



**Orange County Government Request for
Proposal RFP# 367-OC5441**

Request for Proposals to Manage the Orange County Sportsplex

Date of Issue: November 7, 2024

**Proposal Opening Date: January 9, 2024
At 3:00 P.M. ET**

Direct all inquiries concerning this RFP to:

Jovana Amaro
Purchasing Agent
Phone: 919-245-2651
Email: jamaro@orangecountync.gov

Electronic responses ONLY will be accepted for this solicitation.



ORANGE COUNTY

Request for Proposal #: 367-OC5441

For internal processing, including tabulation of proposals, please provide your company's Federal Employer Identification Number or alternate identification number (e.g. Social Security Number). Pursuant to G.S. 132-1.10 (b) this identification number shall not be released to the public. **This page will be removed and shredded, or otherwise kept confidential,** before the procurement file is made available for public inspection.

This page is to be filled out and returned with your proposal. Failure to do so may subject your proposal to rejection.

ID Number:

Federal ID Number or Social Security Number

Provider Name

1. PURPOSE AND BACKGROUND

Orange County, North Carolina is seeking a qualified provider to manage the operations of the Orange County Sportsplex. The facility is owned by Orange County, but since 2005, it has been managed by a third party under the terms of a Management Agreement. Under that Agreement, the contractor is responsible for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the facility.

The Sportsplex is a multipurpose recreation facility located at the southeast corner of Highway 70A and Meadowlands Drive. The facility comprises a total of 103,668-gross square feet which includes fitness centers, an aquatic center, an ice skating rink, fitness studios, offices, classrooms, athletic courts, child care facilities, locker rooms, a snack bar, and an outdoor turf field.

From a financial perspective, the County has designated the Sportplex Fund as an Enterprise Fund to account for all operating expenses and operating revenue. As an Enterprise Fund, the revenue generated by the facility is expected to fully pay for operating expenses and debt service. The County manages capital improvements through the Asset Management Services Department.

The successful provider will be expected to operate the facility subject to the terms of the attached Sportsplex Management Agreement, which terms are subject to further negotiation.

GENERAL INFORMATION

2.1 REQUEST FOR PROPOSAL DOCUMENT

The RFP is comprised of the base RFP document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFP in advance of any Contract award are incorporated herein by reference.

2.2 NOTICE TO PROVIDERS REGARDING RFP TERMS AND CONDITIONS

It shall be the Provider's responsibility to read the Instructions, Orange County's terms and conditions, all relevant exhibits and attachments, and any other components made a part of this RFP and comply with all requirements and specifications herein. Providers also are responsible for obtaining and complying with all Addenda and other changes that may be issued in connection with this RFP.

If Providers have questions, issues, or exceptions regarding any term, condition, or other component within this RFP, those must be submitted as questions in accordance with the instructions in Section 2.4 PROPOSAL QUESTIONS. If Orange County determines that any changes will be made as a result of the questions asked, then such decisions will be communicated in the form of an RFP addendum.

2.3 RFP SCHEDULE

The table below shows the *intended* schedule for this RFP. Orange County will make every effort to adhere to this schedule.

Event	Responsibility	Date and Time
Issue RFP	OC	November 7, 2024
Hold Pre-Submittal Conference	OC	November 20, 2024 at 1:00 pm
Facility Tour	OC	November 21, 2024 at 1:00 pm
Submit Written Questions	Provider	December 5, 2024
Provide Response to Questions	OC	December 12, 2024

Submit Proposals	Provider	January 9, 2025 by 3:00 pm
Contract Award	OC	February 2025
Contract Effective Date	OC	July 2025

NOTE: Non-Mandatory Pre-Submittal Conference:

Date: November 20, 2024

Time: 1:00 PM Eastern Time

Instructions:

There will be a non-mandatory pre-submittal virtual conference for all interested Providers to take place at 1:00 PM on November 20, 2024. Below is the link to join the Zoom meeting:

<https://orangecountync.zoom.us/j/88610107661?pwd=UXExQ0xWdGRnWm9ad0JINmhRT1g4QT09>

Meeting ID: 886 1010 7661, Passcode: 709527. One tap mobile +16469313860 US

2.4 PROPOSAL QUESTIONS

Upon review of the RFP documents, Providers may have questions to clarify or interpret the RFP in order to submit the best proposal possible. To accommodate the Proposal Questions process, Providers shall submit any such questions by the above due date.

Written questions shall be emailed to jamaro@orangecountync.gov by the date and time specified above. Providers should enter “**RFP# 367-OC5441 Questions**” as the subject for the email. Questions submittals should include a reference to the applicable RFP section.

Questions received by the deadline date, Orange County’s response, and any additional terms deemed necessary by the Orange County will be posted in the form of an addendum to Orange County website <https://www.orangecountync.gov/Bids.aspx> and shall become an Addendum to this RFP. No information, instruction or advice provided orally or informally by any Orange County personnel, whether made in response to a question or otherwise in connection with this RFP, shall be considered authoritative or binding. Providers shall rely *only* on written material contained in an Addendum to this RFP.

2.5 PROPOSAL SUBMITTAL

IMPORTANT NOTE: This is an absolute requirement. Provider shall bear the risk for late submission due to unintended or unanticipated delay. Any proposal-submitted after the proposal deadline will be rejected. ***Electronic Responses only will be accepted for this solicitation.***

Providers should enter “**RFP# 367-OC5441 Company’s name, Management of the Orange County Sportsplex**”: as the subject for the email. **Electronic (PDF Format) submittals** should be less than 15MB in size and submitted by 3:00 p.m. EST on **January 9, 2025.** PDF files should include bookmarks that link to sections to allow easy document navigation. Electronic submittals shall be emailed to Jovana Amaro, Purchasing Agent, jamaro@orangecountync.gov by the date specified above.

Critical updated information may be included in Addenda to this RFP. It is important that all Providers proposing on this RFP periodically check the Orange County's website <https://www.orangecountync.gov/bids.aspx> for any Addenda that may be issued prior to the bid opening date. All Providers shall be deemed to have read and understood all information in this RFP and all Addenda thereto.

2.6 PROPOSAL CONTENTS

Providers shall populate all attachments of this RFP that require the Provider to provide information and include an authorized signature where requested. Provider RFP responses shall include the following items and those attachments should be arranged in the following order:

- a) Cover Letter (Identify General Manager)
- b) Title Page: Include the company name and Federal ID number or Social Security number
- c) A written narrative response to address the management philosophy and approach to managing the Orange County Sportsplex
- d) A written narrative response to address how the Provider will achieve the financial and qualitative performance objectives as detailed in the attached **Sportsplex Management Agreement**
- e) Provider Experience and Qualifications as it relates to management of public recreational facilities
- f) Provider's capability and capacity to perform project
- g) Provider's references
- h) Proposed Base Management Fee and Reimbursable Expenses (See Exhibit B of attached **Sportsplex Management Agreement**)
- i) Acknowledgement of receipt of any addenda.
- j) Living Wage Policy
- k) E-Verify Affidavit
- l) Non-Discrimination Certification Form
- m) Supplemental Vendor Information: Historically Underutilized Businesses Form
- n) Sportsplex Financials
- o) Upon opening, proposals become public record. Providers who include confidential, proprietary, or trade secret information in their proposal shall appropriately mark such information and shall, on a page separate from the proposal, provide written notice of the page and section of the proposal where all such information is included and marked.

3.0 METHOD OF AWARD AND PROPOSAL EVALUATION PROCESS

3.1 METHOD OF AWARD

All qualified proposals will be evaluated, and awards will be made to the Provider(s) meeting the RFP requirements and achieving the highest and best final evaluation, based on the criteria described below.

While the intent of this RFP is to award a Contract(s) to a single Provider, Orange County reserves the right to make separate awards to different Providers for one or more work elements, to not award one or more of those elements or to cancel this RFP in its entirety without awarding a Contract, if it is considered to be most advantageous to the County to do so.

Orange County reserves the right to waive any minor informality or technicality in proposals received.

3.2 CONFIDENTIALITY AND PROHIBITED COMMUNICATIONS DURING EVALUATION

During the evaluation period—from the date proposals are opened through the date the contract is awarded—each Provider submitting a proposal (including its representatives, sub-contractors and/or suppliers) is prohibited from having any communications with any person inside or outside the using agency, issuing agency, other government agency office, or body (including the purchaser named above, department secretary, agency head, members of the general assembly and/or governor's office), or private entity, if the communication refers to the content of Provider's proposal or qualifications, the contents of another Provider's proposal, another Provider's qualifications or ability to perform the contract, and/or the transmittal of any other communication of information that could be reasonably considered to have the effect of directly or indirectly influencing the evaluation of proposals and/or the award of the contract. A Provider not in compliance with this provision shall be disqualified from contract award, unless it is determined in Orange County's discretion that the communication was harmless, that it was made without intent to influence and that the best interest of Orange County would not be served by the disqualification. A Provider's proposal may be disqualified if its sub-contractor and supplier engage in any of the foregoing communications during the time that the procurement is active (i.e., the issuance date of the procurement to the date of contract award). Only those discussions, communications or transmittals of information authorized or initiated by the issuing agency for this RFP or general inquiries directed to the purchaser regarding requirements of the RFP (prior to proposal submission) or the status of the contract award (after submission) are excepted from this provision.

3.3 PROPOSAL EVALUATION PROCESS

Orange County shall review all Provider responses to this RFP to confirm that they meet the specifications and requirements of the RFP.

Proposals will be received from each responsive Provider according to the method of submission specified in Section 2.5 of this RFP.

All proposals must be received by Orange County no later than the date and time specified on the cover sheet of this RFP.

At their option, the evaluators may request oral presentations or discussions with any or all Providers for clarification or to amplify the materials presented in any part of the proposal. Providers are cautioned, however, that the evaluators are not required to request presentations or other clarification—and often do not. Therefore, all proposals should be complete and reflect the most favorable terms available from the Provider.

Proposals will generally be evaluated according to completeness, content, and experience with similar projects, ability of the Provider and its staff, and cost. Specific evaluation criteria are listed in 3.4 EVALUATION CRITERIA, below.

Providers are cautioned that this is a request for offers, not an offer or request to contract, and Orange County reserves the unqualified right to reject any and all offers at any time if such rejection is deemed to be in the best interest of the County.

Upon completion of the evaluation process, the County will make Award(s) based on the evaluation criteria. Award of a Contract to one Provider does not mean that the other proposals lacked merit, but that, all factors considered, the selected proposal was deemed most advantageous and represented the best value to the County.

3.4 EVALUATION CRITERIA

All qualified proposals will be evaluated based on the following criteria, to result in an award most advantageous to Orange County:

Criteria	Maximum Point Value
1. Provider experience and qualifications as it relates to management of public recreational facilities	25
2. Management philosophy and approach to delivering the Scope of Services for Orange County Sportsplex (Section 5.3)	20
3. Technical response to how the financial and qualitative performance objectives are achieved (Section 5.2)	20
4. Provider's capability and capacity to perform project	20
5. Proposed Base Management Fee and Reimbursable Expenses (Section 4.2)	15
Total	100

4.0 REQUIREMENTS

4.1 CONTRACT TERM

The Contract shall commence on the date of contract award (the "Effective Date") and have an initial term of two years.

4.2 PRICING

Base Management Fee shall constitute the total cost to Orange County for complete performance in accordance with the requirements and specifications herein, including all applicable charges, handling, administrative and other similar fees. Provider will also be reimbursed for specific reimbursable expenses as defined by Exhibit B of the ***Sportsplex Management Agreement*** (attached). Provider shall not invoice for any amounts not specifically allowed for in this RFP.

4.3 INVOICES

Invoices must include an accurate description of the work for which the invoice is being submitted, the invoice date, the period of time covered, the amount of fees due to the Provider and the original signature of the Provider's General Manager.

The County will authorize payments, as outlined in the ***Sportsplex Management Agreement***, to the Provider. Invoices shall be sent to:

4.4 PROVIDER EXPERIENCE

In its Proposal, Provider shall demonstrate experience managing other public recreational facilities of similar or greater size and complexity to the Orange County Sportsplex. Provider shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person.

4.5 REFERENCES

Providers shall provide at least three (3) references for which your organization has provided services of similar size and scope to that proposed herein. Orange County may contact these users to determine if the services provided are substantially similar in scope to those proposed herein and Provider's performance has been satisfactory. The information obtained may be considered in the evaluation of the proposal.

COMPANY NAME	CONTACT NAME	TELEPHONE NUMBER

4.6 PERSONNEL

- a) Provider will identify a full-time on-site General Manager and other Management-Level Employees. The General Manager will have general supervisory responsibility of the Facility and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

4.7 PROVIDER'S REPRESENTATIONS

- a. Provider warrants that qualified personnel shall provide services under this Contract in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the industry. Provider agrees that it will not enter any agreement with a third party that may abridge any rights of Orange County under this Contract. Provider will serve as the prime contractor under this Contract and shall be responsible for the performance and payment of all subcontractor(s) that may be approved by the County. Names of any third party Providers or subcontractors of Provider may appear for purposes of convenience in Contract documents; and shall not limit Provider's obligations hereunder. Provider will

retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- b. If any Services, deliverables, functions, or responsibilities not specifically described in this Contract are required for Provider's proper performance, provision and delivery of the service and deliverables under this Contract, or are an inherent part of or necessary sub-task included within such service, they will be deemed to be implied by and included within the scope of the contract to the same extent and in the same manner as if specifically described in the contract. Unless otherwise expressly provided herein, Provider will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Provider to provide and deliver the Services and Deliverables.
- c. Provider warrants that it has the financial capacity to perform and to continue perform its obligations under the contract; that Provider has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Provider that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.
- d. A sample ***Sportsplex Management Agreement*** that will be executed with the selected Provider is included. The Agreement is subject to negotiation.

5.0 SCOPE OF SERVICES

In general, the Provider will be responsible for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the Orange County Sportsplex. Specific responsibilities are contained in the attached ***Sportsplex Management Agreement***.

5.1 PERFORMANCE OBJECTIVES AND REPORTING REQUIREMENTS

In general, the Provider is expected utilize all of its good faith commercially reasonable efforts to manage the Facility in a first-class, high-quality, fiscally responsible manner and in the County's best interest. The Provider will use its good faith commercially reasonable efforts to accomplish the following performance goals in its management of the Facility:

- As an enterprise fund, Manager shall generate sufficient Operating Revenue to cover Operating Costs;
- Operating Revenue shall provide Debt Service Coverage of 1.25X as part of the Budget formulation and Audited results;
- Improving the quality of operations and programming at the Facility;
- Operating the Facility in a manner that promotes the Guiding Principles contained in the Owner's Strategic Plan.

Additional performance expectations and reporting requirements are contained in the attached ***Sportsplex Management Agreement***.

- Project Timetable
 - Issue Request for Proposal – November 7, 2024
 - Proposers Questions Due – December 5, 2024
 - Responses to Questions Due – December 12, 2024
 - Proposals Due – January 9, 2025 by 3:00 pm
 - Evaluation of Proposals – January 2025
 - Interviews of Selected Organizations – January 2025
 - Proposal Award – February 2025

- Tentative Contract Execution Date – February 2025
- Contract Effective Date – July 2025

5.2 PROJECT ORGANIZATION

Provider shall describe the organizational and operational structure it proposes to utilize for the work described in this RFP.

5.3 TECHNICAL APPROACH

Provider's proposal shall include, in narrative, outline, and/or graph form the Provider's approach to accomplishing the elements outlined in the Scope of Services.

CONTRACT ADMINISTRATION

6.1 GENERAL MANAGER AND CUSTOMER SERVICE

The Provider shall designate and make available to Orange County a General Manager. The General Manager shall be the County's single point of contact for contract related issues and issues concerning performance, progress review, scheduling and service.

6.2 POST AWARD MANAGEMENT REVIEW MEETINGS

The Provider, at the request of Orange County, shall meet to discuss services and finances performed by the Provider. The purpose of these meetings will be to review progress reports, discuss Provider and the County's performance, address outstanding issues, review problem resolution, provide direction, evaluate continuous improvement and cost saving ideas, and discuss any other pertinent topics.

LIVING WAGE & E-VERIFY

Living Wage

Orange County is committed to providing its employees with a living wage and encourages agencies it funds to pursue the same goal. A copy of Orange County's Living Wage Contractor Policy is included at the end of this RFP.

E-Verify

HB789 imposes E-Verify requirements on contractors who enter into certain contracts with state agencies and local governments. The legislation specifically prohibits governmental units from entering into certain contracts "unless the contractor and the contractor's subcontractors comply with the requirements of Article 2 of Chapter 65 of the General Statutes." (Article 2 of Chapter 65 establishes North Carolina's E-Verify requirements for private employers.) It is important to note that the verification requirement applies to subcontractors as well as contractors. The new laws specifically prohibit governmental units from entering into contracts with contractors who have not (or their subcontractors have not) complied with E-Verify.

SUBMIT WITH PROPOSAL

ADDENDUM ACKNOWLEDGEMENT FORM

Consultants must acknowledge receipt of addendums posted by Orange County before the RFP/RFQ deadline. Please initial for Addendums received.

Addendum No 1 _____

Addendum No 2 _____

Addendum No 3 _____

STATE OF NORTH CAROLINA

AFFIDAVIT

ORANGE COUNTY

I, _____ (the individual attesting below), being duly authorized by and on behalf of
_____ (the entity bidding on project hereinafter "Employer") after first being duly
sworn hereby swears or affirms as follows:

1. Employer understands that E-Verify is the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law in accordance with NCGS §64-25(5).
2. Employer understands that Employers Must Use E-Verify. Each employer, after hiring an employee to work in the United States, shall verify the work authorization of the employee through E-Verify in accordance with NCGS§64-26(a).
3. Employer is a person, business entity, or other organization that transacts business in this State and that employs 25 or more employees in this State. (mark Yes or No)
 - a. YES _____, or
 - b. NO _____
4. Employer's subcontractors comply with E-Verify, and if Employer is the winning bidder on this project Employer will ensure compliance with E-Verify by any subcontractors subsequently hired by Employer.

This ____ day of _____, 20__.

Signature of Affiant

Print or Type Name: _____

State of North Carolina, _____ County

Signed and sworn to (or affirmed) before me, this the _____

day of _____, 20__.

My Commission Expires:

Notary Public

(Affix Official/Notarial Seal)

SUBMIT WITH PROPOSAL

ORANGE COUNTY NONDISCRIMINATION CERTIFICATION

The undersigned bidder or proposer hereby certifies and agrees that the following information is correct:

1. In preparing its enclosed bid or proposal, the undersigned bidder or proposer has considered all bids and proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in discrimination as defined in Section 12-52 of the Orange County Non-discrimination Ordinance.
2. Without limiting any other remedies that Orange County may have for a false certification, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for Orange County to reject the bid or proposal submitted with this certification, and terminate any contract awarded based on such bid or proposal. It shall also subject the bidder or proposer to disqualification from participating in county contracts or bid processes for up to two years.
3. As a condition of contracting with Orange County, the undersigned bidder or proposer agrees to promptly provide to Orange County all information and documentation that may be requested by Orange County from time to time regarding the solicitation and selection of suppliers and subcontractors in connection with this solicitation process. Failure to maintain or failure to provide such information constitutes grounds for Orange County to reject the bid or proposal and to terminate, without penalty to Orange County, any contract awarded on such bid or proposal. All such information and documentation shall be maintained for a period of three years after the expiration of the contract.
4. As part of its bid or proposal, the undersigned bidder or proposer shall provide to Orange County a list of all instances within the past ten years where a complaint was filed or pending against bidder or proposer in a legal or administrative proceeding alleging that bidder or proposer discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken.
5. As a condition of submitting a bid or proposal to Orange County the undersigned bidder or proposer agrees to comply with the Orange County Non-discrimination Ordinance. Falsification of this certification shall constitute a violation of the Orange

County Non-Discrimination Ordinance and shall be grounds for rejection of the bid or proposal or termination of an existing contract, without fault or further obligation to Orange County.

6. As a condition of submitting a bid or proposal to Orange County the undersigned bidder or proposer agrees that Orange County may consider the information submitted as part of this certification in its determination of the responsibility of the undersigned bidder or proposer. The undersigned bidder or proposer, as the case may be, waives the right to challenge the rejection of a bid or proposal when such rejection is based, in its entirety, on information submitted as part of this certification.

The bidder or proposer certifies the undersigned has full authority to sign on its behalf.

By:_____

Printed Name and Title

On behalf of _____

Company or Corporate name

SUBMIT WITH PROPOSAL

Supplemental Vendor Information: HISTORICALLY UNDERUTILIZED BUSINESSES

Company Name: _____ **Date:** _____

Historically Underutilized Businesses (HUBs) consist of minority, women and disabled business firms that are at least fifty-one percent owned and operated by an individual(s) of the categories. Also included in this category are disabled business enterprises and non-profit work centers for the blind and severely disabled.

Pursuant to G.S. 143B-1361(a), 143-48 and 143-128.4, the County invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. This includes utilizing subcontractors to perform the required functions in this RFP/RFQ. For questions concerning NC HUB certification, contact the [North Carolina Office of Historically Underutilized Businesses](#) at (919) 807-2330. The Vendor shall respond to question #1 and #2 below.

1) Is Vendor a Historically Underutilized Business? ☐ **Yes** ☐ **No**

2) Is Vendor Certified with North Carolina as a Historically Underutilized Business? ☐ **Yes** ☐ **No**

If so, state HUB classification:

EXHIBIT A MANAGEMENT SERVICES

During the Term, Manager will be responsible for all aspects of oversight for the staffing, marketing, maintenance, event management, sponsorship and advertising sales, and day-to-day operations of the Owner's Facility. In addition to all other obligations, responsibilities, and requirements of this Agreement the Manager shall have the following specific responsibilities:

1. Manager shall provide a full-time on-site General Manager and other employees as required to meet the operational needs of the Facility, within the budgeted percentage of labor.

2. Manager will produce an annual plan pursuant to Section 8.13. In the event Owner disapproves the annual plan, revised plans hereunder, and Manager and Owner fail to reach an agreement on a new annual plan within ninety (90) days of such disapproval, either party may terminate this agreement by providing the other party with written notice sixty (60) days prior to the date such party intends to terminate. Owner and the Manager agree to use good faith efforts to resolve any differences in opinion regarding the annual plan and any portion thereof so that agreement on the annual plan can be reached as soon as possible after the date Manager first submits the revised annual plan for such year to the Owner.

3. The Manager shall present the then current staffing, the incentive bonus plan for employees, and all salaries and payments to employees through the Disbursement Account in the Annual Operations Budget. It is understood by all parties that reductions and additions to various positions may be made at Manager's discretion throughout the year due to business tempo, trends, opportunities, and budget requirements. If a change is recommended that will require expense above the budgeted labor percentage, the change will be submitted for Owner's review and approval by Owner via reforecast and revised annual plan or budget.

4. The Manager agrees to develop, install, and maintain reasonably appropriate accounting, operating, and administrative controls governing the financial aspects of the Facility, such controls to be consistent with generally accepted accounting principles in the U.S and the Facility financial policy described in Exhibit C.

5. The Manager shall establish, in the Facility's name, at a banking institution or institutions subject to the approval of Owner, the Operating Account and Disbursement Account as provided in this Agreement.

6. Subject to the Manager's written notices to Owner as herein, Owner acknowledges that it is solely responsible for all Operating Expenses and capital expenditures required for or on behalf of the Facility provided that such Operating Expenses and capital expenditures are made in accordance with the terms of this Agreement.

7. Administer relationships with all subcontractors, concessionaires, and all other

contracting parties to pre-existing agreements, assume responsibility for any and all negotiations, renewals, and extensions relating to any pre-existing agreements, and enforce any such pre-existing agreements.

8. Negotiate, execute in its own name, deliver and administer any and all licenses, occupancy agreements, rental agreements, booking commitments, advertising agreements, concession agreements, supplier agreements, service contracts (including without limitation, contracts for cleaning decorating and set-up, snow removal, general maintenance and maintenance and inspection of all systems, elevators, equipment, fire control panel and other safety equipment, staffing and personnel needs, and other services which are necessary or appropriate) and all other contracts and agreements in connection with the management, promotion and operation of the Facility, provided that if any such license, agreement, commitment, or contract other than those involving the license, lease, or rental of the Facility in the ordinary course has a term that extends beyond the remaining Term, such license, agreement, commitment or contract shall be approved and executed by the Owner, (which approval shall not be unreasonably withheld) provided however, that in the event that Manager desires to propose additional services by Manager, Manager shall present all such proposals to the Owner for its approval.

9. To the extent Operating Revenues or funds supplied by the Owner are made available therefor, maintain the Facility, provided that the Owner shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided herein.

10. To the extent Operating Revenues or funds supplied by the Owner are made available therefor, rent, lease, or purchase all equipment and maintenance supplies necessary or appropriate for the operating and maintenance of the Facility, provided that the Owner shall be responsible for undertaking all Capital Improvements and Capital Equipment purchases as provided herein and Regulatory Approvals related thereto.

11. Establish and adjust membership fees and user fees consistent with the Facility Policy Manual, prices, rates, and rate schedules for the aforesaid licenses, agreements, and contracts and any other commitments relating to the Facility to be negotiated by Manager in the course of its management, operation, and promotion of the Facility. In determining such fees, prices, and rate schedules, Manager shall evaluate comparable charges for similar goods and services at similar and competing facilities and shall consult with the Owner about any adjustments to the fees, prices, and rate schedules at the Facility to be made by Manager. Manager shall ensure membership and user fees for Owner's employees remain discounted at similar rates and percentages has have been historically maintained at the Facility. Such discounts shall be reflected and further described in the Facility Policy Manual.

12. To the extent that Operating Revenues or funds supplied by the Owner are made available therefor, pay, when due, all Operating Expenses from accounts established as provided herein.

13. After consultation with the Owner, institute or defend, at reasonable expense

of the Owner, with counsel agreed to by both parties, such legal actions or proceedings as Manager may deem necessary or appropriate in connection with the operation of the Facility, including, without limitation, to collect charges, rents, or other revenues due or to cancel, terminate, or sue for damages under, any license, use, advertisement, or concession agreement for the breach thereof or default thereunder by any licensee, user, advertiser, or concessionaire at the Facility. Owner must agree to any such legal actions or proceedings in writing.

14. In consultation with the Owner, shall operate the Facility using any and all reasonable energy conservation devices, techniques and policies.

15. The Owner will provide to the Facility such recycling services as it provides to other Orange County buildings for use by Manager for recyclable materials generated at the Facility. Manager agrees to operate the Facility in conformance with Orange County's recycling policies and procedures as communicated by the Owner.

16. Maintain a master set of all booking records and schedules for the Facility.

17. Provide day-to-day administrative services in support of its management activities pursuant to approved budgets and annual plans described herein, including, but not limited to, the acquisition of services, equipment, supplies and facilities, internal budgeting and accounting, maintenance and property management, personnel management, record-keeping, collections and billing, and similar services.

18. Engage in such advertising, solicitation, and promotional activities as Manager deems necessary or appropriate to develop the potential of the Facility and the cultivation of broad community support (including without limitation selling advertising inventory and securing product rights for the Facility). Manager shall work with the Orange County Economic Development Commission and such Visitor's Bureau, Chamber of Commerce, alliance of business groups and government groups as designated by Owner to market the Facility for conventions, trade shows and public entertainment shows. In connection with its activities under this Agreement, including without limitation advertising relating to the Facility, Manager shall be permitted to use the terms "Orange County Sportsplex" and logos for such names in its advertising, subject to the approval of the Owner.

19. Market and secure new Commercial Rights sales for the Facility.

20. As set forth herein, submit all budgets, annual plans, financial reports, and other reports detailing Manager's activities regarding the Facility to the Owner in a timely manner.

EXHIBIT B

SPORTSPLEX MANAGEMENT AGREEMENT

between

ORANGE COUNTY

and

Dated: _____, 2025

FACILITY MANAGEMENT AGREEMENT

THIS FACILITY MANAGEMENT AGREEMENT (the "Agreement") is made and entered into this _____ day of 2025 (the "Effective Date"), by and between Orange County, a political subdivision of the State of North Carolina, (the "Owner") and _____, a _____ (the "Manager").

RECITALS

WHEREAS, Owner owns the infrastructure, buildings, parking, lighting, sports playing surfaces, sports equipment, and all other hard assets associated with the athletic facility as the same exist now or may exist in the future including improvements related thereto specifically located at 101 Meadowlands Drive, Hillsborough, North Carolina 27278, as the same exist now or may exist in the future, known as the "Orange County Sportsplex" or any other name(s) that may be identified in the future (hereinafter the "Facility");

WHEREAS, Manager has expertise in providing management services for multi-purpose athletic facilities throughout the United States;

WHEREAS, Owner and Manager desire for _____ to operate and manage the Facility subject to the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the promises and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, Owner and Manager agree as follows:

ARTICLE 1 DEFINITIONS

1.1. **Definitions.** For purposes of this Agreement, the following terms have the meanings referred to in this Section:

Affiliate: A person or company that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified person or company.

Agreement: The "Agreement" shall mean this Agreement, together with all exhibits attached hereto (each of which are incorporated herein as an integral part of this Agreement), as amended, supplemented or restated from time to time.

Approved Budgets: The "Approved Budgets" consist of the annual operating budget of the Facility and the annual cash flow budget of the Facility.

Base Management Fee: The "Base Management Fee" shall have the meaning ascribed to such term in Exhibit B.

Capital Expenditures: All expenditures for building additions, alterations, repairs or improvements ("Capital Improvements") where the cost of such expenditure is greater than

Twenty Thousand Dollars (\$20,000.00) per project and for purchases of additional or replacement FF&E, ("Capital Equipment"), where the cost of such expenditure is greater than Five Thousand Dollars (\$5,000.00) and the depreciable life of the applicable item is, according to generally accepted accounting principles in the U.S., in excess of five (5) years.

Concession Revenue: All revenue accounted for through the sale of food and beverage or food and beverage vendor contracts. Sponsorships, commissions and rebates provided from vendors are not included as concession revenue. These items will be accounted for as Commercial Rights.

Commercial Rights: Naming rights, pouring rights, advertising, sponsorships, the branding of food and beverage products for resale and memorial gifts at or with respect to the Facility.

Disbursement Account: A separate account in the name of Manager at a licensed bank through which all Facility staff and other personnel employed by Manager (including related payroll taxes), or engaged by Manager as independent contractors, are paid.

Early Termination Fee: The term "Early Termination Fee" shall have the meaning ascribed to such term in Section 4.3(a) of this Agreement.

Effective Date: "Effective Date" shall have the meaning ascribed to such term in the preamble of this Agreement.

Emergency Repair: The repair of a condition which, if not performed immediately, creates an imminent danger to persons or property or an unsafe condition at the Facility threatening persons or property.

Event of Force Majeure: An act of God, fire, earthquake, hurricane, flood, riot, civil commotion, terrorist act, terrorist threat, storm, washout, wind, lightning, landslide, explosion, epidemic or pandemic, inability to obtain materials or supplies, accident to machinery or equipment, any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls, hostilities or war, a labor dispute which results in a strike or work stoppage affecting the Facility or services described in this Agreement, or any other cause or occurrence outside the reasonable control of the party claiming an inability to perform and which by the exercise of due diligence could not be reasonably prevented or overcome.

Existing Contracts: Service Contracts, Revenue Generating Contracts, and other agreements relating to the day-to-day operation of the Facility existing as of the Effective Date.

Facility: The "Facility" shall have the meaning ascribed to such term in the Recitals to this Agreement.

Facility Policy Manual: The Owner-approved policy manual provided by Manager to the Owner, and updated from time to time, containing certain operating and employment

policies customarily utilized by Manager in connection with the management of a public facility such as the Facility. The Facility Policy Manual shall at all times and in all iterations be in compliance with the terms of this Agreement.

FF&E: Furniture, fixtures, and equipment to be procured for use at the Facility.

Fiscal Year: Each twelve (12) month period during the Term, commencing on July 1 and ending on June 30.

General Manager: The employee of Manager acting as the full-time on-site general manager of the Facility.

Laws: Means all applicable laws, statutes, rules, regulations, and ordinances.

Manager: The term "Manager" shall have the meaning ascribed to such term in the first paragraph to this Agreement.

Operating Account(s): A depository account into which revenues are deposited and a disbursement account through which expenses are paid. Separate interest-bearing account(s) in the name of the Owner at a licensed bank, to be designated by the Owner, where Revenue is deposited and from which Operating Expenses are paid.

Operating Budget: A line-item budget for the Facility that includes a projection of Revenues and Operating Expenses, approved on an annual basis and reviewed on a monthly basis.

Operating Expenses: All expenses incurred by Manager in connection with its operation, promotion, maintenance and management of the Facility, including but not limited to the following:

(i) employee payroll, bonuses and benefits (including payments to any national benefit system, relocation costs, termination costs (including severance costs and payments in lieu of termination), and related costs, (ii) cost of operating supplies, including general office supplies, (iii) advertising, marketing, group sales, and public relations costs, (iv) cleaning expenses, (v) data processing costs, (vi) dues, subscriptions and membership costs, (vii) the Base Management Fee, (viii) printing and stationery costs, (ix) postage and freight costs, (x) equipment rental costs, (xi) minor repairs, maintenance, and equipment servicing, not including expenses relating to performing capital improvements or repairs, (xii) security expenses, (xiii) telephone and communication charges, (xiv) Taxes, (xv) cost of employee uniforms and identification, (xvi) exterminator and trash removal costs, if applicable (xvii) computer, software, hardware and training costs, (xix) utility expenses, (xx) office expenses, (xxi) audit and accounting fees, if pre-approved by Owner, (xxii) loss, costs, damage, liability and any other obligations arising under or incurred under Service Contracts and other agreements relating to Facility operations, (xxiii) all bond and insurance costs, including but not limited to personal property, general liability, professional liability and worker's compensation insurance, (xxiv) commissions and all other fees payable to third parties (e.g. commissions relating to food, beverage and merchandise concessions services and Commercial Rights sales), (xxv) cost of complying

with any Laws, (xxvi) costs incurred by Manager to settle or defend any claims asserted against Manager arising out of its operations at the Facility on behalf of Owner. Upon the satisfaction of the foregoing Operating Expenses, the Owner may direct surplus Operating Expenses toward the costs of Capital Improvements and Capital Equipment, Facility debt service, and indirect and overhead costs of administrative services provided by the Owner. The term Operating Expenses does not include litigation costs and fees, attorneys' fees, or litigation damages.

Operating Revenues: Any and all revenues of any kind or nature derived from owning, operating, managing, and promoting the Facility, including, but not limited to: license, lease, and Concession Revenue and rentals, revenues from memberships and Facility user fees, revenues from merchandise sales, advertising and sponsorship sales and renewals, event sponsorship revenues, equipment rentals, utility revenues, box office revenues, ticket surcharges, ticket service fees, parking revenues, food services and concession revenues (however, if such revenues are collected in the first instance by and retained by the concessionaire, only the amount of such revenues paid by the concessionaire to the Facility shall be included as Operating Revenues), commissions or other revenues from decoration and set-up, security and other subcontractors (however if such revenues are collected in the first instance by and retained by such subcontractors, only the amount of such revenues paid by such contractors to the Facility shall be included as Operating Revenues), miscellaneous operating revenues, revenues generated from separate agreements with Manager Affiliates pertaining to the Facility, and interest revenues, all as determined in accordance with generally accepted accounting principles and recognized on a full accrual/cash basis. The parties acknowledge that revenues from the sale of tickets for events at the Facility are not Operating Revenues, but are instead revenues of the promoter or performer of each such event. To the extent that Manager collects such ticket sale revenue on behalf of such promoter or performer, such ticket sale revenue shall be the source of funds from which Manager collects the rental charges and other event reimbursements due by such promoter or performer for use of the Facility, which charges and reimbursements are Operating Revenues hereunder.

Operations Manual: The document developed by Manager, in consultation with Owner, which shall contain terms regarding the management and operation of the Facility including detailed policies and procedures to be implemented in operating the Facility, as agreed upon by both the Owner and the Manager.

Owner: The term "Owner" shall have the meaning ascribed to such term in the first paragraph to this Agreement.

Regulatory Approvals: All applicable governmental or regulatory approvals, authorizations, consents, licenses, or permits.

Service Contracts: Agreements for services to be provided in connection with the operation of the Facility, including without limitation agreements for consulting services, ticketing, web development and maintenance, computer support services, FF&E

purchasing services, engineering services, electricity, steam, gas, fuel, general maintenance, HVAC maintenance, telephone, staffing personnel including guards, ushers and ticket-takers, extermination, elevators, stage equipment, fire control panel and other safety equipment, snow removal and other services which are deemed by Manager to be either necessary or useful in operating the Facility.

Taxes: Any and all governmental assessments, franchise fees, excises, license and permit fees, levies, charges, and taxes, of every kind and nature whatsoever, which at any time during the Term may be assessed, levied, or imposed on, or become due and payable out of or in respect of, (i) activities conducted on behalf of the Owner at the Facility, including without limitation the sale of concessions, the sale of tickets, and the performance of events (such as any applicable sales and admissions taxes, use taxes, excise taxes, occupancy taxes, employment taxes, and withholding taxes), or (ii) any payments received from any holders of a leasehold interest or license in or to the Facility, from any guests, or from any others using or occupying all or any part of the Facility.

Term: "Term" shall have the meaning ascribed to such term in Section 4.1 of this Agreement.

Tournament Revenue: All revenue negotiated as part of a tournament or facility rental agreement, accounted for through a self-operated tournament, or other vendor contracts associated with the tournament.

ARTICLE 2 SCOPE OF SERVICES

2.1 Engagement.

(a) Owner hereby engages Manager during the Term to act as the sole and exclusive manager and operator of the Facility, subject to and as more fully described in this Agreement, and, in connection therewith, to perform the services described herein and in Exhibits A and B attached hereto.

(b) Manager hereby accepts such engagement, and shall perform the services described herein, subject to the limitations expressly set forth in this Agreement.

2.2 Limitations on Manager's Duties. Manager's obligations under this Agreement are contingent upon and subject to the Owner making available, in a timely fashion, the funds budgeted for or reasonably required by Manager to carry out such obligations during the Term. Manager shall not be considered to be in breach or default of this Agreement and shall have no liability to the Owner or any other party if Manager does not perform any of its obligations hereunder due to failure by the Owner to timely provide such funds.

ARTICLE 3 COMPENSATION

3.1 **Management Fees.** In consideration of Manager's performance of its services hereunder, Owner shall pay Manager those payments as further set forth in Exhibit B attached hereto.

ARTICLE 4 TERM; TERMINATION; SUSPENSION

4.1 **Term.** The Term of this Agreement shall begin on the Effective Date and, unless sooner terminated pursuant to the provisions of Section 4.2 below, shall expire on June 30 of the second full operating year of this agreement. Both parties may mutually agree to extend this Agreement for additional five-year terms.

Notwithstanding anything to the contrary herein, Owner's engagement of Manager as provided herein and Manager's acceptance of such engagement are each expressly subject to and conditioned upon Manager's presentation of a draft Pro Forma, and Owner's approval of a the draft Pro Forma, within sixty (60) days of the execution of this Agreement. If Owner does not approve Manager's draft budget, this Agreement shall be null and void and Manager shall retain the first two months fees paid to it, as full compensation for its consulting services in preparing the draft Pro Forma.

4.2 **Early Termination.** This Agreement may be terminated by Owner or Manager, with or without cause, at any time by providing the other party with written notice on or before the date such terminating party wishes to terminate this Agreement (the "Termination Date").

(a) For Owner's Convenience: Owner shall have the right to terminate this Agreement for any reason or no reason subject to section 4.3 below.

(b) For Manager's Convenience: Manager shall have the right to terminate this Agreement for any reason or no reason upon twelve (12) months' notice to Owner.

(c) For Cause by Owner: Owner shall have the right to terminate this Agreement for Cause at any time. Upon termination by Owner for cause, Manager shall promptly vacate the Facility and no Early Termination Fee or other compensation, damages or lost profits related to early termination shall be due or payable to Manager. Cause for termination shall include, but not be limited to, Manager's failure to cure the breach of any material provision in this Agreement within twenty (20) days after receipt of written notice to cure from Owner detailing that breach; except that in the event that a cure is not objectively possible within twenty (20) days after that notice, Owner shall not be entitled to terminate for cause where Manager shall commence to cure the noticed breach as fully as possible within that twenty (20) day period and thereafter diligently and continuously pursue that cure to a successful completion within sixty (60) days after that notice.

(d) For Cause by Manager: Manager shall have the right to terminate this Agreement for Cause at any time. Upon termination for cause by Manager shall be contingent upon Manager promptly vacating the Facility and taking nothing of value from Owner without owner's written permission. Manager expressly waives any possessory lien

rights or right of set-off it might have against any of Owner's property or assets. Cause for termination shall include, but not be limited to, Owner's (i) repeated failure to timely pay into the Operating Account budgeted Owner contributions; (ii) Owner's failure to cure the breach of any material provision in this Agreement within twenty (20) days after receipt of written notice to cure from Manager detailing that breach; except that in the event that a cure is not objectively possible within twenty (20) days after that notice, Manager shall not be entitled to terminate for cause where Owner shall commence to cure the noticed breach as fully as possible within that twenty (20) day period and thereafter diligently and continuously pursue that cure to a successful completion within sixty (60) days after that notice.

4.3 Effect of Early Termination.

(a) Upon termination by the Owner for any reason other than for "Cause" due to Manager's breach of any material provision herein, without cure by Manager following the process set out above, Owner shall pay to Manager a termination fee (the "Early Termination Fee") on the Termination Date that is equal to the greater of: (i) the trailing one (1) months' fees due to Manager hereunder or (ii) the average monthly payment due to Manager during the Term. In the Event that Owner terminates this Agreement, Owner shall have the right to request that Manager vacate the Facility and cease all management activities related to the Facility, in which case Owner shall pay Manager the Early Termination Fee as set forth above. Should Manager fail to vacate the Facility within three (3) days of Owner's request the Early Termination Fee set out herein shall be forfeited by the Manager and Owner shall be released from any further responsibility related to such Early Termination Fee.

(b) Upon termination or expiration of this Agreement for any reason, (i) Manager shall promptly discontinue the performance of all services hereunder, (ii) the Owner shall promptly pay Manager all fees due Manager up to the date of termination or expiration (subject to proration if the Term ends other than at the end of the Fiscal Year), (iii) Manager shall make available to the Owner all data, electronic files, documents, procedures, reports, estimates, summaries, and other such information and materials with respect to the Facility as may have been accumulated by Manager in performing its obligations hereunder, whether completed or in process, (iv) Manager shall, in a commercially reasonable manner, cooperate and assist Owner in the transition of management to the successor Facility manager, and (v) Manager shall transfer to Owner all funds in all Operating Accounts.

(c) Without any further action on part of Manager or Owner, the Owner shall, or shall cause the successor Facility manager to, assume all obligations arising after the date of such termination or expiration, under any Service Contracts, Revenue Generating Contracts, booking commitments and any other Facility agreements entered into by Manager in furtherance of its duties hereunder. Notwithstanding the foregoing, Manager is under no duty to provide certain proprietary confidential materials or intellectual property to the Owner, including but not limited to national benchmarking formulas, key

performance indicators reports, employee manuals, employee training materials, employee performance evaluations, financial forecasting formulas, Manager's internal databases or contact lists (this does not include member data and lists), Manager's operations manuals, or other intellectual property developed by and maintained by the Manager and which it may use in its regular course of business to provide services to clients similar to Owner. Any obligations of the parties that are specifically intended to survive expiration or termination of this Agreement shall survive expiration or termination hereof.

4.4 Suspension. Owner may suspend any portion of this Agreement at any time for Owner's convenience and without penalty to Owner upon three (3) days' notice to Manager. Upon any suspension by Owner, Manager shall discontinue the activities related to the suspended portion and shall not resume such activities until notified to proceed by Owner. Each such suspension shall not exceed fifteen (15) consecutive calendar days.

4.5 Subsequent Contract. If the Owner intends, upon termination or expiration of the Term, to continue to provide management at the Facility through a private provider and this Agreement has not been terminated upon a default by Manager then the Owner may, during the final year of the Term (unless the parties mutually agree to renew as provided herein), negotiate and discuss in good faith a new contract or arrangement with Manager for the provision of such services following the completion of such term. The Owner's option to negotiate with Manager is not intended to guarantee any contract rights for a future contract with Manager or any specific terms of a new contract. The Owner may contract with Manager or extend a contract with Manager in its sole and absolute discretion. Should Owner elect to negotiate with a different private provider for management services at the Facility the Manager shall in good faith cooperate with Owner in such negotiations through the timely provision of documentation and information to Owner and shall fully cooperate with any such subsequent private party manager in transitioning management of the Facility to the new manager.

ARTICLE 5 OWNERSHIP; MANAGEMENT; AND USE OF THE FACILITY

5.1 Ownership of Facility, Data, Equipment, and Materials. The Owner will at all times retain ownership of the Facility, including but not limited to real estate, technical equipment, furniture, displays, fixtures and similar property, including improvements made during the Term, at the Facility. Any data, equipment or materials furnished by Owner to Manager or acquired by Manager as an Operating Expense shall remain the property of Owner and shall be returned to Owner when no longer needed by Manager to perform under this Agreement. Notwithstanding the above, Owner shall not have the right to use any third- party software licensed by Manager for general use by Manager at the Facility and other facilities managed by Manager, the licensing fee for which is proportionately allocated and charged to the Facility as an Operating Expense; such software may be retained by Manager upon expiration or termination hereof.

5.2 Management of the Facility. Subject to the terms of this Agreement, Manager

shall be the sole and exclusive manager to manage, operate, maintain, and promote the Facility during the Term and any extension thereof. In such capacity, Manager shall have exclusive authority over the day-to-day operation of the Facility and all activities therein except as otherwise provided for herein. Manager's specific services to be provided to Owner are those services set out in Exhibit A hereto.

5.3 **Approval of the Owner.** To the extent that the approval of the Owner is required under the terms of this Agreement, such approval must be in writing. Except for those amendments and approvals hereto that specifically require consideration by the Orange County Commissioners, Owner shall designate an officer who shall be authorized to approve such other approvals on behalf of the Owner.

5.4 **Standards of Measurement of Manager's Performance.** The Owner is entering into this Agreement in part based upon Manager's stated expertise and experience in managing and promoting other facilities similar in nature to the Facility and that Manager will utilize all of its good faith commercially reasonable efforts to manage the Facility in a first-class, high-quality, fiscally responsible manner and in the Owner's best interest. It is the intention of the parties hereto that Manager will use its good faith commercially reasonable efforts to accomplish the following performance goals in its management of the Facility:

- (a) As an enterprise fund, Manager shall generate sufficient Operating Revenue to cover Operating Costs;
- (b) Operating Revenue shall provide Debt Service Coverage of 1.25X as part of the Budget formulation and Audited results;
- (c) Improving the quality of operations and programming at the Facility;
- (d) Operating the Facility in a manner that promotes the Guiding Principles contained in the Owner's Strategic Plan.

5.5 **Right of Use by Manager.** The Owner hereby gives Manager the right and license to use the Facility for the Term, and Manager accepts such right of use, for the purpose of performing the services herein specified, including the operation and maintenance of all physical and mechanical facilities necessary for, and related to, the operation, maintenance and management of the Facility. The Owner shall provide Manager with a sufficient amount of suitable office space in the Facility (exact office space to be mutually agreed by the parties) to enable Manager to perform its obligations under this Agreement. In addition, the Owner shall make available to Manager, at no cost, parking spaces adjacent to the Facility for all of Manager's full-time employees and for the Facility's event staff.

5.6 **Right of Use of Staff by Manager.** Manager shall have the right to utilize its

employees as needed to support manager's organization as a whole, including but not limited to travel for training and temporary staffing coverage. Manager shall have the right to utilize the Facility to host events for its employees from time to time for the purpose of learning and development, at no cost to the operational budget other than that incurred by the staff who are regularly stationed at the Facility. However, any such utilization of the facility shall not inhibit or impair use of the Facility by Orange County residents.

5.7 **Observance of Agreements and Policies.** The Owner agrees to pay, keep, observe, and perform all payments, terms, covenants, conditions, and obligations under any agreements, leases, bonds, debentures, loans and other financing and security agreements to which the Owner is bound in connection with its ownership of the Facility subject to annual appropriations. The Manager agrees to pay, keep, observe, and perform all payments, terms, covenants, conditions, and obligations under any agreements, leases, bonds, debentures, loans and other financing and security agreements to which Manager is bound in connection with management of the Facility. Further the Manager shall follow all policies and guidelines of the Owner existing at the time of the Effective Date or that may be adopted hereafter (described in Exhibit C), as such policies and guidelines may from time to time be amended, provided the Owner notifies the Manager in writing that such policies and guidelines are applicable to the Facility including, without limitation, any methodology pertaining to the allocation of any costs and expenses by the Owner to the Facility as permitted herein. Upon notification of the applicability of a policy it is Manager's responsibility to remain knowledgeable and informed regarding such policy and all amendments thereto. Exhibit C may be amended without formal amendment of this Agreement through Owner's written notice to Manager via electronic mail. Upon receipt of such notice Manager should respond and acknowledge the amendment and applicability of such policy to the Facility and management thereof. Should Manager fail to respond to the notice and acknowledge the amendment, such amendment to Exhibit C shall become effective three (3) calendar days after the date the notice is sent.

ARTICLE 6 PERSONNEL

6.1 **Generally.** All Facility staff and other personnel shall be engaged or hired by Manager in its sole discretion, and shall be employees, agents, or independent contractors of Manager, and not of the Owner. Manager shall select employees in its sole discretion subject to the Non-Discrimination Policy and Living Wage Policy of Orange County. Manager agrees to use reasonable and prudent judgment in the selection and supervision of such personnel. Owner specifically agrees that Manager shall be entitled to pay its employees, as an Operating Expense, bonuses and benefits in accordance with Manager's then current employee manual, which may be modified by Manager from time to time in its sole discretion.

6.2 **General Manager and Management-Level Employees.** Personnel engaged by Manager will include a full-time on-site General Manager and other Management-Level Employees. The General Manager will have general supervisory

responsibility for Manager and will be responsible for day-to-day operations of the Facility, supervision of employees, and management and coordination of all activities associated with events taking place at the Facility.

6.3 **Post-Termination Employment.** In the event of termination, or in any case where Owner, or its affiliated departments or entities, or any successor manager, expresses an interest in hiring any of Manager's non-management level employees who were not Owner's employees on the Effective Date of this Agreement, Manager may not deny such a request so long as the Manager's employee does not retain or share with Owner the Manager's intellectual property material in any such future employment with Owner. This provision shall also apply to management level employees as it relates to Owner.

ARTICLE 7 PROCEDURE FOR HANDLING INCOME

7.1 **Operating Account(s).** Except as otherwise agreed to by the parties in writing all Revenue derived from operation of the Facility shall be deposited by Manager into the Operating Account(s) as soon as practicable upon receipt (but not less often than once each business day). The specific procedures (and authorized individuals) for making deposits to and withdrawals from such account shall be set forth in the Facility Policy Manual, but the parties specifically agree that Manager shall have authority to sign checks and make withdrawals from such account, subject to the limitation contained in this Agreement, without needing to obtain the co-signature of Owner. The Owner shall have access and visibility to all accounts owned by the Manager related to the Facility.

ARTICLE 8 FUNDING; AUDITS; REPORTS

8.1 **Source of Funding.** Manager shall pay all items of expense for the operation, maintenance, supervision and management of the Facility from the funds in the Operating Account, which Manager may access periodically for this purpose. The Operating Account shall be funded with amounts generated by operation of the Facility (as described in Article 7 above), or otherwise made available by the Owner subject to annual appropriations. To ensure sufficient funds are available in the Operating Account, Owner will deposit in the Operating Account, on or before the Effective Date, the budgeted or otherwise approved expenses for the month beginning on the Effective Date. The Owner shall thereafter, on or before the first (1st) day of each succeeding month following the Effective Date, deposit (or allow to remain) in the Operating Account the budgeted or otherwise approved expenses for each such month. Manager shall have no liability to the Owner or any third party in the event Manager is unable to perform its obligations hereunder, or under any third-party contract entered into pursuant to the terms hereof, due to the fact that sufficient funds are not made available to Manager to pay such expenses in a timely manner.

8.2 **Advancement of Funds.** Under no circumstances shall Manager be required to pay for or advance any of its own funds to pay for any Operating Expenses. In the

event that, notwithstanding the foregoing, Manager agrees to advance its own funds to pay Operating Expenses, Owner shall promptly reimburse Manager for the full amount of such reasonably advanced funds. Owner will also fund an amount to be included in the budget, that will be accounted for as Owner's asset, to be used as operating funds and working capital. The "working capital" will be the baseline account balance for the Operating Account and Owner will contribute funds as needed to maintain that minimum of amount in the Operating Account.

8.3 **Operating Funds.**

(a) Except as otherwise set forth herein, following the approval of the annual operating budget for a Fiscal Year (including, without limitation, any annual operating budget applicable to the first Fiscal Year during the term hereof), the Owner shall make available to Manager all funds necessary to pay all approved expenses pursuant to the approved budgeted Operating Expenses incurred or accrued in such Fiscal Year, to the extent Operating Revenues do not equal or exceed Operating Expenses. On or before January 31st of the Fiscal Year Owner and Manager shall conduct a mid-year review to examine Operating Revenues and Operating Expenses in order to determine whether and to what extent operation of the Facility will result in an operating deficit.

(b) The Manager shall operate the Facility within the approved Operating Budget and subject to the Facility financial policy established by the Owner as described in Exhibit C.

(c) If the Owner appropriates funds at (or reduces appropriated funds to) a level that, in Manager's reasonable, good faith judgment, renders the management of the Facility or any part of the Facility unsafe for use for its intended purpose, Manager shall provide its concerns in writing to the Owner within seven (7) days and (i) Manager and the Owner shall, as soon as practicable and in no event later than the date that Manager has identified as the last date beyond which Manager has determined that it is unsafe to operate the Facility or any part of the Facility (the date of which shall have been included in Manager's notice referenced immediately above), agree on the manner in which the Facility shall be operated or on the increased amount of funding necessary to render the operation of the Facility safe or (ii) Manager may terminate this Agreement pursuant to Section 4.2. In the event of a termination under this subsection and if Manager's concerns are addressed within the twelve (12) month period provided for in Section 4.2, then Manager shall have the right to resume management of the Facility by giving written notice within thirty (30) days of the date such concerns are addressed, provided that this right to resume management shall expire if not exercised in writing within such thirty (30) day period.

8.4 **Annual Budget; Cash Flow Budget.** As part of the annual plan described herein, on or before one hundred twenty (120) days prior to the end of each Fiscal Year, the Manager will prepare a proposed annual operating budget for the next Fiscal Year to meet the scope of services and objectives under this Agreement. Such budget shall contain appropriate line items for revenues and expenses. The Manager shall prepare and submit to the Owner on or before one hundred twenty (120) days prior to the end of each Fiscal Year a proposed annual cash flow budget for the succeeding Fiscal Year. The annual budgets referred to above shall be reviewed and are subject to approval by the Owner. On or before the date of the Orange County Commissioners' last regularly scheduled meeting prior to the end of each Fiscal Year, the Owner shall notify the Manager of any changes to

the proposed annual operating budget and the proposed cash flow funding budget for the succeeding Fiscal Year proposed by Manager and with such changes, if any, as are made by the Owner. In the event that Manager agrees to such changes, which agreement shall not be unreasonably withheld, conditioned or delayed, such budgets may be approved by the Orange County Commissioners for the upcoming Fiscal Year and, if the parties cannot agree on Approved Budgets for the upcoming Fiscal Year, then the previous Fiscal Year's Approved Budgets shall be the Approved Budgets for such upcoming Fiscal Year until a new budget is agreed upon by the parties.

8.5 **Budget Modifications Initiated by Manager.** Manager may submit to the Owner at any time during the Owner's annual budget amendment calendar, but in no event later than May 31st of any Fiscal Year, a supplemental or revised annual operating budget or cash flow budget for such Fiscal Year. Upon the approval of the Owner, the Approved Budgets shall be deemed amended to incorporate such supplemental or revised budget. The Approved Budgets may only be amended as set forth in this Article 8 except that Manager shall have the right to propose amendments to the Approved Budgets for approval by the Owner as may be necessary or appropriate as the result of the scheduling by Manager of additional programs and activities at the Facility (and the incurrence of additional Operating Expenses and Operating Revenue arising from the scheduling of additional programs and activities at the Facility) as long as prior to the scheduling of such activities, Manager had a reasonable good faith belief that the projected Operating Revenues are sufficient to pay for additional Operating Expenses.

8.6 **Budget Modifications Initiated by the Owner.** In the event that it appears reasonably likely, in any Fiscal Year during the term hereof, that the actual Net Operating Loss/Profit for such Fiscal Year will be larger or smaller as the case may be than projected in the annual operating budget for such Fiscal Year, the Owner may request from Manager a plan for reduction of Operating Expenses to a level consistent with the budgeted Net Operating Loss/Profit amount. Manager shall forthwith comply with any such expense reduction requested by the Owner, whether such reduction was included in Manager's proposed plan for reduction or not, and the Approved Budgets for such Fiscal Year shall be modified accordingly, provided that if the Owner's requested reductions, in Manager's reasonable good faith judgment, could materially interfere, impede, or impair the ability of Manager to manage and operate the Facility, Manager shall have the right to terminate this Agreement pursuant to Section 4.2 (with the effect set forth in Section 4.3); and, provided further, Manager shall not be construed to have breached its obligations under this Agreement if such alleged breach has been directly caused by the reductions requested by the Owner, provided that the Owner has been first given reasonable prior written notice by Manager that such requested reduction is likely to result in interference, impediment, or impairment of the Manager's ability to manage or operate the Facility and termination by Manager pursuant to this Section 8.6 is likely to result from such Owner's requested reduction.

8.7 **Operating Receipts and Disbursements.** Manager shall establish and maintain, in one or more depositories designated by the Owner, one or more Operating Accounts for the promotion, operation and management of the Facility, in the name of the Owner, with Manager having signature authority in such employees of Manager as Manager shall reasonably determine provided such employees are properly bonded as specified herein. All revenues collected by Manager from the operation of or in any way related to the Facility shall be deposited into such accounts and Operating Expenses shall be paid by

Manager from such accounts. All revenues collected by Manager arising from, related to or payable in connection with the Facility, including but not limited to revenues from membership fees, user fees, box office sales, facility or equipment rentals, utility rental agreements, food and beverage concessions, naming or pouring rights, licensing agreements, sales, marketing, leasing or other commissions, or any other source, are the sole property of the Owner, held in trust by Manager for the Owner for application as provided herein. Any amounts remaining in such accounts upon termination or expiration of this Agreement for any reason, after payment of all outstanding Operating Expenses, shall be the sole property of the Owner and shall be promptly paid by Manager to the Owner.

8.8 **Ticket Sales Revenues.** Manager shall hold in a separate interest-bearing account in a banking institution depository designated by the Owner any ticket sale revenues which it receives with respect to an event to be held at the Facility pending the completion of the event. Such monies are to be held for the protection of ticket purchasers, the Owner, and Manager, and to provide a source of funds, as required for such payments to performers and promoters and for such payments of Operating Expenses in connection with the presentation of events as may be required to be paid contemporaneously with the event. Following the satisfactory completion of the events, Manager shall deposit such ticket sales revenues into the appropriate Operating Account(s), established herein, and shall pay from the Operating Account all event expenses and provide the Owner with a full event settlement report along with, upon request of the Owner, copies of paid receipts from all vendors, promoters, performers, and other payees of any portion of the ticket sale revenues, and/or other details of such payments. Interest which accrues on amounts deposited in the Operating Account(s) referred to herein and the ticket account referred to above shall be considered Operating Revenues. Bank service charges, if any, on such account(s) shall be considered Operating Expenses.

8.9 **Capital Improvements; Capital Equipment.** The obligation to pay for, and authority to perform, direct, and supervise Capital Improvements and Capital Equipment purchases shall remain with the Owner. The annual plan submitted by Manager shall include Manager's recommendation for Capital Improvements and Capital Equipment purchases to be accomplished during the Fiscal Year and shall be accompanied by an estimate of the cost of all such items and projects and a request that the Owner budget funds therefor. The Owner shall retain the sole discretion to determine whether and to what level to fund Capital Improvements and Capital Equipment purchases to the Facility.

8.10 **Funding of Facility.** The parties agree the Manager shall not be considered to have a funding obligation to fund the operation of the Facility in the event that the Owner cannot appropriate funds for its operation due to changes in Owner's statutory authority or severe emergency financial conditions; provided, however, that this Agreement does not in any manner negate any payment obligations of Manager set forth in this Agreement.

8.11 **Funds for Emergency Repairs.** Manager shall have the right to act, with the consent of the Owner, in situations which Manager determines to be an emergency with respect to the safety, welfare, and protection of the general public, including spending and committing funds held in the Operating Account(s) of the Facility, even if such expenses are not budgeted, provided that use of such funds is directly related to addressing the immediate emergency condition only; provided however, Manager shall have no obligation under any circumstance to spend or commit funds other than funds then available in such accounts for any such purpose. Manager shall contact the Owner prior to taking such actions, and,

immediately following such action, Manager shall inform the Owner of the situation and the action(s) taken, and the Owner shall pay into such account(s) the amount of funds, if any, reasonably spent or committed by Manager pursuant to this section in excess of budgeted amounts.

8.12 **Records and Audits.**

(a) Manager shall keep full and accurate accounting records relating to its activities at the Facility in accordance with generally accepted accounting principles in the U.S. Manager shall maintain a system of bookkeeping adequate for its operations hereunder and sufficient to allow the Owner to determine Manager's compliance with this Agreement and the Facility's complete financial status and performance at any time. Manager shall adjust its accounting procedures upon request by the Owner to conform with any applicable requirements of state or federal law or with the reasonable recommendations of the Owner's Chief Finance Officer or other financial advisors. Manager shall give the Owner's authorized representatives access to Manager's financial and accounting books and records at any reasonable time. Manager shall keep and preserve for at least three (3) years following each Fiscal Year all sales slips, rental agreements, purchase orders, sales books, credit card invoices, records related to social payment apps or other electronic transactions, digital currency transactions, duplicate deposit slips, electronic or digital banking and account information, and other evidence of Operating Revenues and Operating Expenses for such period. In addition, on or before sixty (60) days following each Fiscal Year for which Manager is managing the Facility hereunder, Manager shall furnish to the Owner a balance sheet, a statement of profit or loss, and a statement of cash flows for the Facility for the preceding Fiscal Year, prepared in accordance with generally accepted accounting principles in the U.S. to be audited by the Owner's independent auditor or other independent auditor chosen by the Owner. The audit shall contain an opinion expressed by the independent auditor of the accuracy of financial records kept by Manager and of amounts due to the Owner. The audit shall also provide a certification of Operating Revenues and Operating Expenses as defined in this Agreement for such Fiscal Year. The costs of such audit shall be deemed Operating Expenses.

(b) The Owner shall have the right at any time, and from time to time, to cause its independent auditor or another of Owner's choosing to audit all of the books and records of Manager relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, records of payment apps or other electronic transactions, duplicate deposit tapes, and invoices. No costs incurred by the Owner in conducting such audit shall be considered as Operating Expense. If any such audit demonstrates that the Operating Revenues or Operating Expenditures reflected in any financial statements prepared by Manager and audited as specified in the foregoing subparagraph (a) are understated (in the case of Operating Expenses) or overstated (in the case of Operating Revenues), in either case by more than five percent (5%), or that there were material inaccuracies or omissions of any other nature which appear to be intentional or grossly negligent by Manager, Manager shall pay to the Owner the reasonable cost of such audit. The Owner's right to have such an audit made with respect to any Fiscal Year shall expire upon the expiration of the Manager's obligation to retain all records associated with Manager's management of the Facility. Manager shall retain all such records for the greater of three (3) years or the time period required by the *2021 General Records Schedule: Local Government Agencies* as that schedule is maintained and may be amended from time to time by the North Carolina Department of Cultural Resources

8.13 **Annual Plan.** Manager shall provide to the Owner on or before one hundred twenty (120) days prior to the end of each Fiscal Year, an annual management plan, which shall include the annual operating budget described herein for the next Fiscal Year. The annual plan shall include information regarding Manager's anticipated operations for such Fiscal Year, including planned operating maintenance activities by Manager, requested Capital Improvements and Capital Equipment purchases and an anticipated budget therefor, anticipated programs, activities, and events at the Facility, anticipated advertising and promotional activities, and planned equipment and furnishings purchases. The annual plan shall be subject to review, revision, and approval by the Owner. Following review and revision by the Owner, Manager shall have thirty (30) days to incorporate the Owner's revisions into its plan and resubmit the revised plan for approval. Upon written approval by the Owner, such annual plan shall constitute the operating program for Manager for the following Fiscal Year.

8.14 **Monthly Reports.** Prior to the 15th day of each month during the term of this Agreement, Manager shall provide to the Owner a written monthly report in a form approved by the Owner setting out the Facility's anticipated programs, activities and events for the upcoming month and reporting on the prior month's activities and finances; provided, however, that it shall not be a breach of this agreement if Manager's report is received within three (3) business days of the 15th. Manager shall include in such report a balance sheet, income statement, and other financial reports (such as a departmental expense report and event accounting).

ARTICLE 9 FACILITY CONTRACTS; TRANSACTIONS WITH AFFILIATES

9.1 **Existing Contracts.** To the extent practical or necessary the Owner shall provide to Manager, on or before the Effective Date, full and complete copies of all Existing Contracts between the prior Facility manager and its contractors. Manager shall administer and use reasonable commercial efforts to ensure compliance with such Existing Contracts to the extent provided to Manager and to the extent necessary to maintain operations at the Facility.

9.2 **Execution of Contracts.** Manager shall have the right to enter into Service Contracts, Revenue Generating Contracts, and other contracts related to the operation of the Facility. Any such material agreements shall contain standard indemnification and insurance obligations on the part of each vendor, licensee or service provider, as is customary for the type of services or obligations being provided or performed by such parties. No such contracts shall create an agency relationship between Owner and Manager. Except as otherwise provided herein, no such contracts shall be binding upon the Owner.

9.3 **Transactions with Affiliates.** In connection with its obligations hereunder relating to the purchase or procurement of services for the Facility (including without limitation food and beverage services, ticketing services and Commercial Rights sales), Manager may purchase or procure such services, or otherwise transact business with,

an Affiliate of Manager, provided that the prices charged and services rendered by such Affiliate are competitive with those obtainable from any unrelated parties rendering comparable services. Manager shall, if requested by Owner, provide reasonable evidence establishing the competitive nature of such prices and services, including if appropriate, competitive bids from other persons seeking to render such services at the Facility.

ARTICLE 10

AGREEMENT MONITORING AND GENERAL MANAGER

10.1 **Contract Administrator.** Each party shall appoint a contract administrator who shall monitor such party's compliance with the terms of this Agreement and who shall have authority to make day-to-day decisions regarding the terms of this Agreement. Manager's contract administrator shall be its General Manager at the Facility, unless Manager notifies Owner of a substitute contract administrator in writing. Owner shall notify Manager of the name of its contract administrator within thirty (30) days of execution hereof. Any references in this Agreement requiring Manager or Owner participation or approval shall mean the participation or approval of such party's contract administrator except that, unless otherwise provided herein, approval of amendments to this Agreement must be approved by Owner's governing board.

ARTICLE 11 INSURANCE

11.1 **Liability Insurance.** The policy limits shown below are minimums. If Manager maintains broader coverage or higher limits than the minimums shown herein, the Owner shall be entitled to the broader coverage and higher limits maintained by Manager. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Owner. Manager shall secure and deliver to the Owner prior to the commencement of the Term and shall keep in force at all times during any period in which Manager has operations at the Facility, a commercial liability occurrence insurance policy, including public liability and property damage, covering the premises and the operations hereunder, in the amount of One Million Dollars (\$1,000,000.00) for bodily injury and One Million Dollars (\$1,000,000.00) for property damage, including products and completed operations and independent contractors. Manager shall also maintain Property Damage Insurance with a single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. Manager shall also maintain Umbrella liability insurance from these limits up to no less than a limit of Five Million Dollars (\$5,000,000). Manager shall be the named insured under all such policies. The Owner shall be an additional insured under the foregoing insurance policies, as its interests may appear, and said policies shall contain a provision covering the parties' indemnification liabilities to each other. Certificates of insurance naming Owner and evidencing all the policies required of Manager hereunder along with copies of the paid receipts therefor shall be delivered to the Owner prior to the commencement of this Agreement. Notwithstanding the provisions of this Article 11, the parties hereto acknowledge that the policies herein may contain exclusions from coverage which are reasonable and customary for policies of such type. Each such Manager's policy or certificate shall contain a valid provision or endorsement

stating, "This policy will not be canceled or materially changed or altered without first giving thirty (30) days' written notice thereof to Orange Owner, North Carolina, Attention: Orange Owner Risk Manager, P.O. Box 8181, Hillsborough, NC 27278, sent by certified mail, return receipt requested."

11.2 **Endorsement.** The additionally insured endorsement shall further provide the Owner, its officers, officials, employees, and agents are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of Manager including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Manager's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used). With respect to policies procured by it, Manager shall deliver to the Owner satisfactory evidence of such renewal of such policies prior to a policy's expiration date except for any policy expiring on the termination or expiration date of this Agreement or thereafter. Except as provided in Sections 11.5 and 11.6, all insurance procured by Manager in accordance with the requirements of this Agreement shall be primary over any insurance carried by the Owner and shall not require contribution by the Owner.

11.3 **Worker's Compensation Insurance.** Unless explicitly exempted under law, Manager shall, at all times, maintain worker's compensation insurance (including occupational disease hazards) with an authorized insurance company or through the North Carolina State Compensation Insurance Fund or through an authorized self-insurance plan approved by the State of North Carolina insuring its employees at the Facility in amounts equal to or greater than required under law.

11.4 **Fidelity Insurance and Bonds.** Manager shall maintain during the term of this Agreement Fidelity Insurance or Fidelity Bonds covering all of Manager's personnel employed at the Facility in the amount of Five Hundred Thousand Dollars (\$500,000.00) for each loss, to reimburse the Owner for Losses experienced due to the dishonest acts of Manager's employees.

11.5 **Property Insurance.** Manager shall maintain sufficient property damage or loss insurance to cover personal property owned by Manager and the Owner at the Facility and shall maintain such insurance beginning as of the date hereof and continuing throughout all periods in which Manager has any operations at the Facility. The Owner shall maintain property insurance covering the premises of the Facility. Certificates evidencing the existence of the policies shall be maintained with Owner's risk management department and may be provided to manager upon request. Notwithstanding the provisions of this Section 11.5, the parties hereto acknowledge that the above policies may contain exclusions from coverage which are reasonable and customary for policies of such type. With respect to policies procured by it, the Contract Administrator on behalf of the Owner shall deliver to Manager satisfactory evidence of such renewal of such policies at least twenty (20) days after a policy's expiration date except for any policy expiring on the termination date of this Agreement or thereafter.

11.6 **Certain Other Insurance.** If any Agreements signed by Manager prior to the Effective Date (the "Pre-existing Agreements") consist of agreements with independent contractors to provide services in respect of the Facility, Manager shall use its best efforts to cause such contractors to name Manager as an additional insured under any insurance maintained by such contractors pursuant to the terms of such Pre-existing Agreements and in such event to deliver to Manager promptly after request therefor a certified copy of such policy and a certificate evidencing the existence thereof. In addition, if Manager enters into any agreements during the Management Term and any Renewal Term with any independent contractors for the provision of services hereunder, Manager shall have the right to require such contractors to name Manager as an additional insured under any insurance required by Manager thereunder and to deliver to Manager prior to the performance of such services a certified copy of such policy, plus a certificate evidencing the existence thereof, which policy contains the same type of endorsements and provisions as provided in Section 11.2. If Manager does require such contractors to name Manager as an additional insured under any insurance required by Manager, it shall also require such contractors to name the Owner as an additional insured and such policies shall contain the same type of endorsements and provisions as provided in Section 11.2. Manager shall, within ninety (90) days of the date of this Agreement and at least yearly thereafter, review the insurance carried by the Owner and Manager covering the Facility or any of Manager's or the Owner's operations at the Facility, or required of third parties using the Facility, with regard to Manager's experiences at other similar facilities, and shall within fifteen (15) days of such review advise the Owner in writing of the results of its review and of any changes, additions or increases to the insurance requirements hereunder or applicable to third parties which are advisable under best facility management practices. The parties hereto shall each immediately notify the other, along with any applicable insurance carrier(s), in writing of any occurrence or discovery which could result in an insurance claim hereunder. Manager shall require reasonable liability insurance from all third-party licensees, lessees, tenants, and users of the Facility and shall enforce the provisions contained in all third-party contracts entered into in connection with the Facility, including the insurance requirement contained in all Owner approved event license, concessionaire, subcontractor and other similar agreements. All such liability insurance shall name Manager and Orange Owner as additional insureds.

11.7 **Self-insured retentions (SIR).** SIR must be declared to and approved by the Owner. The Owner may require Manager to purchase coverage with a lower retention or provide proof of ability to pay Losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the SIR shall be satisfied by Manager, but may, at the Owner's sole discretion, be satisfied by the Owner. The commercial general liability and any policies, including excess liability policies, may not be subject to SIR that exceed \$2,500 unless approved in writing by the Owner. Any deductibles and SIR shall be the sole responsibility of Manager and shall not apply to the Owner except as stated in this subsection. Policies shall NOT contain any SIR provision that limits the satisfaction of the SIR to Manager. Owner reserves the right to obtain a copy of any policies and endorsements for verification.

ARTICLE 12 COVENANTS AND REPRESENTATIONS; INDEMNIFICATION

12.1 **Owner's Covenants and Representations.** Owner makes the following covenants and representations to Manager, which covenants, and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) Owner's Status. Owner is a county government duly organized, validly existing, and in good standing under the laws of the State of North Carolina with full power and authority to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Owner has been duly authorized and approved by requisite action and this Agreement has been duly executed and delivered by Owner and constitutes a valid and binding obligation of Owner, enforceable in accordance with its terms and applicable laws.

(c) Documentation. If reasonably necessary to carry out the intent of this Agreement, Owner agrees to execute and provide to Manager, on or after the Effective Date, any and all other instruments, documents, conveyances, assignments, and agreements which Manager may reasonably request in connection with the operation of the Facility.

12.2 **Manager's Covenants and Representations.** Manager makes the following covenants and representations to Owner, which covenants, and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

(a) Corporate Status. Manager is a _____ duly organized, validly existing, and in good standing under the laws of the State of North Carolina or is a corporation organized under the laws of the State of _____ and is registered with the North Carolina Secretary of State and authorized to transact business throughout the United States with full corporate power to enter into this Agreement and execute all documents required hereunder.

(b) Authorization. The making, execution, delivery, and performance of this Agreement by Manager has been duly authorized and approved by all requisite action of the board of directors of Manager, and this Agreement has been duly executed and delivered by Manager and constitutes a valid and binding obligation of Manager, enforceable in accordance with its terms and applicable laws.

(c) Effect of Agreement. To Manager's best knowledge, without duty of inquiry, neither the execution and delivery of this Agreement by Manager nor Manager's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Manager is subject; or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any

other agreement or document to which Manager is a party or is otherwise bound.

(d) **Manager agrees it will at all times remain in compliance with all applicable federal, state, and local laws.** Manager affirmatively states it is not a "restricted company" as that term is described in North Carolina General Statutes 147-86.58, 147-86.60, 147-86.81, and 147-86.82.

12.3 Indemnification.

(a) **INDEMNIFICATION BY MANAGER. MANAGER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OWNER AND ITS OFFICIALS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUCCESSORS, AND ASSIGNS AGAINST ANY CLAIMS, CAUSES OF ACTION, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) LIABILITIES, OR DAMAGES (COLLECTIVELY, "LOSSES") SUFFERED BY THOSE PARTIES, ARISING OUT OF OR IN CONNECTION WITH (I) ANY MATERIAL DEFAULT OR BREACH BY MANAGER OF ITS OBLIGATIONS SPECIFIED HEREIN, (II) ANY CLAIM AGAINST MANAGER RELATED IN ANY WAY TO MANAGER'S MANAGEMENT OF THE FACILITY, AND (III) ANY WRONGDOING, ACT, OR FAILURE TO ACT BY ANY EMPLOYEE, AGENT, OR CONTRACTOR OF MANAGER. THE INTENT OF THIS PARAGRAPH IS THAT THE MANAGER DEFEND, INDEMNIFY, AND HOLD HARMLESS THE OWNER TO THE GREATEST EXTENT AUTHORIZED BY LAW.**

(b) Indemnification by Owner. To the extent authorized by North Carolina law, Owner agrees to defend, indemnify and hold harmless the Manager and its managers, directors, officers, employees, agents, successors and assigns against any claims, causes of action, costs, expenses (including reasonable attorneys' fees) liabilities, or damages (collectively, "Losses") suffered by those parties, arising out of or in connection with any (i) grossly negligent act or omission, or willful misconduct, on the part of Owner or any of its employees or agents in the performance of its obligations under this Agreement; or (ii) breach by Owner of any of its representations, covenants or agreements made herein.

(c) Conditions to Indemnification. With respect to each separate matter brought by any third party against which a party hereto ("Indemnitee") is indemnified by the other party ("Indemnitor") under this Section, the Indemnitor shall be responsible, at its sole cost and expense, for controlling, litigating, defending and otherwise attempting to resolve any proceeding, claim, or cause of action underlying such matter, except that (i) the Indemnitee may, at its option, participate in such defense or resolution at its expense and through counsel of its choice; (ii) the Indemnitee may, at its option, assume control of such defense or resolution if the Indemnitor does not promptly and diligently pursue such defense or resolution, provided that the Indemnitor shall continue to be obligated to indemnify the Indemnitee hereunder in connection therewith; and (iii) neither Indemnitor nor Indemnitee shall agree to any settlement without the other party's prior written consent (which shall not be unreasonably withheld or delayed). In any event, Indemnitor and Indemnitee shall in good faith cooperate with each other and their respective counsel with respect to all such actions or proceedings, at the Indemnitor's sole expense. With respect to each and every matter with respect to which any indemnification may be sought

hereunder, upon receiving notice pertaining to such matter, Indemnitee shall promptly (and in no event more than fifteen (15) days after any third-party litigation is commenced asserting such claim) give reasonably detailed written notice to the Indemnitor of the nature of such matter and the amount demanded or claimed in connection therewith.

(d) Survival. The obligations of the parties contained in this Section shall survive the termination or expiration of this Agreement.

ARTICLE 13 MISCELLANEOUS

13.1 **Relationship.** Manager and Owner shall **not** be construed as joint venturers or general partners of each other, and neither shall have the power to bind or obligate the other party except as set forth in this Agreement. Manager understands and agrees that the relationship to Owner is that of independent contractor, and that it will not represent to anyone that its relationship to Owner is other than that of independent contractor. Nothing herein shall deprive or otherwise affect the right of either party to own, invest in, manage or operate property, or to conduct business activities, which are competitive with the business of the Facility. Manager covenants and agrees that even though it may have a management responsibility for other similar properties, which from "time to time" may be competitive with the Facility, Manager shall always represent the Facility fairly and deal with Owner on an equitable basis.

Manager has the right to display its brand and marks in the Facility and on the Facility's marketing materials in a manner that does not exceed 10% of the overall impression of the Facility's own brand. Manager has the right to use and store the database and contact information of the customers of the Facility. Manager will provide from time-to-time images and other marketing material that it owns and holds the license to for use by the Facility. Owner agrees not to use those images and that material in any manner outside of the operation of the Facility while Manager is engaged to operate it. Manager has the right to use images and marks from the Facility for its own marketing and promotions material without restriction while the Manager is engaged to operate the Facility.

13.2 **Assignment.** This Agreement shall not be assigned by either party without the express written consent of the non-assigning party. Any such assignment made without proper consent shall be deemed void.

13.3 **Benefits and Obligations.** The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors, and assigns. There are no third-party beneficiaries of this Agreement and nothing in this Agreement, express or implied, is intended to confer on any person other than the parties hereto (and their respective successors, heirs and permitted assigns), any rights, remedies, or obligations.

13.4 **Fees for Legal Advice.** Except as otherwise provided in Section 12.3 each party is responsible for its own legal fees and costs.

13.5 **Fees for Other Professional Services**. Unless otherwise provided for herein each party is responsible for its own professional services fees and costs.

13.6 **Building Compliance**. Manager shall notify Owner promptly, or forward to Owner promptly, any complaints, warnings, notices, or summonses received by Manager relating to such building code compliance or related matters. Owner represents that to the best of Owner's knowledge, the Facility and all Capital Equipment contained therein comply with all applicable building codes.

13.7 **Notices**. Except as otherwise provided herein, all notices provided for in this Agreement shall be in writing and served by registered or certified mail, return receipt requested, postage prepaid, at the following addresses until such time as written notice of a change of address is given to the other party:

If to Owner:

Orange County
Attention: _____
P.O. Box 8181
Hillsborough, NC 27278
And via Email:

With a copy to:
Orange County Attorney
P.O. Box 8181
Hillsborough, NC 27278

If to Manager:

And via email:

With a copy to:

13.8 **Owner Responsible for Payments.** Upon termination of or withdrawal from this Agreement, Owner shall assume the obligations of any contract or outstanding bill executed by Manager under this Agreement for and on behalf of Owner when Manager was instructed in writing by Owner to enter such contract or incur such outstanding bill.

13.9 **Headlines.** All headings and subheadings employed within this Agreement and in the accompanying schedules and exhibits are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

13.10 **Event of Force Majeure.** Any delays in the performance of any obligation of Manager or Owner under this Agreement shall be excused to the extent that such delays are caused by an Event of Force Majeure not within the control of Manager or Owner and any time periods required for performance shall be extended accordingly.

13.11 **Rights Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to either of the parties to this Agreement is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given under this Agreement or now or hereafter legally existing upon the occurrence of an event of default under this Agreement. The failure of either party to this Agreement to insist at any time upon the strict observance or performance of any of the provisions of this Agreement, or to exercise any right or remedy or be construed as a waiver or relinquishment of such right or remedy with respect to subsequent defaults. Every right and remedy given by this Agreement to the parties may be exercised from "time to time" and as often as may be deemed expedient by those parties.

13.12 **Applicable Law.** The execution, interpretation, and performance of this Agreement shall in all respects be controlled and governed by the laws of the State of North Carolina. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the General Court of Justice sitting in Orange County, North Carolina. Each party consents to the sole and proper jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Binding arbitration may not be initiated by either Party, however, the Parties may agree to nonbinding mediation of any dispute prior to the bringing of a suit or action.

13.13 **Acknowledgement.** The parties hereto acknowledge that they have been provided with a copy of this Agreement for review prior to signing it, that they have been given the opportunity to review it prior to signing it, that they have been given the opportunity to have this Agreement reviewed by their attorney prior to signing it, and that they understand the purposes and effect of this Agreement.

13.14 **Severability.** If any provision or provisions of this Agreement shall be held to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other

provisions of this Agreement, and this Agreement shall be construed and enforced as if such provision or provisions had not been included.

13.15 **Intellectual Property.** Owner acknowledges that Manager has certain intellectual property, trade secrets, and proprietary business techniques ("Intellectual Property") that it will use on behalf of Owner to meet its obligations under this Agreement. Owner acknowledges that it obtains no ownership rights whatsoever in the Intellectual Property and, upon termination of this Agreement, Manager shall retain all rights to the Intellectual Property and remove such Intellectual Property from the Facility and its operations. For purposes of this Agreement, the term Intellectual Property shall include, without limitation, analytical tools and documented procedures for forecasting, performance tracking, operational and marketing systems that are unique to Manager's approach, staff training programs, program curriculum and agendas, rights to certain discounts or programs that Manager has negotiated for Manager-operated facilities, and other intellectual property which Manager has previously introduced to the Facility and of which Manager is an author.

13.16 **Youth Sports.** All Orange County recreation facilities are operated primarily to benefit Orange County residents at reasonable and affordable costs. Manager may offer adult sports leagues and teams at the Facility. Additionally, the Manager shall offer non-travel house/recreational level youth sports teams, leagues, matches, and access at the Facility and in so doing shall cater primarily to Orange County residents. Such house/recreational level youth sports teams and leagues shall include practices and games, matches, festivals, and tournaments at substantially similar numbers, frequency, times, and costs to what has historically been provided at the Facility. Priority will be given to introduction, grassroots development, and growth of house/recreational level youth sports. Manager may offer travel level sports teams, however, such travel level youth sports teams shall not supplant, or in any way reduce Facility access by, house/recreational level youth sports teams and leagues. Manager shall offer qualifying 80% Area Median Income (as determined by the U.S. Department of Housing and Urban Development) Orange County families access to all such house/recreational level and travel level teams through income based scholarships or other substantially reduced cost programs. Manager may offer all abilities of youth sports teams, leagues, and scholarship programs directly or through third party providers.

13.17 **Owner Use and Access.** Upon reasonable advance notice Owner may, at Owner's discretion, direct Manager to provide access to the Facility by civic and nonprofit organizations and, subject to the terms herein, may direct such access be provided at reduced rates. Further, Owner shall have the right to use the Facility or any part thereof, upon reasonable advance notice and subject to any pre-existing commitments, for such purposes as meetings, seminars, training classes, or other uses without the payment of any rental or use fee, except that direct out-of-pocket expenses incurred in connection with such uses shall be paid by Owner. Owner may, at owner's discretion, access the Facility for maintenance, repairs, and to respond to emergency situations at any time. Owner will make reasonable efforts to ensure such access does not impair Manager's management of the Facility.

13.18 **Passmore Senior Center.** The Facility is part of the larger structure and facility owned by Owner that includes the Passmore Senior Center, situated at 103 Meadowlands Drive, Hillsborough, North Carolina and Senior Care of Orange County, Inc., DBA Soltys Place situated at 105 Meadowlands Drive, Hillsborough, North Carolina. Manager shall have no responsibility or authority with regard to these two facilities. During events at the Facility the Manager shall ensure that sufficient parking for, and access, ingress, and, egress to and from the Passmore Senior Center and Soltys Place are reasonably maintained and clear of obstruction. In the event maintenance or repair projects related to the Passmore Senior Center or Soltys Place require access, ingress, and, egress in, over, under, or through the Facility or Facility parking areas Manager shall fully cooperate with Owner and Owner's agents, employees, and contractors allowing such access, ingress, and, egress.

13.19 **Hazardous Substances.** Manager shall not cause or permit any Hazardous Substance (defined below) to be used, stored, generated or disposed of on or in the Facility. If Hazardous Substances are unlawfully used, stored, generated or disposed of on or in the Facility, or if the Facility becomes contaminated in any manner for which Manager is responsible or liable, Manager shall, to the extent permitted by law, and as provided herein, indemnify and hold harmless Owner from any and all claims, damages, fines, judgments, penalties, costs, liabilities or Losses (including, without limitation, a decrease in value of the Facility or improvements, damages due to loss or restriction of rentable or usable space, or any damages due to adverse impact on marketing of the space, and any and all sums paid for settlement of claims, attorneys' fees, consultant and expert fees) arising during or after the term hereof and arising as a result of such use, storage, generation, disposal, or contamination by Manager. This indemnification includes, without limitation, any and all costs incurred due to any investigation of the site, or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision. Without limitation of the foregoing, if Manager causes or permits the presence of any Hazardous Substance on the Facility premises and such results in contamination, Manager shall promptly, at its sole expense, take any and all necessary actions to return the Facility premises to the condition existing prior to the presence of any such Hazardous Substance on the Facility premises after first obtaining Owner's approval for such remedial action. Pesticides, herbicides, and insecticides shall not be used at the Facility without the express consent of Owner. Manager agrees to comply with all applicable North Carolina and Federal Hazardous Substances and materials laws in exercising its rights under this Agreement. Manager solely and exclusively responsible for prohibiting the introduction of Hazardous Substances to the Facility by any user, licensee, lessee, or tenant and upon the discovery of such introduced substances shall take immediate action to remove such Hazardous Substances and the offending user, licensee, lessee, or tenant from the Facility.

"Hazardous Substances" shall mean any hazardous wastes, hazardous substances, hazardous constituents, toxic substances or related materials, any substance which is toxic, ignitable, reactive, or corrosive, whether solids, liquids or gases, including but not limited to substances defined as "hazardous waste", "extremely hazardous waste",

“hazardous substances,” “toxic substances,” “pollutants,” “contaminants,” “radioactive materials,” or other similar designations in, or otherwise subject to regulation under, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (CERCLA), 42 U.S.C. §§ 9601 et seq.; the Toxic Substance Control Act (TSCA), 15 U.S.C. §§ 2601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1802 et seq.; the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 9601 et seq.; The Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300(f) et seq.; the Clean Air Act (CAA), 42 U.S.C. §§ 7401 et seq.; all as amended; any law, rule, or regulation, federal, state or local, now or hereafter in existence, governing or relating to the creation, use, storage, sale, retention, or transportation of hazardous or toxic substances and wastes; in the plans, rules, regulations or ordinances adopted, or other criteria and guidelines promulgated pursuant to the preceding laws or other similar laws, regulations, rule or ordinance now or hereafter in effect; and any other substances, constituents or wastes subject to environmental regulations under any applicable federal, state or local law, regulation or ordinance now or hereafter in effect. “Hazardous Substance” includes but is not restricted to asbestos, polychlorobiphenyls (“PCBs”), and petroleum (in any form or nature).

Hazardous Substances shall not include fuel maintained on site to fuel any emergency power generators and shall not include typical cleaning supplies, all of which Manager shall use and store in a safe and reasonable manner.

13.20 **States of Emergency.** During any state of emergency affecting Orange County that is declared or proclaimed pursuant to the authority granted by Article 1A of North Carolina General Statute 166A the Owner may suspend the terms of this Agreement, restrict access to the Facility, and utilize the Facility as may be needed if it is determined by Orange County officials that doing so will assist in addressing the cause or effects of the emergency. Action taken pursuant to this section shall not constitute a default or breach of the Agreement by either party.

13.21 **Non-Appropriation.** Manager acknowledges that Owner is a governmental entity, and the validity of this Agreement is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable or not appropriated for the performance of Owner’s obligations under this Agreement, then this Agreement shall automatically expire without penalty to Owner immediately upon written notice to Manager of the unavailability or non-appropriation of public funds. In the event of a change in the Owner’s statutory authority, mandate, or mandated functions, by state or federal legislative or regulatory action or state or federal judicial action, which adversely affects Owner’s authority to continue its obligations under this Agreement, then this Agreement shall automatically terminate without penalty to Owner upon written notice to Manager of such limitation or change in Owner’s legal authority. It is expressly agreed that Owner shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement.

13.22 **Signatures.** This Agreement together with any amendments or modifications may be executed electronically. All electronic signatures affixed hereto evidence the consent of the parties to utilize electronic signatures and the intent of the Parties to comply with Article 11A and Article 40 of North Carolina General Statute Chapter 66.

13.23 **Priority.** In any dispute regarding the meaning of any term or provision herein or of the responsibilities of the parties the parties may reference the Owner's Request for Proposals together with attachments ("RFP"), the Facility Policy Manual, and the Manager's Proposal together with attachments and such documents may inform the parties regarding the dispute. In any conflict between the terms the priority of documents shall be as follows: This Agreement, the Facility Policy Manual, the Owner's RFP together with attachments, Manager's Proposal together with attachments.

13.24 **Confidentiality.** In connection with the performance of Manager's services hereunder, the Owner acknowledges that Manager may provide the Owner and its employees, agents, and contractors (including without limitation any engineering firm that may be retained by Manager for the Facility) with Confidential Information as defined below. In addition, in connection with the performance of the services hereunder, Manager may provide to the Owner and its employees, agents, and contractors with materials that are protected by copyright or trademark of Manager.

a. The Owner agrees that it shall keep secret and confidential any and all Confidential Information already disclosed or to be disclosed to it by Manager which has been designated as confidential in writing by Manager, and the Owner shall not divulge any such Confidential Information, in whole or in part, to any third party except as is expressly permitted below or as may be required by state or federal law. The Owner shall not use any such information, except for the express purpose of utilizing it in connection with the management of the Facility. The Owner shall not directly or indirectly disclose or discuss any such information with any person, other than employees, agents and contractors of the Owner who are directly concerned with the management of the Facility, provided, however, that in the event of any such disclosure to its employees, agents and contractors, the Owner (i) shall first inform Manager of its desire to make such disclosure, (ii) if requested by Manager, shall require such employees, agents or contractors to execute and deliver to Manager prior to any disclosure by the Owner to them, an agreement acknowledging a receipt of a copy of the provisions of this section and agreeing to be bound by such provisions to the same extent as the Owner, and (iii) in any event, shall advise in writing all such persons of the existence of the provisions of this section and of their responsibility to comply with such provisions.

b. "Confidential Information" means any and all information disclosed (orally, in writing, by inspection, or otherwise) to the Owner by Manager pursuant to this Agreement which information has been designated as confidential in writing by Manager. Such information includes, and is limited to, _____. The restrictions upon confidentiality and use of Confidential Information set forth in this section do not apply to

information which the Owner can demonstrate was publicly available or lawfully in its possession at the time of its disclosure to the Owner by Manager.

c. With respect to any information or material which is protected by copyright or trademark of Manager, no part of such materials may be reproduced, stored in a data base and retrieval system, or transmitted in any form or by any means graphic, electronic, photocopying, recording, mechanical, or otherwise without the prior written permission of Manager. Within thirty (30) days of the Effective Date Manager shall provide Owner with a written listing of all such copyrighted and trademarked information and materials.

d. The Owner agrees that the provisions of this section are reasonable and necessary to protect the interests of Manager and that Manager's remedies at law for a breach of any of the provisions of this section are inadequate and that, in connection with any such breach, Manager will be entitled, as its sole remedy whether at law or in equity, to temporary and permanent injunctive relief without the necessity of proving actual damage or immediate or irreparable harm, or of the posting of a bond. Notwithstanding the foregoing, if a court of competent jurisdiction shall determine any of the provisions of this section to be unreasonable, Manager agrees to such provisions will be of no effect.

e. The Owner acknowledges the Confidential Information claim of Manager contained in this section. In the event a public records request seeks Confidential Information the Owner agrees, consistent with the public records law of North Carolina, to assert that claim. The Owner and Manager acknowledge that the Owner is a local government and a political subdivision of the State of North Carolina and as such is subject to the Public Records Laws of the State of North Carolina. The Owner's agreement contained in this section to assert this claim does not require the Owner to violate any such laws and does not require the Owner to litigate and pay for the litigation of the right to withhold access to or copies of such claimed Confidential Information. The Owner agrees to notify Manager of any such request it receives under the Public Records Laws of North Carolina for access, copies, or use of the Confidential Information and agrees that Manager may, at its election and expense, direct its attorneys to defend the claim in the Owner's name provided Manager agrees in writing, before undertaking such a defense, to indemnify and hold the Owner, its officials, officers, and employees, harmless from any consequence of the defense. Nothing in this section requires the Owner, its officials, officers, or employees, to subject itself and themselves to criminal or civil liability and each may independently act in good faith to protect itself and themselves from criminal and liability. The Manager is fully and solely responsible for all money damages, litigation fees and costs, and attorneys' fees resulting from the defense against producing Confidential Information. The Owner agrees, in good faith, to take all reasonable steps to prevent the unauthorized access, use, or transfer of the Confidential Information.

13.25 **Entire Agreement.** This Agreement, including any specified attachments or exhibits, constitutes the entire agreement between Owner and Manager with respect to the management and operation of the Facility and supersedes and replaces any previous management agreements entered into or negotiated between Owner and Manager relating

to the Facility covered by this Agreement. Except as otherwise provided herein, no change to this Agreement shall be valid unless made by supplemental written agreement executed and approved by Owner and Manager. Except as otherwise provided herein, any amendments, additions, or deletions to this Agreement shall be null and void unless approved by Owner and Manager in writing. Each party to this Agreement hereby acknowledges and agrees that the other party has made no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein, and that each party, in entering into and executing this Agreement, has relied upon no warranties, representations, covenants, or agreements, express or implied, to such party, other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first above written.

For Orange County

For _____

By: _____
Orange County Manager

By: _____

EXHIBIT B MANAGER COMPENSATION

During the Term of this Agreement, Manager shall receive compensation from the Owner subject to annual appropriation according to the following:

1. Base Management Fee
2. Reimbursable Expenses

1. **Base Management Fee.** Beginning____and continuing thereafter on the first day of each month throughout the remainder of the Term, Owner shall pay a monthly fee to Manager (the "Base Management Fee") in equal monthly installments of _____ per month. Each installment will be due and payable on the first day of each successive month. The Base Management Fee shall not exceed _____ per Fiscal Year.

2. **Reimbursable Expenses.** Manager shall be reimbursed for activities such as _____ directly related to the Management Services described in Exhibit A, provided however, that Manager received prior written approval of the Owner prior to engaging in such activities. All such reimbursement will be based on verified receipts to be furnished by Manager to the Owner. Such expenses may include but are not limited to _____. All fees and reimbursements should be paid to Manager within thirty (30) calendar days of invoicing. Reimbursable Expenses shall not exceed _____ per Fiscal Year. Reimbursable Expenses are limited to Manager's expenditures for:

(a) ...

(b) ...

(c) ...

(d) ...

EXHIBIT C APPLICABLE OWNER POLICIES

The Orange County Living Wage Policy (available [here](#))

The Orange County Non-discrimination/Retaliation Policy (available [here](#))

Orange County's policy that its recreation facilities shall primarily benefit the residents of Orange County at the lowest reasonable costs

The Orange County Board of Health Smoke Free Public Places Rule (available [here](#))

The Orange County Sportsplex Financial Policy (the Facility financial policy, available [here](#))

Orange County Sportsplex Full Year FY23-24 to June 30th.

Orange County Sportsplex Budget	July 2023 Actual	August 2023 Actual	Sept. 2023 Actual	Oct. 2023 Actual	Nov. 2023 Actual	Dec.2023 Actual	Jan.2024 Actual	Feb. 2024 Actual	Mar. 2024 Actual	April 2024 Actual	May 2024 Actual	June 2024 Sactual	FY23-24 Actual
Revenues													
Ice Rink Programs	106,901	163,331	162,105	179,344	126,787	275,634	285,837	185,739	157,479	180,629	235,820	185,899	
Aquatics	41,522	63,073	60,219	53,452	53,387	54,925	47,634	73,153	44,847	51,522	60,833	50,806	
Kidsplex	23,470	27,316	34,300	37,967	52,537	53,887	130,074	77,751	73,361	72,451	32,605	25,130	
Wellness and Memberships	111,600	113,887	122,911	113,546	128,645	120,576	135,912	113,539	135,509	137,221	140,834	135,282	
Field House (Turf and Court)	23,741	17,698	23,930	19,935	19,298	20,459	33,746	32,077	32,611	22,384	23,426	16,375	
Other Income	16,922	20,131	24,426	26,505	26,420	32,962	38,154	26,328	33,222	16,572	27,720	18,176	
Total Revenues	324,156	405,436	427,891	430,749	407,074	558,443	671,358	508,587	477,029	480,779	521,238	431,668	5,644,408
Expenses													
Marketing	525	1,782	982	4,570	2,757	136	1,285	1,000	646	3,449	2,367	1,000	
Credit Card Fees	7,347	7,265	8,537	9,030	9,028	8,034	12,361	14,537	9,840	11,428	9,953	11,539	
IT/Communication	5,680	3,879	3,960	5,762	3,881	3,780	4,646	4,305	4,422	5,419	4,729	5,225	
Education, Certif., Lic. & Dues	2,907	1,783	1,833	1,785	2,090	2,035	2,656	1,825	676	1,159	6,108	1,723	
Equipment Lease	444	541	445	2,013	445	228	1,830	444	444	1,908	450	450	
Concession/ Vending/Kidsplex Food	4,666	5,717	7,243	7,456	6,241	11,250	10,275	5,947	4,533	4,559	5,979	5,313	
Liability Insurance	3,634	3,634	3,634	3,634	3,634		13,868	2,840	6,839	20,139	4,618	4,618	
Payroll Costs:													
Management Payroll	10,191	9,172	9,172	9,172	13,205	11,180	9,754	9,754	9,754	9,724	14,540	9,693	
Operating Wages	105,232	106,712	95,001	102,102	135,382	111,610	97,105	105,344	105,299	102,685	165,154	114,556	
Payroll Taxes & Benefits	12,539	12,582	11,367	11,766	12,184	17,942	12,109	12,203	10,825	11,753	14,302	9,879	
Health Insurance	6,435	7,177	6,730	6,766	8,766	8,920	7,008	7,507	6,840	8,880	9,317	9,851	
Workers Comp.	328	164	345	864	700	926	693		480	5,430	480	615	
Maint & Repairs Bldgs.	2,334	7,308	13,668	11,950	11,032	7,881	8,143	6,549	9,500	7,958	8,410	5,588	
Maint & Repairs Equip	16,309	19,261	14,919	36,821	9,856	18,948	6,306	5,668	19,381	4,328	3,945	11,880	
Landscaping	6,800	1,000	1,000		2,600		1,000			400	3,000	5,250	
Office Costs and Supplies	2,032	2,227	2,765	1,758	1,583	3,596	1,805	3,112	1,322	3,022	1,579	2,096	
Operating/Janitorial Supplies	22,582	9,706	33,942	22,186	26,823	18,164	14,463	22,662	16,600	16,166	28,401	57,298	
Outside Services	2,086	1,798	1,532	2,149	1,956	1,672	1,764	1,870	1,154	2,421	1,762	1,919	
Management Fees	15,723	15,723	15,723	15,723	15,723	15,725	15,723	15,723	15,723	15,723	15,723	15,723	
Contract Coaches/Trainers	53,129	53,230	48,570	66,813	53,755	71,592	36,314	56,713	69,665	61,973	90,280	53,257	
Transportation	3,710	5,425	4,038	7,583	4,226	4,806	3,876	5,175	2,713	6,683	9,044	3,707	
Utilities:													
Electric	21,097	21,751	22,294	21,644	18,186	17,417	742	35,561	20,706	20,413	18,778	21,080	
Natural Gas	4,710	3,349	3,537	5,047	6,740	7,756	9,579	8,999	6,233	6,675	5,410	4,212	
Water	4,873	7,308	7,810	7,094	7,552	7,499	7,915	6,690	3,684	7,257	6,947	8,009	
Total Expenses	315,313	308,494	319,047	363,688	358,345	351,097	281,220	334,428	327,279	339,552	431,276	364,481	4,094,220
Operating Surplus before Debt Service	8,843	96,942	108,844	67,061	48,729	207,346	390,138	174,159	149,750	141,227	89,962	67,187	1,550,188

ORANGE COUNTY, NORTH CAROLINA

SPORTSPLEX FUND

SCHEDULE OF REVENUES, EXPENDITURES, AND OTHER FINANCING SOURCES (USES) - BUDGET AND ACTUAL (NON-GAAP) FOR THE YEAR ENDED JUNE 30, 2023

	Final Budget	Actual	Variance Positive (Negative)
REVENUES			
Charges for services	\$ 4,756,865	\$ 4,769,351	\$ 12,486
Total revenues	4,756,865	4,769,351	12,486
EXPENDITURES			
Operations	2,208,398	1,978,902	229,496
General and administrative	1,649,373	1,635,291	14,082
Total expenditures	3,857,771	3,614,193	243,578
Excess of revenues over expenditures	899,094	1,155,158	256,064
OTHER FINANCING SOURCES (USES)			
Transfer to SportsPlex Capital Projects Fund	(975,000)	(975,000)	-
Appropriated fund balance	75,906	-	(75,906)
Other financing sources (uses), net	(899,094)	(975,000)	(75,906)
Excess of revenues and other financing (uses) over expenditures	\$ -	180,158	\$ 180,158
Reconciliation from budgetary basis (modified accrual) to full accrual:			
SportsPlex Fund reconciling items:			
Deprecation expense		(503,366)	
SportsPlex Capital Projects Fund reconciling items:			
Transfer from SportsPlex Operating Fund		975,000	
Investment earnings		2,568	
Interest and other charges		(142,950)	
Change in net position - GAAP Basis		\$ 511,410	

ORANGE COUNTY, NORTH CAROLINA

SPORTSPLEX CAPITAL PROJECTS FUND

SCHEDULE OF REVENUES, EXPENDITURES AND OTHER FINANCING SOURCES - BUDGET AND ACTUAL FROM INCEPTION AND FOR THE YEAR ENDED JUNE 30, 2023

	Project Authorization	Prior Years	Actual Current Year	Total	Variance Positive (Negative)
REVENUES					
Investment earnings	\$ -	\$ -	\$ 2,568	\$ 2,568	\$ 2,568
Total revenues	-	-	2,568	2,568	2,568
EXPENDITURES					
Community services	-	2,037,786	106,743	2,144,529	(2,144,529)
Capital expenditures	2,243,710	1,574,818	-	1,574,818	668,892
Debt service:					
Principal retirements	1,519,821	1,351,794	551,779	1,903,573	(383,752)
Interest and other charges	602,466	656,911	192,926	849,837	(247,371)
Total expenditures	4,365,997	5,621,309	851,448	6,472,757	(2,106,760)
Deficiency of revenues under expenditures	(4,365,997)	(5,621,309)	(848,880)	(6,470,189)	(2,104,192)
OTHER FINANCING SOURCES					
Long-term debt issued	1,688,648	941,182	-	941,182	(747,466)
Transfers from SportsPlex Fund	2,170,349	1,820,804	975,000	2,795,804	625,455
Appropriated fund balance	507,000	-	-	-	(507,000)
Total other financing sources	4,365,997	2,761,986	975,000	3,736,986	(629,011)
Deficiency of revenues and other financing sources over (under) expenditures	\$ -	\$ (2,859,323)	\$ 126,120	\$ (2,733,203)	\$ (2,733,203)

ORANGE COUNTY, NORTH CAROLINA

SPORTSPLEX FUND

SCHEDULE OF REVENUES, EXPENDITURES, AND OTHER FINANCING SOURCES (USES) - BUDGET AND ACTUAL (NON-GAAP) FOR THE YEAR ENDED JUNE 30, 2022

	Final Budget	Actual	Variance Positive (Negative)
REVENUES			
Charges for services	\$ 3,690,656	\$ 3,835,429	\$ 144,773
Total revenues	3,690,656	3,835,429	144,773
EXPENDITURES			
Operations	2,595,950	1,863,498	732,452
General and administrative	1,246,265	1,209,907	36,358
Total expenditures	3,842,215	3,073,405	768,810
Excess (deficiency) of revenues over (under) expenditures	(151,559)	762,024	913,583
OTHER FINANCING SOURCES (USES)			
Transfers from other funds	790,000	790,000	-
Transfer to SportsPlex Capital Projects Fund	(714,347)	(1,059,242)	(344,895)
Appropriated fund balance	75,906	-	(75,906)
Other financing sources (uses), net	151,559	(269,242)	(420,801)
Revenues and other financing sources (uses) over expenditures	\$ -	492,782	\$ 492,782
Reconciliation from budgetary basis (modified accrual) to full accrual:			
SportsPlex Fund reconciling items:			
Deprecation expense		(801,145)	
SportsPlex Capital Projects Fund reconciling items:			
Transfer from SportsPlex Operating Fund		1,059,242	
Interest and other charges		(192,491)	
Change in net position - GAAP Basis		\$ 558,388	

ORANGE COUNTY, NORTH CAROLINA

SPORTSPLEX CAPITAL PROJECTS FUND

SCHEDULE OF REVENUES, EXPENDITURES AND OTHER FINANCING SOURCES - BUDGET AND ACTUAL FROM INCEPTION AND FOR THE YEAR ENDED JUNE 30, 2022

	Project Authorization	Prior Years	Actual Current Year	Total	Variance Positive (Negative)
REVENUES					
Investment earnings	\$ -	\$ -	\$ -	\$ -	\$ -
Total revenues	-	-	-	-	-
EXPENDITURES					
Community services	-	2,011,187	26,599	2,037,786	(2,037,786)
Capital expenditures	2,243,710	1,573,818	1,000	1,574,818	668,892
Debt service:					
Principal retirements	1,519,821	833,083	518,711	1,351,794	168,027
Interest and other charges	602,466	464,419	192,492	656,911	(54,445)
Total expenditures	4,365,997	4,882,507	738,802	5,621,309	(1,255,312)
Deficiency of revenues under expenditures	(4,365,997)	(4,882,507)	(738,802)	(5,621,309)	(1,255,312)
OTHER FINANCING SOURCES					
Long-term debt issued	1,688,648	836,182	105,000	941,182	(747,466)
Transfers from SportsPlex Fund	2,170,349	761,562	1,059,242	1,820,804	(349,545)
Appropriated fund balance	507,000	-	-	-	(507,000)
Total other financing sources	4,365,997	1,597,744	1,164,242	2,761,986	(1,604,011)
Other financing sources under expenditures	\$ -	\$ (3,284,763)	\$ 425,440	\$ (2,859,323)	\$ (2,859,323)

ORANGE COUNTY, NORTH CAROLINA

SPORTSPLEX FUND

**SCHEDULE OF REVENUES, EXPENDITURES, AND OTHER FINANCING
SOURCES (USES) - BUDGET AND ACTUAL (NON-GAAP)
FOR THE YEAR ENDED JUNE 30, 2021**

	Final Budget	Actual	Variance Positive (Negative)
REVENUES			
Charges for services	\$ 3,796,991	\$ 2,727,377	\$ (1,069,614)
Total revenues	3,796,991	2,727,377	(1,069,614)
EXPENDITURES			
Operations	3,130,278	1,350,560	1,779,718
General and administrative	1,286,687	928,238	358,449
Total expenditures	4,416,965	2,278,798	2,138,167
Revenues over (under) expenditures	(619,974)	448,579	1,068,553
OTHER FINANCING SOURCES (USES)			
Transfers from other funds	790,000	-	(790,000)
Transfer to SportsPlex Capital Projects Fund	(723,852)	(723,852)	-
Appropriated fund balance	553,826	-	(553,826)
Other financing sources (uses), net	619,974	(723,852)	(1,343,826)
Revenues and other financing sources (uses) over expenditures	\$ -	(275,273)	\$ (275,273)
Reconciliation from budgetary basis (modified accrual) to full accrual:			
SportsPlex Fund reconciling items:			
Depreciation expense		(498,357)	
SportsPlex Capital Projects Fund reconciling items:			
Transfer from SportsPlex Operating Fund		723,852	
Noncapitalized expenditures		(191,325)	
Interest and other charges		(235,770)	
Change in net position - GAAP Basis		\$ (476,873)	

ORANGE COUNTY, NORTH CAROLINA

SPORTSPLEX CAPITAL PROJECTS FUND

**SCHEDULE OF REVENUES, EXPENDITURES AND OTHER FINANCING
SOURCES - BUDGET AND ACTUAL
FROM INCEPTION AND FOR THE YEAR ENDED JUNE 30, 2021**

	Project Authorization	Prior Years	Actual Current Year	Total	Variance Positive (Negative)
REVENUES					
Investment earnings	\$ -	\$ -	\$ -	\$ -	\$ -
Total revenues	-	-	-	-	-
EXPENDITURES					
Community services	-	1,890,000	121,187	2,011,187	(2,011,187)
Capital expenditures	2,243,710	614,573	959,245	1,573,818	669,892
Debt service:					
Principal retirements	1,519,821	323,711	509,372	833,083	686,738
Interest and other charges	602,466	228,649	235,770	464,419	138,047
Total expenditures	4,365,997	3,056,933	1,825,574	4,882,507	(516,510)
OTHER FINANCING SOURCES					
Long-term debt issued	1,688,648	241,182	595,000	836,182	(852,466)
Transfers from SportsPlex Fund	2,170,349	37,710	723,852	761,562	(1,408,787)
Appropriated fund balance	507,000	-	-	-	(507,000)
Total other financing sources	4,365,997	278,892	1,318,852	1,597,744	(2,768,253)
Other financing sources under expenditures	\$ -	\$ (2,778,041)	\$ (506,722)	\$ (3,284,763)	\$ (3,284,763)