

## **AGREEMENT FOR USE OF THE HERMOSA BEACH COMMUNITY CENTER GYMNASIUM BETWEEN THE CITY OF HERMOSA BEACH AND THE HERMOSA BEACH YOUTH BASKETBALL LEAGUE**

This Agreement for Use of the Hermosa Beach Community Center Gymnasium (hereinafter called "Agreement") is made the 8th day of September, 2020 by and between the City of Hermosa Beach, a municipal corporation (hereinafter called "City") and Hermosa Beach Youth Basketball League, a California nonprofit public benefit corporation (hereinafter called "HBYB").

### **RECITALS**

A. CITY is willing to make the Community Center Gymnasium; classrooms in the Community Center; and outdoor basketball facilities available to HBYB for its annual youth basketball program pursuant to the terms and conditions of this Agreement.

B. HBYB desires a commitment from CITY to secure the Community Center Gymnasium and outdoor basketball facilities for practices and games in addition to classrooms in the Community Center, associated with its youth basketball program.

NOW, THEREFORE, in consideration of the foregoing and the promises contained herein, the parties agree as follows:

### **I. TERM AND PAYMENT.**

a. ) The facilities described in Recital A are closed as of the execution date of this Agreement due to the COVID-19 pandemic. The Term of this Agreement shall commence on a mutually agreed upon date after CITY notifies HBYB in writing that the facilities described in Recital A are re-opened for use ("Commencement Date") and HBYB has been provided sufficient time to commence league activities. The Term of this Agreement shall continue until the completion of the third summer league held following the Commencement Date. HBYB is authorized use of the enumerated facilities for both its winter (October – March) and summer (July) seasons during the term. HBYB may request alternate season dates that extend beyond the traditional schedule not later than thirty (30) days prior. Additional time is not guaranteed and will be based on availability. This Agreement may be extended upon request by HBYB for two additional one-year terms in the exclusive discretion of the City. CITY shall act on such extension requests not later than ninety (90) days following receipt of HBYB's Form 990 for the immediately preceding fiscal year, as provided in Section II(i) below. During the term of this Agreement, CITY authorizes HBYB to use the Community Center Gymnasium, designated outdoor basketball facilities and designated classrooms within the Community Center for activities associated with regular league play as further set forth herein.

b. ) HBYB agrees to pay CITY at the rental amount of \$28 per hour for use of the indoor facilities. All rental payments shall be made to the CITY, at the agreed upon date.

### **II. HBYB RESPONSIBILITIES.**

a. ) The HBYB League shall maintain its status as a non-profit organization.

b. ) HBYB will provide, at its expense, all League equipment. HBYB will set up/tear down within the allocated rental times on a daily basis. HBYB shall have sole access to the storage room on the west-side of the gymnasium, accessed from the interior of the gymnasium. Additionally, HBYB shall set up said equipment in a cooperative and timely fashion, and at the daily close of League activities, take down, remove and/or store its equipment. A designated HBYB representative must remain on-site during the entire set-up and tear-down process and during all league activities. The parties agree that, based on reasonable expectations, HBYB will rectify any outstanding "clean-up" deficiency.

c. ) HBYB shall provide all necessary funds, staff, equipment, and materials necessary to adequately promote and seek sponsorship for the League at no expense to CITY. League banners, flyers, promotional materials and other league related items may be installed on interior walls of the gymnasium no earlier than two weeks prior to the start of each season. HBYB shall remove all banners, flyers, promotional materials, and items relating to its league no more than two weeks following the end of the season. Any banners or other sponsor items displayed on interior walls of the gymnasium must be installed so as not to damage or permanently leave lasting marks on the infrastructure of the building. If damage does occur during installation or removal, HBYB shall restore the area to the reasonable satisfaction of the CITY.

d. ) HBYB shall provide a designated representative to consult as necessary with the Community Resources Manager or CITY designee regarding all facets of League activities on city property. Final decisions will be made by CITY regarding compliance with the agreement as well as any issues that directly and/or adversely impact the community.

e.) HBYB, at its expense, shall provide for adequate trash removal. HBYB is required to clean the Gymnasium, classrooms and outdoor basketball facilities on a daily basis when utilized by HBYB, removing all trash associated with league activities. This includes, but is not limited to, sweeping and mopping of the gymnasium floor, trash removal throughout the courtyard and personal item removal from the gymnasium left behind from participants. HBYB shall store any collected personal items in its storage room.

f.) HBYB shall provide a full schedule of all requested dates and times to the CITY no less than thirty (30) days prior to the start of league activities.

g.) The CITY will allow HBYB usage of additional classrooms located at the Community Center for League-related activities requested after the initial schedule of requested dates and times are submitted. Additional rooms are not guaranteed and will be based on availability. HBYB shall be responsible to comply with payment of fees at \$25 per hour associated with usage of additional classrooms by the agreed upon due date.

h.) HBYB shall continue to enforce and implement the following requirements:

- a. Maintain an expanded board that includes representatives from several community organizations and community members directly associated with the league;

- b. Maintain or enhance the current process for parent/guardian responses to issues or concerns, including but not limited to providing signs, subject to CITY's approval, with conduct information visible in the gymnasium;
- c. Pay a \$750 refundable deposit at the start of the season for any damage or additional staff time spent on behalf of the CITY as a result of league activities. In the event of damage or CITY services that are in excess of the deposit, HBYB will be required to pay the difference and replenish the deposit for the remainder of each season;
- d. Ensure the implementation of a mandatory coaches training program. Further, all new coaches will be required to attend an on-site seminar, organized by HBYB each season. Returning coaches may elect to take part in an online course, if available and provided by the coaches training program, in lieu of attending the on-site seminar;
- e. Continue to be proactive about civic and school district outreach for potential assistance/donations;
- f. Present league overview to the Parks, Recreation and Community Resources Advisory Commission immediately following each season to provide updates and general financials of the season.
- g. Continue to manage the league purely on a volunteer basis (no stipends or salaries for Board members or others) and contribute league revenues to the community or for the betterment of the program.
- h. HBYB shall ensure its bylaws are consistent with and include the following:
  - i. Sections that reference compensation to Board Members to further clarify that the league is managed strictly on volunteerism;
  - ii. Term lengths of Board Members; and
  - iii. Loans to Officers.
- i. HBYB shall provide CITY with its Form 990 for each fiscal year during the term of this Agreement, or any extended term, commencing with the Form 990 for 2020, as soon as it is available.

### **III. CITY RESPONSIBILITIES.**

- a.) CITY shall permit HBYB to conduct the Hermosa Beach Youth Basketball League(s) in the Community Center Gymnasium located at the Community Center, 710 Pier Avenue, Hermosa Beach; designated outdoor basketball court for practices only; and designated classroom(s) in the Community Center.
- b.) CITY shall provide a designated staff person as the assigned contact regarding the total operation of League activities, especially in all matters pertaining to League liability and public safety. All decisions of the CITY designee shall be final with respect to any issues that involve compliance with this Agreement as well as any issues that directly and/or adversely impact the community. Said

CITY designee shall consult with a designated representative of HBYB and it shall be the goal of the parties to reach mutual agreement on matters of League operation.

c.) CITY shall provide to HBYB any CITY services required for the League such as police, fire, building inspection, etc. as deemed necessary by the respective Chief or Department Head. Cost of CITY personnel shall be assumed by HBYB.

d.) CITY shall manage the raising and lowering of the nets and will follow the schedule given to staff at the start of each season. Changes to this schedule must be made in writing at least 48 hours in advance.

#### **IV. CARE AND MAINTENANCE OF PREMISES.**

a.) HBYB acknowledges that, to the best of its knowledge, the premises are in good order and repair as applicable to HBYB's intended use of the premises. HBYB shall maintain the condition of premises in good and safe conditions and shall surrender the same at termination hereof, in as good condition as received, with normal wear and tear excepted.

b.) The CITY shall be responsible for the building maintenance and associated mechanical repairs that are necessary to maintain the current condition of the property. Should maintenance be deemed necessary, it is the responsibility of the HBYB to contact the CITY immediately to report the issue. The CITY acknowledges that the premises are in good order and repair with no known risk to health or safety. The CITY is responsible for ADA compliance of the building.

c.) All City properties are smoke free facilities. With the exception of certified service animals, no pets are allowed in the building.

d.) HBYB shall not, without first obtaining the written consent from the CITY, make any alterations, additions, or improvements, in, to or about the premises. HBYB shall not be responsible for any capital improvements which need to be made to the premises during the course of this Agreement.

#### **V. INSURANCE.**

a.) At least ten (10) days prior to the start of league activities at the Community Center, HBYB shall provide CITY a Certificate of Insurance providing personal injury and property damage liability insurance naming CITY, and County of Los Angeles, their officers, employees and agents as additional insured with a minimum coverage of **\$2 million combined single limit coverage**. Insurance is to be placed with insurers with a current AM Best's rating of no less than A:VII. Said insurance shall not be canceled or altered without thirty (30) days' notice in writing to CITY.

b.) HBYB insurers shall be primarily responsible for any and all liability resulting from or arising out of the performance of the contract and CITY and their insurers shall not be required to contribute.

c.) For insurance purposes, the League area shall be defined to include any and all areas occupied or affected by the League.

## **VI. INDEMNITY AND ASSUMPTION OF RISK.**

a.) HBYB shall hold harmless, defend and indemnify the CITY, its officers, employees and volunteers from and against any and all liability, loss, damage expense, and costs (including without limitation costs and fees of litigation), of every nature arising out of or in connection with HBYB's League and performance of the League hereunder or its failure to comply with any of its obligations contained in this Agreement except such loss or damage which was caused by the sole negligence or willful misconduct of the CITY. The CITY shall indemnify HBYB from and against any and all liability, loss, damage, expense, and costs (including without limitation costs and fees of litigation), of every nature arising out of or in connection with the sole negligence or willful misconduct of the CITY.

b.) By signing this agreement, HBYB acknowledges the contagious nature of COVID-19 and voluntarily assume the risk that league participants and their families, league administrators, league officials, and contractors of the league ("program participants") may be exposed to or infected by COVID-19 by using the facilities described in Recital A, and that such exposure or infection may result in personal injury, illness, permanent disability, and death. HBYB understand that the risk of becoming exposed to or infected by COVID-19 at the facilities described in Recital A may result from the actions, omissions, or negligence of program participants and others, including, but not limited to, City of Hermosa Beach employees, officials and agents.

c.) HBYB assumes all risks of damages and injury to program participants and others arising out of or attributable to its use of the facilities described in Recital A during the COVID-19 pandemic. HBYB hereby releases and discharges the City of Hermosa Beach and its officers, employees and agents, from any and all claims for losses, injuries, damages or liabilities, including personal injury and injury to personal property arising out of or attributable to its use of the facilities described in Recital A during the COVID-19 pandemic, and HBYB expressly releases the City of Hermosa Beach and its officers, employees and agents from and against any and all claims or liability arising from their negligence. HBYB voluntarily agrees to assume all of the foregoing risks and accepts sole responsibility for any injury to program participants including, but not limited to, personal injury, disability, and death, illness, damage, loss, claim, liability, or expense, of any kind, that may be experienced or incurred in connection with use of the facilities described in Recital A. HBYB hereby releases, covenants not to sue, discharges, and holds harmless the City of Hermosa Beach, its employees, officers, and agents, of and from all liabilities, claims, actions, damages, costs or expenses of any kind arising out of or relating thereto. HBYB understands and agrees that this release includes any claims based on the actions, omissions, or negligence of the City of Hermosa Beach, its employees, officers and agents, whether a COVID-19 infection occurs before, during, or after use of the facilities described in Recital A.

## **VII. ADVERTISING.**

a. ) All sponsor signs, props, product facsimiles, etc. deemed necessary by HBYB to identify the League, shall be approved as to location and content by CITY.

b.) As stated in section 2c, these items must be removed at the conclusion of each season.

**VIII. CONCESSIONS.**

a. ) HBYB is not permitted to sell, serve, or distribute food or drink items (excluding water) in the gymnasium. HBYB agrees to make every effort to ensure League participants do not bring food or drink items into the Gymnasium for League activities.

**VIII. INDEPENDENT CONTRACTOR.**

CITY and HBYB shall each be and act as independent contractors and under no circumstances shall this agreement be construed as one of agency or partnership between CITY and HBYB. Each party acknowledges and agrees that it neither has nor will give the appearance or impression of having any legal authority to bind or commit the other party in any way other than as authorized by this Agreement. Nothing in this Agreement shall be construed to create a joint venture between the parties hereto or to obligate either party for debts or obligations incurred by the other party in the performance of this Agreement.

**IX. COMPLIANCE WITH THE LAW.**

Should it be determined that this Agreement or any provision hereof violates any federal, state, or local law or regulation, then the parties shall promptly modify this Agreement to the extent necessary to bring about compliance with such law and/or regulation; provided, however, that if such modification would cause this Agreement to fail in its essential purpose or purposes, it shall be deemed cancelled by mutual agreement of the parties and neither party shall have any further obligations or liabilities with respect to this Agreement.

**X. RESERVATION OF RIGHTS BY CITY.**

CITY reserves the right in its sole discretion at any time or times to close and suspend the use of the facilities subject to this Agreement for any duration in order to protect public health and safety. Any such closure will not constitute a breach or a default of this Agreement. CITY shall have no liability whatever to HBYB for the effect of such suspension and closure on its program, nor shall CITY have any responsibility to provide HBYB with substitute facilities. HBYB's rights under this Agreement are subject and subordinate to CITY's police and emergency powers in addition to CITY's rights to manage its municipal facilities and its contractual rights as described in this Agreement.

**XI. ENTIRE AGREEMENT.**

This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings or agreements in regard hereto. This Agreement cannot be altered or modified except by an agreement in writing signed by both parties.

CITY OF HERMOSA BEACH

DocuSigned by:

*Mary Campbell (Mayor)*

Mayor, Mary Campbell

DocuSigned by:

*Suja Lowenthal*

City Manager, Suja Lowenthal

ATTEST

DocuSigned by:

*Eduardo Sarmiento*

City Clerk, Eduardo Sarmiento

APPROVED AS TO FORM

DocuSigned by:

*Michael Jenkins*

City Attorney, Michael Jenkins

HBYP

Brian Pettigrew

HBYP Representative (name)

DocuSigned by:

*Brian Pettigrew*

HBYP Representative (signature)