognition of the strides and mountains women throughout history have made for inclusion and recognition as capable, intelligent, masterful leaders in their fields of endeavors.

For millennia, women have traditionally been cast into the support roles of society where they were not allowed to work and earn money to sustain themselves. Some were even restricted from learning - reading, mathematics, the sciences, and so on. Their duty was to bear children and attend the home - plus a little hard labor in the field should an extra hand be required. They were not viewed as being partners in relationships; instead, they were chattel and a bonus of the wedding dowry.

However, women have proved themselves to be worthy of standing shoulder to shoulder with their male counterparts. Flora Davis, in her *Moving the Mountain*, traces the history of women's accomplishments while breaking through the cultural and social barriers to their participation -

all the while paving the way for inclusion and alignment with other parts of our marginalized populations.

Many studies, scientific, business, cultural, and anthropologic, have shown the benefits the woman's perspective brings to the better performance of where they are. It is noted that women tend to be more far-visioned and do better planning because of that characteristic; businesses with women serving on their Boards tend to perform better.

Women have traditionally been referred to as the weaker sex. Dispelling that myth came (with many costs) to those who broke the bar by being admitted to The Citadel and VMI (Virginia Military Institute). From those breakthroughs, we now have women firefighters, EMTs, and police officers who are in the field doing the full complements of their positions.

Women leaders have peppered our history from before Cleopatra, but they were sparse despite their wisdom and abilities. Their nations thrived under their rules.

Today we "locals" have a County government that is led by an entirely female Board. Yet in some industries (and partly because of current economic impacts) women in engineering and IT are finding it difficult to get admitted to the table or at least stay there. Nevertheless (and as we can see by the presence of so many women leaders in this room tonight), women are making their way into no longer hitting their heads against the glass ceiling. They no longer suffer reaching a pinnacle that does little to reward for the abilities they have to offer.

So, here's to the advancements we've made and here's to the women who have been part of the grease that made those successes happen.

It isn't the Boys' Club anymore. It's about the Club.

Yvonne LaRose, CAC

Organization Development Consultant: Diversity/Title VII, Harassment, Ethics

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City of South Pasadena
Community Services
Department

Memo

Date: March 15, 2023

To: The Honorable City Council

Via: Arminé Chaparyan, City Manager *AC*

From: Sheila Pautsch, Community Services Director

March 15, 2023 City Council Meeting Item No. 7 Approval of a Facility License and Operations Agreement with South Pasadena Batting Cages, LLC for the Operation of the Batting Cage Facility and Adopt the Finding of Exemption From the California Environmental Quality Act

The memo provides a signed Facility License and Operations Agreement with South Pasadena Batting Cages, LLC for the Operation of the Batting Cage Facility.

FACILITY LICENSE AND OPERATIONS AGREEMENT

This Facilities License and Operations Agreement (the “Agreement”) is entered into this 1st day of April, 2023, by and between City of South Pasadena, a California municipal corporation (“City”), and South Pasadena Batting Cages LLC, a California Limited Liability Company (“Operator”).

1. Premises License. City hereby licenses Operator and Operator to use, inasmuch as they may lawfully do so, the Premises for the uses identified in Section 2, for the term and upon the terms and conditions set forth in this Agreement, the following (collectively, “Premises”):

1.1 Real Property. That parcel of real property located at 660 Stoney Drive, (“Premise”), in the City of South Pasadena, State of California and described with more specificity in Exhibit “A,” which is attached to this Agreement and made a part of this Agreement for all purposes, together with all buildings, fixtures and other improvements located on said land and all easements, covenants and other appurtenant rights (the “Real Property”).

2. Use of Premises.

2.1 Use. Operator shall use the Premises for the operation of a batting cage facility and other activities customarily associated with or incidental to the operation of a batting cage facility, including without limitation, batting lessons, batting cage rental, sale or rental of related merchandise, and food services. Filming on-site with City issued film permits will be allowed. The Location Fee received will be split with the City receiving 80% of all revenue and Operator shall receive 20% of all revenue. Any events or activities other than the aforementioned activities require prior approval by the Community Services Director. Operator shall not use the Premises for any unlawful purpose and shall comply with all valid laws, rules, and regulations applicable to the Premises or the businesses conducted on the Premises.

2.2 Operator’s Right to Control Business Operations.

a) Operator shall have the exclusive right and authority to operate and manage the Premises as Operator deems appropriate subject to the following:

1. Operator shall ensure that the facilities are open to all persons consistent with state and federal laws.
 2. Operator shall not operate the Premises outside of the hours of 7:00 a.m. to 10:00 pm daily.
 3. Operator shall not allow amplified music to be played in violation of the City's sound ordinance.
- b) Without limiting the foregoing, Operator shall solely be

responsible for:

1. Establishing and enforcing reasonable rules and regulations concerning the management, use, and operation of a batting cage facility on the Premises, including all safety and security measures, and all protocols and precautions established due to COVID-19 or other public health issue. Such shall include developing a safety program for employee and patron use of the Premises, and developing operational safety standards (patron rules). The safety program and operational safety standard shall conform to the standard of care for batting cage operators in the state of California, and at a minimum shall address the following:
 - Training all employees regarding the safety program
 - Locking of cages during non-use
 - Suitable ground markings in batting cages for player use areas
 - Posting of user rules
 - Use of helmets by ALL users in batting cages
 - Number of persons in cage at a time
 - Switch hitting during play
 - Footwear use
 - Alcohol/drug use
 - Minimum age use above 6 years old
 - Adult accompanying players under 12 years old
 - Minimum age for various speed machines
 - Cage gates remaining closed
 - Practice swing areas (where allowed/not allowed)
 - Picking up balls
 - Reporting of incidents

2. Determining all fees for use of Premises, lessons (if any), rentals, and all other charges associated with the operation of the Premises;
3. Determining and be solely responsible for all personnel requirements, recruitment schedules and compensation levels; and shall be solely responsible to employ, train, promote, discharge, and supervise all personnel performing services in and about the Premises as employees to Operator's business;
4. Purchasing and/or lease all furnishings, equipment, and operating supplies which Operator deems necessary or desirable for the operation of the Premises;
5. Establishing accounting, cash collection, and payroll procedures at the Premises; and
6. Conducting all other activities necessary for the operation of the Premises.

c) Notwithstanding the above, City shall have the right to enter and inspect the property at any time the facility is open, including City's right to temporarily close any portion of the Premises for such inspection.

d) City's representative is the Director of Community Services who is authorized, on behalf of the City, to administer this Agreement and monitor Operator's compliance with the terms hereof. Unless otherwise notified by City through its City Manager, Operator shall deal exclusively by and through the Director of Community Services or her designee and shall have the right to rely upon decisions rendered by the Director of Community Services who shall be deemed to be the City's authorized representative. Operator shall meet with City's representative upon request of the City. Operator shall consider in good faith the requests and recommendations of the Director of Community Services to increase use of facility and revenue, or to enhance maintenance and operation of the facility.

e) Since the batting cage facility belongs to the City of South Pasadena, it is expected that the Operator will contribute to the betterment of the quality of life for the residents by utilizing local vendors, whenever possible.

f) City shall have the right to review Operator's marketing materials and have the right to comment upon and make suggestions for improvement to such materials or to Operator's operations as a whole. Operator shall consider all of City's suggestions and comments but shall not be obligated to implement the same.

3. Term.

3.1 Term. The term of this Agreement shall be for ten (10) years, beginning on April 1, 2023 (the "Commencement Date"), and ending ten (10) years thereafter (the "Term") and ending on March 31, 2033. Any extension of this Agreement shall be in writing and signed by both parties following approval by City.

3.2 [Reserved]

3.3 Surrender upon Agreement Expiration. Upon the expiration or earlier termination of this Agreement, Operator shall return the Real Property to City in its then-existing condition. Operator shall be liable to the City for any damage to the facilities or deferred maintenance due to the negligence of the Operator or breach of its duty to maintain the facilities.

3.4 Disposition of Materials, Equipment, Tools, and Supplies. At the termination of this Agreement, Operator shall give City the first right to purchase the moveable fixtures, materials, equipment, tools, and supplies used by Operator in the operations and maintenance of the Premises (moveable F&E") at a price to be agreed upon between City and Operator. Such option shall exclude any materials, equipment, and supplies that are included as Improvements for which an Improvement Credit was taken by Operator as described in paragraph 5.4, below. If City and Operator are unable to agree upon a price, then the price shall be the value of the moveable F&E, as determined by a qualified appraiser selected by City and Operator. In the event an agreement cannot be reached as to selection of an appraiser, City and Operator shall each select an appraiser, and the two (2) chosen shall select a third appraiser. All three appraisers shall appraise the movable F&E. The agreed-upon opinion of two (2) of the three (3) appraisers shall be the price to be paid by City to the Operator. The costs and expenses of any appraisers shall be divided equally between City and Operator. Those items paid for by Operator through Improvement Credits as identified in section 5.4(a),

below, shall be the property of the City at time of application of Rend Credits and shall not be claimed as moveable F&E or property to be disposed of or acquired by the City through this section 3.4.

4. **Year Defined.** The term "Year" means each one-year period beginning on the Commencement Date and on each anniversary of the Commencement Date during the term of the Agreement.

5. **License Fee.**

5.1 **License Fee.** In consideration of City executing this Agreement and granting the rights provided in this Agreement, Operator shall pay in advance to City each month, starting the first day of the fourth month, at the address listed for City in Section 30.5 of this Agreement the sum of \$4,000 per month as the License Fee, less any agreed- upon Improvement Credits as described in paragraph 5.4 below. For months 1-3 of the Term, Operator will not pay the License Fee of \$4,000 per month. Commencing on the first day of the 13th month of the Term, (first anniversary of the Commencement Date) the monthly License Fee shall increase by the percentage change in the Consumer Price Index, All Items, for All Urban Consumers in the Los Angeles-Anaheim-Riverside Area, promulgated by the Bureau of Labor Statistics of the U.S. Department of Labor ("CPI") over the same CPI for the same month of the Commencement Date. For the remainder of the Term, annually on the anniversary of the Commencement Date, the monthly License Fee shall be subject to automatic adjustments in proportion to the percentage change in the Consumer Price Index (CPI), from the preceding year. In no event shall the annual adjustment to the License Fee exceed three percent (3%) year over year. At time of claiming such Improvement Credit, Operator shall provide proof of payment for such Improvement being claimed as Improvement Credit for that month's License Fee due. Payment of the applicable monthly License Fee may be offset by any Improvement Credit established as described below in Paragraph 5.4.

5.2 **Calculation of License Fee.** For section 5.1, the automatic adjustments shall be calculated by means of the following formula:

$$A = B \times (C/D)$$

Where:

A = Adjusted Base License Fee

B = Base License Fee

C = Monthly index for the third month prior to January 1st of each year in which each Base License Fee adjustment is to become effective

D = Monthly index for the month of the Effective Date of this Agreement.

In the event that the CPI is not issued or published, for the period for which such annual License Fee is to be adjusted and computed hereunder, or in the event that the Bureau of Labor Statistics of the United States Department of Labor should cease to publish said index figures, then any similar index published by any other branch or department of the United States Government shall be used; and if none is so published, then another index generally recognized and authoritative shall be agreed upon by City and Operator.

5.3 Fee Due. License Fee shall be due on the first of each month and payable by the 10th day of the month. A 10% late fee, no less than \$400.00, will be assessed and an invoice sent by the City if received after the tenth (10) calendar day.

The License Fee shall be paid in monthly installments, on the first day of each calendar month during the term of this Agreement, minus any applicable Improvement Credits upon proof of payment for such Improvements.

5.4 Improvement Credits. As a method to allow Operator to recoup the investment required to pay for capital improvements necessary to renovate and refurbish the Premises as listed below, an Improvement Credit will be allowed against the monthly License Fee up to the amounts described below. The Operator will be allowed to claim Improvement Credits for the costs of actual improvements made during the first 6 months of the agreement as listed below.

- a) Calculation of Improvement Credits. If Operator completes the Phase 1 Improvements during the first three months of the Agreement, and the Phase 2 Improvements during the second three months of the Agreement, and provides

proof of payment of such Improvements in the amounts stated below for each as Allowed Improvement Reimbursement Amount, then during the first five (5) years of the Agreement, Operator may apply the entire amounts paid for Phase 1 and Phase 2 Improvements actually spent up to the maximum Allowed Improvement Reimbursement Deduction as an Improvement Credit. In no event may the total Improvement Credit exceed the Allowed Reimbursement Amount. After all applicable and available Allowed Reimbursement Amounts have been applied towards License Fees due, then License Fee shall resume at monthly License Fee amount. Should Operator not complete an improvement by the required completion date, no Reimbursement Amount shall be allowed for that Improvement.

Operator shall complete the following Phase 1 Improvements by the end of the third month (required completion date) following the Commencement Date:

Improvement	Maximum Allowed Reimbursement Amount
1. Purchase and install seven (7) new pitching machines for both baseball and softball	\$22,000
2. Contract for and cause to be installed new netting around all pitching machine and batting cage areas (Replacement or betterment of existing netting)	\$18,000
3. Contract for and cause to be installed new LED lighting to illuminate the batting cage area, and all walking paths (Replacement or betterment of existing lighting). New lighting poles to be installed where needed. Existing lighting poles and light fixtures may be utilized if deemed adequate by City to be refurbished.	\$10,000
4. Contract for and cause to be undertaken repairs to batting cages (Replacement or betterment of existing). Batting cages will be repaired by replacing damaged chain-link fencing. Doors entering each cage will be repaired or replaced. Chain-link fencing will be extended to the top of the existing poles entering the cages. New padding will be	\$10,000

added around all poles. New rubberized backstops will be installed behind all batter's boxes. New turf pads with home plates and batters boxes will be installed. Replace or repair the existing hopper ball escalator. Install new weatherproof coverage over pitching machines.	
5. Contract for and cause to be installed a Clubspeed point of sale (POS) system	\$2,500
6. Purchase and install shade sails and seating	\$7,000
7. Contract for and cause to be installed artificial turf in Common Area	\$8,000
8. Purchase at least ten (10) new and slightly used bats and at least ten (10) helmets for rental use	\$3,000
Total Possible License Fee Deduction for Phase 1 Projects	\$80,500

Phase 2 Improvements to be completed by the end of the sixth month (required completion date) following the Commencement Date shall be:

Improvement	Maximum Allowable Reimbursement Amount
9. Contract for and cause to be completed cleaning, painting and remodel the concession stand	\$10,000
10. Contract for and cause to be completed reconstruction of restroom. A luxury portable restroom will be provided adjacent to the concession stand.	\$15,000
11. Contract for and cause to be completed installation of new metal gate and fencing from east to west along the front of facility.	\$10,000
12. Contract for and cause to be completed installation of fielding and pitching turf (artificial)	\$8,000

13. Contract for and cause to be completed installation of retractable awning for the concession stand	\$2,500
14. Contract for and cause to be completed installation of adjustable nets for expanding cages	\$8,000
15. Contract for and cause to be completed clean up the planter and add drought-tolerant plants	\$6,000
16. Purchase and install seven (7) new pitching machines for both baseball and softball	\$16,000
Total Possible License Fee Deduction for Phase 2	\$75,500

In the event of circumstances beyond Operator's control relating to the procurement or delivery of items in Phase 1 or Phase 2, an exception may be requested by Operator for excusing a delay in the completion of such Improvement. Such request for delay shall be made in writing by Operator to City at least seven (7) days prior to the required completion date stating all efforts by Operator to complete the procurement and installation of such Improvement and the reasons for such delay in purchase, installation, or construction is due to measures beyond the Operator's control. City shall not unreasonably withhold timely request for exemption due to delay.

Notwithstanding the foregoing, under no circumstance shall completion of an Improvement be excused beyond one year from the Commencement Date. For items 1, 3, 5, 6 or 7 in Phase 1 or any item in Phase 2, Operator may open to the public without such items being procured. For items 2, 4, or 8, Operator may only open to the public during delay period upon permission granted by City. Such delay shall apply to ability to comply with procurement and installation requirement, not License Fee obligation, which shall be due without delay or reduction; improvement credits on all other improvements in the applicable phase may be applied to the License Fee. Operator may apply for an improvement credit for delayed item after eventual procurement and installation, but in no event will the procurement date and eligibility for potential Improvement Credit be extended beyond one year.

In consideration of the reduction of License Fee, the City's reimbursement of the Improvement Costs under paragraph 5.4 above, any Improvements for which Improvement Credit is applied shall become the property of City pursuant to paragraph 13.3 as if such had been purchased by City. Such shall apply regardless of whether such Improvement is an improvement pertaining to the realty, operation of the

Premises, or a moveable or immovable fixture, or other item, including any items of personal property, structure, or piece of equipment.

- a) Calculation of and Application for Improvement Credits. For months 1-3 of the Term, Operator will not pay the License Fee of \$4,000 per month. Commencing in month four of the Term, Operator may begin applying Improvement Credits for completed Phase 1 improvements. Each month thereafter, the Operator may continue to apply to all License Fees due during the first five years of the Term the remaining Improvement credits up to the maximum amount of the Allowable Reimbursement Amount for the Improvement projects completed. Unless extended by a delay approved by the City, the total amount of Allowable Reimbursement Amount will be set and calculated after month 6 of the Term.
- b) Overage. Notwithstanding the aforementioned provisions for Improvement Fee credit reconciliation, Operator shall not receive any adjustment in License Fees for actual expenditures that exceeds Allowable Reimbursement Amount amounts stated in section 5.4(a).

6. Permits.

Operator is responsible for obtaining all permits, Agreements, contracts, and any other governmental authorizations required for Operator's use of the Premises. Operator shall be required to operate the Premises subject to additional conditions imposed by any governmental agencies other than the City.

7. Maintenance and Examination of Records.

Operator shall maintain, at its principal offices, its financial records pertaining to Capital Improvement (Section 13 herein) expenditures relating to the Premises during a period of four (4) years after the conclusion of any Year. Further, all financial records pertaining to Capital Improvement expenditures at the Premises shall, upon at least three (3) business days' prior written request from City to Operator, be open and available to City or Operator's representative for an examination at all reasonable times during business hours. City shall be entitled at any time within two (2) years after the conclusion of a Year; to question the sufficiency Improvement expenditures as they relate to agreed-upon Improvement Credits or the accuracy of the report furnished by Operator. Operator shall coordinate with the Public Works division on identifying and noticing requirements for

public improvements, including notifications with the Department of Industrial Relations.

8. Incident Reporting.

Operator shall develop a written incident report form for reporting of any injury, death, damage, harm, sexual assault, or theft occurring on the Premises incidents for use by all employees. Within twenty-four hours (24-hours) of Operator becoming aware of any incident, Operator shall submit such written report of such incident to the City representative.

9. Taxes

9.1 Real Property Taxes. Operator shall pay directly to the appropriate taxing authorities, prior to delinquency (except in the case of contests of real estate taxes made in good faith), the actual Real Property Taxes (as defined below) assessed against the Premises which are attributable to the term of this Agreement. If any real estate taxes are assessed against the Premises which do not constitute Real Property Taxes required to be paid by Operator pursuant to the preceding sentence, then City shall pay such real estate taxes to Operator within thirty (30) days after notice from Operator, provided, however, City shall not be required to make such payment more than thirty (30) days before such real estate taxes are due and payable. If City fails to timely contribute its portion of real estate taxes, if any, on a timely basis, then at Operator's option, Operator may pay the full amount of real estate taxes assessed against the Premises, and thereafter Operator shall receive a credit against the License Fee next payable under this Agreement equal to the portion of real estate taxes advanced by Operator on City's behalf. In the event Operator in good faith contests the amount of real property taxes or assessments assessed against the Premises, then, upon the final determination of the real property tax liability, Operator and City shall promptly pay their respective portion of the amount of real estate taxes owed.

9.2 Definition of Real Property Taxes. The term "Real Property Taxes" as used herein means any fee, license fee, commercial rental tax, assessment, penalty, or tax imposed by any taxing authority against the Premises. However, the term "Real Property Taxes" does not include any special assessment imposed against the Premises for improvements made in connection with any adjacent property owned by City or any affiliate of City, any tax imposed upon this transaction or based upon a reassessment of the Premises due to a change of

ownership or other transfer of all or part of City's interest in the Premises or (if applicable) City's federal or state income, franchise, inheritance or estate taxes, all of which shall be paid by City.

9.3 Other Taxes. Operator shall pay all taxes, license fees or other governmental charges assessed or imposed on the Personal Property owned by Operator located on the Premises or upon the business operations of Operator conducted on the Premises, but Operator's responsibility pursuant to this Section shall not include any extraordinary charges or one-time assessments.

10. Utilities. Operator shall pay, before delinquency, all charges for utilities, including water, electricity, gas, heating, cooling and telephone/internet, used by Operator in Operator's operation of the Premises.

11. Concessions. Operator will be permitted to exclusively operate concession facilities, excluding alcohol, at the batting cage facility for all events.

12. Ownership of Improvements. As of the expiration, or earlier termination of this Agreement, ownership of all Improvements and Capital Improvements shall be solely with City.

13. Improvements. Operator accepts the Premises in as-is condition. Operator is required to fund, construct, and implement the Capital Improvements required in section 5.4. Only such Capital Improvements, which are included in section 5.4, are available for reimbursement and application for Improvement Credits. Prior to engaging in Capital Improvements, including purchase of those items listed as Phase 1 and Phase 2 Improvements, Operator shall obtain the written approval by City's representative of the materials to be purchased and scope of work to be completed by Operator.

13.1 Capital Improvements Generally. Except for those Improvements specifically identified in section 5.4, Operator shall have no right to construct alterations, additions, and improvements on the Premises without the approval of City.

13.2 Costs of Construction and Alterations. Operator shall pay all costs for construction or improvements done by it or caused to be done by it on the Premises and shall keep the Premises free and clear of all mechanic's liens resulting from construction done by or for the Operator. City shall not be required

or obligated to make any changes, alterations, additions, improvements, or repairs in or about the Premises or any improvements located thereon or any part thereof during the term.

13.3 Ownership of Improvements No Liens. All Improvements made by Operator pursuant to paragraph 5.4 shall become the property of City upon the termination of the Agreement unless otherwise agreed by City in writing. Operator shall not have the right to create or permit the creation of any lien attaching to City's interest in the Premises or in any Improvements or F&E as a result of any construction of any Improvements.

13.4 Prevailing Wage. (California Prevailing Wage Law) Operator is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000.00 or more, Operator agrees to fully comply with such Prevailing Wage Laws. Operator shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. Operator shall coordinate with the Public Works division regarding notice of projects with the Department of Industrial Relations.

13.5 Monthly Meetings with City. Unless otherwise specified by the City, Operator must schedule and attend monthly meetings with the Community Services Director and provide updates on completed, ongoing, and future Improvement projects.

14. Maintenance and Repairs. Except as otherwise provided in this Agreement, Operator shall, at its sole cost and expenses, maintain the batting cage facility, in first class condition with a high standard of cleanliness, and preserve the facility in the same or better condition as when received on the Commencement Date with subsequent improvements, normal wear and tear excepted. Operator shall perform, at Operator's sole expense, all repairs necessary to the facility for all improvements, fixtures, furniture, furnishings, and equipment situated therein or used in connection

therewith, in such condition. All repairs and maintenance of an amount over \$500 must be approved by the City prior to Operator starting projects. Amounts expended for maintenance and repairs shall not be eligible for or applied to Improvement credits.

14.1 As-Is. Operator agrees that it is accepting the Premises "as is" without any representation or warranty by City, or City's officers, employees, or agents, express, implied or statutory, except as expressly provided herein, as to: (i) the nature or condition of the Premises and (ii) the Premises' fitness for Operator's intended use of same. Operator is, or prior to their use of the Premises, will be familiar with the Premises. Operator is relying solely upon its own independent inspection, investigation, and analysis of the Premises as it deems necessary or appropriate.

14.2 Inspections. City, through its duly authorized representatives, may enter upon the Premises at all reasonable times for the purpose of inspecting and all of the Premises and the improvements and facilities thereon. After such inspections, the City shall give written notice to Operator by mail or personal delivery of the necessary repairs, changes or notices of violations. Operator shall commence the necessary repairs or changes within ten (10) days following receipt of any written notice or such longer time as may be specified herein and completed such undertaking as soon as practicable, provides, however, any items deemed an emergency shall be completed promptly by Operator upon notification by City. Operator shall have the benefit of any warranties available to the City with respect to the batting cage facility or any component thereof.

15. City's Cooperation. City recognizes and acknowledges that Operator will need the assistance and cooperation of City to properly perform and fulfill certain of Operator's covenants and obligations under this Agreement. Therefore, City agrees it shall execute such documents and do such further ministerial acts and things as Operator reasonably requests in order to assist Operator in fulfilling its obligations under this Agreement. City further designates the Community Services Director to work with Operator in assuring that Operator obtains the full cooperation and assistance of City, subject to the terms of this Agreement and all applicable laws. This provision does not affect the City's ability to exercise its future police powers or

discretion in any way.

16. Personnel. During regular business hours at all times, the Operator must have at least have one (1) full-time adult staff member on site. Operator shall maintain adequate and proper personnel for its operations and must closely supervise all employees to ensure a high standard of service. All employees working at the batting cage facility must be over the age of 18, be live scan fingerprinted and cleared through Department of Justice background check prior to commencing employment. The Operator shall be responsible for all reports and obligations with respect to such personnel, including but not limited to social security taxes, income tax withholding, unemployment insurance, and workers compensation insurance.

17. Operations. Operator at its own cost and expense shall operate and manage the batting cage facility in a professional manner, generally including rentals of equipment, space, and instruction. Operator shall provide the following minimum services:

- a) Provide overall program and facility oversight and operation.
- b) Provide services that are affordable to the community.
- c) Enforce all rules and regulations.
- d) Regulate play and conduct of players and spectators.
- e) Supervise batting cage facility, preserve order, and provide for security of the facility, and prevent damage to the facility by players and others.
- f) Inspect and provide general maintenance and upkeep of the batting cage facility (which includes the building, grounds, and cages).
- g) Develop and implement outreach and marketing, through promotional events and advertising efforts.
- h) Host at least two city events a year and provide support for community fundraising events for outreach at the request of City.
- i) Operate, manage, and supervise the Premises, including but not limited to maintaining, selling, and renting a stock of merchandise, supplies, and equipment suitable for use at the facility to meet customer demand.
- j) If providing any food service or catering on Premises, such shall be properly permitted by the County of Los Angeles Health Department.

- k) Focus on service delivery to residents of South Pasadena, especially youth and low-income families.
- l) Provide a high quality of cleanliness for the batting cage facility at all times, which includes the facility grounds, restrooms, patio, furnishing and fixtures, offices etc.
- m) Subject to City approval, obtain user satisfaction surveys or evaluations by batting cage facility customers, to develop information for the Parties' use in tailoring the facility and operations to increase customer satisfaction.

17.1 Marketing. Operator shall have the responsibility to promote, publicize and market the batting cage to optimize public awareness and attendance at the batting cage facility. Operator shall bear all marketing and promotional expenses. Operator may **NOT** use any City logo without the written consent of the City.

18. Insurance.

18.1 Insurance Coverage. Operator shall obtain, pay for, and maintain, at Operator's sole cost and expense, the following types of insurance coverage relating to the Premises and Operator's operations of the Premises at all times throughout the term of this Agreement:

a) Liability Insurance. A policy or policies of comprehensive general liability insurance, with coverage of not less than one million dollars (\$1,000,000) each occurrence, with an aggregate of two million dollars (\$2,000,000) for bodily injury (including accidental death), property damage, and medical payments.

b) Worker's Compensation. A policy or policies of worker's compensation insurance in compliance with applicable California law.

c) Casualty Insurance. A standard form policy or policies of property, fire and extended coverage casualty insurance on the Premises, including all related buildings, with coverage limits not less than the full replacement cost of the Premises. Lessee shall also maintain insurance coverage on, or otherwise assume financial liability for, the Personal Property and the furnishings and equipment owned by Lessee.

d) Sexual abuse or molestation. A policy or policies with coverage of not less than one million dollars (\$1,000,000) each occurrence, with an aggregate of two million dollars (\$2,000,000).

18.2 General Provisions. Operator shall make diligent efforts to assure that the policies of insurance to be maintained by it shall not be subject to cancellation except upon at least ten (10) days' written notice to City. If any policy is cancelled, Operator shall immediately cease operations at the Premises until such insurance coverage is restored. Any subcontractor of Operator allowed by City shall be required to hold all insurance and abide by all provisions of this section 18. At City's request, Operator shall submit to City a certificate of coverage and proof of payment of premiums. Any insurance required to be carried under this Agreement may be included as part of any blanket or other policy or policies of insurance, subject to the provisions of this Agreement. All policies shall name the City of South Pasadena and its officers, agents, employees, and representatives (collectively, "CITY AND ITS REPRESENTATIVES") as additional insureds. Coverage afforded to City and its representatives shall be at least as broad as that afforded to Operator. The liability insurance must include all major divisions of coverage and must cover: (A) Premises Operations (including Explosion, Collapse, and Underground ["X,C,U"] coverages as applicable); (B) Independent Contractors' Protective Liability; (C) Products and Completed Operations (maintain same limits as above until five (5) years after: recordation of the Notice of Completion or final closeout of the Agreement); (D) Personal and Advertising Injury (with Employer's Liability Exclusion deleted); (E) Contractual Liability; (F) Broad Form Property Damage; and (G) Sexual Abuse or Molestation Liability (including coverage for: (i) physical, emotional, psychological injury or harm of a person; and (ii) negligent employment, supervision, investigation, reporting or failing to report to proper authorities, or retention of an employee, agent, representative, volunteer, Subcontractor, or person whose actual, alleged, attempted, or threatened behavior, conduct, or verbal or nonverbal communication— whether or not intentional— results in physical, emotional, psychological injury or harm of a person or persons).

18.3 Certificate of Insurance. Operator shall provide CITY with a "certificate of insurance," an "additional insured endorsement," and a subrogation endorsement, "Waiver of Transfer to Rights of Recovery Against Others" — on forms satisfactory to the City Attorney or City's Risk Manager, and signed by the insurance carrier or its authorized representative — which fully meet the requirements of, and contain provisions entirely consistent with, all of

the Insurance Requirements. The “certificate of insurance” and an “additional insured endorsement” must state: “The City of South Pasadena, and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance or risk coverage of the City. The City’s insurance or self-insurance, or risk pool coverage, will apply in excess of— and will not contribute with— Operator’s insurance. This insurance applies separately to each insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to the City for any policy cancellation, termination, non-renewal, or reduction in coverage.”

18.4 Business Automobile Insurance. At its own expense, Operator shall obtain, pay for, and maintain— and shall require each of its Subcontractors and employees to obtain and maintain— a “Business Automobile” insurance policy on an occurrence basis to fully protect Operator and City from claims and suits for bodily injury, property damage, and medical payments. The policy must add the City of South Pasadena and its officers, agents, employees, and representatives as additional insureds. The insurance must not be written for less than the limits of liability specified below or required by law, whichever coverage amount is greater: (A) one million dollars (\$1,000,000) per occurrence for bodily injury (including accidental death) to any one person; and (B) one million dollars (\$1,000,000) per occurrence for property damage; or (C) two million dollars (\$2,000,000) combined single limit (“CSL”). The liability insurance must include all major divisions of coverage and must cover all vehicles, whether rented, leased, hired, scheduled, owned or non-owned. Operator shall provide City with a “certificate of insurance” and an “additional insured endorsement” — on forms satisfactory to the City Attorney or City’s Risk Manager, and signed by the insurance carrier or its authorized representative— which fully meet the requirements of, and contain provisions entirely consistent with, all of the Insurance Requirements. The “certificate of insurance” and an “additional insured endorsement” must state: “The City of South Pasadena, and its officers, agents, employees, and representatives are included as additional insureds under the policy(s). This insurance is primary to all other insurance of the City. The City’s insurance, or self-insurance, or both, will apply in excess of— and will not contribute with— this insurance. This insurance applies separately to each

insured or additional insured who is seeking coverage, or against whom a claim is made or a suit is brought. The issuing company shall mail thirty (30) days advance notice to City for any policy cancellation, termination, non-renewal, or reduction in coverage.”

19. Indemnification and Hold Harmless.

19.1 Operator shall, at its sole cost and expense, indemnify, defend, and hold harmless the City, its elected officials, officers, agents, employees, and volunteers and those agents of City serving as independent contractors in the role of City officers from all liability, demands, claims, costs, losses, damages, suits, actions, settlements and expenses of every name, kind, and description (collectively, "Claims"), including attorney fees, and costs interest, penalties, expert witness fees, directly or indirectly arising from injuries to or death of any person or damage to property of the City, Operator or others whomsoever, including Claims arising from or connected with the willful misconduct, negligent acts, errors or omissions, the Operator or any person directly or indirectly employed by or acting as agent for the Operator in the performance of this Agreement, or Operator’s failure to comply with its obligations set forth in this Agreement, including the concurrent or successive active or passive negligence of the City, its officers, agents, employees or volunteers, except for claims arising from the sole negligence or willful misconduct of City. Operator shall promptly pay any judgment rendered against Operator or City covering Claims. If City is made a party to any suit or action filed or prosecuted against Operator for such claims, Operator shall pay City any and all costs and expenses incurred by City in such suits or actions, together with attorneys' fees.

19.2 It is understood that the duty of Operator to indemnify and hold harmless the City includes the duty to defend as set forth in Section 2778 of the California Civil Code. Operator shall defend any action or actions filed in connection with a claim with counsel of City's choice and pay all costs and expenses, including attorneys' fees incurred by the City in connection therewith.

19.3 Acceptance of insurance certificates and endorsements required under this Agreement does not relieve the Operator from liability under this indemnification and hold harmless clause. This indemnification and hold

harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages and shall survive the expiration or termination of this Agreement.

20. Damage and Restoration.

20.1 Total Destruction. If the buildings or other improvements on the Premises, or the Personal Property under this Agreement, should be totally destroyed (i.e., damage in excess of partial destruction as defined in Section 20.2) by fire or other casualty or a force majeure occurrence, Operator shall have the option, to be exercised in writing within sixty (60) days of such destruction, to either (a) terminate this Agreement in which event the parties shall have no further obligations hereunder, or (b) elect to repair and restore the Premises and thereafter diligently pursue such restoration to completion. In the event that Operator elects to repair and restore the Premises under paragraph 20.1(b), this Agreement shall remain in full force and effect.

20.2 Partial Destruction. If the buildings or other improvements on the Premises or the Personal Property under this Agreement should be partially damaged by fire or other casualty or a force majeure event, then Operator shall, subject to the availability of insurance proceeds (it being understood and acknowledged that Operator shall have no obligation to repair or restore any portion of the Premises if insurance proceeds are not available to fully restore the same), restore the buildings, Improvements and Personal Property in a good and workmanlike manner to a condition as good as or better than the condition in which the buildings, improvements and Personal Property existed prior to their damage or destruction. For purposes of this Agreement, the term "partially damaged" means (a) damage to the extent of 33% or less of the value of the buildings, improvements, and Personal Property at the Premises or (b) damage to the extent that no more than half of the facility at the Premises are rendered unplayable. If the insurance proceeds made available to Operator are not sufficient to fully restore the Premises, then such proceeds shall first cover any outstanding Improvement Credits able to be claimed by Operator, then remaining proceeds shall be provided to City for partial restoration loss, and Operator may terminate this Agreement upon written notice to City in which event the parties

shall have no further liability hereunder. In addition, notwithstanding anything in this Section 20.2 to the contrary, if, as a result of the partial destruction of the Premises, Operator is unable to make full and productive economic use of the Premises and, in Operator's reasonable determination, the full and complete restoration of the Premises will take in excess of one hundred eighty (180) days, then Operator may, upon written notice to City within sixty (60) days after the partial destruction occurs, terminate this Agreement without right to outstanding Improvement Credits remaining, in which event the parties shall have no further obligations hereunder.

20.3 Damage during the Last Two Years of the Agreement Term. Notwithstanding the provisions of Section 20.2 to the contrary, if during the last two years of the term of this Agreement, the buildings, Improvements on the Premises, or the Personal Property under this Agreement is damaged to the extent often percent (10%) of the value of the buildings, improvements and Personal Property at the Premises or more, then Operator shall have the option, to be exercised within thirty (30) days of such damage or destruction, to either (a) terminate this Agreement in which event the parties shall have no further obligations hereunder or (b) elect to repair and restore the Premises in accordance with the provisions of Section 20.2 above.

21. Abatement and Term Extension. If Operator is unable to make full and productive economic use of the Premises during repair, reconstruction, or replacement as provided for in Sections 19 or 20, Operator's License Fee obligations as well as City's obligations for Improvement Credits under Article 5 shall be abated in proportion to the loss of use of the Premises, suffered during the particular month. Proportional abatement of License Fee and improvement credit obligations shall continue until such time as Operator is again fully able to operate.

22. Application of Insurance Proceeds Upon Termination. If, after the partial or total destruction of the Premises, this Agreement is terminated pursuant to the provisions of this Article 19 or 20, then all insurance proceeds made available on account of such destruction shall first be paid to Operator to reimburse Operator for the value of any and all improvements made to the Premises by Operator prior to such destruction until such time as Operator has received full reimbursement for all such

improvements, less any Improvement Credits received, and for the value of any personal property at the Premises owned by Operator; second, to City until such time as City has received full reimbursement for the value of the improvements at the Premises which existed as of the first day of the Initial Term plus the Improvement Credits applied to date, and the balance, if any, shall be paid to Operator.

23. Termination by City.

a) This Agreement may be terminated by the City upon the occurrence of any of the following events:

- 1) Any material breach of the Agreement by Operator which remains uncured for a period of 45 days after written notice from the City;
- 2) In the event that the City determines in its sole discretion that it wishes to use the facility for a purpose other than a batting cage facility upon one (1) year's written notice;
- 3) The total or partial destruction of the batting cage facility or any event which renders the facility unusable pursuant the provisions of section 19 and 20; or,
- 4) At the City's sole discretion upon sending written notice of termination for cause to Operator after the City has sent to Operator three or more notices of Operator's material breach within any twelve (12) month period.

b) In the event of termination of this License Agreement by the City pursuant to this section, Operator waives any right to compensation from the City for the value of Operator's license, the unexpired term of this License Agreement, any Improvements, unpaid Improvement Credits, loss of business goodwill, Fixtures and Equipment, and the City's payment of relocation benefits under Government Code section 7260, et seq., if any.

24. Termination by Operator. This Agreement may be terminated by Operator with one (1) year written notice to City. Upon exercising this section, Operator forfeits any right to compensation from the City for the value of Operator's license, the unexpired term of this License Agreement, any Improvements, unpaid Improvement

credits, loss of business goodwill, Fixtures and Equipment, and the City's payment of relocation benefits under Government Code section 7260, et seq., if any.

25. Reimbursement for Improvements. As of the expiration, or earlier termination of this Agreement, except as specified in this section for Termination without cause by City and those circumstances of Eminent Domain in section 23, Operator shall not be entitled to any proration or reimbursement for any Improvements, Capital Improvements, or outstanding unpaid or unapplied Improvement credits.

In the event of a Termination Without Cause by City, Operator shall be entitled to reimbursement for the amortized amount of the costs of Phase 1 and 2 Improvements actually made, based on the following formula:

$$\text{Reimbursement} = \frac{\text{Net Phase 1 and 2 Improvement Costs}}{120} \times \text{Months Remaining in Term}$$

"Net Phase 1 and 2 Improvement Costs" is defined as the actual costs of such improvements submitted to the City at time of claiming Improvement credits minus the Improvement Credits received to date at time of termination.

26. Eminent Domain

26.1 Total Taking. If at any time during the term of the Agreement, the Premises is taken by condemnation or by right of eminent domain by any third party, then this Agreement shall terminate on the date of such taking and all license fee payments already made shall be apportioned as of the date of the taking. For purposes of this Article, a "material portion" shall be deemed to have been taken if the remaining portion cannot economically be used by Operator, in Operator's reasonable judgment, in the manner in which the Premises were used prior to such taking.

26.2 Partial Taking. In the event that use of less than all or a material portion of the Premises is taken by condemnation or by right of eminent domain by any third party, then this Agreement shall not terminate, but the License Fee due during the remainder of the Agreement term shall be reduced as of the date of such partial taking in a proportion to the reduction in the Gross Revenues of the Premises attributable to such partial taking.

26.3 Condemnation Award. If there is a taking by right of eminent domain by any third party, the award shall belong to and be paid to City, except that Operator shall receive from the award the following: (a) a sum attributable to the value of Operator's license, including improvements, and (b) a sum attributable to Operator's loss of good will.

27. Representations Warranties and Covenants.

27.1 Power and Authority. City hereby represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Agreement and to fully perform each and all of its obligations under this Agreement. Operator hereby represents and warrants that it has the requisite right, power, legal capacity and authority to enter into this Agreement and to fully perform each and all of its obligations under this Agreement.

27.2 No Conflict. City represents and warrants that neither this Agreement nor the consummation of the transactions contemplated by this Agreement will result in a breach of or constitute a default under any other agreement, commitment or obligation to which City or the Premises is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment, or decree applicable to City or the Premises. Operator represents and warrants that neither this Agreement nor the consummation of the transactions contemplated by this Agreement will result in a breach of or constitute a default under any other agreement, commitment or obligation to which Operator is bound, nor will it violate any law, rule, regulation, restriction, judicial or administrative order, judgment or decree applicable to Operator.

27.3 Encumbrances. City shall not (a) grant any easements, rights of way, licenses or other similar rights, (b) convey to the public or dedicate to the public all or any portion of the Premises, or (c) consent to the Premises being included as part of an assessment district, or (d) encumber, lien or mortgage its fee interest in the Premises, in each case without obtaining Operator's prior written consent, which consent shall be granted or withheld in Operator's sole discretion and which consent shall not be unreasonably withheld.

28. Frustration of Purpose. At any time during the term of this Agreement, (i) if the governing body of any political subdivision having competent jurisdiction over the

Premises should enact any valid zoning or other ordinance, law or regulation (collectively, "Use Law") which prohibits the use of the whole or a substantial part of the Premises for the purposes as provided in Section 2.1 of this Agreement; (ii) if an event of force majeure (collectively, "Force Majeure Event") occurs, including without limitation, declared or undeclared war, sabotage, riot or other acts of civil disobedience, acts or omissions of government, labor disputes, shortages of fuel or other materials, accidents, fires, explosions, floods, earthquakes, or other acts of God, which substantially prevents Operator's use of the Premises as provided for in Section 2.1 of this Agreement; or (iii) if Facilities become unavailable or inadequate so as to substantially interfere with Operator's use of the Premises as provided in Section 2.1 of this Agreement, it is agreed that Operator may elect, within one hundred twenty (120) days after the effective date of such Use Law or the occurrence of the Force Majeure Event, or the date Facilities become unavailable or inadequate, to cancel this Agreement and surrender possession of the Premises. Any such cancellation and surrender by Operator shall act to release and discharge Operator and City from any further obligation under this Agreement. In addition, it is agreed that during the period of any Force Majeure Event; during the period that Facilities are unavailable or inadequate; and/or during any period that any defect in the Premises substantially interferes with Operator's use of the Premises as provided in Section 2.1 of this Agreement, City and Operator shall be excused from performing their respective obligations under this Agreement whether or not Operator exercises its right to terminate as provided herein.

29. Assignment. Except as otherwise provided below, Operator shall not assign this Agreement or sublet all or any part of the Premises without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. Operator shall notify City of any proposed assignment or subletting at least sixty (60) days prior to the proposed effective date of such assignment or subletting. City's consent shall be required for any assignment or sublease of all or any portion of Operator's interest in this Agreement to any corporation, limited liability company, partnership or other entity which controls, is controlled by or is under common control with Operator or

any individuals or entity which directly or indirectly owns an interest in Operator

30. Breach and Remedies. The following conditions will constitute a breach of this Agreement and a default thereunder:

30.1 Conditions of Default.

a) If Operator fails to pay license fee or fulfill any other monetary obligation of Operator to City, and Operator fails to cure such monetary default within thirty (30) days after written notice from City to Operator of such monetary default.

b) If either party fails to fulfill any of its other non-monetary obligations under this Agreement when due or called for, and the party in default fails to cure such non-monetary default within sixty (60) days after written notice from the non-defaulting party of such non-monetary default; provided, however, that if the nature of the non-monetary default is of a nature such that it cannot be fully cured within that sixty (60) day period, the party in default shall have such additional time as is reasonably necessary to cure the default so long as the party in default is proceeding diligently to complete the necessary cure after service of notice by the non-defaulting party.

c) If the Operator fails to complete the required Capital Improvements listed in section 5.4, unless extension is agreed to writing by the parties.

30.2 Remedies.

a) If any of the conditions identified in Section 28.1 above should occur and the party in default does not cure the default, the non-defaulting party may elect to terminate this Agreement immediately and seek all remedies as provided under law and equity.

b) If either party at any time by reason of the other party's default pays any sum or does any act that requires payment of any sum, the sum paid by the non-defaulting party shall be immediately due and owing by the defaulting party to the non-defaulting party at the time the sum is paid, and if paid at a later date shall bear interest at the rate of ten percent (10%) per annum from the date the sum is paid by the non-defaulting party until the non-defaulting party is reimbursed by the defaulting party.

c) If either City or Operator should bring an action in a court of law to enforce any of its rights or remedies under this Agreement, both parties agree that the prevailing party in any such litigation shall be entitled to a recovery of reasonable attorneys' fees and costs incurred by way of such action.

31. Business Name. Operator shall at all times conduct its operations of the batting cage facility exclusively under the name(s) "South Pasadena Batting Cages ". Operator shall not rename the facility any other fictitious business name without prior written consent of the City.

32. General Provisions

32.1 Entire Agreement. This Agreement contains all of the agreements of the parties with respect to the matters covered by this Agreement, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the parties.

32.2 Waiver. This Agreement contains all of the agreements of the parties with respect to the matters covered by this Agreement, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the parties.

32.3 Brokers. City and Operator represent to each other that they are not obligated to any broker or finders in connection with this Agreement, and each party agrees to defend, indemnify, and hold the other harmless from any claim, suit or demand made upon the other by any person, firm or corporation for brokerage fees or commissions or other similar compensation with respect to this Agreement arising out of any act or agreement of the indemnifying party.

32.4 Notices and Addresses. All notices, demands, requests or replies provided for or permitted by this Agreement shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery with receipt acknowledged in writing (2) by deposit with the United States Postal

Service as certified or registered mail, return receipt requested, postage prepaid to the addresses stated below; or (3) by deposit with an overnight express delivery service with receipt acknowledged in writing. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by overnight express delivery service shall be deemed effective one (1) business day after deposit with the express delivery service. Notice by personal delivery shall be deemed effective at the date and time of personal delivery.

For purposes of notice, demand, request, reply or payment, the address of City shall be:

Sheila Pautsch, Community Services Director
City of South Pasadena
815 Mission Street
South Pasadena, California 91030

For purposes of notice, demand, request, reply or payment, the address of Operator shall be:

Arthur Becerra and Melina Becerra
South Pasadena Batting Cages, LLC,
1446 Oak Crest Ave.
South Pasadena CA 91030

Each party shall have the right to designate a different address within the United States of America, and the City may update the name of the individual serving in the position of the City's Community Services Director by the giving of notice to the other party in conformity with this Article.

32.5 Governing Law: Partial Invalidity. This Agreement and the rights and liabilities of the parties to the Agreement shall be governed by the laws of the State of California.

32.6 If any Party to this Agreement brings a lawsuit to enforce or interpret this Agreement, the lawsuit shall be filed in the Superior Court for the County of Los Angeles, California.

32.7 Severability If any term or provision of this Agreement or application of the Agreement to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity or unenforceability, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

32.8 Leasehold Mortgages. Operator shall have no right, at any time, to subject all or a portion of Operator's interest under this Agreement to one or more mortgages, deeds of trust or like instruments ("Leasehold Mortgages").

32.9 Holding Over. If Operator does not vacate the Premises upon the expiration or earlier termination of the Agreement, Operator's occupancy of the Premises shall be a "month-to-month" tenancy, subject to all the terms of this Agreement applicable to a month- to-month tenancy.

32.10 Estoppel Certificates. Upon City's or Operator's written request, the other party shall execute, acknowledge and deliver to the requesting party, a written statement certifying: (a) that none of the terms or provisions of this Agreement have changed (or if they have been changed, stating how they have been changed); (b) that this Agreement has not been cancelled or terminated; (c) the last date of payment of the License Fee and other charges and the time period covered by such payments; and (d) that the other party is not, to the best of-the certifying party's knowledge, in default under this Agreement (or, if the other party is claimed to be in default, stating why). Such party shall deliver such statement to the requesting party within ten (10) days after the requesting party's request. Any such statement may be given by the requesting party to any prospective purchaser or encumbrancer of City or Operator's interest in this Agreement.

32.11 Captions. Captions in this Agreement are included for convenience only and are not to be taken into consideration in any construction or interpretation of this Agreement or any of its provisions.

32.12 Exhibits. The Exhibits referred to below and attached to this Agreement are incorporated herein as if set forth in full:

- a) Exhibit "A" - Legal Description of Real Property

32.13 Further Assurances. City and Operator agree that at any time or from time-to-time after the execution of this Agreement, they shall, upon request of the other, execute and deliver such further documents and do such further acts and things as may be reasonable requested in order to fully effect the purpose of this Agreement.

32.14 No Joint Venture. Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, a partnership or joint ventures between City and Operator. It is understood and agreed that neither any provisions contained in this Agreement nor any acts of City or Operator shall be deemed to create any relationship between City and Operator other than the relationship of Licensor and Licensee.

32.15 No Interpretation Against Draftsman. City and Operator hereby agree that no provision of this Agreement shall be construed against either Operator or City on the basis that the provision was drafted by such party or such party's counsel.

32.16 Counterparts. This License Agreement may be executed in counterparts and, as so executed, shall constitute an agreement that shall be binding upon all Parties hereto, notwithstanding that the signatures of all Parties and/or their designated representatives do not appear on the same page. This License Agreement may be transmitted by email and the reproduction of signatures by email, pdf or other electronic means will be treated as binding as if originals. Any assembly of this License Agreement with such signatures shall be deemed an original.

[Signatures on following page]

IN WITNESS WHEREOF, this Agreement has been executed as of the date first set forth above.

South Pasadena Batting Cages, LLC

Dated 3/9/2023

DocuSigned by:

DFD904DB840AC4AF...

Name: Arthur Becerra
Title: Manager

Dated 3/9/2023

DocuSigned by:

CAD478CA9924458...

Name: Melina Becerra
Title: Manager

City of South Pasadena

Dated _____

Name: Arminé Chaparyan, City Manager
Title: City Manager

Attest

Dated _____

Name: Mark Perez,
Title: Deputy City Clerk

Approved as to Form

Dated _____

Name: Andrew L. Jared
Title: City Attorney