

AGREEMENT FOR USE OF FIELDS AT VETERANS' MEMORIAL PARK

Hollister
Heat

Statement of Purpose:

Whereas, the County of San Benito recognizes the benefits to the community that youth sports provides; and,

Whereas the Hollister Heat is a non-profit organization which have been providing youths with the opportunity to play sports for many years; and,

Whereas, the County desires to encourage and facilitate the use of public fields at Veterans' Memorial Park for youth sporting events/activities; and,

Therefore, the parties desire to enter into an agreement which will encourage and facilitate the use of the fields at Veterans' Memorial Park for organized sports for youths.

AGREEMENT

The COUNTY OF SAN BENITO ("COUNTY") and Hollister Heat ("CONTRACTORS") enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract

This contract shall commence on February 1, 2008 and end on January 31, 2011 unless sooner terminated as specified herein.

2. Termination

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give written notice to the other party. The number of days of advance written notice required for termination of this contract is 60 days.

3. Description of Premises

The premise subject to this agreement is the field at Veterans' Memorial Park.

4. Priority in Scheduling

CONTRACTORS shall have priority over all other community groups and individuals in the use and scheduling of the subject premises for organized youth sports during CONTRACTOR'S normal season, subject to the terms set forth in Paragraph 5.

5. Terms of Use

The following shall be the terms of use of the fields at Veterans' Memorial Park:

- (a) In order to maintain priority over other organizations or individuals for scheduling purposes, CONTRACTORS shall schedule their games with COUNTY at the earliest possible time. CONTRACTORS shall not have priority for any games/events not scheduled at least three weeks prior to the event;

- (b) CONTRACTORS agree to use the premises only for conducting organized sports for youths during CONTRACTOR'S respective season.
- (c) CONTRACTORS shall be responsible for payment of all utilities incurred at Veterans' Memorial Park which result from CONTRACTOR'S usage of the field for youth sports. COUNTY will provide a monthly statement to CONTRACTORS and payment will be due within 30 days upon receipt of monthly usage. Amount charged shall be actual cost billed to COUNTY.
- (d) CONTRACTORS shall not disturb, annoy, endanger, or interfere with occupants of neighboring buildings/residences. CONTRACTORS shall not use the premises for any unlawful purpose, violate any law or ordinance, or commit waste or nuisance on the subject premises;
- (e) CONTRACTORS agree to keep the subject premises clean and sanitary as their condition permits;
- (f) CONTRACTORS shall be responsible for all maintenance of the fields, including mowing, fertilizing, and irrigating, during their respective sports season.
- (g) CONTRACTORS shall refrain from willfully or wantonly destroying or defacing, damaging, impairing, or removing any part of the subject premises or the facilities, equipment, or appurtenances, or permitting any person on the premises to commit such acts;
- (h) CONTRACTORS are responsible for all costs associated with any improper conduct or violations of laws or ordinances; and
- (i) CONTRACTORS shall be responsible for leaving fields and structures neat, clean, and orderly upon completion of their respective season.

6. Insurance

CONTRACTORS shall maintain the following insurance policy limits of coverage consistent with the further insurance requirement specified below.

- (a) Comprehensive general liability insurance: 1,000,000
- (b) Professional liability insurance: 1,000,000

Prior to the commencement of performance of services by CONTRACTORS and prior to any obligations of COUNTY, CONTRACTORS shall file certificates of insurance with COUNTY, showing that CONTRACTORS have in effect the insurance required by this contract. CONTRACTORS shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTORS may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTORS warrants that CONTRACTORS' self-insurance provides substantially the same protection to COUNTY as the insurance required herein. CONTRACTORS further agrees to notify COUNTY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

7. Prohibition Against Assignment and Delegation of Duties

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTORS without the prior written consent of COUNTY, and any attempted assignment or delegation without such consent shall be void.

8. Negotiated Contract

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

9. Severability

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provision which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

10. Entire Contract

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

11. Time is of the Essence

Time is of the essence in the performance of this contract.

12. Notices

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

- (a) The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or,
- (b) Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first class postage fully prepaid; or,
- (c) On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 13 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

13. Responsibility of Contract Administrators

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

14. Information about Contract Administrators

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for COUNTY Contract Administrator for CONTRACTOR

Name: Jerry K. Lo Name: Leo Ibarra

Title: Director of Public Works Title: President

Address 3220 Southside Road Address: 2180 Cypress Street

Hollister CA 95023 Hollister CA 95023

Telephone: 831-636-4170 Telephone: Cell 408-315-5017

Fax: 831-636-4176 Fax: _____

15. Compliance with Applicable Laws

CONTRACTORS shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

16. Indemnification

CONTRACTORS and COUNTY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnity in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

17. TERM CERTAIN

This agreement shall terminate January 31, 2011. Unless terminated, this contract shall be automatically renewed for successive one year periods (February 1 to January 31) and under the same terms and conditions as specified herein, upon CONTRACTOR'S presentation of a current-year officer list and proof of insurance to the COUNTY.

SIGNATURES

APPROVED BY COUNTY:

Jaime De La Cruz

Jaime De La Cruz
Chair
San Benito County Board of Supervisors

Date: 2/26/08

APPROVED BY CONTRACTOR:

Leo Ibarra
(Signature)

Name: Leo Ibarra

Title: President

APPROVED BY VETERANS' PARK
COMMISSION:

Jaime De La Cruz

Jaime De La Cruz
Chair

Date: _____

Tax ID or Social Security Number:

Date: 1/31/08

APPROVED AS TO LEGAL FORM:

Dennis LeClere, County Counsel

Terrence F. Chaffer

By: Deputy

Date: 2/15/08

**POSSESSION AND USE AGREEMENT
BETWEEN THE COUNTY OF SAN BENITO
AND HOLLISTER HEAT**

This Possession and Use Agreement ("Agreement"), dated, for reference purposes only, this 19 day of February, 2013, is by and between the COUNTY OF SAN BENITO, a political subdivision of the State of California, ("COUNTY") and HOLLISTER HEAT, a tax exempt nonprofit organization under section 501(c)3 of the Internal Revenue Code ("HEAT").

WHEREAS, COUNTY is the owner of Veterans Memorial Park (the "Park"), a park facility, located in the City of Hollister in San Benito County used for a variety of activities, including several ballparks owned by the COUNTY for the benefit of the Public; and

WHEREAS, COUNTY and HEAT, wish to document and memorialize HEAT's intent to complete the construction of a Roof Structure over the existing HEAT containers, (the "Project") in the Park and to ensure the production and maintenance associated with the Project; and

WHEREAS, HEAT prepared plans and specifications for the concession stand which have been approved by COUNTY; and

WHEREAS, COUNTY desires to provide HEAT revocable permission to possess and use certain real property in the PARK for the purposes set forth in this Agreement;

Now, therefore and in consideration of the mutual covenants and conditions contained herein, COUNTY grants to HEAT and HEAT accepts from the COUNTY the revocable permission set forth in this Agreement, subject to the following terms and conditions:

1. PROPERTY AND USE: COUNTY hereby confers to HEAT non-exclusive permission to use and occupy portions of Veterans Memorial Park located on APN: 0562-500-390, as shown on attached Exhibit A, ("Property") for the purposes of constructing a Roof Structure according to the plans and specifications approved by the COUNTY and for performing any maintenance set forth in any applicable Lease or Operating Agreement executed by the parties hereto. Uses not specified in this Agreement shall not be allowed without prior consent of COUNTY.

2. IMPROVEMENTS: HEAT shall construct improvements, consisting of a Roof Structure, (hereinafter referred to as "Improvements") subject to final approval of the COUNTY and any other agency having jurisdiction over the Improvements, as follows:

(a) Improvements: HEAT shall construct to COUNTY's reasonable satisfaction and subject to COUNTY approval, (which approval shall not be unreasonably withheld or delayed or conditioned) the Improvements described by the plans and specifications approved by the County, **(i)** at HEAT's sole cost, **(ii)** by the use of licensed contractors selected by HEAT and approved by COUNTY (which approval shall not be unreasonably withheld or delayed or conditioned), and **(iii)** in compliance with all applicable laws, including, without limitation, any applicable contracting requirements under state law and the COUNTY's ordinance code and administrative policies.

(b) Donation of Improvements: All such permanent improvements shall be donated to the COUNTY by HEAT and shall become and remain the sole property of the COUNTY

upon acceptance by the COUNTY Board of Supervisors. Neither HEAT nor any third party shall have any property rights in any such Improvements.

(c) HEAT Responsible for All Costs of Construction: HEAT shall be solely responsible for all costs of construction of the Improvements including but not limited to permitting fees, recording fees, contractor payments, cost overruns and any contractor or material/supplier liens or claims.

(d) Plans and Specifications: HEAT shall construct the Improvements in accordance with the plans and specifications approved by the COUNTY. Any revisions to the plans and specifications are subject to review and approval by the COUNTY (which approval shall not be unreasonably withheld or delayed or conditioned) and prior to implementation.

(e) Exercise of Due Care: During construction of, and following completion of the Improvements, HEAT shall use, and shall cause its Agents (as defined in Section 11 below) to use due care at all times to avoid any damage or harm to the Property or surrounding property.

(f) Work Schedule: HEAT shall provide at least five (5) days notice and a complete construction schedule to the COUNTY's Public Works Administrator before commencing construction. All work must be performed during regular working hours (Monday through Friday) between 7:00 a.m. and 5:00 p.m., excluding COUNTY holidays. No work shall be performed outside of regular working hours unless the COUNTY's Public Works Administrator has approved such work at least forty-eight (48) hours in advance.

3. RESTORATION OF PROPERTY: Immediately following completion of any work permitted hereunder or earlier termination of this Agreement, HEAT shall remove any and all debris and any and all excess dirt created by HEAT or its Agents and, except for the Improvements, shall restore the Property to a condition substantially similar to its condition immediately prior to HEAT work hereunder, to the reasonable satisfaction of the COUNTY. HEAT shall restore excavated areas, if any, with new vegetation according to standards set by the COUNTY.

4. RESTRICTIONS ON USE: HEAT agrees that its use of the Property is restricted, limited or requires affirmative action as provided below, however that none of the requirements listed in this Section shall apply to any pre-existing condition on or related to the Property:

(a) Responsibility for Maintenance of Property: In connection with its use hereunder, HEAT shall at all times during construction and during the term hereof, at its sole cost, maintain the Property in a good, clean, safe, secure, sanitary and sightly condition, so far as the Property may be affected by HEAT's or its Agents' activities hereunder. COUNTY shall at all times during the term hereof, at its sole cost, maintain adequate access to the Property to permit HEAT's activities hereunder.

(b) Dumping: HEAT shall not cause or permit the dumping or other disposal in, on, under or about the Property of landfill, refuse, Hazardous Material (as defined below) or any other materials, including but not limited to materials that are unsightly or could pose a hazard to the human health or safety, native vegetation or wildlife, or the environment, except on a temporary basis as reasonably required by improvements of the type being performed hereunder.

(c) Nuisances: HEAT shall use good faith efforts to not conduct any activities in, on, under or about the Property that constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to COUNTY,

to the owners or occupants of neighboring property, or to the public, or that constitute waste or nuisance per se.

(d) **Damage:** HEAT shall use good faith efforts to not do anything in, on, under or about the Property that causes damage or interference to any facilities or other property located in, on, under or about the Property.

(e) **Use of Adjoining Land:** HEAT acknowledges that the privilege given under this Agreement shall be limited strictly to the Property. HEAT shall not traverse over or otherwise use any other adjoining lands of COUNTY for purposes of this Agreement.

(f) **No Interference with Park Operations or Use by Public:** HEAT acknowledges that the Improvements are being conducted within a County Park open to the public. HEAT shall not unreasonably interfere with the use and enjoyment of the Park by members of the public, and HEAT shall make all reasonable efforts to insure the safety of the Park users and County employees during its possession of the Property pursuant to this Agreement. HEAT shall comply with all reasonable directions of the Public Works Administrator, or his designee, regarding its activities on the park property.

5. **TERM:** This Agreement shall commence on the date on which this Agreement is executed and delivered to COUNTY and following approval by COUNTY (the "Commencement Date") and expire at such time as all Improvements are donated to the COUNTY by HEAT and upon acceptance of all Improvements by the COUNTY Board of Supervisors. It shall also expire on thirty (30) days prior written notice from COUNTY revoking this Agreement. After termination or expiration, HEAT will surrender the Property in the condition required hereunder, pursuant to Section 9 below.

6. **NATURE OF AGREEMENT:** Other than the rights granted in Section 1 this Agreement does not constitute the grant of a lease, deed, easement, or a conveyance or transfer of any property interest in the Property or any franchise rights by COUNTY. All Improvements made shall be a donation to COUNTY and shall remain the property of the COUNTY. Neither HEAT nor any third party shall have a property interest in such property or Improvements by virtue of this Agreement.

7. **ASSIGNMENT:** This Agreement is not transferable or assignable without the prior written consent of the non-assigning party. Any such transfer or assignment without the consent of the non-assigning party shall be void from the time made.

8. **CHANGES, ADDITIONS OR ALTERATIONS:** HEAT agrees not to make any changes, additions, or alterations to the Property or any part thereof that are not herein described, without first consulting with and obtaining the prior and specific written consent of COUNTY prior to making any changes, additions, or alterations to the Property.

9. **SURRENDER:** Upon the expiration of this Agreement or within ninety (90) days after any sooner revocation or other termination of this Agreement, HEAT shall surrender the Property free from hazards (created by the HEAT or its Agents) and clear of all debris (created by the HEAT or its Agents). At such time, HEAT shall remove all of its property from the Property and, shall repair, at its cost, any damage to the Property caused by such removal. HEAT's obligations under this Section 9 and Section 10 shall survive any termination of this Agreement. Improvements made by HEAT pursuant to this Agreement shall be donated to County, subject to its acceptance by the County Board of Supervisors, with no conditions other than those provided by this Agreement.

10. REPAIR OF DAMAGE:

(a) If any portion of the Property or any property of COUNTY located on or about the Property is damaged or threatened by any of the activities conducted by HEAT, or anyone acting by or through HEAT hereunder, HEAT shall promptly, at its sole cost, notify COUNTY by facsimile of such damage or threat. HEAT shall make any such reasonable repairs and replacements arising out of HEAT's activities that COUNTY specifies in writing (i) at HEAT's cost, (ii) by contractors or mechanics selected by HEAT and reasonably approved by COUNTY, and (iii) in compliance with all applicable laws, including, without limitation, any applicable contracting requirements. COUNTY may, but shall not be obligated to, remedy such damage or threat at HEAT's sole cost, or COUNTY may elect to witness HEAT's repair work.

(b) HEAT shall at all times keep the Project site secure against damage by vandals or trespassers. If the Project site is damaged due in whole or in part to HEAT's failure to keep the Project site secure, HEAT shall be responsible at its sole cost for repairing such damage. COUNTY may, but shall not be obligated to, remedy such damage at HEAT's sole cost, or COUNTY may elect to witness HEAT's repair work.

11. RELATIONSHIP; AGENTS: This Agreement does not create a partnership or joint venture between COUNTY and HEAT as to any activity conducted by either party on, in or relating to the Property. Nothing in this Agreement shall be construed to make either party an agent, employee, or department of the other party. COUNTY and HEAT warrant that they will not represent, directly or indirectly, to any person or entity, that they are a department, agent, or employee of the other party, or that they are performing any official function of such party. As used in this Agreement, the term "Agents" when used with respect to either party shall include the agents, representatives, employees, officers, contractors, subcontractors and consultants of such party. HEAT's negotiations and contracts with contractors, subcontractors, suppliers, consultants and other parties shall be conducted in COUNTY's best interests. Such contracts shall not be binding on COUNTY except as HEAT is empowered to act for COUNTY under this Agreement. Any action under this Agreement that HEAT is permitted or obligated to take may be taken or performed by the Agents of HEAT as approved by County.

12. RESERVATIONS: This Agreement is subsequent to and subject to all prior exceptions, reservations, grants, leases, easements, or licenses of any kind whatsoever as the same appear on record in the San Benito County Recorder's Office, or in the other public records of COUNTY.

13. LAW AND REGULATIONS:

(a) HEAT shall ensure that its performance and that of its Contractors and Consultants with respect to this Agreement shall at all times be in full compliance with all legal requirements related to the design, construction and management of the Project, including, but not limited to, compliance with the applicable Public Contract Code, Government Code, Public Resources Code, and all applicable Federal, State and local building codes and ordinances, laws, rules, regulations, and policies which may be applicable thereto. HEAT and its Agents shall not cause any offensive or refuse matter, nor any substance constituting any unnecessary, unreasonable or unlawful fire hazard, nor any material detrimental to the public health to accumulate or remain on the Property (excluding any pre-existing conditions).

(b) **Prevailing Wage:** HEAT and any contractor, subcontractor or any other person or entity working on the Improvements shall comply in all respects with California Labor Code, Sections 1770 et seq., in the performance of the Project including the keeping of all records required by the provisions of Labor Code Section 1776.

14. HOLD HARMLESS AND INDEMNIFICATION: HEAT shall indemnify and hold harmless COUNTY, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description, brought for, or on account of: (A) injuries to or death of any person, or (B) damage to any property of any kind whatsoever and to whomsoever belonging, (C) any sanctions, penalties, or claims of damages resulting from HEAT's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, or (D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of COUNTY, its officers, agents, employees, or servants, resulting from the performance of any work required of or activities conducted by HEAT or payments made or owed by HEAT pursuant to this Agreement, provided that this shall not apply to injuries or damage for which COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of HEAT to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code Agreement.

This hold harmless and indemnification provision shall survive the expiration or termination of this Agreement.

HEAT shall also insure that the contract between HEAT and any contractor working on the Improvements also contain a substantially similar hold harmless and indemnification provision, by which the contractor agrees to hold harmless, indemnify and defend HEAT and COUNTY against any claims, penalties, sanctions or damages caused by the performance or non-performance by the contractor, or other acts or omissions by the contractor while engaged in activities on the Property.

15. WAIVER OF CLAIMS:

(a) Neither COUNTY nor any of its commissions, departments, boards, officers, agents or employees shall be liable for any damage to the property of HEAT, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the condition of the Property or its use by HEAT.

(b) HEAT acknowledges that this Agreement is freely revocable by COUNTY and in view of such fact; HEAT expressly assumes the risk of making any expenditures in connection with this Agreement, even if such expenditures are substantial.

(c) As part of HEAT's agreement to accept the Property in its "As Is" condition as provided below, and without limiting such agreement, HEAT on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges, COUNTY and its Agents, and their respective heirs, successors, administrators, personal representatives and assigns, from any and all Claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Property and any related improvements or any law or regulation applicable thereto or the suitability of the Property for HEAT's intended use.

(d) In connection with the foregoing releases, HEAT acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads: A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor. HEAT acknowledges that the releases contained herein include all known

and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. HEAT realizes and acknowledges that it has agreed upon this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

16. FORCE MAJEURE. In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement due to the Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, destruction of tools or facilities, riot, insurrection, material unavailability, or any other cause beyond the reasonable control of the party invoking this section, such party may give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences and, if either party elects following such event, such party may terminate this Agreement upon thirty (30) days prior written notice.

Notwithstanding the foregoing, HEAT shall remain responsible for any contractor or supplier claims arising out of the Project.

17. "AS IS" CONDITION OF PROPERTY; DISCLAIMER OF REPRESENTATIONS: HEAT accepts the Property in its "AS IS" condition, without representation or warranty of any kind by COUNTY, its officers, agents or employees, and subject to all applicable laws, rules and ordinances governing the use of the Property. Without limiting the foregoing, this Agreement is made subject to any and all existing and future covenants, conditions, restrictions, easements, encumbrances and other title matters affecting the Property, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey.

18. WORKERS' COMPENSATION AND EMPLOYER LIABILITY INSURANCE; LIABILITY INSURANCE: HEAT shall insure that any contractor or subcontractor who is engaged in the renovation, construction, prosecution, completion or repair on the Property pursuant to this Agreement shall obtain, maintain and provide during the life of this Agreement all of the insurance requirements described herein, including naming of the COUNTY as additional insured by endorsement:

(a) **Workers' Compensation:** During the entire term of this Agreement, and any extension hereof, HEAT's contractor shall have in effect Workers' Compensation and Employer Liability Insurance providing full statutory coverage for all its employees. HEAT shall also insure that the contract between HEAT and any contractor working on the Improvements provides that the contractor make the following certification:

I/We am/are aware of the provisions of Section 3700 of the California Labor Code which require every employer (1) to be insured against liability for Workers' Compensation or (2) to undertake self-insurance in accordance with the provisions of the Code. I/We will comply with such provisions.

(b) **Liability Insurance:** HEAT's contractor shall obtain at its sole expense, such Bodily and Injury Liability and Property Damage Liability Insurance and shall protect it and COUNTY, from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage including third party property damage, which may arise from the operations under this Agreement, whether such operations be by HEAT or by any subcontractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amount specified below. Such insurance shall

include:

Comprehensive General Liability \$1,000,000.

Motor Vehicle Liability Insurance Minimum required by State Law.

Professional Liability Insurance N/A.

(c) **Certificates of Insurance:** HEAT shall provide to COUNTY certificates of insurance showing the insurance coverages and required endorsements described herein, in a form and content approved by COUNTY, prior to performing any services under this Agreement.

(d) **Additional Insured:** COUNTY, its officers, agents and employees shall be named as additional insured by endorsement on the liability insurance policy required hereinabove, which shall also contain a provision that the insurance afforded thereby to COUNTY shall be the primary insurance to the full limits of liability that HEAT and its contractors are required to have, and that such other insurance coverage of COUNTY shall be excess insurance only.

19. COVENANT NOT TO DISCRIMINATE: HEAT acknowledges and agrees that no person shall be excluded from participation in, denied the benefits of, or be subjected to discrimination under this Agreement on account of their race, color, religion, national origin, age, sex, sexual orientation, pregnancy, childbirth or related conditions, medical condition, mental or physical disability or veteran's status. HEAT shall ensure full compliance with federal, state and local laws, directives and executive orders regarding non-discrimination for all employees and Subcontractors under this Agreement.

HEAT shall report to the COUNTY Public Works Administrator the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified HEAT that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. HEAT shall provide COUNTY with a copy of its response to the Complaint when filed.

20. NOTICES: Any notice to be given hereunder shall be by U.S. Certified Mail, prepaid, and addressed to the parties hereto, or personally delivered to, as follows:

COUNTY: County Of San Benito
Steve Wittry, Public Works Administrator
2301 Technology Parkway
Hollister, CA 95023
Fax: 831-636-4176

HEAT: Hollister Heat
P.O. Box 315
Hollister, CA 95023

21. **SUCCESSORS IN INTEREST**: All of the provisions in this Agreement apply to and bind the heirs, successors, executors, administrators and permitted assigns of both parties hereto, both of whom shall be jointly and severally liable hereunder.

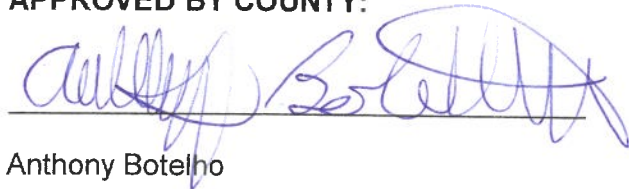
22. **ENTIRE AGREEMENT**: The foregoing constitutes the entire agreement between the parties with regard to the subject matter set forth herein and supersedes any and all previous negotiations, discussions and agreements between the parties and may be modified only by a writing duly executed by both parties.

23. **AUTHORIZED REPRESENTATIVE OF COUNTY OF SAN BENITO**: The COUNTY's Public Works Administrator (unless another COUNTY official is specifically designated herein) shall be the authorized representative of COUNTY for purposes of giving any notices or exercising any rights, options or privileges of COUNTY in this Agreement, including the right to terminate this Agreement or to grant HEAT permission to make changes, additions or alterations in the Property.

The parties hereto have executed this Agreement on the day and year first above written. Each party executing this Agreement acknowledges receipt of a copy hereof.

SIGNATURES

APPROVED BY COUNTY:

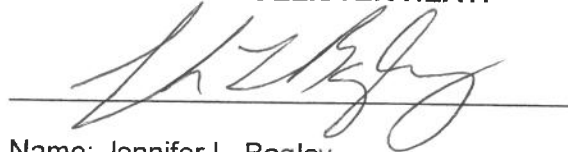


Anthony Botelho

Chair, San Benito County Board of Supervisors

Date: 2/19/13

APPROVED BY HOLLISTER HEAT:



Name: Jennifer L. Bagley

Title: President Hollister Heat

Date: 2/4/2013

APPROVED BY VETERANS MEMORIAL PARK COMMISSION:

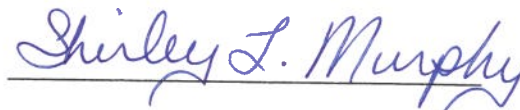


Chair, San Benito County Veterans Park Commission

Date: JAIME De la Cruz 2/4/2013

APPROVED AS TO LEGAL FORM:

San Benito County Counsel's Office



Shirley L. Murphy, Deputy County Counsel

Date: Feb. 11, 2013



Exhibit A

VETERANS Memorial
Park

Hollister
Heat