

CITY OF MEDFORD
AGREEMENT PROCESSING CONTROL RECORD

To Parks

I. INITIATING DEPARTMENT: COMPLETE SECTIONS I & II

INITIATING DEPARTMENT PARKS & RECREATION DATE Sept. 12, 2012

APCR PREPARED BY Rich Rosenthal Rec. Supt. DEPT HEAD [Signature]
NAME TITLE SIGNATURE

AGREEMENT OR CONTRACT TITLE Personal Services Contract

AGREEMENT OR CONTRACT PURPOSE Maintenance and Management of Harry & David Field

CONTRACT PARTIES City of Medford and MOBT, Inc. dba Consolidated Sports Holdings

CONTRACT TERM BEGIN: 10/1/2012 END: 9/31/2022 1 YEAR 2 YEAR MORE THAN 2 YEARS
(PROJECTIONS ARE ACCEPTABLE)

DATE OF COUNCIL ACTION Sept. 20, 2012

OTHER GOVERNMENT(S) AFFECTED None

WHO PREPARED THE AGREEMENT OR CONTRACT City of Medford

FINANCIAL IMPACT None

BUDGET ACCOUNT NUMBER: _____

BUDGET PROJECT NUMBER (if applicable): _____ BOLI: YES _____ NO

II. CHECK YES TO ALL APPLICABLE SECTIONS BEFORE ROUTING TO RECORDER'S OFFICE FOR FURTHER PROCESSING
(NO ACCEPTABLE FOR AGREEMENTS WITH OTHER GOVERNMENTAL ENTITIES)

	YES	NO	N/A
FUNDING IS AVAILABLE (DEPARTMENTS MUST CERTIFY UNENCUMBERED RESOURCES ARE AVAILABLE TO FULLY FUND THE CONTRACT)	_____	_____	X
COMPETITIVELY SOLICITED	_____	_____	X
OTHER PARTY HAS EXECUTED	X	_____	_____
PERFORMANCE BOND OR OTHER SECURITY IS ATTACHED	_____	_____	X
INSURANCE CERTIFICATE(S) ATTACHED	<u>(4)</u>	X	_____
LEGAL DESCRIPTIONS BEEN RECEIVED AND CHECKED	X	_____	_____
OTHER COMMENTS _____	_____	_____	_____

Awaiting insurance

(4)

PROVIDE TWO (2) COPIES OF COMPLETED APCR AND ATTACH TWO (2) COPIES OF AGREEMENT TO BE SIGNED

III. CITY RECORDER: _____

DATE RECEIVED 9/13/12 APCR No. 353.12 DATE ROUTED 9/13/12

IV. LAW DEPT _____ DATE 9/17/12

RETURN TO CITY RECORDER

V. CITY MANAGER _____ DATE _____

RETURN TO CITY RECORDER

VI. ACTION RECORD: _____

CITY COUNCIL ACTION DATE 9/20/12 ORDINANCE NO. 2012-148

MAYOR/CITY MANAGER/DEPT HEAD EXECUTION DATE 9-20-12

CITY RECORDER COMPLETION DATE 9-21-12 11/12/12

DISTRIBUTION: ORIGINAL: City Recorder's Office DEPT RETURNED TO: Parks

SCANNED

PERSONAL SERVICES CONTRACT

This contract is entered into the 20 day of Sept, 2012, between the CITY OF MEDFORD, OREGON, an Oregon municipal corporation, hereinafter called "City," and MOBT, INC., hereinafter called "Contractor."

RECITALS

- A. The Contractor wishes to operate a West Coast League franchise in Medford.
- B. The parties desire to enter into an agreement wherein Contractor will manage, support, and maintain Harry & David Field for community benefit.

NOW, THEREFORE, the parties agree as follows:

1. **Description of Contractor's Services and Delivery Schedule:**

See Exhibit A attached hereto and incorporated by reference.

2. **Effective Date and Duration:** Contractor's services will begin upon City's execution of this agreement and mailing of a notice to proceed to Contractor. Unless earlier terminated or extended, this contract shall expire ten (10) years from the date of execution. However, such expiration shall not extinguish or prejudice City's right to enforce this contract with respect to (a) any breach of a Contractor warranty; or (b) any default or defect in Contractor's performance that has not been cured. This agreement may be renewed for an additional 10-year period with the written consent of both parties. Written notice of intent to renew this agreement shall be delivered in writing by either of the parties to the other no later than sixty (60) days prior to the expiration of this agreement. If notice of intent is not given, this agreement shall terminate as specified in this paragraph.

3. **Contract Documents:** This contract between the parties consists of this Personal Services Contract and the following attached documents which contain all the terms and conditions of the contract and are incorporated by this reference: Exhibit A (Description of Contractor's Services and Delivery Schedule), Exhibit B (General Conditions); Exhibit C (Operations Manual), Exhibit D (Field Maintenance Standards and Procedures), Exhibit E (Capital Improvement Plan); Exhibit F (U.S. Cellular Community Park naming-rights agreement); Exhibit G (Statutory Public Contract Provisions), and Exhibit H (Independent Contractor Certification).

4. **Amendment:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written instrument signed by the parties.

CONTRACTOR:

By: _____

Willard Yuill, CEO, MOBT, Inc.

Address: 7017 E GREENWAY PKWY

#250, SCOTTSDALE AZ, 85254

Tax ID#: 392079776

DARYL
NEWINS
FOR
PRESIDENT

CITY:

By: _____

Gary H. Wheeler, Mayor

c/o City Manager

411 W. 8th St.

Medford, OR 97501

Approved as to Form:

By: _____

City Attorney

EXHIBIT A

DESCRIPTION OF CONTRACTOR'S SERVICES AND DELIVERY SCHEDULE

Contractor shall perform the following duties:

1. Manage, on behalf of the City, the City's youth baseball facility known as Harry & David Field, and associated parking lot, and associated infrastructure improvements. Contractor's obligations include the following:

(i) Scheduling baseball events at the constructed baseball facility, including high school and other amateur baseball league and tournament games, practices and related uses, and scheduling other, non-baseball events; no professional baseball activity will be permitted at the facility;

(ii) Performing routine maintenance and operation of the baseball facility in a safe condition and attractive appearance, including fences, restrooms, concession buildings and equipment, spectator seating, scoreboards, field lighting, as well as performing winterization, garbage collection and removal, and general field maintenance (mowing, fertilization, aeration, weed control and over seeding);

(iv) Operating all concession activities during baseball and non-baseball events. As partial consideration for the services to be provided by Contractor, the City assigns the right for all food, beverage, merchandise and novelty concession privileges to Contractor at all times that the baseball facility is used for amateur baseball activities. Contractor may subcontract such privileges. However, City reserves the right to approve products and pricing of products sold, and any party to whom Contractor proposes to subcontract concession privileges. City further reserves the right to independently contract for food, beverage, merchandise and novelty concession privileges when the baseball facility is used for City purposes. City further reserves the right to use the baseball facility at no charge for:

- a. Youth baseball tournaments, including, but not limited to:
 - Memorial Day weekend (Friday through Monday)
 - Independence Day holiday/weekend (if not conflicting with WCL games)
 - Labor Day weekend (Friday through Monday)
- b. Adult baseball league championship games
- c. Special community event(s) coordinated by the City

City shall provide Contractor with reasonable notice as to City's desired use of the facility. Only West Coast League games/uses shall take precedence in the event of a scheduling conflict involving a City request.

The City shall reimburse Contractor for expenses related to City use of the facility above routine and ongoing maintenance costs, including chalk, field-drying agents and similar supplies.

The City prohibits the sale or consumption of alcoholic beverages in all City parks; and

(v) Providing security personnel, subject to the City's approval, for events when in the opinion of City's supervising representative such service is warranted.

2. Pay, at Contractor's expense, all utility and irrigation fees, charges, assessments, etc. (if any) incurred at the baseball facility.

3. Develop all necessary facility capital improvements consistent with the existing and any future master plans adopted by the City.

Contractor shall not have any authority to contractually bind the City. All contracts, and all schedules for baseball and non-baseball events, must be approved in writing by the City before becoming effective. All plans for construction must be submitted by Contractor to the City for written approval prior to submission to the City for any necessary building permits or land use approval. All contracts for public improvements (as defined in ORS 279A.010(cc)) shall comply with all public contracting requirements contained in ORS Chapter 279C and elsewhere, including but not limited to public bidding, and payment of prevailing wage rates for public works contracts as required by ORS 279.348 et seq. Contractor is not authorized to perform any public improvement projects. The Bureau of Labor and Industries in an October 12, 2007 letter has determined that the Prevailing Wage Rate laws do not apply to the seating, landscaping, and parking improvements at Harry & David Field to be made by Contractor since no funds of a public agency are to be used for this project.

Contractor shall not discriminate against any person on the basis of race, religion, color, national origin, gender or sexual orientation in the management or operation of the baseball facility. Contractor shall otherwise comply with all federal, state and local civil rights, disabilities and rehabilitation laws, including the Americans With Disabilities Act, as they now exist or shall be adopted or amended in the future. Contractor shall not publicize the accommodation, facilities, services or privileges that are the subject of this contract in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, national origin, gender or sexual orientation. Contractor agrees to include and require compliance with a provision similar to the foregoing provision in any contract made with respect to the operations to be carried out under this agreement.

Contractor, in its advertising matter, letterheads or like materials, shall refrain from misrepresenting in any way the service provided or the status of this agreement. Contractor shall apply for required sign permits and shall receive written approval from the City for the location, size, text, colors and construction of the proposed signs prior to erection.

Contractor shall not cause or permit any hazardous substance to be spilled, leaked, disposed of, or otherwise released on or under the baseball facility and surrounding areas.

Contractor shall use only those hazardous substances typically used or sold in the prudent and safe operation of a baseball facility. Contractor may store hazardous substances on the baseball facility premises only in quantities necessary to satisfy Contractor's reasonably anticipated needs. Contractor shall comply with all environmental laws and exercise the highest degree of care in the use, handling and storage of hazardous substances. Contractor shall take all practicable measures to minimize the quantity and toxicity of hazardous substances used, handled or stored on the baseball facility premises. Upon expiration or termination of this contract, Contractor shall remove all hazardous substances from the premises. The term "environmental laws" shall mean any federal, state or local statute, rule, regulation or ordinance or any judicial or other governmental order pertaining to the protection of health, safety or the environment. The term "hazardous substance" shall mean any hazardous, toxic, infectious or radioactive substance, waste, or material as defined or listed by any environmental law. "Hazardous substance" shall include, without limitation, petroleum oil and its fractions.

4. Contractor shall receive all revenues collected from baseball facility operations, including but not limited to, revenue received from outfield fence billboard signs, field rental, parking lot rental, naming rights, concessions, and seat rights, except for the following:

- a. City reserves the right to retain concession and gate receipts when the facility is used for City-operated events, as stipulated in Section 1.(iv) above.
- b. City retains the right to keep in place the brass plaque on the front facing wall of the public plaza area located at the entrance of the stadium which contains a statement memorializing that the stadium was made possible by a generous contribution from the County.
- c. The City retains the right to permanently reserve three parking spaces at the stadium, located conveniently to the entrance of the stadium, labeled for the use of Jackson County Commissioners.

5. Contractor shall ensure that the parking requirements of the Medford Land Development Code are met, including code sections 10.744 and 10.745.

6. Signage/Marketing

- a. City to be recognized as a major Medford WCL franchise sponsor with the Parks and Recreation Department receiving the associated benefits, including year-round signage space at a mutually agreeable, highly visible location within ballpark.
- b. Signage, marketing and promotions must conform to stipulations set forth in the overall park naming-rights contract (Exhibit F).
- c. Any permanent ballpark sign dimension may not exceed the length or width of the park entrance signs (20' x 17') in order to protect the value of overall Sports Park naming rights and to comply with contractual obligations. The

City reserves the right to determine violations of signage stipulations outlined in the Sports Park naming-rights agreement, and may request Contractor to remove or adjust the sign within a reasonable amount of time in order to comply with contractual obligations, at the Contractor's expense.

- d. Contractor must consult with the Parks and Recreation Director or his/her designee prior to presenting proposals to:
 - i. U.S. Cellular.
 - ii. Southern Oregon Media Group.
 - iii. Charter Media.
 - iv. Radio Medford.
 - v. Lithia.
 - vi. Rogue Federal Credit Union.
 - vii. Les Schwab Tire Centers.
 - viii. Providence Medical Group.
 - ix. State Farm Insurance.
 - x. Yogurt Hut

- e. City may not reject reasonable sponsorship proposals unless the proposal is detrimental to existing City resource development efforts.

- f. Contractor shall adhere to signage stipulations under municipal code 10.1710.

EXHIBIT B

GENERAL CONDITIONS

1. Independent Contractor; Responsibility for Taxes and Withholding:

(a) Contractor shall perform the work required by this contract as an independent contractor. All of the services required hereunder will be performed by the CONTRACTOR or under his direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Although the City reserves the right (i) to determine (and modify) the delivery schedule for the work to be performed and (ii) to evaluate the quality of the completed performance in conformance with City's approved plans, the City cannot and will not control the means or manner of the Contractor's performance. The Contractor is responsible for determining the appropriate means and manner of performing the work. The CONTRACTOR represents that it employs, or will employ at its own expense, all personnel required in performing the services under this Agreement.

(b) The Contractor represents and warrants that Contractor (i) is not an employee of the City of Medford, (ii) is not currently employed by the Federal Government, and (iii) meets the specific independent contractor standards of ORS 670.600, as certified on the Independent Contractor Certification attached and by this reference made a part hereof. Contractor is not an "officer," "employee," or "agent" of the City, as those terms are used in ORS 30.265.

(c) Contractor shall be responsible for all federal or state taxes applicable to any compensation or payments paid to Contractor under this contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any federal Social Security, unemployment insurance, or workers' compensation benefits from compensation or payments paid to Contractor under this contract, except as a self-employed individual.

2. Subcontracts and Assignment; Successors in Interest: Contractor shall not enter into any subcontracts for any of the work required by this contract, or assign or transfer any of its interest in this contract, without the prior written consent of City. The provisions of this contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any.

3. No Third Party Beneficiaries: City and Contractor are the only parties to this contract and are the only parties entitled to enforce its terms. Nothing in this contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this contract.

4. **Funds Available and Authorized:** In the event the Contractor has insufficient appropriations, limitations or other expenditure authority, City may terminate this contract without penalty or liability to the City, effective upon the delivery of written notice delivered by regular first-class mail or in person to Contractor. **Termination:**

(a) **Mutual Consent.** This contract may be terminated at any time by mutual consent of both parties.

(b) **City's Convenience.** This contract may be terminated at any time by City upon ninety (90) days' notice in writing and delivered by regular first class mail or in person.

(c) **For Cause.** City may terminate or modify this contract, in whole or in part, effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

i. If funding is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services.

ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract; or

iii. If any license or certificate required by law or regulation to be held by Contractor to provide the services required by this contract is for any reason denied, revoked, suspended, or not renewed.

(d) **For Default or Breach.**

i. Either City or Contractor may terminate this contract in the event of a breach of the contract by the other. Prior to such termination, the party seeking termination shall give to the other party written notice of the breach and intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize or require, then the contract may be terminated at any time thereafter by a written notice of termination by the party giving notice.

ii. Time is of the essence for Contractor's performance of each and every obligation and duty under this contract. City, by written notice to Contractor of default or breach, may at any time terminate the whole or any part of this contract if Contractor fails to provide services called for by this contract within the time specified herein or in any extension thereof.

iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

(e) **Obligation/Liability of Parties.** Termination or modification of this contract pursuant to subsections (a), (b), or (c) above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification, including but not limited to, any obligation of City to make a payment to Contractor required herein prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to subsections (a), (b), (c) or (d) of this Section 5), Contractor shall immediately cease all activities under this contract, unless expressly directed otherwise by City in the notice of termination. If any construction project authorized under this agreement is incomplete at the time of termination of this agreement, Contractor shall do any work necessary to leave the construction project in a safe, non-hazardous condition. If Contractor does not make the construction site safe within a reasonable time period, City shall perform the work to make the construction site safe, and Contractor shall be liable for all costs and charges incurred by City in making the construction site safe. Contractor shall not make any disposition of the machinery, tools, appliances, supplies, or materials used on or in conjunction with the work, whether by sales, covenants, or encumbrance, inconsistent with the provisions of this contract.

Further, upon termination, Contractor shall deliver to City all contract documents, information, works-in-progress and other property that are or would be deliverables had the contract been completed.

5. **Interest of the Contractor**

The CONTRACTOR hereby covenants that it has, at the time of the execution of this Agreement, no interest and that it shall not acquire any interest in the future, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed pursuant to this Agreement. The CONTRACTOR further covenants that in the performance of this work no person having any such interest shall be employed.

6. **Records Management; Access; Ownership of Work Product; License:**

(a) **Records Management; Access.** Contractor shall maintain all fiscal records relating to this contract in accordance with a consistently-applied cash basis of accounting. In addition, Contractor shall maintain any other records pertinent to this contract in such a manner as to clearly document Contractor's performance hereunder. Contractor acknowledges and agrees that City and its duly authorized representatives shall have access to such fiscal records and to all other books, documents, electronic files, papers, plans and writings of Contractor that are pertinent to this contract for the purpose of performing examinations and audits, and making excerpts and transcripts.

(b) **Ownership of Work Product; License.** All work products of the Contractor that result from this contract ("the work products") are the exclusive property of the City. In addition, if any of the work products contain intellectual property of the Contractor that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Contractor hereby grants City a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, deliver, publish, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so, all such work products, including but not limited to, any information, designs, plans or works provided or delivered to the City or produced by the Contractor under this contract.

7. **Publications**

It is agreed that either or both of the parties hereto may publish at any time, subject to the terms of this Agreement, the results of the work conducted hereunder, provided credit is given to the individuals and organizations who conducted and sponsored the work. A copy of each manuscript to be submitted for publication by either or the parties hereto shall be furnished to the other party prior to such submission for publication, and five (5) copies or reprints shall be furnished to the other party subsequent to publication. Articles or works reporting on the subject work hereunder or on portions thereof which are published by the CONTRACTOR shall contain the forward, preface or footnote a statement to the effect that publication of the article or work does not necessarily indicate acceptance by the CLIENT of the findings, conclusions or recommendations either inferred or specifically expressed therein.

Compliance with Applicable Law: Contractor shall comply with all federal, state and local laws and ordinances applicable to the work under this contract, including, without limitation, the provisions of ORS Chapters 279A, B, and C, as well as other statutes as set forth in the attached Exhibit C, Statutory Public Contract Provisions, which is by this reference made a part hereof. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal, state and local civil rights and rehabilitation statutes, rules and regulations.

8. **Foreign Contractor:** If the Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The Contractor shall demonstrate its legal capacity to perform these services in the State of Oregon prior to entering into this contract.

9. **Governing Law; Jurisdiction; Venue:** This contract shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claims, action, suit or proceeding (collectively, "the claim") between the City (and/or any other City or department of the State of Oregon) and the Contractor that arises from or relates to this contract shall be brought and conducted solely and

exclusively within the Circuit Court of Jackson County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon filed in Jackson County, Oregon. Contractor, by the signature herein of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

10. Indemnity, Insurance:

(a) **Indemnity.** Contractor shall defend, save, hold harmless, and indemnify the City of Medford, Oregon, and its officers, employees, and agents, from all claims, suits, or actions of whatever nature resulting from or arising out of the activities of Contractor or its officers, employees, subcontractors, or agents under this contract.

(b) **Insurance.** Contractor shall at its own expense provide the following insurance:

During the life of this Agreement, CONTRACTOR shall maintain the following minimum insurance:

(1) Commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage. The following minimum limits are required: General Aggregate- \$1,000,000, Personal & Advertising Injury Aggregate- \$1,000,000, Each Occurrence- \$500,000. "The City of Medford and its officers, employees and agents while acting within the scope of their duties as such" shall be named an Additional Insured.

(2) Commercial automobile bodily injury and property damage liability insurance covering owned, non-owned, rented, and hired autos. The combined single limit for bodily injury and property damage shall be not less than \$500,000.

(3) Statutory workers compensation and employers liability insurance as required by Oregon State law.

Coverages 1 and 2 shall be written on an occurrence basis not on a claims-made basis and satisfactory "tail" coverage shall be provided for coverage 4. Coverages 1 and 2 shall be primary and non-contributing over any other insurance available to CLIENT. CONTRACTOR shall submit to CLIENT certificates of insurance for all policies listed above and shall provide written notice to CLIENT at least ten (10) days prior to cancellation of or any material change in the policy.

11. Force Majeure: Neither City nor Contractor shall be held responsible for delay or default caused by fire, riot, acts of God, or war where such cause was beyond, respectively, City's or Contractors' reasonable control. Contractor shall, however, make all reasonable efforts

to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this contract.

12. **Severability:** The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

13. **Survival:** The terms, conditions, representations and all warranties contained in the contract shall survive the termination or expiration of this contract.

14. **Waiver:** The failure of City to enforce any provision of this contract shall not constitute a waiver by City of that or any other provision.

15. **Execution and Counterparts:** This contract may be exercised in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

16. **Prior Approval Required:** Approval by the City Council or the City Manager is required prior to the commencement of this contract. Once this contract is approved by the City Council or City Manager, City shall designate the City's representative, who shall have the authority to administer the contract. Contractor may deal solely with that representative in obtaining all approvals required herein, and such representative shall be responsible for seeking any additional City approvals.

17. **Notice.** Notices required by this contract must be given in writing by personal delivery or mail at the addresses given by the parties on page 2 of this contract, unless some other means or method of notice is required by law. Each party will notify the other of any change of address.

18. **Merger Clause:** THIS CONTRACT AND ATTACHED EXHIBITS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS CONTRACT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS CONTRACT. CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

EXHIBIT C
OPERATIONS MANUAL

1. Authorized representatives of the Contractor and City shall meet semi-annually to review and, if necessary, amend the Operations Manual (Exhibit C-1).
2. Proposed facility usage fees are subject to approval by the Parks and Recreation Commission.

Exhibit G
STATUTORY PUBLIC CONTRACT PROVISIONS

279C.505 Conditions concerning payment, contributions, liens, withholding and drug testing.

(1) CONTRACTOR shall:

(a) Make payment promptly, as due, to all persons supplying to CONTRACTOR labor or material for the performance of the work provided for in this contract.

(b) Pay all contributions or amounts due the Industrial Accident Fund from CONTRACTOR or subcontractor incurred in the performance of this contract.

(c) Not permit any lien or claim to be filed or prosecuted against CITY on account of any labor or material furnished.

(d) Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

(2) If a public improvement contract, CONTRACTOR shall demonstrate that an employee drug-testing program is in place.

279C.510 Demolition contracts to require material salvage; lawn and landscape maintenance contracts to require composting or mulching.

(1) If a contract for demolition, CONTRACTOR shall salvage or recycle construction and demolition debris, if feasible and cost effective.

(2) If a contract for lawn and landscape maintenance, CONTRACTOR shall compost or mulch yard waste material at an approved site, if feasible and cost effective.

279C.515 Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints.

(1) If CONTRACTOR fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to CONTRACTOR or a subcontractor by any person in connection with the public improvement contract as such claim becomes due, the proper officer or officers representing CITY may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due CONTRACTOR by reason of such contract.

(2) Every public improvement contract shall contain a clause or condition that, if the contractor or a first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580 (4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the contractor or first-tier

subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after the date when payment was received from the contracting agency or from the contractor, but the rate of interest may not exceed 30 percent. The amount of interest may not be waived.

(3) Every public improvement contract and every contract related to the public improvement contract shall contain a clause or condition that, if the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

(4) The payment of a claim in the manner authorized in this section shall not relieve CONTRACTOR or CONTRACTOR's surety from obligation with respect to any unpaid claims.

279C.520 Condition concerning hours of labor.

(1)(a) No person shall be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279C.100, the employee shall be paid at least time and a half pay:

(A) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or

(B) For all overtime in excess of 10 hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

(b) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

(2) CONTRACTOR shall give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

(3) Persons employed under contracts for personal services as described in ORS 279C.100 shall be paid at least time and a half for all overtime work in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

(4) N/A.

(5)(a) Persons employed under contracts for services shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of 10 hours a day or in excess of 40 hours in a week, whichever is greater.

(b) CONTRACTOR shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

279C.530 Condition concerning payment for medical care and providing workers' compensation.

(1) CONTRACTOR shall promptly, as due, make payment to any person, copartnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of CONTRACTOR, of all sums which CONTRACTOR agrees to pay for such services and all moneys and sums which CONTRACTOR collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

(2) All subject employers working under this contract are either employers that will comply with ORS 656.017 or are employers that are exempt under ORS 656.126.

ORS 279C.830 Provisions concerning prevailing rate of wage in specifications, contracts and subcontracts; applicability of prevailing wage; fee; bond.

(1)(a) Except as provided in paragraph (d) of this subsection, the specifications for every contract for public works shall contain a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 U.S.C. 3141 et seq) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract. When the prevailing rates of wage are available electronically or are accessible on the Internet, the rate may be incorporated into the specifications by referring to the electronically accessible or Internet-accessible rates and by providing adequate information about how to access the rates.

(b) If a public agency is required under paragraph (a) of this subsection to include the state and federal prevailing rates of wage in the specifications, the public agency also shall include in the specifications information showing which prevailing rate of wage is higher for workers in each trade or occupation in each locality, as determined by the Commissioner of the Bureau of Labor and Industries under ORS 279C.815(2)(c).

(c) Every contract and subcontract shall contain a provision that the workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and ORS 279C840.

(d) A public works project described in ORS 279C.800(6)(a)(B) or (C) is subject to the existing state prevailing rate of wage or, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act that is in effect at the time a public agency enters into an agreement with a private entity for the project. After that time, the specifications for any contract for the public works shall include the applicable prevailing rate of wage.

(2) The specifications for every contract for public works between a public agency and a contractor shall contain a provision stating that a fee is required to be paid to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825 (1). The contract shall contain a provision that the fee shall be paid to the commissioner under the administrative rule of the commissioner.

(3) The specifications for every contract for public works shall contain a provision stating that the contractor and every subcontractor must have a public works bond filed with the Construction

Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9). Every contract awarded by a contracting agency shall contain a provision requiring the contractor:

(a) To have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836 (4), (7), (8) or (9).

(b) To include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

Exhibit H
INDEPENDENT CONTRACTOR CERTIFICATION

CONTRACTOR warrants that it has taken and will take all actions required of it to qualify as an independent contractor under the standards set forth in ORS 670.600 and to maintain that status during the term of this contract. CONTRACTOR warrants that Federal and state income tax returns in the name of the business or a business Schedule C as part of the personal income tax return were filed for the previous year if the CONTRACTOR performed labor or services as an independent contractor in the previous year. It is understood that CITY is not required to provide and will not provide unemployment compensation, workers compensation coverage or any other coverage or benefits for CONTRACTOR.

CONTRACTOR represents to CITY and to the public that the labor or services which CONTRACTOR provides are to be provided by an independently established business. CONTRACTOR warrants that at least four of the following circumstances exist and will continue to exist during the term of this contract (initial those which apply):

- _____ The labor or services are primarily carried out at a location that is separate from the residence of the CONTRACTOR, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;
- _____ Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the CONTRACTOR has a trade association membership;
- _____ Telephone listing and service are used for the business that is separate from the personal residence listing and service used by the CONTRACTOR;
- _____ Labor or services are performed only pursuant to written contracts;
- _____ Labor or services are performed for two or more different persons within a period of one year; or
- _____ The CONTRACTOR assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.

Exhibit C-1

Harry & David Field

Operations Manual

Primary Contact:
General Manager
Medford WCL Franchise
541-###-####

Field License Agreement Application Procedure

1. All teams, leagues, tournament directors and special event coordinators wishing to use the Harry & David Field baseball facility must fill out a Field License Agreement Application Form and submit it to MOBT within 30 to 365 days of the proposed event.
2. A debit or credit card number will be kept on file as a means to guarantee final payment.
3. Applicant will be notified of the status of their application by MOBT staff within 10 working days.
4. Upon receiving rental approval, the requesting party will have five business days to provide MOBT with insurance documentation.
5. The applicable fees should be paid within fourteen days of the end of the agreement.

Cash, personal checks or cashier checks, are accepted forms of payment.

Submit payments to:
MOBT
2929 S. Pacific Hwy.
Medford OR 97501

6. CSH reserves the right to cancel a reservation due to extenuating circumstances.
7. Forfeited games count as a game slot.

Field Usage Fees

Baseball Games	\$45 for a single game \$60 for two games \$15/each additional game (maximum of four/day)
Special Events	Case-by-case basis
Field Lights	Direct Cost
Medford Schools	By Contractual Agreement

Field Priority Usage

Harry & David Field shall be managed in a manner that maximizes field use for Medford-based user groups and the West Coast League franchise while maintaining the highest possible level of facility quality.

1. West Coast League games and practices
2. Medford-based American Legion games and practices
3. Medford public high school varsity/junior varsity games and practices during the OSAA baseball season
4. Medford Parks and Recreation Department tournaments, adult baseball league, baseball clinics and special events
5. Special events with broad community benefit (concerts, etc.)

Note: Whenever possible, practices should be scheduled in a manner that accommodates the needs of other priority user groups.

Field Availability

- Mondays are down days for field maintenance
- Up to 2 ½ hours prior to game time
- Not generally available for practice

Facility Staffing

Name	Title	Availability
TBD	General Manager	Full-time, year-round
TBD	Sales/Marketing Manager	Full-time, year-round
TBD	Admin. Asst./Office Manager	Part-time, year-round
TBD	Field Maintenance Coordinator	Part-time, seasonal
TBD	Facility Maintenance Coordinator	Contractor

Umpires

Teams and Tournament Director are responsible for obtaining, scheduling and paying umpires for services. All umpires must be 18 years of age.

Rogue Valley Umpire Association – Steve Switzer, Commissioner, (541)821-7456

Harry & David Field Operational Policies

1. Facility Management

Harry & David Field is managed in a manner that ensures it is the premier natural grass field in the region. All facility users must secure a field license agreement and abide by operational policies.

2. Insurance Requirements

Comprehensive commercial general liability insurance, including personal injury liability, blanket contractual liability, and broad-form property damage liability coverage is required. Minimum limits:

Aggregate - \$1,000,000

Products - \$1,000,000

Personal & Advertising Injury - \$1,000,000 and Each Occurrence - \$500,000

CSH must be named as an "additional insured".

3. Prohibited Items

The following items are prohibited at Harry & David Field:

- a. Any item or substance that may damage, stain or permanently alter facilities, structures or playing surfaces
- b. Chewing gum
- c. Coolers and ice chests
- d. Soda cans and glass bottles
- e. Animals and pets (except service animals)
- f. Fireworks
- g. Skateboarding and rollerblading
- h. Balloons
- i. Artificial noisemakers, including (but not limited to) megaphones, air horns, bells, whistles, clickers or other items as determined by MOBT staff
- j. Tobacco products of any kind

6. Tournament Information

Tournament Directors or primary contacts are required to provide MOBT with a tournament bracket and/or schedule within 72 hours of the tournament.

7. Code of Conduct

For the safety and health of participants, spectators and visitors, unsportsmanlike conduct will not be tolerated and may result in disciplinary action or ejection from the facility. MOBT employees have the right to ask anyone to leave the park if behavior, language or clothing is deemed unacceptable. Inappropriate behavior includes:

- a. Physically or verbally threatening the well-being of an umpire, competitor, spectator or MOBT employee
- b. Fighting and/or aggressive behavior
- c. Addressing an umpire, competitor, spectator or MOBT employee in a disrespectful manner
- d. Use of vulgar language
- e. Endangering actions (e.g. throwing bats or other equipment)
- f. Inappropriate gestures
- g. Intoxication
- h. Vandalism

8. Concessions

CSH is the sole authorized operator of the concession service. Additional food and beverage sales are prohibited without express written consent of MOBT.

9. Damage or Vandalism

Damage to the facility, structures or playing surface determined to stem from the rental activity will be billed to the renter or to the Tournament Director. Damage and replacement costs are determined by MOBT staff. Major damage will be reported to the Police Department.

10. Lost and Found

Items left behind will be retained for two weeks. Contact MOBT staff at (541)555-1212 for more information.

11. Signs and Banners

Any signage intended to be affixed to fencing, structures or staked in the ground must be pre-approved by MOBT staff. Signs with inappropriate content are subject to removal at the discretion of MOBT staff. Signs may not block the view of the public, cause a distraction or obscure any facility sponsor signage. All signs must be taken down upon conclusion of the rental.

12. Weather Cancellations or Delays

Renters will not be charged for games that are canceled due to lightning or unsafe conditions.

13. Parking

Parking is allowed in designated parking areas only. Overnight parking is prohibited.

14. Temporary Structures

Tents, canopies or other temporary structures are permitted only with the approval of MOBT staff.

Harry & David Field License Agreement

The parties to this License Agreement are MOBET, Licensor, and _____, Licensee. The effective date of this Agreement is _____.

In consideration of the mutual agreements contained herein, the parties agree as follows:

1. Use. Licensor hereby grants to Licensee a non-exclusive license to use Harry & David Field (Field) and the adjacent parking area for the term of this Agreement.

2. Term. The initial term of this Agreement shall commence on _____, _____ and terminate on _____.

3. License Fees. The basic license fee is \$45.00 for a single game; \$60.00 for two games on the same day. The use of field lighting will be charged for actual usage. The applicable fees should be paid within 14 days of the end of this agreement.

4. Stadium Use. For this fee, Licensee shall be entitled to utilize the Field for the purpose of baseball games per agreed upon schedule.

5. Other Uses. Other uses not specifically identified in section 4 above shall not be permitted without express permission of the Licensor.

6. Restoration. Licensee, after the completion of its respective event(s) outlined in number 4 above, shall clean and restore the facilities at the Field to their previous condition, ordinary wear and tear excepted, and such cleaning and restoration shall be accomplished without unreasonable delay.

7. Restrictions on Use. Licensee agrees that it will not make any unlawful or improper or offensive use of the Field, and that it will conform to all applicable laws or regulations of any public or governmental authority affecting the Field and the use, and correct at Licensee's own expense, any failure of compliance created through Licensee's fault or by reason of Licensee's use. Licensee shall not discriminate against any person on the basis of race, religion, color, national origin, or gender in the management or operation of the Field. Licensee shall otherwise comply with all federal, state and local civil rights, disabilities and rehabilitation laws, including the Americans with Disabilities Act, as they now exist or shall be adopted or amended in the future. Licensee shall not publicize the accommodation, facilities, services or privileges that are the subject of this contract in any manner that would directly or inferentially reflect upon or question the acceptability of the patronage of any person because of race, religion, color, national origin, or gender. Licensee agrees to include and require compliance with a provision similar to the foregoing provision in any contract made with respect to operations to be carried out under this Agreement.

8. Signs. Licensee shall comply with all present or future requirements of the City of Medford pertaining to signs and advertising. Licensee shall not permit any signs or advertising to occur without the prior consent of Licensor.

9. Indemnification. Licensee agrees to indemnify, defend and hold harmless the

Licensor, its officers, board members, agents, and employees from any claims, actions, liability or costs, including attorneys fees and other costs of defense, arising out of or in any way related to the use and occupancy allowed under this Agreement and arising from the sole or joint negligence and/or fault of the Licensee, its members, agents, officers, players, coaches, spectators or invitees.

10. Insurance. Licensee shall obtain and continuously maintain during the term of this Agreement workers' compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all of their subject workers, and general liability insurance, with a combined single limit, or the equivalent, of not less than \$1,000,000 for each occurrence for Bodily Injury and Property Damage. The general liability insurance policy shall include contractual liability coverage for the indemnity provided under this Agreement. As evidence of the insurance coverages required by this contract, Licensee shall furnish acceptable insurance certificates prior to commencing any use of the Field. The certificate shall specify that the Licensor is an additional insured. Insuring companies or entities are subject to Licensor's acceptance.

11. Equipment and Materials. Licensee shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with its activities. Licensee shall also be responsible for any loss, damage, or destruction of property belonging to the Licensor or a third party caused by the sole or joint negligence of the Licensee, its members, officers, agents, spectators or invitees.

12. Inspection. Licensor shall have access to all portions of the Field for the purposes of inspecting the Field's condition and exercising any right or power reserved by Licensor under this Agreement.

13. Default. If Licensee shall neglect or fail to do or perform any of the agreements herein contained and if such default shall continue for thirty (30) days after written notice thereof has been given to Licensee by Licensor, Licensor may immediately or any time thereafter and while such default continues, and without further notice or demand, enter the Field or any part thereof and repossess the same as of its former estate and expel the said Licensee without being deemed guilty in any manner of trespass, and without prejudice to any other right or remedy that might be available in law or equity.

14. Notice. Any notice required or permitted under this agreement shall be given when actually delivered or three (3) days after deposit in the U. S. Mail, postage prepaid and addressed as follows:

To Licensor:
MOBT
ATTN: General Manager
2929 S. Pacific Hwy.
Medford, OR 97501

To Licensee:

ATTN: _____

Or such other party and at such other address as the parties hereto may designate in writing and deliver to the other party.

15. Assignment. No part of this Agreement may be assigned by Licensee, nor may a right of use of any portion of the Field be conferred on any person voluntarily or involuntarily by any other means without the prior approval of Licensor.

16. Waiver. Failure by Licensor to require Licensee's strict performance of any term of this Agreement shall not affect Licensor's right to enforce the same, nor shall a waiver of default be construed to be a waiver of any succeeding default or waiver of this clause. To be effective, any waiver by Licensor must be written and signed by Licensor.

17. Attorney's Fees. If suit or action is instituted by either party to establish or enforce any right under this Agreement, to recover any amounts due hereunder, to correct a breach of any covenant, term or condition, or to litigate any other matter arising from the execution of this Agreement, the prevailing party in the trial court and the prevailing party on any appeal shall recover reasonable attorney's fees awarded by the trial and appellate courts in addition to costs and disbursements. This provision shall survive any termination of this Agreement.

18. Complete Agreement. This Agreement constitutes a final and complete statement of the agreement between the parties, and fully supersedes all prior agreements or negotiations, written or oral.

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of _____, _____.

MOBT _____
By: _____
Title: _____

By: _____
Title: _____

- This data is informational and does not satisfy MOBT insurance requirements.

Release of Liability Agreement

I certify that the above statements are true to the best of my knowledge and I agree to be bound by the rental regulations and policies. I understand that violation of any of these regulations and policies may result in immediate termination of the event, forfeiture of deposit, legal responsibility for damages in excess of the deposit and will jeopardize future use of the facility.

I shall indemnify and hold MOBT, its officers, agents, and employees harmless from any and all claims, actions, liabilities, costs, including attorney fees and other costs of defense, arising out of or related to the activities of myself and the other participants during the use of the facility under this application.

I agree that during the use of the athletic facility, I will not exclude anyone from participation in, deny anyone the benefits of, or otherwise subject anyone to discrimination because of the person's race, color, national origin, age or disability.

I further understand the City of Medford makes no warranties or guarantees as to the conditions of the facilities or equipment covered by this application and that I and other participants will be using the facilities at our own risk.

Applicant's Signature: _____ Date: _____

Exhibit D

Harry & David Field

Maintenance Standards

This section covers everything you need for maintaining the grass turf and infield skin. The elements of the field maintenance plan are all inter-dependent. What is done with each element of the plan, affects the other elements. The weather is a key factor in scheduling field maintenance activities. Maintenance of the facility is also covered in this document.

Grass Turf

The natural grass turf maintenance process involves mowing, irrigation, aeration, fertilizing, over seeding, top dressing with sand, edging, spraying for broadleaf weeds and insects and soil testing. Attached is an annual schedule for maintenance activities that are done on a monthly basis. Functions such as mowing and edging are done on an as needed basis and subject to the weather. As an example, the grass may be mowed weekly in the spring and then every other day in June and July. The infield grass may be mowed daily depending on the wishes of the home team. Irrigation scheduling, monitoring and sprinkler repair are done daily.

Infield Skin & Warning Track

The infield surface, baselines, pitcher's mound and batter's box have a soil texture comprised of clay, sand and loam. The warning track is made of decomposed granite. The daily maintenance requirements for these two surfaces may include mat dragging, nail dragging, leveling with a tractor-pulled box grader, hand raking, watering, repair of the pitcher's mound and batter's box and application of Turface to help with drainage and provide a safe, consistent surface. Periodically, the infield soil will need to be replenished due to wind and play on the field. As needed, the infield surface and warning track should be rolled with a one-ton roller.

Facility

Because of the cement block and metal siding and roof construction of the press box and maintenance buildings and concrete and asphalt surfaces, the facility structures require minimal maintenance. However, following is a list of maintenance duties that should be done on a daily to annual basis based on the schedule of games and events:*

- Pressure wash the concrete and asphalt surfaces
- Backflow Testing
- Prune, weed and fertilize landscaping
- Plant and maintain flowers in plaza area
- Spray for insects
- Clean restrooms
- Clean parking lot
- Clean seating areas
- Clean and vacuum press box
- Clean windows
- Service swamp cooler & HVAC
- Change HVAC filters
- Recharge fire extinguishers
- Inspect/repair stadium & bleacher seats
- Inspect/certify concession grill venting & fire suppression system

* Reseal and stripe asphalt surfaces every 5-6 years

Exhibit E
Harry & David Field
Calendar Years 2012-2016
Capital Improvement Plan

1. The Capital Improvement Plan (CIP) identifies MOBT's short- and long-term capital needs for Harry & David Field over a five-year time frame; and identifies estimated costs and funding sources for each recommended plan. The development of the CIP is a continual work in progress.
2. Representatives of the Contractor and City shall meet annually to review the CIP. The primary source of funding for the plan will be through the fundraising efforts of the Medford Youth Baseball Society (MYBS) and other opportunities.
3. Contractor

Two-year Capital Plan (CY 2012-2013)

Project Name: Fan Capacity Expansion

Description:

The proposed project is designed to increase the capacity of the facility from 643 fans to 2,170. The expansion will include permanent bleachers, grass berm, party deck and additional stadium seats. Work required to complete the project includes import of fill material, grading, construction of concrete retaining walls and seat risers, extension of the concrete concourse and installation of railings and drains.

Three-year Capital Forecast (CY 2014, 2015 & 2016)

Project Name: Parking Expansion - West Lot

Description:

The proposed project is designed to increase parking capacity from 108 spaces to 207. Work required to complete the project includes installation of sub-base material, placement of storm drain lines and catch basins, installation of asphalt, stripping, curbing, lighting and landscaping.

Project Name: Parking Expansion – South Lot

Description:

The proposed project is designed to increase parking capacity from 207 spaces to 373. Work required to complete the project includes installation of sub-base material, placement of storm drain lines and catch basins, installation of asphalt, stripping, curbing, lighting and landscaping.

Project Name: Roof Construction

Description:

A stadium feeling experience for ticket holders makes the games more comfortable and exciting to attend. Installing a concrete privacy wall to screen out non-ticket holders from viewing the first and third base dugout areas will increase the value of a ticket holder's experience. And, an overhead shade awning that matches the Galvalume metal roof of the press box building will make games more comfortable for the audience.

Project Name: Clubhouse Construction

Description:

A masonry clubhouse with locker rooms, showers and coach meeting rooms for two teams will improve team preparation for games and make the field a more popular location for tournaments. It would include clothes washers and dryers, as well, with easy to maintain concrete floors and tile in the shower areas.

EXHIBIT E-1
Harry & David Field
Calendar Years 2012 - 2016
Capital Improvement Plan

Project Type	2012 Budget	2013 Budget	2014 Estimate	2015 Estimate	2016 Estimate	2012-2016 TOTAL
Stadium Expansion	\$ 250,000.00	\$ 250,000.00				\$ 500,000.00
Parking Expansion - West Lot			\$ 201,000.00			\$ 201,000.00
Parking Expansion - South Lot				\$ 533,000.00		\$ 533,000.00
Stadium Roof				\$ 560,000.00		\$ 560,000.00
Clubhouse					\$ 495,000.00	\$ 495,000.00
TOTAL	\$ 250,000.00	\$ 250,000.00	\$ 201,000.00	\$ 1,093,000.00	\$ 495,000.00	\$ 2,289,000.00

NAMING RIGHTS AGREEMENT

This Agreement is made as of ~~May 11, 2007~~ ^{June 7} ("Effective Date") by and between United States Cellular Corporation ("U.S. Cellular"), a Delaware corporation, and the City of Medford, Oregon ("City"), an Oregon municipal corporation.

WHEREAS, City is constructing and will own the sports and community park and related facilities located on a 132-acre parcel of land situated between Interstate Highway No. 5 and State Highway No. 99, Medford, Oregon, currently known as the Medford Sports and Community Park (collectively and including the elements identified below, "Park").

WHEREAS, City has the right to name the Park pursuant to its naming rights policy contained in Resolution 2002-212, as amended by Resolution 2004-219 and by Resolution 2006-140 (collectively, "Naming Rights Policy").

WHEREAS, City has the authority to grant advertising and promotional rights with respect to the Park not inconsistent with the laws of the United States, the State of Oregon, and the Medford Charter.

WHEREAS, City wishes to grant to U.S. Cellular the right to name the Park and to grant to U.S. Cellular the rights to conduct advertising and promotional activities in connection with the Park as well as the other promotional rights and benefits described in this Agreement.

WHEREAS, U.S. Cellular desires to acquire such rights.

NOW, THEREFORE, the parties agree as follows:

Section 1. Park

1.1 The Park shall consist of a state-of-the-art mixed use multi-purpose park complex for sports, entertainment, and business and civic events, as depicted on the Park Master Plan, attached as Exhibit A, including the following elements:

(a) Harry & David Field (No. 9 on Park Master Plan). A newly-constructed baseball stadium that consists of a 400' outfield, grandstands, press box, concessions, restrooms, material storage, practice facilities and parking for over 430 cars. The stadium will host approximately 150 games per year and may also be used for exhibitions, auto shows, concerts, and other activities. U.S. Cellular acknowledges that this element is operated under a separate agreement between City and Medford Youth Baseball.

(b) Jefferson Nature Center (NC on Park Master Plan). A nature center, operated by Jefferson Nature Center, a non-profit organization that

consists of a farmhouse that is currently located along Bear Creek within the Park renovated to include educational and interpretive programs. The nature center will include walking trails, interpretive stations, and gardens. U.S. Cellular acknowledges that this element is operated under a separate agreement between City and Jefferson Nature Center.

(c) Softball Complex (Nos. 13 a-e on Park Master Plan). A softball complex that consists of at least four softball/baseball fields, concessions stand, public restrooms, practice areas, picnic grounds, and a children's playground.

(d) Activity Pavilion (No. 2 on Park Master Plan). A pavilion that consists of 8,000 square feet of space including restrooms, storage and a caterer's kitchen. The pavilion will accommodate 300 people in a dinner arrangement and over 600 in an auditorium configuration.

(e) Interior Park Roads. Interior park roads that consist of one road on the west side of the park and another road that leads over the bridge to access the east side of the park. That road will dead end at the parking lot on the north side of the property.

(f) Rotary Bridge. An artistic two-lane bridge for vehicle traffic located within the Park that crosses Bear Creek.

(g) Bicycle and Pedestrian Trails. Bicycle and pedestrian trails that consist of the Bear Creek trail, a paved path that is about one-half mile long, which runs through the Park and enters the south portion of the Park by the creek. The trail then runs over the bridge and along the creek until it exits on the northeast section of the Park. Other trails will include one that follows the road in the west side of the Park and those that are associated with the Jefferson Nature Center.

(h) Bear Creek Greenway. A one-half mile portion of the Bear Creek Greenway, a 19-mile paved bicycle and pedestrian trail that links five cities in Oregon will be constructed through the Park.

(i) Picnic Shelters. The Park will include at least six picnic shelters that consist of tables and benches.

(j) Public Transit. There will be a bus stop along State Highway No. 99 that will allow public to access the Park by public transportation.

(k) Parking Facilities. The parking facilities will include at least six interior parking areas with a capacity of at least 1,300 automobile parking spaces.

(l) Capacity. The overall capacity of the Park will be approximately 10,000 visitors.

(m) Hours of Operation. The hours of operation of the Park will be 365 days a year from 6:30 a.m. until 10:00 p.m.

(n) Size. Currently, as planned, the Park will be the largest park in the southern Oregon and northern California region.

(o) Riparian Corridor Area. An area of approximately 40 acres will remain natural and undeveloped.

1.2 City shall and will continue to own, operate, and maintain the Park, including the elements described above, each of which and collectively shall be of a quality at least as set forth in the current City of Medford Leisure Services Plan ("Leisure Services Plan"). City may not materially alter the Leisure Services Plan in a manner that materially adversely affects the operation or maintenance of the Park or the elements described above without U.S. Cellular's prior consent.

1.3 City acknowledges the importance of U.S. Cellular's connection with the Park to U.S. Cellular's public image and business reputation. City shall maintain in place its policy of non-discrimination, rules for use of the Park, and schedules and standards for maintenance of the Park, which shall reflect favorably on U.S. Cellular's public image, good will, or business reputation.

1.4 Except as expressly set forth in this Agreement, U.S. Cellular shall not bear any responsibility for the operation of the Park.

Section 2. Naming Rights Fee

2.1 Except as provided in Exhibit B, U.S. Cellular shall pay City a Naming Rights Fee of \$650,000 as set forth below:

(a) Until the Park is complete, U.S. Cellular shall pay City a percentage of \$130,000 year based on the percentage of the Park that is completed on the anniversary date of this Agreement as set forth in Exhibit B. For the purposes of this Section, the elements identified on Exhibit B shall be deemed completed when a Certificate of Occupancy for the element has been issued by the City of Medford.

(b) After the Park is complete, U.S. Cellular shall pay City \$130,000 per year (except that in the final year, such payment may be less than \$130,000), due on the anniversary date of the Park's completion, until all such payments total \$650,000.

Section 3. Grant of Rights

3.1 Grant of Naming Rights. Pursuant to the Naming Rights Policy, City grants to U.S. Cellular the exclusive, right to name the Park and to advertise and promote the Park and U.S. Cellular's naming rights. Pursuant to such grant, U.S. Cellular may name the Park "U.S. Cellular Community Park," or such other name as the parties mutually agree. U.S. Cellular acknowledges and agrees that the foregoing grant does not include the right to name any individual elements of the Park.

(a) Reference to "Heitkamp Ranch". City represents that it is contractually obligated to include a reference to "Heitkamp Ranch" on certain entry signs for the Park so that the Park Name is followed, on a separate line, by the phrase "at Heitkamp Ranch." The reference shall appear only on entry signs at South Pacific Highway and at Lowry Lane and on the sign bearing the Park Name that is located on the east boundary of the Park, similar to the proportions of the signs depicted on Exhibit C, which signs shall be subject to U.S. Cellular's prior approval.

(b) Park Logo. U.S. Cellular, at its option, may develop, a logo for the Park, consisting of one or more stylized versions of the Park Name (each, a "Park Logo") for use in different applications (e.g., logo for use on principal signs, logo for use in advertising, logo for use on informational signs). Any such logo shall be subject to City's prior written approval, which shall not be unreasonably withheld.

(c) Changes.

(1) U.S. Cellular may propose a new Park Name, subject to Section 3.1(a), to replace the then-current Park Name, upon notice to City. Any new Park Name shall be subject to City's prior written approval, which shall not be unreasonably withheld.

(2) U.S. Cellular may change the logo for the Park, to replace the then-current logo, upon notice to City.

U.S. Cellular shall pay all costs and expenses incurred in implementing a new Park Name or Park Logo pursuant to this subsection.

3.2 Grant of Sponsorship Rights. City grants to U.S. Cellular the exclusive sponsorship right to be identified as a sponsor of the Park and to advertise and promote the Park and U.S. Cellular's sponsorship.

Section 4. Exclusivity.

City shall not authorize any manufacturer, seller, distributor, or dealer of any of the

following competitive goods or services to be a sponsor or co-sponsor of the Park or any element thereof: telecommunications services and telecommunications equipment.

Section 5. Trademarks

5.1 Ownership.

(a) **U.S. Cellular Trademarks.** As between the parties, U.S. Cellular's trade names, trademarks, service marks, and logos, including those identified on Exhibit C (collectively, "U.S. Cellular Trademarks"), are and shall remain the property of U.S. Cellular. U.S. Cellular Trademarks shall not include Park Trademarks (as defined below).

(b) **Park Trademarks.** As between the parties, the Park Name and the Park Logo, including those identified on Exhibit C (collectively, "Park Trademarks"), are and shall remain the property of U.S. Cellular. U.S. Cellular may seek a trademark or service mark registration for the Park Name and the Park Logo.

5.2 License Grant. U.S. Cellular hereby grants to City the right use and to license others to use the Park Trademarks in connection with the marketing, operation, and promotion of the Park, subject to U.S. Cellular's prior written approval of such uses, except for approved uses set forth in the branding guidelines described in Section 8.1(b)(1). City may not use the Park Trademarks other than as authorized by U.S. Cellular. U.S. Cellular expressly reserves all other rights in the U.S. Cellular Trademarks.

5.3 Quality Control. City shall manage and operate the Park in a manner generally consistent with the Leisure Services Plan and with its policies, rules, and schedules and standards described in Section 1.3.

Section 6. Advertising and Merchandising

6.1 All material designed to publicize, advertise, promote, disseminate information regarding, or otherwise refer to the Park, including: signs, press materials, brochures, tickets, media advertising of any type (such as radio and television commercial announcements, and print advertising) (collectively, "Advertising and Promotional Materials") and material designed to publicize, advertise, promote, or otherwise refer to the Park, other than "Advertising and Promotional Materials," including but not limited to equipment, uniforms, programs, clothing, souvenirs, and memorabilia (collectively, "Promotional Merchandise"), whether or not specifically identified as such, shall: (a) be of a high standard of quality at least comparable to the quality used for other similar facilities; (b) be of a style, appearance, and quality as to suit the best exploitation of the Park; (c) bear appropriate trademark and copyright

notices; and (d) be free from product defects, merchantable, and fit for its particular purpose.

6.2 U.S. Cellular shall have the royalty-free right to produce, sell, and distribute Promotional Merchandise, retaining any proceeds and without accounting to City therefor. Any Promotional Merchandise bearing Park Trademarks shall be subject to City's approval, which shall not be unreasonably withheld.

6.3 City shall have the royalty-free right to produce, sell, and distribute Promotional Merchandise bearing Park Trademarks. Such merchandise shall be subject to U.S. Cellular's approval, which shall not be unreasonably withheld. City shall not place any other trademark, service mark, name, logo or design on Promotional Merchandise bearing Park Trademarks without U.S. Cellular's prior written approval.

6.4 If any Promotional Merchandise manufactured, distributed, or sold by a party shall be defective in material or workmanship or otherwise fail to conform with the terms of this Agreement, the other party may, in addition to its other rights, require destruction of such goods or the alteration to remove the trademarks therefrom, at the sole expense of the owner of such merchandise.

Section 7. Display of Park Trademarks and U.S. Cellular Trademarks

7.1 Use of Trademarks. City shall use the Park Trademarks and U.S. Cellular Trademarks as set forth on Exhibit D. Unless otherwise specified, all such uses shall be at the cost and expense of City, including the cost and responsibility for producing, installing, and maintaining such displays in good order, repair, and condition at all times.

7.2 Use of Park Trademarks. City shall use the Park Name, and where feasible, the appropriate Park Logo, in all Advertising and Promotional Materials and Promotional Merchandise for the Park. The Park Logo shall be displayed in a manner that is aesthetically consistent with the overall context in which it appears.

7.3 Preeminence of U.S. Cellular Naming Rights and Sponsorship.

(a) City shall ensure that no other trademarks or signs shall be displayed within the Park except:

(1) Signs identifying individual elements of the Park that are subject to other sponsorships as set forth in this section.

(2) Signs of a non-commercial nature related to the operation of the Park.

(3) For an individual event, on the day of the event up to four temporary banners promoting the event, provided that the banners: (A) are placed at least 30 feet from any of the Park Trademarks or U.S. Cellular Trademarks; (B) contain information relating to the sponsor of such event, including such sponsor's name, logo, products, services, slogans and taglines; and (C) do not advertise, market or promote a third party's telecommunications services or telephone equipment.

(b) U.S. Cellular acknowledges that, subject to Section 4, City may grant other naming rights related to individual elements of the Park. Specifically, City may grant other naming rights to up to fifteen other entities, subject to U.S. Cellular's prior approval, which shall not be unreasonably withheld.

(c) City acknowledges that U.S. Cellular's rights shall be superior to and have precedence over all other sponsorships related to the Park:

(1) City shall ensure that, compared to U.S. Cellular, no other single sponsor or brand has or related sponsors or brands have: (A) a greater number of signs, (B) larger signs, (C) a greater aggregate square footage taking into account all signs, (D) priority in choosing locations for signs, or (E) priority in choosing the dates of events.

(2) Whenever feasible, references to U.S. Cellular shall appear in the primary position and in the largest font whenever more than one sponsor is identified.

7.4 Advertising and Promotional Benefits. City shall provide U.S. Cellular with the advertising, promotional, and hospitality benefits set forth on Exhibit E.

Section 8. Approval Rights

8.1 U.S. Cellular may review and approve in advance the following elements with respect to the Park:

(a) City's selection of any management company for the Park, unless such management company agrees to be bound by all applicable terms of this Agreement.

(b) All Advertising and Promotional Materials and Promotional Merchandise.

(1) Certain Advertising and Promotional Materials that use U.S. Cellular Trademarks and Park Trademarks only to identify the Park and U.S. Cellular and not, for example, to provide any substantive or factual

information about U.S. Cellular, its goods or services, or its relationship with the Park or City shall be deemed approved if they comply with U.S. Cellular's written branding guidelines, attached as Exhibit F.

(2) Advertising and Promotional Materials that use U.S. Cellular Trademarks and Park Trademarks and provide any substantive or factual information about U.S. Cellular, its goods or services, or its relationship with the Park or City shall remain subject to U.S. Cellular's prior written approval.

8.2 City may review and approve in advance any Advertising and Promotional Materials and Promotional Merchandise produced by or on behalf of U.S. Cellular bearing Park Trademarks.

Section 9. Reports

From time to time, U.S. Cellular may require City to submit written progress reports to U.S. Cellular in connection with the design, construction, and operation of the Park. Such reports shall describe: (a) the status since the submission of a prior report, if any, and the expected progress to be made; (b) the activities engaged in by City with specific reference to its obligations and duties under this Agreement; (c) any problems or delays anticipated by City; and (d) other information relevant to City's performance or otherwise required under this Agreement.

Section 10. Term

10.1 Initial Term. This Agreement shall begin as of the Effective Date and continue until five years after the Park is completed.

10.2 Renewal. U.S. Cellular may renew this Agreement for one additional six-year term on the same terms and conditions contained herein, except for the amount of the Naming Rights Fee, on written notice to City at least one year prior to the expiration of the initial term, provided that U.S. Cellular and City agree to the amount of the Naming Rights Fee at least six months prior to expiration of the initial term.

10.3 Right of Exclusive Negotiation. During the term, unless and until the parties are unable to reach agreement on renewal under Section 10.2, U.S. Cellular shall have an exclusive right of first negotiation regarding the name of the Park or any sponsorship comparable to its sponsorship rights under this Agreement for any period following the term.

10.4 Right of First Refusal. City may not enter into any agreement with another party that contains terms and conditions materially different from the terms last offered to U.S. Cellular and refused by U.S. Cellular, unless City has provided U.S.

Cellular with notice of such terms and U.S. Cellular has either failed to accept such terms or has not responded to the notice within sixty days.

Section 11. Termination

11.1 By U.S. Cellular. U.S. Cellular may terminate this Agreement:

(a) Upon notice to City of a material breach by City. Such termination shall be effective ten days after the date of such notice (unless a greater period is specified in the notice) unless City cures the breach within such period. In addition to the breaches identified in Section 11.1(b), a material breach includes, without limitation:

(1) A material change in the Naming Rights Policy that, in U.S. Cellular's reasonable judgment, adversely affects the rights granted to it under this Agreement.

(2) Any representation or warranty by City contained in this Agreement that is false or misleading in any material respect.

(3) A default by City in the performance or observance of any material term of this Agreement.

The cure period shall not apply to any breach that by its nature is not capable of cure.

(b) Immediately upon notice to City if:

(1) The Park fails to conduct the minimum level of events and activities set forth in Exhibit B.

(2) City: (A) has proceedings in bankruptcy, reorganization, receivership, or dissolution initiated by or against it; (B) makes an assignment for the benefit of its creditors; (C) admits in writing that it is unable to pay its debts generally as they become due; or (D) winds up or liquidates its business.

(3) City, any of its agents, or others associated with the Park, become involved in or have at any time been involved in scandalous, criminal, notorious, or disreputable activity that is likely to damage, detract from, or reflect unfavorably on U.S. Cellular's public image, good will, or business reputation.

11.2 By City. City may terminate this Agreement upon notice to U.S. Cellular if U.S. Cellular fails to pay the Naming Rights Fee. Such termination shall be effective

fifteen business days after the date of such notice (unless a greater period is specified in the notice) unless U.S. Cellular cures the breach within such period.

11.3 Consequence of Termination. On any termination of this Agreement, City shall:

(a) Take all action necessary to protect any property in its possession in which U.S. Cellular has an interest, including any property bearing U.S. Cellular Trademarks.

(b) Take all reasonable steps to protect U.S. Cellular Trademarks, including ceasing use of them within a reasonable period of time under the circumstances of the termination.

(c) At U.S. Cellular's request, take all action necessary to announce and publicize the discontinuation of U.S. Cellular's affiliation with the Park.

Notwithstanding the foregoing, upon the expiration of this Agreement, City may continue to use the Park Name under the standards set forth in this for a commercially reasonable period of time, but no longer than 90 days.

Section 12. Other Contractual Obligations

12.1 U.S. Cellular acknowledges that, as set forth in Section 7.3(b), City may grant to third parties naming rights related to individual elements of the Park.

12.2 Any agreement related to the Park between City and any third party, under which obligations or liabilities in excess of \$10,000 in the aggregate may be incurred, shall contain a clause substantially in the following form:

[Third party] shall look solely to [City] for performance and for payment and satisfaction of any obligation or claim arising out of or in connection with this Agreement, and [Third Party] hereby covenants that it shall not assert any claim against or look to United States Cellular Corporation or any of its officers, directors, employees, affiliates, or representatives for satisfaction of any such obligation or claim.

Section 13. Representations and Warranties

13.1 By U.S. Cellular. U.S. Cellular represents and warrants that:

(a) It owns and has adopted and used U.S. Cellular Trademarks.

(b) It has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

13.2 By City. City represents and warrants that:

(a) It has and will continue to have the authority to own, operate, and maintain the Park.

(b) Pursuant to the Naming Rights Policy, it has full power and authority to enter into this Agreement, grant the rights granted hereunder, and perform its obligations as set forth herein and the person signing this Agreement on its behalf has the authority to do so.

Section 14. Indemnification

14.1 By U.S. Cellular. U.S. Cellular shall indemnify and hold harmless City and their respective officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of any claims by third parties relating to negligent or intentional acts or omissions of U.S. Cellular or its employees, agents, or representatives in the exercise of its rights hereunder, including any events or activities conducted by U.S. Cellular, except to the extent caused by the negligence or willful misconduct of City.

14.2 By City. To the extent permitted by Article XI, Section 7 of the Oregon Constitution, and subject to the limits of the Oregon Tort Claims Act, ORS 30,260 through 30,300, which limits shall exclude any available insurance provided pursuant to Section 15, City shall indemnify and hold harmless U.S. Cellular and U.S. Cellular's officers, directors, employees, successors, and assigns from any claims, damages, liabilities, losses, government procedures, costs, and expenses, including reasonable attorneys' fees and costs of suit, arising out of claims by third parties relating to:

(a) Any negligent or intentional acts or omissions of City or its employees, agents, or representatives in the exercise of its rights hereunder, except to the extent caused by the negligence or willful misconduct of the U.S. Cellular.

(b) Any injury, including death, to the person or property of another or other damage occurring in connection with the Park or the activities of City related to Park, including but not limited to Promotional Merchandise manufactured, distributed, or sold by City.

(c) All loss, damage, or expense whatsoever resulting from the execution or the performance of this Agreement that constitutes a breach of any obligation of City to a third party.

14.3 The party seeking to be indemnified ("Indemnified Party") shall give prompt written notice to the other ("Indemnifying Party") of any such claim, suit, or demand. Indemnifying Party shall thereupon be entitled to defend or settle the same through counsel of its own choosing and shall promptly notify Indemnified Party of its intention in this regard. Indemnified Party shall cooperate with the Indemnifying Party in the defense. Indemnified Party may conduct the defense itself, at Indemnifying Party's expense, if Indemnifying Party has not notified Indemnified Party of its election in this regard within 30 days following notice by Indemnified Party of such matters.

Section 15. Insurance

15.1 City shall obtain and maintain at its own expense, during the term of this Agreement, and for a period of two years thereafter, insurance policies written by a United States insurance company admitted in the State of Illinois with a minimum A.M. Best rating of "A-" and a financial size of at least Class VIII, or written with a group self-insurance program approved by the State of Oregon, in the amounts and on the terms specified below, which policies shall:

(a) Commercial General Liability Insurance in the amount of \$5,000,000 per occurrence (which may be provided in any combination of primary and umbrella liability coverage), including coverage for bodily injury and property damage, premises and operations, products, completed operations, contractual liability, independent contractors, and personal/advertising injury liability.

(b) Workers Compensation (as required by law) and Employer's Liability in the amount of \$1,000,000 per occurrence.

(c) Provide standard product liability protection.

(d) Media Liability, Sponsorship or other similar coverage in the amount of \$2,000,000 per claim. The Media Liability or other similar insurance shall include coverage for infringement of any intellectual property right of any third party, including without limitation trade secret, copyright, trade dress or slogan.

(e) In the event that beer, wine, or other alcoholic liquors or beverages are sold or given away at or from the Facility (it being understood and agreed, however, that this section is not intended to authorize the use of the Facility for such purposes), provide employer's liability, host liquor liability, liquor liability and so-called "dram shop" liability coverage with a combined single limit of at

least \$3,000,000 or for such higher limits as may be provided for under the laws of the State in which the Facility is located.

(f) Identify U.S. Cellular, its affiliates, and related entities and the officers, directors, partners, employees and representatives of each, including their respective successors and assigns, as additional insureds under the commercial general liability and umbrella and excess liability policies.

15.2 The foregoing liability insurance shall be primary with respect to liability assumed by City hereunder, and shall include a waiver of subrogation in favor of U.S. Cellular. Such insurance shall be with insurers and in a form reasonably acceptable to U.S. Cellular and shall require the insurer to give U.S. Cellular at least 30 days' prior notice of any modification or cancellation of coverage. City shall provide U.S. Cellular with such evidence of coverage in the form of a certificate of insurance within 30 days of execution of this Agreement.

15.3 In addition, City shall cause one or more third parties associated with the Park to obtain and maintain Commercial General Liability Insurance (as described above) totaling \$2,000,000 per occurrence and \$4,000,000 general aggregate naming U.S. Cellular, its subsidiaries, divisions, affiliates and/or related entities and their officers, directors, partners, employees and representatives, including their respective successors and assigns as additional insureds on the terms set forth above.

Section 16. Governing Law and Venue

This Agreement shall be governed by the laws of the State of Oregon, without regard to its conflicts of laws provisions. Any court action relating to this Agreement shall be brought in the State of Oregon Circuit Court for Jackson County, Oregon or in the United States District Court for the District of Oregon located in Medford, Oregon. Nothing in this Agreement shall be deemed to prevent the parties from arbitrating any disputes under this Agreement.

Section 17. General

17.1 Relationship. The parties are acting as independent contractors; nothing in this Agreement shall be deemed to create a joint venture, partnership, agency, employment, or other relationship between the parties.

17.2 Survival. The following provisions shall survive the termination or expiration of this Agreement: Section 5, Section 6, Section 14, and Section 15.

17.3 Entire Agreement. This Agreement is the parties' entire agreement with respect to its subject matter and supersedes any other agreements, written or oral relating to that subject matter.

17.4 Modifications. This Agreement may not be amended, modified, waived, or adjusted except in a writing signed by the parties.

17.5 Assignment. City may not assign or delegate any of its rights or obligations under this Agreement without U.S. Cellular's prior written consent. U.S. Cellular may not assign or delegate any of its rights or obligations under this Agreement without City's prior written consent, except that an assignment or delegation to one of its affiliates shall not require consent. For purposes of this section, an "affiliate" means an entity, which directly or indirectly owns or controls, is owned or is controlled by, or is under common ownership or control with, U.S. Cellular. As used herein, "control" means the power to direct the management or affairs of an entity, and "ownership" means the beneficial ownership of more than 50% of the voting equity securities or other equivalent voting interests of the entity. Any assignment or delegation made without such consent shall be void.

17.6 Notice. All communications and notices hereunder shall be in writing addressed to a party at its address set forth below or at such other address as may be given by a party pursuant to a notice that complies with this section.

U.S. Cellular:

U.S. Cellular Corporation
8410 West Bryn Mawr Avenue
Suite 700
Chicago, Illinois 60631
Attention: Alan D. Ferber, Vice President
of Marketing

Telecopy: (773) 399-8905

With a copy to:

Stephen P. Fitzell, Esq.
Sidley Austin LLP
One South Dearborn Street
Chicago, Illinois 60603

Telecopy: (312) 853-7036

City:

City of Medford
411 West 8th Street
Medford, Oregon 97501
Attention: Mike Dyal, City Manager

Telecopy: (541)-774-2560

All notices shall be delivered personally, by telecopy, by reputable overnight courier service, or by United States mail, provided that in all cases, delivery is confirmed.

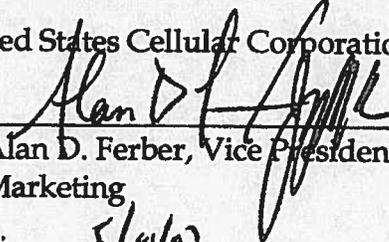
17.7 No Implied Waivers. A party's waiver of its rights under this Agreement on one occasion shall not waive those rights on another occasion.

17.8 Remedies. The rights and remedies of this Agreement are intended to be cumulative and the exercise of one shall not waive the exercise of another.

17.9 Severability. If any provision of this Agreement is deemed to be invalid: (a) the remainder shall not be deemed invalid, and (b) it shall be deemed amended by modifying such provision to the extent necessary to make the provision valid while preserving its intent or, if such a modification is not possible, substituting another valid provision so as to materially effectuate the parties' intent.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized representatives as of the date first set forth above.

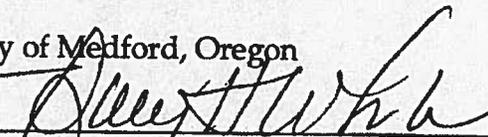
United States Cellular Corporation

By: 

Alan D. Ferber, Vice President of Marketing

Date: 5/14/07

City of Medford, Oregon

By: 

Gary H. Wheeler, Mayor

Date: 6-7-2007

NAMING AGREEMENT

Exhibit A

Park Master Plan



NAMING AGREEMENT

Exhibit B

Park Activities and Events

Section 1. Completion of Park

City acknowledges that the value of this Agreement to U.S. Cellular depends upon the timely completion of the Park. Each element of the Park has been listed below (followed by a number that is a reference to the City's master plan for the Park) along with its associated percentage as a percentage of the entire overall Park.

<u>Element</u>	<u>% of Park</u>	<u>Estimated Completion</u>
Softball/Baseball Complex Parking, field lighting, restrooms, concessions and seating	33%	May 1, 2008
Lowry Lane Extension (4) Lowry Lane, Highway 99 Access, Paved trail on West side of park	7%	June 1, 2008
Baseball Field (12a) Parking, Lighting	7%	April 1, 2009
Championship Field (7) Lighting, Restroom, Concession, Seating	7%	April 2009
Field Sports Area (11 & 14) Lighting	25%	April 2009
Baseball Field (12b)	7%	April 2010
Activity Pavilion Parking	7%	April 2010
Site Amenities 6 picnic shelters, playgrounds	2%	As funding is available
Youth field complex (15a & 15b)	5%	As funding is available

The amount of the Naming Rights Fee shall be calculated annually as of the anniversary date of this Agreement. City shall promptly provide to U.S. Cellular proof of the issuance of the Certificate of Occupancy for each element identified in the previous table.

Example:

As of the first anniversary of this Agreement, the Park is not complete. The

softball/baseball complex has been completed and Certificate of Occupancy issued, but no other elements identified in the table above have been completed and had a Certificate of Occupancy issues.

U.S. Cellular shall pay City an annual Naming Rights Fee of \$42,900, reflecting the percentage associated with completion of the softball/baseball complex (33%) multiplied by the annual \$130,000 payment pursuant to Section 2.1(a):

$$\$130,000 \times 33\% = \$42,900$$

Section 2. Right to Terminate

U.S. Cellular may terminate this Agreement at any time pursuant to Section 11, if all of the Park elements identified above (excluding those which are identified as depending on the availability of funding) are not complete by 2010.

Section 3. Reduction of Annual Fee

If the all of the Park elements identified above (excluding those which are identified as depending on the availability of funding) are not complete by 2011 and U.S. Cellular has not terminated this Agreement as provided above, U.S. Cellular's obligation to pay the Naming Rights Fee shall be suspended until such time as the Park has been completed.

NAMING RIGHTS AGREEMENT

Exhibit C

Trademarks

Section 1. U.S. Cellular Trademarks

- 1.1 The word mark: U.S. CELLULAR
- 1.2 The U.S. Cellular logo:



Nothing in this Agreement shall be deemed to give City any right to use or claim any rights in the U.S. Cellular Trademarks, except as explicitly provided for in this Agreement.

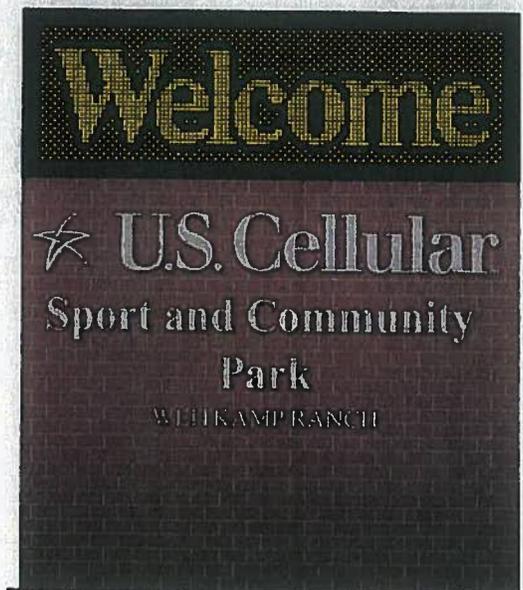
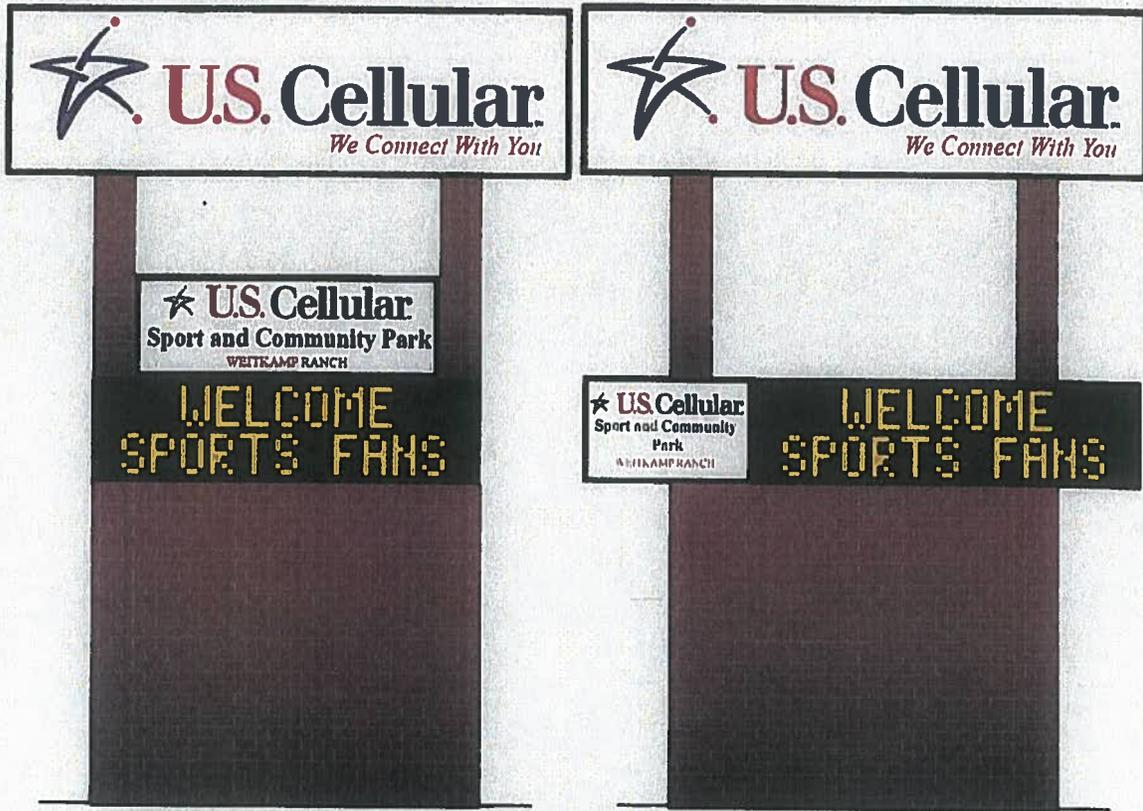
Section 2. Park Trademarks

- 2.1 The word mark consisting of the Park Name.
- 2.2 The Park Logo consisting of mutually agreed logos.

City does not claim any rights in the name "U.S. Cellular" contained in any Park Trademarks, as more fully set forth in this Agreement.

Section 3. References to "Heitkamp Ranch".

References to "Heitkamp Ranch" shall appear as shown on the examples below (which incorrectly display the name as "Weitkamp Ranch"):



NAMING RIGHTS AGREEMENT

Exhibit D

Use of Park Name and Logo

The following is not intended to limit the rights of U.S. Cellular or the obligations of City under Section 7.

Section 1. Park Exterior.

City will provide and maintain the following signs bearing the Park Name and Park Logo on the exterior of the Park:

1.1 Freeway Electronic Reader. At least one electronic sign with an area of 250 square feet and a height of 50 feet at a mutually agreed location.

1.2 State Highway No. 99 Entrances. At least two monument signs with an area of 125' square and a height of 22' located at at least two primary entrances and exits to the Park, including at State Highway No. 99 and Lowry Lane.

1.3 Other Exterior Signs. City will cause interstate, county, and city directional road-signs to bear the Park Name and Park Logo.

Section 2. Park Interior.

City will provide and maintain the following signs bearing the Park Name and Park Logo on the interior of the Park:

2.1 Directory Kiosks.

2.2 Directional Signs. All interior directional signs, including signs for restrooms and playing facilities

Section 3. Other Park Activities

City will cause the Park Logo to appear and be maintained on:

3.1 Websites. The official website for the Park and all official websites for professional sports teams based in the Park.

3.2 Print Materials. Specifically including but not limited to the front and back cover of all programs for activities in Park, Park letterhead, press releases, tickets, and schedules.

3.3 Other.

- (a) Trash Cans made available for public use.
- (b) Cups used at concessions stands during City-operated events.

NAMING RIGHTS AGREEMENT

Exhibit E

Promotional Benefits

Section 1. Benefits Provided By City

City shall provide the following services, benefits, and privileges to U.S. Cellular, at no additional cost to U.S. Cellular (except as set forth below):

1.1 Publicity. City shall conduct a public relations campaign that promotes the naming of the Park in accordance with an agreed public relations plan, including a news media conference announcing the naming of the Park, which includes participation by representatives of U.S. Cellular, and periodic news and press releases relating to the progress of completion of elements of the Park.

1.2 Promotion. Each year, City shall actively promote the Park, including in the following:

- (a) *Community Connections*, a tabloid mailed to approximately 26,000 Medford households at least three times per year.
- (b) Sports League and Tournament advertising.
- (c) Bear Creek Greenway maps and brochures.
- (d) Visitor Information Center at South Medford Freeway Interchange.
- (e) Official web sites for: (1) City of Medford, (2) Medford Parks & Recreation Foundation.
- (f) Requesting that Park be listed on official web sites for: (1) the Medford/Jackson County Chamber of Commerce, and (2) Visitors and Convention Bureau.
- (g) Promotional material made available in the lobby of the offices of the Medford/Jackson County Chamber of Commerce.
- (h) City of Medford Parks and Recreation Department brochure distributed through area hotels, restaurants, and chambers of commerce.
- (i) Southern Oregon Visitors Association brochures.

1.3 Access to Park Facilities. City shall make available to U.S. Cellular four times per year during the term of this Agreement access to the Activity Pavilion or other covered picnic shelters in the Park at no cost to U.S. Cellular.

Section 2. U.S. Cellular's Promotional Rights:

U.S. Cellular shall have the following promotional rights, provided that any materials, products, or services required with respect to U.S. Cellular's exercise of these rights shall be at U.S. Cellular's expense:

2.1 U.S. Cellular may refer to its naming rights and sponsorship in Advertising and Promotional Materials, including on the U.S. Cellular web site.

2.2 U.S. Cellular may include on its web site a link to the Park's web site; City shall provide the link.

2.3 U.S. Cellular may photograph or film activities and events at the Park. Further, subject only to the rights of third parties, U.S. Cellular may use any of the photographs or film without territorial, time, use, or other limitation.

2.4 U.S. Cellular may conduct national or regional advertising and dealer promotion programs in connection with U.S. Cellular's naming rights and sponsorship.

Karen M Spoons

From: Richard S Rosenthal <richard.rosenthal@cityofmedford.org>
Sent: Monday, November 12, 2012 1:59 PM
To: bonnie huard; Karen M Spoons
Subject: MOBT insurance info
Attachments: Scanned from Santo Parks Xerox001.pdf

Hi Karen and Bonnie,

MOBT apparently has paid for insurance for 2012-13 but the certificate of insurance isn't ready. It also appears the league's insurance lapsed for 11 days until today. I asked for last year's certificate and evidence that Medford was added to the 2012-13 certificate.

This is fun, huh?

rr

--

Rich Rosenthal, CPRP, CVSA

Recreation Superintendent

City of Medford (Ore.)

541-774-2483



**NAMED INSURED MEMBER
COMMERCIAL GENERAL LIABILITY DECLARATIONS CERTIFICATE**

Insurance Company Starr Surplus Lines Insurance Company	Policyholder Sports and Recreation Providers Association Purchasing Group 1776 South Naperville Road, Bldg-B Wheaton, IL 60187
---	--

Named Insured Member West Coast League/WCL Portland P.O. Box 8395 Portland, OR 97207	Certificate Policy Period Effective 11/1/2011 Expiration 11/1/2012 Coverage is effective and expires at 12:01am at the address of the insured member
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Insured Operations	
Policy Number	SLP2GL-100000-04
Certificate Number	SLP2GL-100474-04
Limits of Coverage	\$2,000,000.00 General Aggregate Limit \$2,000,000.00 Products - Completed Operations Aggregate Limit \$1,000,000.00 Personal and Advertising Injury \$1,000,000.00 Each Occurrence Limit \$300,000.00 Fire Damage-Any One Fire \$5,000.00 Medical Expense Limit \$0.00 Property Damage Deductible Each Claim
Premium, Taxes and Fees	\$1,260.00 General Liability Premium \$13.55 Program Administrative Fee \$25.20 State Tax and Stamping Fee \$40.00 Filing Fee \$0.00 Total Amount Due From Member

Hired/Non-Owned Automobile	
Policy Number	SLP2GL-100000-04
Limits of Coverage	\$1,000,000.00
Premium, Taxes and Fees	\$67.00

Liquor Coverage	
Policy Number	SLP2GL-100000-04
Certificate Number	SLP2GL-100052-04
Limits of Coverage	\$1,000,000.00 Each Occurrence \$2,000,000.00 Aggregate Limit
Premium, Taxes and Fees	\$1,325.20

Excess/Umbrella	
Policy Number	SLXS-100000-04
Certificate Number	SLXS-100144-04
Limits of Coverage	\$1,000,000.00
Premium, Taxes and Fees	\$1,315.00

Ken Wilson

From: "Ken Wilson" <wilson@westcoastleague.com>
Date: Friday, November 09, 2012 1:04 PM
To: <Tammy@fdean.com>; "Carmen Franklin" <CUnderwood@fdean.com>
Subject: West Coast League
Tammy & Carmen:

Sent the West Coast League premium off this morning.

Would you please add the following additional insureds:

City of Medford
411 West 8th Street
Medford, Oregon 97501

City of Victoria
1 Centennial Square
Victoria, British Columbia, Canada B8W 1P6

Concordia University
2811 N.E. Holman
Portland, Oregon 97211

Thanks.



Ken

**NAMED INSURED MEMBER
COMMERCIAL GENERAL LIABILITY DECLARATIONS CERTIFICATE**

Insurance Company Starr Surplus Lines Insurance Company	Policyholder Sports and Recreation Providers Association Purchasing Group 1776 South Naperville Road, Bldg-B Wheaton, IL 60187									
Named Insured Member West Coast League/WCL Portland P.O. Box 8395 Portland, OR 97207	Certificate Policy Period Effective 11/1/2011 Expiration 11/1/2012 Coverage is effective and expires at 12:01am at the address of the insured member									
Location/Description of Operations Baseball Activities										
Schedule of Additional Insureds The below entities are added as additional insured but only in respect to liability arising out of operations of the named insured during the policy term. <table border="0" style="width:100%; border:none;"> <tr> <td style="width:33%; vertical-align:top;"> 1. City of Bellingham 210 Lottie Street Bellingham, WA 98225 </td> <td style="width:33%; vertical-align:top;"> 2. Joe Martin Field 1220 Civic Field Way Bellingham, WA 98229 </td> <td style="width:33%; vertical-align:top;"> 3. Sandlot Ventures, LLC 4623 95th Avenue Bellevue, WA 98004 </td> </tr> <tr> <td style="vertical-align:top;"> 4. Bend Metro Park & Rec. District 401 S.E. Roosevelt Street Bend, OR 97702 </td> <td style="vertical-align:top;"> 5. Bend Field House 401 S.E. Roosevelt Street Bend, OR 97702 </td> <td style="vertical-align:top;"> 6. Oregon State University Attn: PaCS 644 SW 13th Street Corvallis, OR 97330 </td> </tr> <tr> <td style="vertical-align:top;"> 7. Lower Columbia College 1600 Maple Street Longview, WA 96832 </td> <td style="vertical-align:top;"> 8. Boys of Summer LLC. P.O. Box 1255 Longview, WA 96832 </td> <td style="vertical-align:top;"> 9. Cowlitz Ballpark Concessions, LLC. P.O. Box 1255 Logview, WA 96832 </td> </tr> </table>		1. City of Bellingham 210 Lottie Street Bellingham, WA 98225	2. Joe Martin Field 1220 Civic Field Way Bellingham, WA 98229	3. Sandlot Ventures, LLC 4623 95th Avenue Bellevue, WA 98004	4. Bend Metro Park & Rec. District 401 S.E. Roosevelt Street Bend, OR 97702	5. Bend Field House 401 S.E. Roosevelt Street Bend, OR 97702	6. Oregon State University Attn: PaCS 644 SW 13th Street Corvallis, OR 97330	7. Lower Columbia College 1600 Maple Street Longview, WA 96832	8. Boys of Summer LLC. P.O. Box 1255 Longview, WA 96832	9. Cowlitz Ballpark Concessions, LLC. P.O. Box 1255 Logview, WA 96832
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This Certificate Issued By: Francis L. Dean & Associates, Inc. 1776 South Naperville Road, Bldg-B P.O. Box 4200 Wheaton, IL 60189 (630) 665-7011										
Starr Surplus Lines Insurance Company certifies that the certificate holder named herein is insured under the Sports & Recreation Providers Association Purchasing Group Master Policy. The limits of liability, premium and effective date of coverage applicable to such certificate holder are as specified above. This certificate of insurance is not the contract of insurance. It is merely evidence of insurance provided under the Master Policy. All claims are paid according to the term of the Master Policy. Authorized Purchasing Group Representative <u>Francis L. Dean</u>										

Schedule of Additional Insureds

The below entities are added as additional insured but only in respect to liability arising out of operations of the named insured during the policy term.

10.
Kitsap County
1200 Fairgrounds Road N.W.
Bremerton, WA 98312

11.
City of Klamath Falls City Hall
500 Klamath Avenue
Klamath Falls, OR 97601

12.
Kiger Stadium Association
P.O. Box 7935
Klamath Falls, OR 97602

13.
Klamath Falls Stadium Concessions,
LLC
2001 Crest Street
Klamath falls, OR 97603

14.
The Borleske Stadium Association
c/o Whitman College
Walla Walla, WA 99362

15.
City of Walla Walla
P.O. Box 478
Walla Walla, WA 99362

16.
Whitman College
345 Boyer Avenue
Walla Walla, WA 99362

17.
Walla Walla Public Schools
1150 W. Chestnut Street
Walla Walla, WA 99362

18.
Wenatchee Valley College
1300 Fifth Street
Wenatchee, WA 98801

19.
Mt. Hood Community College
26000 SE Stark Street
Gresham, OR 97030

20.
University of Portland
5000 N. Willamette Blvd.
Portland, OR 97203

21.
City of Corvallis
501 SW Madison Avenue
Corvallis, OR 97339

22.
John and Donna Johnston
2633 Old Medford Road
Klamath Falls, OR. 97603

23.
Mike and Valerie Piclard
5450 Altamont
Klamath Falls, OR. 97601

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