

Council Meeting of
April 3, 2012

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the City Council:

**SUBJECT: Parks and Recreation Commission and Community Services -
Approve an amended and restated concession agreement for the
Torrance Batting Cages.**

Expenditure: None

RECOMMENDATION

Recommendation of the Parks and Recreation Commission and the Community Services Director that City Council approve an amended and restated concession agreement with Tyler Sports, Inc., (C2008-227) for the lease and full operation of the Torrance Batting Cages to expand the existing concession area to include an additional 10,000 square feet of unimproved space for use as a baseball and softball fielding instruction and warm-up area.

FUNDING

No funding required. There is anticipated revenue of \$5,000 for the Parks and Recreation Enterprise Fund.

BACKGROUND

In 2008, the City of Torrance entered into an agreement with Tyler Sports, Incorporated, for the Full Lease and Operation of the Torrance Batting Cages at Wilson Park. Tyler Sports has done an outstanding job in providing quality batting cages to the community through their installation of premium machines, fantastic customer service, and their commitment to working with local organizations to provide cage usage, instruction, and equipment to both baseball and softball players.

The Concessionaire Agreement with Tyler Sports is in year four of a five year term. There are two additional two-year options included in the agreement. Tyler Sports continues to meet all of the City's requirements in terms of payment, monthly reporting, and access to the public.

The Torrance Batting Cages are located adjacent to the site of the former Torrance Skatepark. The Skatepark ramps were removed two years ago after continued attempts to repair them proved no longer effective. Community Services Department Staff were asked to explore the possibility of utilizing the space for other programming needs, including the possible rental of the space as a revenue enhancement for the Department's budget.

ANALYSIS

The Department was approached by Tyler Sports about their interest in using a portion of the Skatepark area for baseball and softball fielding instruction as a supplement to their current training program. Staff received an informal proposal in 2011 and has now received a formal request for permission to use the space. As the current terms of their Concessionaire Agreement do not allow for use of any area outside of the Batting Cages, a revised agreement has been developed that outlines the Additional Area of usage, as well as the additional terms. The proposal is attached for your review (Attachment A).

The proposal from Tyler Sports, Inc., includes the purchase and installation of approximately 10,000 square feet of artificial turf, along with the purchase and installation of netting to separate the new fielding area from the rest of the vacant Skatepark. These improvements do not affect the integrity of the space and can be removed once the agreement has expired. Should the City request a Termination of the Agreement for Convenience prior to the expiration of the existing term, not including extensions, Tyler Sports would be reimbursed for a portion of the expenses. This agreement would take effect on May 1, 2012, and stipulates that Tyler Sports, Inc., will pay the City an additional \$350.00 per month, or 7% of their gross monthly rent, whichever is greater. Based on usage estimates provided by Tyler Sports, Inc., staff estimate a minimum of \$5,000 per year in increased revenue will be generated.

The Skatepark area is currently used by the Youth Basketball Program as practice space during the months of January, February, and March. This agreement does not affect the Youth Basketball Program, as there is plenty of space in the northern section of the Skatepark that is sufficient for 2-3 basketball courts. In addition staff have been in contact with two separate organizations that might bring activities to the area, including a Futsal Tournament and a practice space for Lacrosse teams.

This item was reviewed and approved by the Parks and Recreation Commission in February 2012. An excerpt of minutes is included (Attachment B). Therefore, the Parks and Recreation Commission and Community Services Director recommends approval

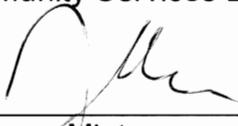
of this agreement as it accomplishes the City's goal of creating additional revenue opportunities on underused facilities while providing Tyler Sports an opportunity to increase their revenue and enhance their level of service to their customer base. The original proposal was reviewed and approved by the Parks and Recreation Commission in February 2012.

Respectfully submitted,

PARKS AND RECREATION COMMISSION

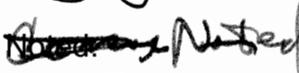
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Hazel Taniguchi, Chairperson

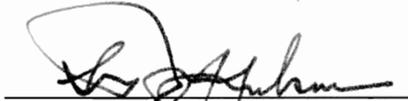
JOHN JONES
Community Services Director

By 
Jason Minter
Senior Business Manager

Concur:


John Jones
Community Services Director




LeROY J. JACKSON
City Manager

- Attachments: A) Proposal letter from Tyler Sports
B) Excerpt of minutes from the February 8, 2012, Parks and Recreation Commission meeting
C) Revised Agreement

ATTACHMENT A

Tyler Sports Inc.
PO Box 3606
Torrance, Ca 90510

John Jones, Community Services Director
City of Torrance
3031 Torrance Blvd
Torrance, Ca 90503
March 7, 2012

Dear Mr. Jones,

Thank you for taking the time to further discuss the proposal of the potential use of the area adjacent to the batting cages. As per the discussion of the meeting we would like to add to our previous proposal these additional details. We would like to offer for use of this space, 7% of the gross revenue or three hundred and fifty dollars a month whichever is greater.

We would like exclusive use of this area with the understanding than any individual or group would be able to rent this from us.

Our initial investment would be approximately twenty thousand dollars to purchase 10,000 square feet of astro turf and 5000 square feet of netting to adequately develop this area into a one of a kind training facility.

Thank you again for your consideration.

Sincerely,

Jay Tyler

EXCERPT OF MINUTES

√ Minutes Approved
 Minutes Subject to Approval

February 8, 2012

**MINUTES OF A REGULAR MEETING OF THE
 TORRANCE PARKS AND RECREATION COMMISSION**

1. CALL TO ORDER

The Torrance Parks and Recreation Commission convened in a regular session at 7:00 p.m. on Wednesday, February 8, 2012, in the West Annex meeting room at Torrance City Hall.

2. ROLL CALL

Present: Commissioners Baxter, Gilbert, Greenberg,
 Hays, Mayeda, Ning, and Chairperson Taniguchi.

Absent: None.

Also Present: Community Services Director Jones,
 Senior Business Manager Minter,
 Recreation Services Manager Brunette, and
 Park Services Manager Carson.

7. NEW BUSINESS

7A. APPROVAL OF A PROPOSAL FOR TORRANCE BATTING CAGES

Senior Business Manager Minter provided background and presented a proposal from Tyler Sports, Inc. to amend their Concessionaire Agreement to allow them to use part of the former Torrance Skate Park to expand their instructional programs. He noted the proposal in Attachment A and map of Torrance Batting Cages and proposed area in Attachment B. He stated that Tyler Sports plans to use artificial turf that can be rolled across the area for instructional opportunities and rolled up if other user groups are booked for activities that require the space. He stated that the City has had a great relationship with Tyler Sports since 2008 and their proposal would provide additional revenue to the City. He recommended that the Commission approve the proposal and proceed with an amendment to the Agreement to be approved by City Council.

Commissioner Greenberg stated that Torrance needs a skate park because it has 30 schools and 26,000 students. She questioned why one cannot be built and expressed concern that the City would be giving up a valuable space that might be considered for a skate park in the future.

Senior Business Manager Minter assured her that no permanent changes were being made. He stated that Tyler Sports has two years remaining on their Agreement, with options for two additional two-year terms; however, at each point, the viability of a

skate park could be reevaluated if funding becomes available or a funding source is identified.

Kevin Tyler, Fern Avenue, expressed his appreciation for the positive relationship he has had with the City and discussed ways Tyler Sports tries to give back to the community. He stated that the area would be used for fielding practice and individual training sessions.

Responding to Commissioner Mayeda's inquiry, he stated that the area of astro turf would be approximately 70 feet by 80 feet, surrounded by a 20 foot fence.

Senior Business Manager Minter provided clarification that Tyler Sports would not have exclusive use of the area and would need to schedule use through Facilities Booking.

MOTION: Commissioner Hays moved to approve the proposal from Tyler Sports, Inc., and to direct staff to proceed with an amendment to the Concessionaire Agreement to be approved by City Council. Commissioner Gilbert seconded the motion; a voice vote reflected unanimous approval.

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AMENDED AND RESTATED
CONCESSION AGREEMENT

Between

Tyler Sports Inc.

and

THE CITY OF TORRANCE

May 1, 2012

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CONCESSION AGREEMENT

The Concession AGREEMENT between Tyler Sports, Inc., and the City of Torrance dated November 25, 2008 is amended and restated as follows:

This Concession AGREEMENT ("AGREEMENT") is made and entered into as of May 1, 2012, ("the EFFECTIVE DATE") in the City of Torrance, California, by and between the City of Torrance, a Municipal Corporation, ("CITY") and Tyler Sports Inc., a California Corporation ("CONCESSIONAIRE").

RECITALS

The CITY has one batting cage facility with eight batting cages, two pitching tunnels, two batting cage offices, and associated public areas.

CONCESSIONAIRE wishes to operate this facility, including the batting cages, both slow and fast pitch, provide baseball and softball instruction, and for the sale of baseball and softball related merchandise.

THE CITY also has an additional parcel of property which is approximately 10,000 square feet and located directly west of the batting cages.

CONCESSIONAIRE wishes to maintain exclusive use the parcel of property located directly west of the batting cages for the operation of practice fielding for its patrons.

The CITY is willing to contract with CONCESSIONAIRE for services and use of the premises subject to the terms of this AGREEMENT.

AGREEMENT

1. PREMISES

A. Delivery of Premises.

1) CITY delivers, and CONCESSIONAIRE accepts this AGREEMENT for use of the premises described in Exhibit "A", subject to the terms and conditions of this AGREEMENT. The purpose of this AGREEMENT is to provide for the operation of the batting cage facility at Wilson Park for the general public. The public will be authorized the use of and ingress and egress across all the premises and also to buildings and facilities subject to reasonable restrictions and conditions.

2) CITY delivers, and CONCESSIONAIRE accepts this AGREEMENT for use of the premises described in Exhibit "B", (hereinafter referred to "THE ADDITIONAL PREMISES") subject to the terms and conditions of this AGREEMENT. The purpose of this AGREEMENT is also to provide for the operation of practice fielding to be scheduled by CONCESSIONAIRE for use by patrons.

2. TERM AND OPTION

A. Term.

The term of this AGREEMENT is from the EFFECTIVE DATE of this AGREEMENT through November 30, 2013.

B. Period of Extension.

CITY may, at CITY's option, extend the term of this AGREEMENT for two additional years for a maximum of two extensions, subject to all the provisions of the AGREEMENT.

C. Conditions for Exercise.

CITY's right to exercise an option to extend, pursuant to this Paragraph 2, is subject to the following conditions precedent:

1) CITY must give CONCESSIONAIRE thirty days notice, prior to the expiration of the term, of CITY's option to extend the term of the AGREEMENT for two additional years.

2) CONCESSIONAIRE must not be in default under any provision of this AGREEMENT at the time notice of exercise is given or on the last day of the term.

3. NATURE OF CONCESSION

From and after the EFFECTIVE DATE of this AGREEMENT, CITY releases to CONCESSIONAIRE the premises and CONCESSIONAIRE accepts the premises, and agrees to comply with all the following conditions:

A. Hours of Operation.

CONCESSIONAIRE must at all times maintain a written schedule delineating the operating hours and operating procedures for each business operation conducted on the premises. The hours of operation must comply with Exhibit C.

B. Rent.

1) CONCESSIONAIRE must pay monthly rent to CITY for use of the Property described in Exhibit "A" and Exhibit "B" to this AGREEMENT. The rent required is the greater of (a) seven (7)% of gross receipts each month from all business conducted on the premises, including batting cage rental, token revenue, group and private instruction, merchandise sales and service, and approved vending sales, and fielding activities or a minimum of (b) \$1,400 per month during the

months of July, August, September, October, November, December, January, and February, and a minimum of \$1,800 per month during the months of March, April, May, and June.

2) In the event that CITY terminates CONCESSIONAIRE's right to use the Property described in Exhibit "B" for its own convenience, the rent required will revert to the greater of (a) seven (7)% of gross receipts each month from all business conducted on the premises, including batting cage rental, token revenue, group and private instruction, merchandise sales and service, and approved vending sales, or a minimum of (b) \$1,050 per month during the months of July, August, September, October, November, December, January, and February, and a minimum of \$1,450 per month during the months of March, April, May, and June.

C. Capital Improvements

1. CONCESSIONAIRE has already made the following capital improvements to Wilson Park Batting Cages:

- (a) Removal of all pitching machines, including both slow pitch and fast pitch machines
- (b) Installation of eight (8) new Iron Mike pitching machines from Master Pitching Machine Company
- (c) Re-installation of the six (6) existing slow pitch machines
- (d) Modification of the ball retrieval system to accommodate the new pitching machines
- (e) Modification to the computer system and rewiring of the light boxes to combine the existing system with the new machines
- (f) Reconstruction of the existing pitching machine structure to accommodate the new machines
- (g) Upgrades to the lighting fixtures to provide appropriate lighting levels

- (h) Repair and/or replacement of all netting, including the top canopy, the east perimeter, the back net, the west perimeter, the divider nets between each batter's box, and the backstops
- (i) Purchase of new balls as necessary
- (j) Painting of the cage floors with court surfacing, including green infields, brown batters boxes, and white batter's box lines
- (k) Introduction of a new token system, including new tokens, the replacement of the existing coin box mechanisms, and repair/repaint of all coin boxes
- (l) Purchase of new batting helmets and bats
- (m) Replacement of all signage including cage numbers

2. CONCESSIONAIRE will make at a minimum, the following capital improvements to THE ADDITIONAL PREMISES:

- (a) Install approximately 10,000 square feet of artificial turf
- (b) Install netting.

Any additional capital improvements to THE ADDITIONAL PREMISES must be pre-approved by CITY in writing before installation.

D. Operation of Facilities

CONCESSIONAIRE will operate and manage the facilities in a competent and efficient manner at least comparable to other well-managed batting cage facilities and fielding facilities of similar type in the Greater Los Angeles vicinity.

E. Personnel

CONCESSIONAIRE will at all times retain active, qualified, competent, and experienced personnel to supervise CONCESSIONAIRE'S operations at the premises and to represent and act for CONCESSIONAIRE at the premises.

F. Appearance of Personnel

CONCESSIONAIRE must require its attendants and employees to be dressed properly, clean, courteous, efficient and neat in appearance at all times. CONCESSIONAIRE must not employ any person(s) in or about the premises who use offensive language or act in a loud, boisterous or otherwise offensive manner.

G. Review of Personnel

CONCESSIONAIRE must maintain a close check over attendants and employees to insure the maintenance of a high standard of service to the public. CONCESSIONAIRE must replace any employee for good cause pursuant to applicable federal and state laws.

CONCESSIONAIRE, along with any employees or agents that provide services at the facility, will be required to complete a California Department of Justice background check before commencing service. This is to be done at the expense of the CONCESSIONAIRE.

H. Cost of Operation

CONCESSIONAIRE will assume the full cost of operating the facility, including staff, insurance, electricity, trash removal, telephone, custodial, minor building and facility maintenance (under \$500.00 per incident) and upkeep.

I. Common Area

The CITY will maintain the common area outside of the batting cages, including the restrooms, steps, service ramp, walkway lighting, and landscaping.

J. Coordination of Concessions

The CONCESSIONAIRE will be responsible for the coordination of any concessions within the facility, with the exception of vending machines and sale of snacks, and both hot and cold drinks. All other vending machines must be approved by the Community Services Director.

K. Publicity and Programs

CONCESSIONAIRE must assume all costs and responsibility for publicity and programs excluding the Torrance Seasons and City website.

L. Prices

A schedule of prices charged for all goods and/or services supplied to the public on the premises must also be maintained. All prices charged for goods and/or services supplied to the public on or from the premises must be fair and reasonable, based upon the following considerations:

1) CITY'S primary purpose for entering into this AGREEMENT is to promote the development of, and make available, recreational facilities and services for the benefit of the public.

2) CONCESSIONAIRE will be entitled to charge prices for the goods, accommodations, and services offered in accordance with this AGREEMENT that are reasonable and consistent with market prices charged by other competing and/or comparable businesses in the greater Los Angeles vicinity provided, however, that charges for use of the batting cages and pitching tunnels must comply with Exhibit C.

M. Packaging.

CONCESSIONAIRE agrees that when alternate forms of packaging are available, only items packaged in a manner most compatible with the goals of reducing litter and preserving the environment will be sold.

4. INSURANCE

A. CONCESSIONAIRE agrees that at all times during the term of this AGREEMENT it will maintain, at its own expense, a policy or policies of insurance that will insure and indemnify CITY, the City Council, both present and future, and each member thereof, and every officer and employee and members of boards and commissions of the CITY against liability or financial loss resulting from injury occurring to persons and property in or about the property by reason of the use and occupation by CONCESSIONAIRE or by any other person or persons on the property in an amount not less than \$1,000,000.00 combined single limit bodily injury and property damage each accident or occurrence.

CONCESSIONAIRE must maintain Workers' Compensation limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.

B. The policy will be the primary coverage for CONCESSIONAIRE and additional insureds.

C. The policy must provide Comprehensive General Liability Protection and must include, among other types of coverage, Contractual Liability and Products Liability.

D. The policy must provide insurance in the amount above on account of liability imposed upon the CONCESSIONAIRE by law for damage caused by the negligent act, error or omission of CONCESSIONAIRE or any person for whose acts CONCESSIONAIRE is liable arising out of the conduct of the terms of this AGREEMENT.

E. The CITY, the City Council and each member thereof, present and future, and every officer, agent and employee of the CITY and every member of its boards and commissions must be named as additional insureds on the policies. The policy must be issued by an insurer rated in Best's Insurance Guide with a financial rating of Class V or better. The policy must provide that the insurance coverage will not be canceled or reduced by the insurance carrier without the CITY having been given thirty days prior written notice by the carrier. CONCESSIONAIRE agrees that it will not cancel or reduce the insurance coverage without the CITY having been given thirty days prior written notice by CONCESSIONAIRE.

F. At all times during the term of this AGREEMENT, CONCESSIONAIRE must maintain on file with the CITY, a certificate of the insurance carrier or carriers showing that the insurance is in effect in the amount required above. Notwithstanding any other provisions of this AGREEMENT to the contrary, CONCESSIONAIRE does not have the right to possession of the property until the certificate is filed with the CITY.

5. INDEMNITY

CONCESSIONAIRE will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees, and every member of its boards and commissions, from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, bodily injury, death, personal injury, or property loss or damage arising from or related to acts or omissions of CONCESSIONAIRE, its officers, employees, agents, subcontractors or vendors, or in connection with the performance by CONCESSIONAIRE, its officers, employees, agents, subcontractors or vendors, of its services, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees, or agents.

6. AUDIT AND REPORTS

A. CITY'S Right to Inspect Books and Records.

CONCESSIONAIRE must provide the CITY with access to the following reports, to be maintained at the facility for the duration of the AGREEMENT:

- 1) Printout or copy of daily revenues, reservations, and rentals.
- 2) Monthly maintenance record.

B. CONCESSIONAIRE Must Provide the CITY the Following Reports on a Quarterly Basis:

Within thirty days of the end of each calendar quarter, CONCESSIONAIRE must submit a gross receipts statement, depicting quarterly revenues by type of revenue source, including batting cage rental, token revenue, group and private instruction, merchandise sales, and approved vending services.

- C. CONCESSIONAIRE Must Provide to the CITY an Annual Certified or Reviewed Financial Statement.
- D. CONCESSIONAIRE Must Utilize a Cash Register that Issues a Receipt to Each Person for All Services Rendered.

7. PLACE OF PAYMENT; LATE PAYMENT

- A. Place of Payment.

All monthly rent payable to the CITY must be paid, without abatement, deduction or offset, to the office of the Director of Finance of the CITY, at 3031 Torrance Boulevard, Torrance, California 90503, on or before the 15th of every month, or the next business day.

- B. Late Charge.

If CONCESSIONAIRE fails to pay any monthly rent that is due, and CONCESSIONAIRE fails to make payment thereof within five (5) days after written demand thereof by CITY, then CONCESSIONAIRE shall pay to CITY, as a late charge and in consideration of the additional costs incurred by CITY and the additional record keeping required to be performed by CITY, a minimum of One Hundred Dollars (\$100.00).

- C. Late Charge as Additional Fee.

The late charges payable pursuant to this Paragraph 7 shall be deemed to be an Additional Fee under this Agreement.

8. PERMITS

- A. No Obligation to Issue.

This AGREEMENT will not be construed to (1) exempt CONCESSIONAIRE from the requirement of obtaining any permit or license, or obtaining any development review or approval required by the Torrance Municipal Code or pursuant to any other applicable provision of law; or (2)

by its existence entitle CONCESSIONAIRE to any permit, license, review or approval required by the Torrance Municipal Code or by any other applicable provision of law.

B. Refusals to Issue Permits, etc.

A refusal or failure by the CITY to issue any permit, license, or approval sought by the CONCESSIONAIRE for construction of improvements or the conduct of one or more business operations on the premises will not constitute a breach of this AGREEMENT, whether or not any such refusal or failure was wrongful.

9. SITE PREPARATION

A. On the Part of the CITY

The CITY agrees to complete the following modifications to the facility to allow full use of the facility by the CONCESSIONAIRE:

1. Installation of a new Southern California Edison Meter specifically for the Batting Cage Facility, allowing the CONCESSIONAIRE sole responsibility for electricity usage and billing for the facility
2. Installation of a fence closing the corridor between the Batting Cages common area and the Skateboard Park common area
3. Installation of a door on the south side of the Batting Cage Office for customer access from the Batting Cage common area
4. Replacement of the dividing wall between the batting cages and the roller hockey rink with chain link fencing and protective windscreen

B. Risk of CONCESSIONAIRE.

CONCESSIONAIRE may proceed to construct structures and other improvements on the premises at its sole risk as to the condition of the premises.

10. ALTERATIONS AND IMPROVEMENTS

A. Cost of Alterations and Improvements.

Any alterations and improvements other than those listed above will be done at CONCESSIONAIRE'S sole cost and expense.

B. Construction Approval.

CONCESSIONAIRE may not construct any building, structure or other improvement on the premises unless the plan showing the location and construction plans and specifications are first approved by the Director of Community Services, the Director of Community Development, and by the City Council.

C. Standards.

1) Any construction must be done in accordance with CITY'S Building Code and must be constructed of all new or commercially-acceptable material, as approved by the CITY.

2) CONCESSIONAIRE must obtain building permits from the Director of Community Development as required by the Torrance Municipal Code (which incorporates the CITY'S Building and Fire Codes) and any other applicable laws.

3) CONCESSIONAIRE must prepare final plans and specifications substantially conforming to the preliminary plans previously approved by the Director of Community Services and deliver to the Department of Community Development of the CITY one complete set as approved by all government agencies of the CITY having jurisdiction over the project. Changes from the preliminary plans will be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests or requirements of a governmental agency of the CITY in connection with the application for permit or approval. After the final plans and specifications have been approved by the Department of Community Development, no changes will be made without the prior written approval of the City Council of the CITY. Any work that does not comply with the approved final plans and specifications, or that does not comply with all

applicable laws and regulations, including, but not limited to, building and safety codes and environmental laws, will be promptly redone at CONCESSIONAIRE'S cost and expense.

4) CONCESSIONAIRE must notify the City Manager of CONCESSIONAIRE'S intention to commence construction or bring any building materials onto the premises. The CITY will have the right to post and maintain on the premises any notices of non-responsibility provided for under applicable law, and to inspect the premises in relation to the construction at all reasonable times.

D. Changes and Alterations.

All changes and alterations will be of such a character that, when completed, the value and utility of the building, structure or other improvement changed or altered by the changes or alterations, will not be less than the value and utility immediately before the change or alteration.

E. Workmanlike Manner.

All work done in connection with any changes or alterations must be performed in a good and workmanlike manner and with due diligence.

F. Improvements.

CONCESSIONAIRE may not remove or demolish, in whole or in part, any improvement upon the premises without the prior written consent of the CITY, which may, at its sole discretion, condition its consent upon the obligation of CONCESSIONAIRE to replace the improvement, in whole or in part.

G. Further Acts -- Utilities.

1) The CITY, upon written request of CONCESSIONAIRE, will execute any instruments as may be reasonably necessary to subject the CITY'S fee interest in the premises to easements for the installation, maintenance, repair and replacement of normal utilities to service the premises; provided, however, that the CITY will incur no out-of-pocket costs, liabilities, obligations or

expenses as a result of the granting easements for the installation, maintenance, repair or replacement of utilities during the term of this AGREEMENT.

H. Payment for Utility Services.

CONCESSIONAIRE must pay all charges for electricity, pickup of refuse, and telephone services. Services for electricity, pickup of refuse, and telephone must be billed in CONCESSIONAIRE'S name.

I. Damage to or Destruction of Improvements.

In the event of damage to, or destruction of, CONCESSIONAIRE-constructed facilities, or if improvements located within the premises are declared unsafe or unfit for use or occupancy by a public entity with the authority to make and enforce the declaration, CONCESSIONAIRE must within fifteen days, commence and diligently pursue to complete the repair, replacement, or reconstruction of improvements necessary to permit full use and occupancy of the premises for the purposes required by this AGREEMENT. Repair, replacement, or reconstruction of improvements within the premises must be accomplished according to plans approved by the Director of Community Services.

11. LIENS

A. Payment of Liens.

Subject to CONCESSIONAIRE'S right to contest the same as provided in this Paragraph 11, CONCESSIONAIRE agrees that it will pay as soon as due all mechanics', laborers', materialmen's, contractors', subcontractors', or similar charges, and all other charges of whatever nature which may become due, attached to or payable on the premises for any structure or other improvements thereon, from and after the date that this AGREEMENT is executed, or as a result of any work performed on the premises by CONCESSIONAIRE or any of CONCESSIONAIRE'S agents, employees or contractors prior to that date. CONCESSIONAIRE will not be responsible for any charges arising from work performed on the premises by the CITY'S employees or agents.

B. No Agency.

CONCESSIONAIRE is not in any respect an agent of the CITY, nor is CONCESSIONAIRE authorized to do any act or to make any contract encumbering or in any manner affecting the title or rights of the CITY in or to reversionary interest of the CITY in the premises or the improvements thereon.

C. Discharge of Lien.

If any mechanics' or other liens are filed against the premises or an interest therein, which are caused by CONCESSIONAIRE'S conduct, CONCESSIONAIRE must cause the same to be discharged of record within ninety days after the date of filing the same, or otherwise free the premises from the effect of the claim of lien and any action brought to foreclose the lien; or CONCESSIONAIRE must promptly furnish to the CITY a bond in an amount and issued by a surety company satisfactory to the CITY, securing the CITY against payment of the lien and against any and all loss or damage whatsoever in any way arising from the failure of CONCESSIONAIRE to discharge the lien.

D. Contest of Liens.

CONCESSIONAIRE will have the right to contest any liens in good faith and with due diligence, provided that during the time CONCESSIONAIRE contests the liens, CONCESSIONAIRE must furnish the CITY with a bond in an amount and issued by a surety company satisfactory to the CITY securing the CITY against payment of the lien and against any and all loss or damage whatsoever in any way arising from the failure of CONCESSIONAIRE to discharge the lien, and provided further the CONCESSIONAIRE must fully pay and immediately discharge the amount of any final judgment rendered against the CITY or CONCESSIONAIRE in any litigation involving the enforcement of the liens or their validity, provided that the lien(s) arose from CONCESSIONAIRE'S conduct.

E. Failure to Discharge.

In the event of CONCESSIONAIRE'S failure to discharge liens arising from its conduct, to satisfy any uncontested lien within the ninety day period, or to pay and satisfy any judgment, the CITY may, but is not obligated to, pay the amount, inclusive of any interest and any costs assessed against CONCESSIONAIRE in the litigation, or may discharge the lien by contesting its validity, or by any other lawful means.

F. CITY Warranty.

CITY warrants to CONCESSIONAIRE that at the time of the execution of this AGREEMENT, there are no mechanics', laborers', materialmen's, contractors', subcontractors' or similar charges upon the premises.

12. SAFETY REQUIREMENTS AND OPERATION

A. Safety Hazards.

All work performed under this AGREEMENT must be performed in a manner that meets or exceeds all State of California safety regulations. The CITY reserves the right under California law to issue restraining or cease and desist orders to CONCESSIONAIRE when unsafe or harmful acts are observed or reported relating to, or connected with, CONCESSIONAIRE'S performance under this AGREEMENT.

B. Hazard Free Premises.

CONCESSIONAIRE must maintain the premises free of hazards to persons and/or property resulting from its operations. Any hazardous condition noted by the CONCESSIONAIRE, at any place on the premises that is not a result of CONCESSIONAIRE'S operations, must be reported to the CITY as soon as reasonably possible.

13. MAINTENANCE AND REPAIR

A. Preservation of Premises.

CONCESSIONAIRE must at its sole cost and expense, throughout the term of this AGREEMENT, maintain, and as reasonably necessary, remodel, refurbish, or otherwise preserve the buildings, structures, other improvements, equipment, fixtures and signs on the premises in a safe, clean and sanitary condition and in compliance with all requirements of law. CONCESSIONAIRE must also conduct its operations on the premises, using the best known available and practical devices and facilities, to reduce as much as is reasonably practicable, considering the nature and extent of CONCESSIONAIRE'S operations, the emanating from the premises of noise, vibration, movements of air, fumes and odors, so as not to interfere unreasonably with the use of other premises adjoining the premises.

B. Inspection.

CITY, by its officers, employees, agents, representatives and contractors, has the right at all reasonable times to enter upon the premises for the purpose of inspecting the premises for any maintenance violations. CONCESSIONAIRE must correct each and every violation as soon as possible but no later than within seventy-two (72) hours after being informed in writing by the CITY of the maintenance violations.

C. Corrections.

If CONCESSIONAIRE fails to correct any unsafe, unclean, or unsanitary condition within seventy-two hours after being notified in writing to do so by the CITY, the CITY has the right, but not the obligation, to enter the premises and remedy the condition, or conditions, and charge the cost to CONCESSIONAIRE without any liability for any resulting business loss or damage. In the event of an emergency, the CITY has the right, but not the obligation, to immediately enter the premises to remedy any unsafe, unclean, or unsanitary condition and charge the cost to

CONCESSIONAIRE. The CITY will notify CONCESSIONAIRE of the emergency as soon as reasonably possible.

D. Maintenance.

CONCESSIONAIRE must paint, clean and as reasonably necessary preserve and refurbish the surfaces of the interior and exteriors of all buildings, structures, work areas and on the premises.

14. TITLE

A. Surrender of Possession.

At the expiration of the term of this AGREEMENT or upon earlier termination, this AGREEMENT will terminate without further notice and CONCESSIONAIRE must immediately surrender possession of the premises to the CITY, and all structures, and other improvements must remain.

B. Removal.

No structures or other improvements may be removed from the premises or voluntarily destroyed or damaged during the term of this AGREEMENT without the prior written consent of the City Manager, which may be granted or withheld in the sole discretion of the City Manager.

C. Personal Property.

Any and all personal property, not attached to or installed in any building, structure or other improvement that CONCESSIONAIRE places in, upon or about the premises during the term may be removed prior to the expiration of the term of this AGREEMENT and will, as between the CITY and CONCESSIONAIRE, be and remain the personal property of CONCESSIONAIRE.

D. Utility Fixtures.

Notwithstanding any terms to the contrary contained in this Section, any and all lighting, plumbing, air cooling, air conditioning, heating and ventilating equipment ("Utility Fixtures") are

deemed to be a part of the realty, and regardless of whether or not any item or equipment can be removed without structural damage to the building, structure or improvement in which it is installed, no Utility Fixtures may be removed from any buildings, structures or other improvements, except for repairs, alterations, and replacement with like equipment, without the consent of the City Council, and all Utility Fixtures must remain as a part of the realty at the expiration or termination of the term of this AGREEMENT.

15. ASSIGNMENT AND SUBLETTING

CONCESSIONAIRE may not sublet all or any part of the premises, or assign this AGREEMENT or any interest in the premises, without first obtaining the written consent of the City Council. The giving of any consent will not be a waiver of any right to object to further or future assignments or subleases, consent to which must be first obtained in writing from the City Council. Any assignment of this AGREEMENT to an assignee approved by the CITY will not relieve the assignor of any liability under this AGREEMENT arising after the effective date of the assignment unless the CITY expressly and in writing releases the assignor, and upon any assignment of this AGREEMENT if the CITY does not expressly release assignor, assignor will remain fully liable under the AGREEMENT during the entire unexpired term. The CITY will have forty-five (45) days to approve or disapprove any proposed sublease, assignment or transfer submitted by CONCESSIONAIRE.

16. COMPLIANCE WITH LAW

A. Operation.

CONCESSIONAIRE must conduct all operations in accordance with, and comply with, and must cause all sub-lessees, permittees, licensees, assignees and/or concessionaires to conduct all operations in accordance with, and comply with, all federal, state and local laws, ordinances, rules and regulations applicable to the business, whether now in effect or hereafter adopted (including, without limitation, those of the City of Torrance, the County of Los Angeles, the State of California

and the United States of America), including, but not limited to, compliance with all technical construction codes adopted by the City of Torrance, and all rules and regulations adopted for the operation of the premises, to the extent CONCESSIONAIRE is able to control the conduct of third parties by means of reasonable efforts.

B. Licenses and Permits.

CONCESSIONAIRE must obtain and maintain during the term of this AGREEMENT, all appropriate licenses, permits and certificates that may be required in connection with the operation of its facilities, including, but not limited to, all CITY licenses, permits and certificates, all without additional expense to the CITY.

17. RIGHT TO TERMINATE AGREEMENT

A. Notice of Default.

If either party fails to perform, keep or observe any of the terms, covenants or conditions of this AGREEMENT, the other party may give written notice to correct the condition or cure the default. If the condition or default continues for thirty (30) days after receipt of notice, the party not in default may give notice of its election to terminate this AGREEMENT and twenty (20) days after receipt of the notice, this AGREEMENT will cease and terminate. Election to terminate by either party will not be construed as a waiver of any claim it may have against the other party, consistent with the termination.

B. Correction.

If, however, any default cannot physically be corrected within thirty (30) days, and if the party in default has commenced to remedy the default promptly after the receipt of notice, and continuously and diligently proceeds in good faith to eliminate the default, then the period for correction will be extended as reasonably necessary to correct the default.

C. Notice of Default.

City will not be under any obligation to mail, deliver or serve any notice under this Paragraph 17 to any person other than CONCESSIONAIRE.

D. Termination By City For Convenience

1. With respect to THE ADDITIONAL PREMISES described in Exhibit "B" only, CITY may, at any time, terminate the AGREEMENT for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience regarding THE ADDITIONAL PREMISES, CONCESSIONAIRE will:

- a. cease operations as directed by CITY in the notice; and
- b. take actions necessary, or that CITY may direct, to return

the ADDITIONAL PREMISES to its original condition.

3. In case of such termination for CITY'S convenience, CITY will reimburse CONCESSIONAIRE up to 50% of the cost of the capital improvements or \$10,000 whichever is less. CITY will reimburse CONCESSIONAIRE after all capital improvements have been completed by CONCESSIONAIRE and itemized valid receipts have been submitted to CITY.

18. NOTICES

A. All notices, requests, demands, or other communications under this AGREEMENT must be in writing. Notice will be sufficiently given for all purposes as follows:

1) Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2) First-class mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox.

3) Certified mail. When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

4) Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

5) Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 PM (recipient's time) or on a non-business day. Addresses for purpose of giving notice are as follows:

<p><u>CONCESSIONAIRE:</u></p> <p>Tyler Sports Inc Att.: Jay Tyler P.O. Box 3606 Torrance, California 90503 Fax: (310) 533-5188</p>	<p><u>CITY:</u></p> <p>City of Torrance City Clerk 3031 Torrance Boulevard Torrance, California 90503 Fax: (310) 618-2931</p>
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B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this AGREEMENT.

19. AMENDMENTS AND MODIFICATIONS

This AGREEMENT may not be amended or modified in any way, except in writing signed by both parties.

20. APPROVALS BY THE CITY

No consent, approval or satisfaction of the CITY, and no waiver by the CITY of any provision will be effective unless in a writing specifically referring to this AGREEMENT and executed by the City Manager or his designee for the CITY; no consent, approval, or satisfaction with respect to this AGREEMENT will be inferred or implied from any other act or omission of the CITY or any agent or employee of the CITY. Similarly, unless otherwise expressly provided, no approval, consent or other action taken by the CITY under or pursuant to this AGREEMENT will be deemed to waive any other rights or authority of the CITY. Similarly, nothing contained in this AGREEMENT will in any way restrict or diminish the rights, powers or jurisdiction of the CITY, its City Council, Planning Commission and other agencies with respect to the governance of the premises and all improvements, business and activities located on or conducted on the premises.

21. MISCELLANEOUS PROVISIONS

A. Exclusive.

No remedy or election provided by any provisions in this AGREEMENT will be deemed exclusive unless so indicated, but will whenever possible be cumulative with all other remedies in law or equity, except as otherwise specifically provided herein.

B. Covenant and Condition.

Each provision will be deemed both a covenant and condition.

C. Time of the Essence.

Time is of the essence of this AGREEMENT and of each and every provision of this AGREEMENT where time is a factor.

D. Paragraph Headings.

The paragraph and subparagraph headings in this AGREEMENT are for convenience and reference only, and are not intended to and do not define, govern, limit, modify or in any manner affect the scope, meaning or intent of any provision in this AGREEMENT.

E. Severability.

If any part of this AGREEMENT is found to be in conflict with applicable law, that part will be inoperative, null and void insofar as it is in conflict with the law, but the remainder of the AGREEMENT will remain in full force and effect.

F. Consent or Approval.

In the event any provision under this AGREEMENT requires or anticipates that either party make a judgment, give consent or approval, or exercise discretion, that party agrees to do so reasonably and in good faith, with due diligence, except in those specific instances where an AGREEMENT provision specifically sets forth a different standard of approval, in which case the specific standard of that AGREEMENT provision will govern.

G. Jurisdiction.

This AGREEMENT will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the AGREEMENT will be in Los Angeles County, California.

H. Security.

CONCESSIONAIRE hereby acknowledges that the rent payable to the CITY does not include the cost of guard service or other security measures, and that the CITY has no obligation to provide security. CONCESSIONAIRE assumes all responsibility for the protection of the CONCESSIONAIRE, its employees and agents, invitees, customers and property from acts of third parties.

I. Holding Over.

Any holding over by CONCESSIONAIRE after the expiration or any termination of this AGREEMENT will not constitute a renewal or extension of the term of this AGREEMENT or give CONCESSIONAIRE any rights in or to the premises.

J. Relationship.

Nothing contained in this AGREEMENT will be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between the CITY and CONCESSIONAIRE or any other relationship other than Grantor and CONCESSIONAIRE.

K. Attorneys' Fees.

If an action is instituted to enforce any provision or for damages by reason of an alleged breach of any provision of this AGREEMENT, the prevailing party will be entitled to receive from the other party all costs and expenses and an amount as the court may adjudge to be reasonable attorneys' fees and costs.

L. Complete Understanding.

This AGREEMENT represents the full and complete understanding between the parties with respect to the subject matter. No verbal AGREEMENTS or representations or implied covenants will be held to vary the provisions of this AGREEMENT.

M. Further Assurances.

CONCESSIONAIRE and CITY will execute any and all additional papers, documents and other assurances and will do any and all acts or things reasonably necessary in connection with the performance of their obligations to carry out the express intent of the parties to the AGREEMENT in a timely manner.

N. Force Majeure.

If the performance by CONCESSIONAIRE of any of its obligations or undertakings under this AGREEMENT is interrupted or delayed by an occurrence not occasioned by the conduct of either party to this AGREEMENT, whether that occurrence is an act of God or public enemy, or whether that occurrence is caused by war, riot, storm, earthquake, or other natural forces, or by the acts of anyone not a party to this AGREEMENT, then CONCESSIONAIRE will be excused from any

further performance for whatever period of time after the occurrence is reasonably necessary to remedy the effects of the occurrence.

O. Exhibits.

All exhibits identified in this AGREEMENT are incorporated into the AGREEMENT by this reference.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the date first written above.

CITY OF TORRANCE
a Municipal Corporation

Tyler Sports Inc
a California Corporation

By _____
Frank Scotto
Mayor of the City of Torrance

Jay Tyler
President

ATTEST:

Sue Herbers
City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
CITY ATTORNEY

By _____
Deputy City Attorney

EXHIBIT A – SCOPE OF SERVICES

Facilities

The CONCESSIONAIRE will manage and administer all facilities and areas contained in the Wilson Park Batting Cage Facility, including the eight (8) batting cages, the two pitching tunnels, the batting cage common area, and two (2) batting cage offices.

Maintenance

The CONCESSIONAIRE will maintain and perform all repairs to the facility, including maintenance of the pitching machines, netting, coin operators, timers, coin and change machines, and lighting, and will perform basic maintenance to the facility including walkways and seating areas, trash removal, and power washing of concrete.

Marketing

The CONCESSIONAIRE is responsible for the marketing of its programs and facilities and all costs associated with said marketing, with the exception of the City's Quarterly Seasons Guide. Concessionaire will be notified of the due dates for all information contained in the Seasons Guide, and will be expected to submit information as required to meet the City's publication schedule.

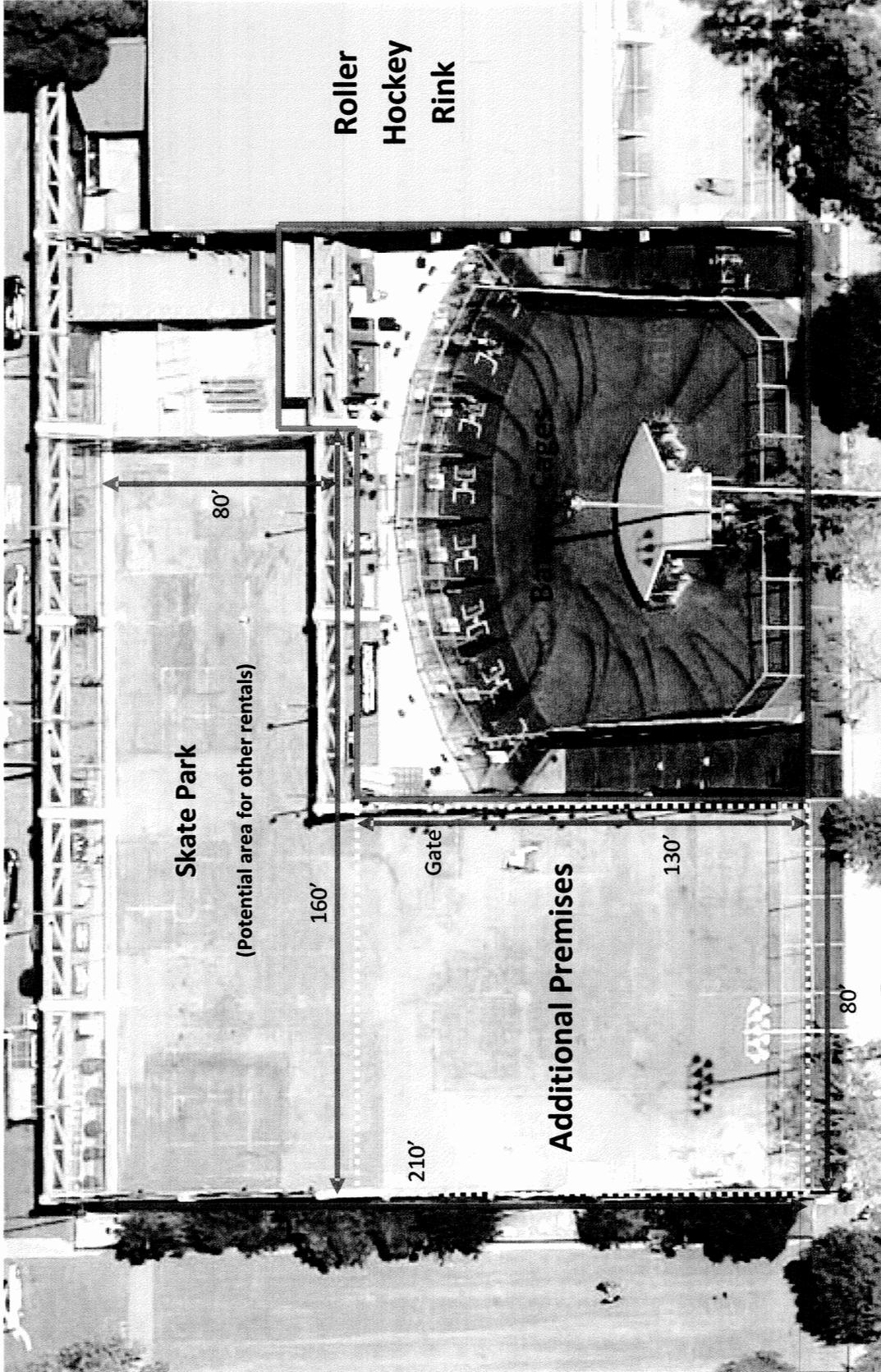
Capital Improvements

The CONCESSIONAIRE is responsible for performing the following Capital Improvements at an estimated cost of \$67,680:

- Installation of Iron Mike Pitching Machines
- Modification to platforms for new pitching machines
- Welding and coring as necessary for installation of new equipment
- Upgrades to stall lighting
- Replacement/repair of netting
- Replacement of balls, bats, and batting helmets
- Replacement of tokens and token systems
- Replacement of Batting Cage signage, including cage numbers and rules
- Court paint
- Repairs of coin boxes, coin mechanisms

EXHIBIT B

Torrance Batting Cages and Skatepark



Please note that all measurements are approximate.

EXHIBIT C -- PERFORMANCE OF SERVICES

Performance:

The CONCESSIONAIRE shall perform the services in accordance with the provisions of these specifications in a professional, ethical, courteous, and orderly manner as a best effort to obtain and keep the confidence of the community.

Hours(*):

Day(s)	Current Open Hours:
Monday – Friday	3:00 PM - 9:30 PM
Saturday	10:00 AM – 9:00 PM
Sunday	10:00 AM – 8:00 PM

(*) These hours represent the MINIMUM hours of operation keeping in mind the hours of operation of public parks is 6:00 AM - 10:00 PM as stated in the Torrance Municipal Code, Section 49.2.1.

Note: Lessee is required to provide Torrance residents priority in renting court time and in registering for programs/instruction.

Charges:

Batting cage tokens, cage rental fees, lessons and instruction, pitching tunnel rental, and use of the curve ball machine shall be as follows:

Batting Cage Time	
1 Token/12 Pitches	\$1.00
One quarter (1/4) hour	\$13.00
One half (1/2) hour	\$24.00
One (1) hour	\$36.00
Hitting/Pitching Lessons	\$45.00
Pitching Tunnel Time	
One half (1/2) hour	\$20.00
One (1) hour	\$30.00
Curve Ball Machine	
One half (1/2) hour	\$24.00
One (1) hour	\$36.00