



# SAN BENITO COUNTY VETERANS MEMORIAL PARK COMMISSION

Maria Spandri

Peter Hernandez

Robert Duffy

Paul St. John

Mark Medina

Hollister VFW

Board of Supervisors

American Legion

San Juan Bautista VFW

Board of Supervisors

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San Benito County Board Chambers – 481 4<sup>th</sup> Street, Hollister, CA 95023

**REGULAR MEETING**  
**Monday, February 3, 2020**  
**7:00 PM**

## AGENDA

1. **Call to Order:**
  - a. Pledge of Allegiance
  - b. Roll Call
  - c. Acknowledge Certificate of Posting
2. **Public Comment:** *This is an opportunity for the public to address the commission on items of interest not appearing on the agenda or not scheduled for public hearing. No action may be taken unless provided for by GC 56954.2. Each speaker is limited to five minutes.*
3. **Consent Agenda:**
  - a. Approval of Minutes of the December 17, 2019 special meeting.
4. **Elections:**
  - a. Nomination for Chair.
  - b. Nomination for Vice-Chair.
5. **Commission Announcements – Information only.**
6. **Discussion/Action Items:**
  - a. Receive update from the Vet's Park Ad Hoc Committee.
  - b. Receive and approve letter to the City of Hollister and the Black Jacks/Central Coast Athletics (hereinafter "Black Jacks" disapproving proposed 2017 lease between the City of Hollister and the Black Jacks). – County Counsel.
  - c. Review and approve recommendation to the Board of Supervisors to terminate current City-County Operating Agreement for a portion of Vet's Park, either effective immediately or effective June 30, 2020.

- d. Review and approve recommendation to the Board of Supervisors to approve a new City-County Operating Agreement.
- e. Discussion in regards to the Carnival to be held at Vet's Park for the High School May 6-10. Authorize the Board of Supervisors to approve a contract for the 2020 Carnival.
- f. Discussion in regards to the Rancho/Maze Band wanting to use the Little League parking lot area for a spring boutique fundraiser, for dates 4/26 or 5/3.
- g. Discussion in regards to having quarterly or monthly meetings.

## **7. Adjournment.**

**SAN BENITO COUNTY  
VETERANS' MEMORIAL  
PARK COMMISSION  
CERTIFICATE OF POSTING**


**Pursuant to Government Code Section #59454.2(a), the agenda for the San Benito County Veterans' Memorial Park Commission Regular Meeting of February 3, 2020 was posted on the 30<sup>th</sup> day of January, 2020 at the following locations, freely accessible to the public:**

**The bulletin board outside the front entrance of the Old County Courthouse, Monterey Street, City of Hollister, San Benito County, State of California**

**and**

**The bulletin board outside the front entrance of the San Benito County Administration Building, 481 Fourth Street, Hollister, CA**

**I, Janet Slibsager, certify under penalty of perjury, that the foregoing is true and correct.**

  
**JANET SLIBSAGER, CLERK OF THE  
BOARD OF SUPERVISORS**

### **3. CONSENT AGENDA:**

- a. Approval of minutes: December 17, 2019 special meeting.**





# SAN BENITO COUNTY VETERANS MEMORIAL PARK COMMISSION

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San Benito County Board Chambers – 481 4<sup>th</sup> Street, Hollister, CA 95023

**SPECIAL MEETING**  
**Monday, December 17, 2019**  
**7:00 PM**

## MEETING MINUTES

**1. Call to Order – The meeting was called to order at 7:00 p.m. by Commissioner Mark Medina.**

- a. Pledge of Allegiance was led by Commissioner Peter Hernandez.
- b. Roll Call – Janet Slibsager took roll call, Commissioners that were present were Peter Hernandez, Mark Medina, Maria Spandri, Paul St. John, and absent was Robert Duffy. Also present was County Counsel Barbara Thompson and Clerk of the Board Janet Slibsager.
- c. Acknowledge Certificate of Posting.

*Commissioner Peter Hernandez made a motion to acknowledge the Certificate of Posting, seconded by Commissioner Paul St. John. (4/0 vote)*

**2. Public Comment**

There was no one from the public wishing to speak.

**3. Consent Agenda**

- a. Approval of Minutes of the October 7, 2019, special meeting.

*Motion by Commissioner Hernandez to approve the minutes as presented. Seconded by Commissioner Spandri. (4/0 vote)*

#### 4. Discussion/Action Items

- a) Report and discussion on the shed fire at the Bertha Briggs Building- Damon Felice.

Damon Felice reported and gave an update on the fire at Bertha Briggs Building. Kids lit a fire in a garbage can and the roof burnt. The building is going to be torn down and demolished by the end of the year. The Bertha Briggs Building is currently red tagged.

Commissioner Hernandez wanted to know where upcoming events would be held at.

Damon Felice responded there is no plan at this time because there are a number of issues that need to be addressed with the Bertha Briggs Building.

Commissioner Spandri wanted to know why the Bertha Briggs Building is red tagged if the building did not burn down.

Damon Felice responded that the Captain red tagged the Bertha Briggs Building and does not know why.

- b) Receive Capital Improvement Plan update- Damon Felice.

Damon Felice reported that there is no update on the Capital Improvement Plan as of right now. The only update he has in that the Bertha Briggs Building and Field 5 are on septic and not city sewer.

Commissioner Medina commented that a gentleman that uses the softball field was complaining that there was a water leak by 3<sup>rd</sup> base.

Commissioner Hernandez commented on the flooding by 3<sup>rd</sup> base, that there is a back flow.

- c) Receive update for a Vet's Park Master Plan and provide direction to staff - Damon Felice.

Damon Felice reported that per direction from Commissioners from last meeting he went and got two proposals and has narrowed it down to one and will move forward with an agreement and start with the Master Plan. The parking lot lighting will depend on the Master Plan and by June the lighting should be done. Potable water, sewer, and patching will be looked into. There will be a short term plan and we will meet with the Commissioners to get wish list and inputs early next year

Commissioner Hernandez commented that the idea was to come up with a different plan with safety and lighting and creating a different design by having revenue opportunity's at the park.

Damon Felice responded that money in the CIP budget is for lighting.

Commissioner Spandri commented that she thought the lighting was going to be done earlier and would like to have it done by June for the carnival.

Damon Felice provided information that it takes time to bid and get work done in the public sector.

- d) Discussion in regards to all contracts related to Vet's Park fields; and provide recommendation to the Board of Supervisors- County Counsel.

County Counsel Barbara Thompson passed out a rough draft of an Indemnification Agreement regarding the Black Jacks contract that has not been officially approved yet. The language has been made stronger in the Indemnification Agreement regarding sub leasing with Black Jacks; knowledge or permission of other parties using the field. Andrew Barragan of Black Jacks is in Agreement and said he would sign the Agreement and was going to come into County Counsel's office to sign but had an emergency and was not able to sign the agreement. Added into the Agreement was concerns with conflicting use of the field which has not been addressed to Mr. Barragan as of yet, but was going to be discussed when signing the Agreement. The lease agreement would include the use of the small field, would not be exclusive, and would be subject to the review of the Vet's Park Commission. The Vet's Commission will designate someone to review and approve uses of the small field to coordinate conflicting uses of the field.

County Counsel Barbara Thompson reported on the other contracts with Hollister Little League, Hollister Babe Ruth, Tremors, and Hollister Heat and went over the language. After speaking with CAO, someone from RMA will manage and follow up with the contracts. The contracts automatically renew and have a termination clause of 60 days and require proof of insurance.

Commissioner Spandri questioned the meeting with Peter Hernandez, Edgar Nolasco, Tina from Parks and Recreation with redoing the Lease with the City and having no sub-lease holders and giving Hollister Heat and Hollister Little League priority over the fields. To her knowledge, the Black Jacks were supposed to be given a 90 day notice back in November and as of January were no longer supposed to be there.

County Counsel Barbara Thompson responded there is time to negotiate.

Dulce Alonso reported that she was a part of that meeting and found in the Hollister contract that it automatically renews for one year period and cannot cancel 30 days prior to the contract ending. It automatically renewed with the City of Hollister.

County Counsel Barbara Thompson responded that they can amend the contract, with canceling the contract it would not go into effect into July 1, 2020.

Commissioner Spandri explained that the goal at the meeting was to have a lease re written with the understanding that the City was going to take more control over their

areas with having no other lease holders with Hollister Heat and Hollister Little League maintain the fields and have priority over the fields. All other scheduling of fields would then go to Tina through Parks and Recreation with no sub lease holders.

County Counsel Barbara Thompson responded that the lease cannot be terminated before July 1, 2020, but can negotiate an Amendment to the contract sooner than July 1, 2020. With sub-leasing it is contingent with the Boards approval and that has never happened. Notifications can be sent out that approval from the Board has not been recognized for sub-leases and take that position because it has not been accepted by the County.

Commissioner Medina would like to know how long this has been happening.

County Counsel Barbara Thompson responded since February 4, 2018.

Commissioner Medina expressed that the cleanest way to handle the contracts is to end the contracts June 1, 2020, because that is 30 days prior to the expiration.

County Counsel Barbara Thompson said there is two options. One option is to release the City from the sub-lease by not consenting to it. A letter would be sent to the City that the County does not accept the Sub Lease and see if the City releases the sub lease by the lack of content, then deal with the City contract separately where it can be terminated or amended.

Commissioner Medina wants to know if they release the City from the sub lease then the City would be in charge of the whole situation and the County would have no say so.

County Counsel Barbara Thompson responded yes that is correct. She sent over the agreement to the new City Attorney who was not here when the agreement was first put into place. The original City contract states that the City manages the activities as of July 1, 1999 and then entered into a sub-lease. If there was no sub-lease then it would be up to the City to manage the fields.

Commissioner Hernandez commented that he likes the way Tina from Parks and Rec handles the fields and would like to give her more authority to have control and manage the fields by adding it into the Addendum.

Commissioner Medina addressed that the Commission cannot make these decisions for the City.

Tina from the City of Hollister spoke about holding each user accountable by attending meetings. The City of Hollister is under new direction from the City manager and new Chief of Police so there are new changes happening with in the City which will affect the Recreation Department. Tina will be over seeing the department and the fields. Her goal is to budget and move forward and maintain the Park's.



Commissioner Spandri would like to know since Tina attends the meetings if there can be an update of any maintenance that was done in the Park's.

Commissioner Medina would like clarification if they renewed the contract it would be for a total of one year, and renews from year to year with the City of Hollister.

Dulce Alonso responded that it renews automatically every year.

Commissioner Medina expressed how he does not like automatic renewals because when changes arise you have to make changes and forces to have a meeting to renew the contract.

County Counsel Barbara Thompson would like to know if there could be an Ad Hoc Committee to help draft the renewal provisions and to provide a wish list.

Commissioner Hernandez and Spandri are the Ad Hoc for the renewal process.

Commissioner Medina would like to know how we will get this done, future meeting dates, and a date to execute this contract.

Dulce Alonso responded that she can put together a letter for the Board Meeting in January to release the City of Sub Leases if that is the desire of the Commission. This would have to come to the Board of Supervisors Meeting on January 14, 2020.

County Counsel Barbara Thompson stated with the Commission's approval, staff can put together a letter since it was never taken to the Board for approval.

Commissioners directed staff to put together the letter since it was never officially approved from the Board of Supervisors.

Commissioner Hernandez would like to come up with a Contingency Plan to address issues and has hopes that the City of Hollister will support Tina.

Representative from Hollister Heat spoke and brought payments and invoices for the City Fields that they are paying. In 2019 there was a total of \$5,200 for renting the fields for two hours a day for three days a week from the City Schools.

Commissioner Medina reported that the wish of the Commission is to release the City of Hollister from the sub-lease, with staff having the authority to do this through a letter by telling the City we do not approve the sub-lease. By assuming the City accepts this; the second part would be to negotiate the addendum with the City of Hollister to put in more controls that the Vet's Parks Commission would want, along with Dulce Alonso working with the Ad Hoc, RMA, and Tina to work on language.

There was a discussion on dates of meetings between Commissioners. The City of Hollister would need a letter by January 14<sup>th</sup>, 2020 in order to put on their February 18<sup>th</sup>, 2020 Meeting. This item will be brought back to the Commission on February 3, 2020 Regular meeting.

- e) Discussion in regards to the City and County contract for Vet's Park; and provide direction to the Board of Supervisors- County Counsel.

County Counsel Barbara Thompson provided information that she has direction to draft an Addendum and will bring back at February 3, 2020 Regular Meeting.

Commissioner Hernandez commented that moving forward with this means we are currently negotiating with the City of Hollister.

Dulce Alonso stated, yes, currently means we are amending.

Commissioner Spandri said she would like to approve the Carnival Contract but was not on the agenda for today's meeting.

Commissioner Medina responded that the item will be placed on the January 14, 2020 Board of Supervisor meeting as a contingent of the approval of Vet's Park Commission and will be brought to the regular meeting on February 3, 2020.

There was a discussion between Commissioners about changing quarterly meetings to monthly meetings and will be put on February's Agenda.

## 5. **Adjournment:**

**Motion made by Commissioner Hernandez and seconded by Commissioner Spandri to adjourn the meeting. Meeting adjourned at 7:55 p.m., until February 3, 2020 at 7:00 p.m. for a regular meeting. (4/0 vote)**

# 4. ELECTIONS:

- a. **Nomination for Chair.**
- b. **Nomination for Vice-Chair.**



## **6. DISCUSSION/ACTION ITEMS:**

- a. Receive update from the Vet's Park Ad Hoc Committee.**
- b. Receive and approve letter to the City of Hollister and the Black Jacks/Central Coast Athletics (hereinafter "Black Jacks" disapproving proposed 2017 lease between the City of Hollister and the Black Jacks). – County Counsel**
- c. Receive and approve recommendation to the Board of Supervisors to terminate current City-County Operating Agreement for a portion of Vet's Park, either effective immediately or effective June 30, 2020. – County Counsel**
- d. Review and approve recommendation to the Board of Supervisors to approve a new City-County Operating Agreement. – County Counsel**
- e. Discussion in regards to the Carnival to be held at Vet's Park for the High School. Authorize the Board of Supervisors to approve a contract for the 2020 Carnival.**
- f. Discussion in regards to the Ranhco/Maze Band wanting to use the Little League parking lot area for a spring boutique, for dates 4/26 or 5/3.**
- g. Discussion in regards to having quarterly or monthly meetings.**



BY EMAIL AND US MAIL

February 4, 2020

Central Coast Athletics  
Hollister Black Jacks Corporation  
Attn: Andrew Barragan  
355 Magladry Road  
Hollister, CA 95203

Brett Miller, City Manager  
City of Hollister  
375 Fifth Street  
Hollister, CA 95023

Recreation Supervisor  
City of Hollister  
300 West Street  
Hollister, CA 95023

Dear Mr. Barragan and Mr. Miller:

In regards to the April 1, 2017, "Lease Agreement" signed by City of Hollister and the Hollister Black Jacks Corporation, I wish to draw your attention to the fact that the proposed sublease was subject to the consent of the County. Although the County has taken this matter to the Vets Park commission on at least two occasions, to date the Vets Park Commission has not approved the sublease. Since the proposed sublease of that field to the Black Jacks has not been approved by the Vets Park Commission and the Board of Supervisors (or its Chair), it is not in effect and is not a valid sublease.

The "Addendum to the Operating Agreement with the City of Hollister Relating to the Softball Fields at Veterans Memorial Park" clearly indicates that the City may not sublet or assign its interest in the Small Softball Field unless the sublease or assignment agreement is reviewed and approved by (a) The Veterans Memorial Park Commission, (b) the Chair of the Board of Supervisors (who may in his/her discretion agendaize the matter for full Board approval), and (c) as to legal form by County Counsel.

As a result, no sublease agreement has been approved or currently is in effect. The City is requested to provide a response to this letter.

Sincerely,

Barbara Thompson  
County Counsel

Cc: Jason Epperson, Esq. (via email)

<b>AGENDA ITEM TRANSMITTAL</b>		Agenda Time Estimates: 5 Minutes or <input type="checkbox"/> Consent	Leave Blank:	Date/Time Rec'd:
TO: Vets Park Commission		CONTACT FOR INFORMATION: Name: Barbara Thompson Phone No: 636-4040, ext. 12		NUMBER OF CERTIFIED COPIES REQUIRED:
FROM: County Counsel Barbara Thompson, County Counsel		(1) SUBJECT: Approval of sublease agreement between the City of Hollister and the Hollister Black Jacks Corporation and Central Coast Athletics (hereinafter Lessee) of the Small Softball field.		
MEETING DATE: April 1, 2019		(2) BACKGROUND INFORMATION (Attach additional pages if necessary):		
<p>This matter was last before the Vets Park Commission on February 4, 2018. At that time, various questions were raised regarding the indemnification agreement. Upon the continuance, the County has modified the proposed indemnification language to add the following language:</p> <p style="padding-left: 40px;">Notwithstanding the above, LESSEE's liability for indemnification pursuant to this agreement shall be limited to a maximum amounts set forth in paragraph 10 of Lessee's agreement with the City.</p> <p style="padding-left: 40px;">LESSEE acknowledges that Paragraph 20 of the agreement with the City provides that LESSEE may not assign any part of the sublease to any other party without the consent and approval of the City of Hollister, the Vets Park Commission, the Chair of the County Board of Supervisors and County Counsel. LESSEE acknowledges that if any such assignment is approved, it shall ensure that the ASSIGNEE also indemnifies the County in the form set forth in this Indemnification Agreement.</p> <p>Therefore, the Commission is requested to review the agreement, and if satisfied, approve the lease agreement, contingent upon the Black Jacks entering into an indemnification agreement (attached) with the County.</p>				
(4) SUPPORTIVE DOCUMENTS RELATIVE TO THIS ITEM: <input type="checkbox"/> Contract <input checked="" type="checkbox"/> Ordinance		(5) PREVIOUS RELEVANT BOARD ACTIONS ON THIS SPECIFIC ITEM: Ordinance 2012- adding Section 19.07.006 to Chapter 19.07 of Title 19 of the San Benito County Code		
(6) FUNDING SOURCE(S): 2700-233		(7) CURRENT YEAR COST: \$ 0	(8) ANNUAL COST: \$ 0	(9) BUDGETED: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
(10) WILL PROPOSAL REQUIRE ADDITIONAL PERSONNEL? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO If YES, STATE NUMBER: Permanent Limited Term				
(11) RECOMMENDED ACTION(S):				
<p>It is respectfully recommended that the Commission:</p> <p>a) Approve the sublease agreement between the City of Hollister and the Hollister Black Jacks Corporation, and Central Coast Athletics, contingent upon the Lessee entering an indemnification agreement with the County.</p>				
<i>Barbara Thompson</i> Barbara Thompson, County Counsel SIGNATURE OF AGENCY OR DEPARTMENT AUTHORIZED REPRESENTATIVE			March 26, 2019 DATE	

CLERK'S USE ONLY

- |   |                                    |   |  |
|---|------------------------------------|---|--|
| <input type="checkbox"/> APPROVED           | <input type="checkbox"/> DENIED    | <input type="checkbox"/> ADOPTED              | <input type="checkbox"/> CONTINUED TO _____    |
| <input type="checkbox"/> ACKNOWLEDGED       | <input type="checkbox"/> ACCEPTED  | <input type="checkbox"/> RESOLUTION NO. _____ | <input type="checkbox"/> OTHER _____           |
| <input type="checkbox"/> SET PUBLIC HEARING | <input type="checkbox"/> APPOINTED | <input type="checkbox"/> ORDINANCE NO. _____  | <input type="checkbox"/> NO ACTION TAKEN _____ |

BY:  _____ Deputy Clerk of the Board	DATE:
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**INDEMNIFICATION AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2019, by and between the COUNTY OF SAN BENITO, hereinafter "COUNTY" and the Hollister Black Jacks Corporation, a California Corporation, and Central Coast Athletics, LLC (a California limited liability company), collective LESSEE. For purposes of this Agreement, "COUNTY" shall be defined to include COUNTYs officers, elected officials/commissioners, employees, agents, and agencies. COUNTY and LESSEE agree as follows:

LESSEE agrees to indemnify, defend and hold harmless the COUNTY, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with LESSEE's acts or omissions with regard to the performance of any of the obligations under the April 2017 Lease between the City and LESSEE for the use of the small ball field at Veterans Park ("Lease"), including but not limited to the operation and/or maintenance of the Small Field. This indemnity obligation shall include any Worker's Compensation suits, liability or expense, arising from or connected with the uses performed by or on behalf of the LESSEE and any person or entity appointed, hired, or delegated by LESSEE. LESSEE's duty to indemnify County shall survive the expiration or other termination of the Lease. Notwithstanding the above, LESSEE's liability for indemnification pursuant to this agreement shall be limited to a maximum amounts set forth in paragraph 10 of Lessee's agreement with the City.

LESSEE acknowledges that Paragraph 20 of the agreement with the City provides that LESSEE may not assign any part of the sublease to any other party without the consent and approval of the City of Hollister, the Vets Park Commission, the Chair of the County Board of Supervisors and County Counsel. LESSEE acknowledges that if any such assignment is approved, it shall ensure that the ASSIGNEE also indemnifies the County in the form set forth in this Indemnification Agreement.

LESSEE irrevocably agrees to hold LESSEE's offer to enter into this agreement until the agreement is accepted and fully executed by the County Board of Supervisors. The obligations specified herein shall be made, and are binding on the successors in interest of the LESSEE, whether succession is by agreement, by operation of law or by any other means. This Agreement contains the entire agreement of the parties, and any representations, inducements, promises, or agreements otherwise between the parties that are not embodied herein, or incorporated herein by reference, are invalid and lack any force or effect. Further, no terms or provisions hereof may be changed, waived, discharged, or terminated, unless the same is in a writing executed by the parties hereto. This agreement shall be construed as being mutually drafted by both parties. Both parties are represented by counsel or have waived their right to consult with counsel after being informed of their right to do so.

LESSEE (S)

Date: \_\_\_/\_\_\_/\_\_\_

Date: \_\_\_/\_\_\_/\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

COUNTY:

Date \_\_\_/\_\_\_/\_\_\_

By: \_\_\_\_\_

Chair, Board of Supervisors

Attest:

Approved as to Legal Form:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
County Counsel



**AGENDA ITEM TRANSMITTAL**Agenda Time Estimates:  
5 Minutes or  Consent

Leave Blank

Date/Time Rec'd

TO: Vets Park Commission  
FROM: County Counsel  
Barbara Thompson, County CounselCONTACT FOR INFORMATION:  
Name: Barbara Thompson  
Phone No: 636-4040, ext. 12NUMBER OF CERTIFIED COPIES  
REQUIRED:MEETING DATE:  
February 4, 2018

(1) SUBJECT: Approval of sublease agreement between the City of Hollister and the Hollister Black Jacks Corporation and Central Coast Athletics (hereinafter Lessee) of the Small Softball field.

(2) BACKGROUND INFORMATION (Attach additional pages if necessary):

In 2016, the City of Hollister and the County of San Benito entered into an Addendum to the operating agreement with the City of Hollister relating to the Softball Fields at Veterans Memorial Park. This Addendum indicated that the City could sublease its interest in the small softball field if the sublease or the assignment agreement is reviewed and approved by the Veterans Memorial park Commission, the Chair of the Board of Supervisors (who may in his/her discretion agendaize the matter for full board approval), and (c) as to legal form by County Counsel.

The small field is currently being utilized by the Hollister Black Jacks Corporation and Central Coast Athletics (hereinafter "Lessee"), pursuant to a Lease Agreement between the City of Hollister and the Black Jacks.

The Commission is requested to review the agreement, and if satisfied, approve the lease agreement, contingent upon the Black Jacks entering into an indemnification agreement with the County. The basis for this request is that in the Lease agreement presented to the Commission, the Lessee agrees to indemnify the City of Hollister, but the County is not included in that indemnification provision. In lieu of modifying the lease, it is recommended that the Lessee(s) enter into a separate indemnification agreement with the County prior to the Chair signing the lease agreement. This will avoid the lease agreement needing to go back to the City Council for revision.

(4) SUPPORTIVE DOCUMENTS RELATIVE TO THIS ITEM:

 Contract  
 Ordinance  
 Resolution  
 Other:

(5) PREVIOUS RELEVANT BOARD ACTIONS ON THIS SPECIFIC ITEM:

Ordinance 2012- adding Section 19.07.006 to Chapter 19.07 of Title 19 of the San Benito County Code

(6) FUNDING SOURCE(S):  
2700-233(7) CURRENT YEAR COST:  
\$ 0(8) ANNUAL COST:  
\$ 0(9) BUDGETED:  
 YES  NO(10) WILL PROPOSAL REQUIRE ADDITIONAL PERSONNEL?  YES  NO If YES, STATE NUMBER:  
Permanent Limited Term

(11) RECOMMENDED ACTION(S):

It is respectfully recommended that the Commission:

- a) Approve the sublease agreement between the City of Hollister and the Hollister Black Jacks Corporation, and Central Coast Athletics, contingent upon the Lessee entering an indemnification agreement with the County.

Barbara Thompson, County Counsel

SIGNATURE OF AGENCY OR DEPARTMENT AUTHORIZED REPRESENTATIVE

January 29, 2018

DATE

## CLERK'S USE ONLY

 APPROVED  
 ACKNOWLEDGED  
 SET PUBLIC HEARING  
 DENIED  
 ACCEPTED  
 APPOINTED  
 ADOPTED  
 RESOLUTION NO. \_\_\_\_\_  
 ORDINANCE NO. \_\_\_\_\_  
 CONTINUED TO \_\_\_\_\_  
 OTHER \_\_\_\_\_  
 NO ACTION TAKEN \_\_\_\_\_

BY:

Deputy Clerk of the Board

DATE:

COPY ROUTING: BOARD - ORIGINATING DEPT. - AUDITOR

**INDEMNIFICATION AGREEMENT**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the COUNTY OF SAN BENITO, hereinafter "COUNTY" and the Hollister Black Jacks Corporation, a California Corporation, and Central Coast Athletics, LLC (a California limited liability company), collective Lessee.

For purposes of this Agreement, "COUNTY" shall be defined to include COUNTY's officers, elected officials/commissioners, employees, agents, and agencies. COUNTY and LEASEE agree as follows:

Lessee agrees to indemnify, defend and hold harmless the COUNTY, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with Lessee's acts or omissions with regard to the performance of any of the obligations under the April 2017 Lease between the City and Lessee for the use of the small ball field at Veterans Park ("Lease"), including but not limited to the operation and/or maintenance of the Small Field. This indemnity obligation shall include any Worker's Compensation suits, liability or expense, arising from or connected with the uses performed by or on behalf of the Lessees and any person or entity appointed, hired, or delegated by Lessee. Lessee's duty to indemnify County shall survive the expiration or other termination of the Lease.

Applicant irrevocably agrees to hold Applicant's offer to enter into this agreement until the agreement is accepted and fully executed by the County Board of Supervisors. The obligations specified herein shall be made, and are binding on the successors in interest of the LEASEE, whether succession is by agreement, by operation of law or by any other means. This Agreement contains the entire agreement of the parties, and any representations, inducements, promises, or agreements otherwise between the parties that are not embodied herein, or incorporated herein by reference, are invalid and lack any force or effect. Further, no terms or provisions hereof may be changed, waived, discharged, or terminated, unless the same is in a writing executed by the parties hereto. This agreement shall be construed as being mutually drafted by both parties. Both parties are represented by counsel or have waived their right to consult with counsel after being informed of their right to do so.

LEASEE (S)

Date: \_\_/\_\_/\_\_

By: \_\_\_\_\_

Date: \_\_/\_\_/\_\_

By: \_\_\_\_\_

COUNTY:

\_\_\_\_\_  
Chair, Board of Supervisors

Attest:

Approved as to Legal Form:

\_\_\_\_\_  
Clerk of the Board

\_\_\_\_\_  
County Counsel

**CITY OF HOLLISTER  
AND  
[HOLLISTER BLACK JACKS CORPORATION]**

**LEASE AGREEMENT**

This Lease Agreement ("**Lease**") is made effective the 1st day of April, 2017 ("**Effective Date**"), by and between the City of Hollister, a California municipal corporation ("**City**") and the Hollister Black Jacks Corporation, a California corporation, and Central Coast Athletics, LLC, a California limited liability company (collectively, "**Lessee**"), for the lease of the Small Field, as that term is defined in Recital C below. City and Lessee may be referred to hereinafter singularly as "**Party**" or collectively, as "**Parties.**"

**Recitals**

- A. Pursuant to an Operating Agreement with the County of San Benito (the "**County**") dated July 1, 1999 (the "**Operating Agreement**"), the City has exclusive control of the softball fields at Veterans' Memorial Park, which are more particularly described in Exhibit A (the "**Premises**"). A copy of the Operating Agreement is attached hereto as Exhibit B.
- B. On or about February 1, 2016, the City and County agreed to amend the Operating Agreement (the "**Amendment**") to allow the City to lease its interest in the Premises upon the written approval of the Veterans' Park Commission, the Chair of the Board of Supervisors of the County, and County Counsel as to form. A copy of the Amendment is attached to this Lease as Exhibit C.
- C. The City desires to lease to Lessee, and Lessee desires to lease from the City, the small softball field identified in Exhibit A, the non-exclusive use of the parking lot, the score booth, scoreboard, and an portion of land adjacent to the small softball field along the third base line for a shipping container for use as a storage unit (collectively, the "**Small Field**"), subject to the reservation of certain rights by the City as described herein, and subject to the approval of the Veterans' Park Commission, the Chair of the Board of Supervisors of the County, and County Counsel as to form, and upon the terms and conditions of this Lease as set forth below.

NOW THEREFORE, the Parties agree as follows.

**Agreement**

1. Incorporation of Recitals

The Parties agree that the Recitals set forth above are hereby incorporated into the terms of the Lease as if set forth in full herein.

2. Purpose.

This Lease is between the City and Lessee. Lessee shall use the Small Field solely for the following purposes: a) organizing and hosting softball games for the Hollister Black Jacks team and related activities; and b) storage of field equipment, field maintenance equipment, hitting nets, bases, other items related to the maintenance and upkeep of the Small Field and for the use described in Section 2(a). All uses described herein shall be conducted in accordance with all local, state, and federal laws, and all conditions, regulations, and entitlements issued by or to the City.

3. Term.

The term of this Lease shall be for a period of five (5) years, commencing on the Effective Date and ending on 1:59 P.M. on the fifth anniversary of the Effective Date (the "Expiration Date"), unless sooner terminated by the Parties pursuant to the terms hereof (the "Term"). The Parties agree that this Lease shall be terminated if the County terminates the Operating Agreement, such termination shall be effective on the same date that the Operating Agreement terminates. The Parties further agree that if this Lease is not terminated by either Party prior to expiration, the Term shall automatically be extended for a period of one (1) year, commencing on the Effective Date and every anniversary thereafter unless and until either Party notifies the other of their intent to terminate the Lease ("Termination Notice"). The Termination Notice shall be provided no later than thirty (30) days prior to the expiration of the Term or any extension period (if applicable). In no event shall the Term of this Lease extend beyond fifty four (54) years from the Effective Date.

4. Use, Operations, and Maintenance.

The Parties acknowledge that the Lessee has already taken possession of the Small Field, and as such, agree to accept the Small Field in its current condition, as-is, where-is and with all faults.

The Lessee agrees to be bound by and to perform all of the City's obligations under Paragraphs 6, 16, 17, 19, and 21 of the Operating Agreement as they relate to the Small Field. The Lessee's obligations to operate and maintain the Small Field, shall apply to all alterations, improvements, and/or modifications made by Lessee. Lessee agrees to notify the City in writing prior to making any repairs to the utility facilities or infrastructure serving the Small Field.

Lessee agrees to coordinate with San Benito High School District to allow the freshman, junior varsity, and varsity women's softball team(s) to use the Small Field for practices and home games during their season.

For the period commencing on either: a) the third (3<sup>rd</sup>) Monday in March or the first (1<sup>st</sup>) Monday in April 1 and lasting until July 31 during each year of the Term

of this Lease or any extension thereof, the City shall have the right to use the Small Field on Monday evenings from 3:30 P.M. to 10:00 PM for the duration of the term of this Lease for field preparation and recreational softball activities. The City shall have the additional right to use the Small Field on any other nights during the week when the City determines, in the City's sole discretion, that the use of the small field on a particular Monday evening is not reasonable. The City shall coordinate with the Lessee to schedule the date and time of use on days of the week other than Mondays and to ensure that the City's use of the Small Field on evenings other than Mondays do not unreasonably interfere with the Lessee's use of the Small Field.

Lessee shall not install any locks on the improvements, structures, doors, or other facilities in or about the Small Field without first providing a copy of the key(s) to the locks to the City.

Lessee agrees to maintain the area within foul territory in left field next to the storage unit completely clear of any improvements, alterations, impediments, or personalty (the "Fence Storage Area"). The City agrees to remove the portable fencing used by Lessee for outfield walls and to store the portable fencing in the Fence Storage Area prior to the City's permitted use under this Paragraph 2 of the Lease. Lessee agrees to re-install the portable fencing after the City's permitted use under this Paragraph 4 of the Lease.

5. Rent.

As rent for the use of the Small Field, Lessee agrees to pay when due: a) all costs related to the operation and maintenance of the Small Field in good working condition in accordance with best management practices for recreational softball facilities in the geographic region in which the Small Field is located; and b) all personal or property taxes incurred by the Lessee or the City for Lessee's use of the Small Field; and c) any costs or expense incurred by the City as a result of the Lessee's uses described herein, subject to the City's indemnity requirements described below.

The City agrees to bear the sole cost and expense of providing electricity to the Small Field. The City shall ensure that the restrooms are open for Lessee's use of the Small Field.

6. Permits and Approvals.

Lessees shall obtain permits or other entitlements, which are legally required and as identified by the City, for the construction of improvements and maintenance of the uses described herein.

7. Alterations.

The Parties agree that the non-permanent improvements and/or alterations made by Lessee to the Small Field prior to the execution of this Lease, including the

installation of the shipping container adjacent to the Small Field along the third base line for storage uses, are acceptable to the City and County. Lessee shall not make any additional alterations, nor shall Lessee make any permanent alterations or fixtures, to the Small Field without the prior written consent of the City and County.

8. Dispute Resolution.

The Parties agree that any dispute shall first be resolved by the City Manager. For any disputes between the Parties arising hereunder that cannot be resolved by the City Manager, and the Parties are otherwise unable to resolve such matters between themselves by negotiation, then such disputes shall be resolved by submission of the dispute to arbitration pursuant to the rules and regulations of the American Arbitration Association (or as otherwise agreed by the Parties). All disputes hereunder that are not resolved by the City Manager and/or the negotiation of the Parties, must comply with the policies and procedures set forth in the City Code and California law.

9. Indemnification.

Lessee agrees to indemnify, defend and hold harmless the City, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with Lessee's acts or omissions with regard to the performance of any of the obligations under this Lease, including but not limited to the operation and/or maintenance of the Small Field. This indemnity obligation shall include any Worker's Compensation suits, liability or expense, arising from or connected with the uses performed by or on behalf of the Lessees and any person or entity appointed, hired, or delegated by Lessee pursuant to this Lease. Lessee's duty to indemnify City shall survive the expiration or other termination of this Lease.

The City shall indemnify, defend and hold harmless Lessee, its agents, officer and employees, from and against any and all liability, expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising from or connected with the City's acts or omissions with regard to the performance of the City's obligations under this Lease, including any Worker's Compensation suits, liability or expense, arising from or connected with the uses performed by or on behalf of the City and any person or entity appointed, hired, or delegated by City.

10. Insurance.

Lessee shall obtain and maintain during the Term of this Lease, Insurance as follows:

General Requirements. Without limiting Lessee's indemnification of City, Lessee shall each provide and maintain at its own expense throughout the term of this Lease the hereinafter listed programs of insurance covering its operations hereunder. Such insurance provided by Lessee shall be provided by insurers satisfactory to City's Risk Manager, respectively, and a certificate or other evidence of coverage and certified copies of additional insured endorsements satisfactory to City, shall be delivered to the City's Risk Manager, before the effective date of this Lease. Such evidence of coverage shall specifically identify this Lease and shall contain the express condition that City, is to be given at least thirty (30) days advance written notice of any modification or termination of any program of insurance. All such insurance provided by Lessee shall be primary and not contributing with any other insurance maintained by City. With the exception of workers' compensation insurance, all such insurance provided by Lessee shall name "City of Hollister, its elected officials, officers, employees, agents and representatives" as additional insureds.

At all times during the term of this Lease, Lessee shall provide and maintain the following forms and amounts of insurance:

- a. Liability. Comprehensive General Liability Insurance written on a commercial general liability form or on a comprehensive general liability form covering the hazards of premises-operations, products/completed operations, independent contractors, advertising, contractual, broad form of property damage, and personal injury with a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and an aggregate limit of not less than Five Million Dollars (\$5,000,000).
- b. Workers' Compensation. Insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability.
- c. Comprehensive Automobile Liability. Endorsed for all owned, non-owned, and hired vehicles with a combined single limit of not less than One Million Dollars (\$1,000,000) per accident.
- d. Failure to Comply. Failure on the part of Lessee to procure or maintain required insurance shall constitute a material breach of contract upon which City may immediately terminate this Lease. Notwithstanding this requirement, in the event that Lessee fails to procure or keep in effect at all times the insurance coverage required herein, City may in its discretion procure said insurance on behalf of Lessee and charge Lessee, respectively, the full cost of the insurance and administrative costs.

11. Notices.

Any notice, consent, authorization or other communication to be given shall be in writing and deemed duly given and received when (a) delivered personally, (b) transmitted by facsimile, (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or (d) three business days after being mailed by first class mail, charges and postage prepaid, and in all cases properly addressed to the party to receive such notice at the last address furnished for such purpose by the party to whom notice is directed.

In the case of notices to be given to the City, notice shall be addressed as follows:

City Manager  
City of Hollister  
375 Fifth Street  
Hollister, CA 95023

With a copy to:  
Recreation Supervisor  
City of Hollister  
300 West Street  
Hollister, CA 95023

In the case of notices to be given to the Lessee, notice shall be addressed as follows:

Central Coast Athletics  
Hollister Black Jacks Corporation  
Attn: Andrew Barragan  
355 Magladry Road  
Hollister, CA 95023

Either party may change its address or other contact information by giving notice in writing to the other party as specified in this section.

12. Amendments.

This Lease shall only be amended by a writing signed by both Parties and approved by the Veterans' Park Commission, the Chair of the Board of Supervisors of the County, and County Counsel as to form.

13. Good Faith and Cooperation.

The City and Lessee agree that it is in their mutual best interest and in the best interest of the public that the City property be operated and managed as herein agreed and, to that end, the Parties shall in all instances cooperate and act in



good faith in compliance with all of the terms, covenants, and conditions of this Lease and shall deal fairly with each other.

14. Severability.

If any provision of this Lease, or the application of such provision to any party or circumstance, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to such party or circumstance other than those to which it is held to be invalid or unenforceable, shall not be affected thereby.

15. Governing Law.

This Lease shall be governed by and construed and interpreted in accordance with the laws of the State of California, without regard to that state's conflict of laws principles.

16. Entire Agreement.

This Lease contains the entire agreement of the Parties and supersedes all prior to contemporaneous written or oral negotiations, correspondence, understandings and agreements between the Parties regarding the subject matter hereof.

17. Parties in Interest.

Nothing in this Lease shall confer any rights or remedies under or by reason of this Lease on any party other than the Lessee and the City nor shall anything in this Lease relieve or discharge the obligation or liability of any third party to any party to this Lease nor shall any provision give any third party any right of subrogation or action over or against any party to this Lease.

18. Waiver.

Failure of either party to complain of any action, non-action or default of the other party shall not constitute a waiver of such party's rights hereunder with respect to such action, non-action or default. Waiver by the Lessees or City of any right or any default hereunder shall not constitute a waiver of any subsequent default of the same obligation or for any other default, past, present or future. No payment by a party, or acceptance by the other party, of a lesser amount than shall be due from one party to the other shall be treated otherwise than as a payment on account. The acceptance by a party of a check for a lesser amount, with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and a party may accept such check without prejudice to any rights or remedies which it may have against the other party.

19. Construction.

This Lease has been negotiated by the Parties and their respective legal counsel and will be fairly interpreted in accordance with its terms and without strict construction in favor of or against any party.

20. No Assignment.



This Lease, nor any part of it nor any right or obligation arising from it shall be assigned without the express written consent of the Parties and the prior written approval of the Veterans' Park Commission, the Chair of the Board of Supervisors of the County, and County Counsel as to form.

21. Landlord Tenant Status.

The Parties shall at all times be acting as Landlord and Tenant. This Lease is not intended, and shall not be construed to create the relationship of agent, servant, employee, partner, joint venture or association as between the Parties. The Parties understand and agree that any of their personnel furnishing services to the City Property under this Lease are employees solely of the party which hired such personnel for purposes of workers' compensation liability and for purposes of receiving all other types of employee benefits. The Parties shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any personnel hired by them for injuries arising from or connected with services performed under this Lease, and shall bear the sole responsibility and liability for furnishing all other employee benefits to any personnel hired by them.

22. Attorneys' Fees. In the event any Party hereto institutes an action or proceeding in a court of competent jurisdiction to enforce any rights arising under this Lease, the Party prevailing in such action or proceeding shall be paid all reasonable attorneys' fees and costs. These costs include, without limitation, expert witness fees, investigation costs, costs of tests and analysis, travel and accommodation expenses, deposition and trial transcript costs and court costs. A court, and not a jury, will set all such fees and costs, all of which will be included in the judgment entered in such proceeding. In any arbitration proceeding, the arbitrator must appoint a prevailing party as part of the arbitrator's decision.

**IN WITNESS WHEREOF**, the Parties have executed this Lease as of the day and year first above written.

HOLLISTER BLACK JACKS CORPORATION, A California corporation	CENTRAL COAST ATHLETICS, A California corporation
By:  Andrew Barragan, President	By:  Andrew Barragan, Manager

APPROVED AS TO FORM:  
L+G LLP, Attorneys at Law

*Paul A. Rovella*  
Paul A. Rovella, City Attorney

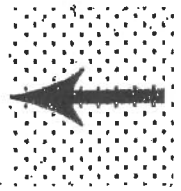
CITY OF HOLLISTER

*William B. Avera*  
William B. Avera, City Manager

ATTEST:

*Christine Black*  
Christine Black, Acting City Clerk

Consent of County



Having reviewed the Lease Agreement between the City of Hollister and the Hollister Black Jacks Corporation, a California corporation, by signing below, we hereby consent to and approve the Lease in accordance with the terms and provisions of the Operating Agreement.

Veterans' Park Commission

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

San Benito County Board of Supervisors

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Chair

As to form only.

County Counsel of the County of San Benito

By: *Barbara Thompson*  
Name: *Barbara Thompson*

EXHIBIT A

Premises




EXHIBIT A

Premises

# Map of Premises

Veterans Memorial Park

## Legend

-  Small Softball Field
-  Veterans Memorial Park
-  Veterans Memorial Park



Google Earth

EXHIBIT B

Operating Agreement





COUNTY through a review by the Commission. Other organized events open to all COUNTY and CITY residents shall/may be approved by the Commission. If the Commission approves a CITY sponsored event, CITY shall pay to COUNTY 20% of all revenues received by CITY for such events.

6. **MAINTENANCE/OPERATION:** The maintenance of premises includes, without limitation, maintenance of all fields, back stops, dug outs, viewing stands, and other structures identified in Attachment "A". CITY shall maintain the premises in a reasonable condition and as further described herein. CITY shall operate premises in a reasonable manner.
7. **ENFORCEMENT OF REGULATION:** CITY shall enforce all CITY laws and regulations applicable to the premises, including those rules relating to dogs running at large and alcohol consumption.
8. **RESTROOMS:** CITY shall open all restrooms within the premises during the facilities use for CITY programs and events as authorized by CITY and CITY shall lock and secure the restrooms following such events. CITY shall immediately repair any damage to the restrooms caused as a result of CITY's failure to adequately lock and secure the restrooms.
9. **RECIPROCAL INDEMNIFICATION:** Each party ("the indemnifying party") agrees to indemnify, defend and save harmless the other party and the other party's officers, agents and employees, from and against any and all claims and losses whatsoever arising out of or in any way related to the indemnifying party's performance under this Operating Agreement, including but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys fees, court costs, investigation costs and experts fees) incurred by the indemnitee in connection with such claims. The indemnifying party's "performance" includes the indemnifying party's action or inaction, and the action or inaction of the indemnifying party's officers, employees, agents or subcontractors.
10. **CONDITION OF PREMISES:** CITY has inspected the premises, its furnishings and equipment, and have found them to be satisfactory. All plumbing, heating and electrical systems, if applicable, are operative and are deemed satisfactory.
11. **WATER:** CITY shall supply irrigation and domestic water to Veterans Memorial Park from its municipal water system at no cost to COUNTY.
12. **CITY BOOSTER PUMP:** CITY and COUNTY acknowledge that pursuant to a previous agreement between the parties, COUNTY has granted CITY the right to construct, install, maintain, operate and remove a booster pump with underground pipelines to and from the same location in the most northwesterly corner of Veterans Memorial Park. CITY and COUNTY agree

that CITY may continue to maintain and operate the booster pump and pressure tank together with underground pipelines to and from the same location in Veterans Memorial Park.

13. **CITY SERVICES:** CITY shall continue to provide storm drain and sanitary sewer service for the restrooms situated in Veterans Memorial Park through its municipal sanitary sewer system.
14. **PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING:** CITY shall not assign CITY'S interest under this lease, or sublet any portion of the premises.
15. **UTILITIES AND SERVICES:** CITY is responsible for payment of all utilities and service charges related to operating the premises.
16. **MISCELLANEOUS OBLIGATIONS:** CITY agrees to perform the following obligations:
  - (a) To keep the premises as clean and sanitary as their condition permits;
  - (b) To dispose of all solid waste deposited on the premises in a clean and sanitary manner;
  - (c) To use and operate properly all appliances and facilities, gas, and plumbing fixtures and pipes, and to keep them as clean and sanitary as their condition permits;
  - (d) To refrain from willfully or wantonly destroying, defacing, damaging, impairing, or removing any part of the premises or the facilities, equipment, or appurtenances, or permitting any person to do so who is on the premises with CITY's consent in connection with CITY sponsored events.
17. **CITY'S CONDUCT:** CITY shall not disturb, annoy, endanger, or interfere with occupants of neighboring buildings or residences. CITY shall not use the premises for any unlawful purpose, violate any law or ordinance, or commit waste or nuisance on the premises. CITY is responsible for all costs associated with any improper conduct or violations of any law or ordinance caused by CITY.
18. **USE OF PREMISES:** The premises are rented to CITY for the following purpose(s) only:

Public park and playground, including the exclusive right of use of ball fields to conduct organized sports for youth and incidentally for adults through CITY's

Recreation Department programs or through CITY sponsored programs as approved by COUNTY on a case by case basis pursuant to paragraph 5.

19. **CITY'S OBLIGATION TO MAINTAIN PREMISES:** CITY at its cost shall maintain the premises in good condition. COUNTY shall not have any responsibility to maintain the premises. CITY waives the provisions of Civil Code §§1941 and 1942 with respect to COUNTY's obligations for tenantability of the premises and CITY's right to make repairs and deduct the expenses of such repairs from rent, should this agreement be construed as a lease.
20. **COUNTY'S RIGHT OF ENTRY:** COUNTY and its authorized representatives shall have the right to enter the premises at all reasonable times to determine whether the premises are in good condition and whether CITY is complying with its obligations under this Operating Agreement.
21. **ALTERATION:** CITY shall not make any alterations to the premises without COUNTY's prior written consent, except as specified under paragraph seven. CITY shall make any request for alterations, not covered by paragraph seven to the Commission, which shall consider and decide any request.
22. **PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE:** CITY at its cost shall maintain public liability and property damage insurance with a combined limit of \$1,000,000.00 and property damage limits of not less than \$200,000.00 insuring against all liability of CITY and COUNTY and their authorized representatives arising out of and in connection with CITY's use or occupancy of the premises. In lieu of providing insurance, CITY may self-insure, provided that CITY's self-insurance provides substantially the same protection to COUNTY as the insurance required herein.
23. **CERTIFICATE OF INSURANCE:** Upon the execution of this agreement, CITY shall provide to COUNTY proof of self-insurance as required by this agreement. CITY further agrees to notify COUNTY in the event change in self-insurance occurs which change alters the obligations undertaken by CITY in this contract. Such notification shall occur within thirty (30) days of any change in self-insurance, which is an alteration of the obligations required by this contract.
24. **BREACH OF COVENANT:** The parties consider each and every term, covenant, and provision of this Operating Agreement to be material and reasonable.
25. **ATTORNEY'S FEES:** In any legal action brought by either party to enforce the terms of this Operating Agreement, the prevailing party is entitled to all costs incurred in connection with such an action, including reasonable attorney's fees.

26. **WAIVER:** Waiver by either party of a breach of any covenant of this Operating Agreement will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CITY's violation of a covenant does not waive its right to enforce any covenant of this Operating Agreement. No waiver by either party of a provision of this lease will be considered to have been made unless expressed in writing and signed by all parties.
27. **POSSESSORY INTEREST TAX:** This Operating Agreement may create a possessory interest subject to property taxation. If such an interest is created, the party in whom the possessory interest is vested may be subject to the payment of the property taxes levied on such interest.
28. **TIME OF THE ESSENCE:** Time is of the essence of each Provision of this Operating Agreement.
29. **ENTIRE AGREEMENT:** This Operating Agreement contains all of the agreements of the parties.
30. **NEGOTIATED AGREEMENT:** This agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this agreement within the meaning of Civil Code §1654.
31. **SEVERABILITY:** Should any provision herein be found or deemed to be invalid, this agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this agreement are declared to be severable.
32. **ENTIRE AGREEMENT:** This agreement is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this agreement or in any document attached hereto or incorporated herein by reference.
33. **NOTICE:** Notices to the parties in connection with the agreement shall be given personally or by regular mail addressed as follows:

**COUNTY OF SAN BENITO**  
 Max Bridges, Public Works Director  
 8220 Southside Road  
 Hollister, CA 95023

**CITY OF HOLLISTER**  
 City Manager  
 875 Fifth Street  
 Hollister, CA 95023

Notices will be deemed received on the date they are personally delivered to the office of the persons indicated above, with a written notation that the notice is to be given to the person indicated above, or five days after the date they are

deposited in the U.S. mail, addressed as indicated above, with first-class postage fully prepaid.

CITY OF HOLLISTER

By: Richard K. Brown  
Mayor  
Hollister City Council

COUNTY OF SAN BENITO

By: [Signature] 6/22/99  
Chair  
San Benito County Board of Supervisors

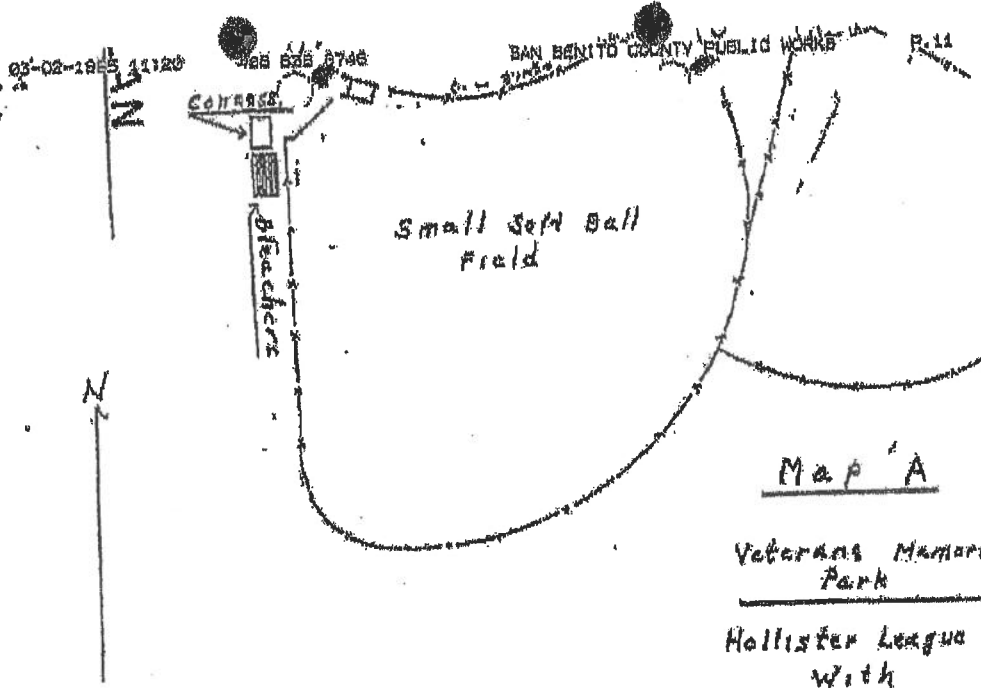
Approved as to legal form:

[Signature] 6/16/99  
Steven R. Sanders, County Counsel

Approved as to legal form:

Elaine M. Cass  
Elaine M. Cass, City Attorney

Attachment "A"



Veterans Memorial Park  
Hollister League Fields  
With  
Ball Field Lighting system.

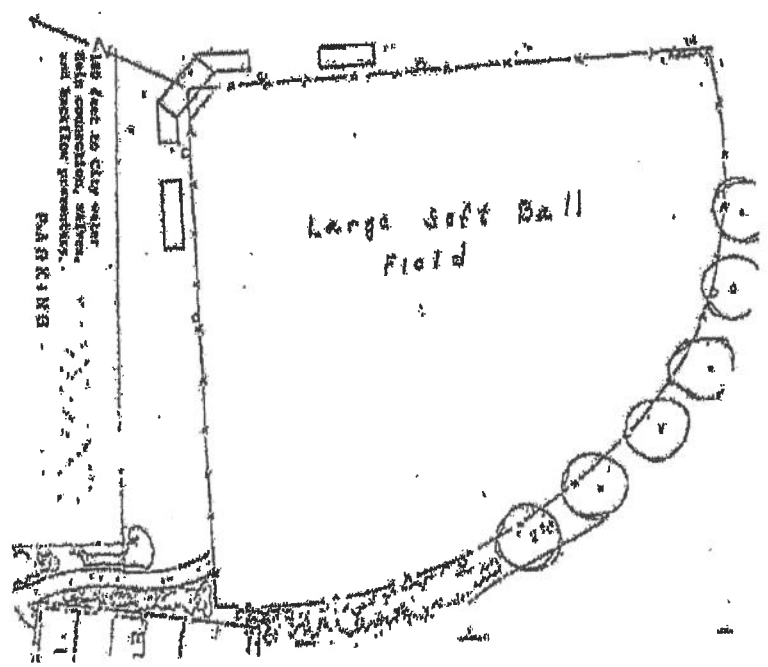


Exhibit C

Amendment

**RESOLUTION 2016-06**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOLLISTER  
AUTHORIZING THE MAYOR TO EXECUTE AN ADDENDUM TO THE 1999  
OPERATING AGREEMENT FOR FIELD AT VETERANS MEMORIAL PARK**


**WHEREAS**, the City of Hollister and the County of San Benito have entered into an Operating Agreement; and

**WHEREAS**, there is a desire by both parties to amend a portion of the agreement affecting the small softball field; and


**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Hollister hereby authorizes the Mayor to execute an addendum attached as Exhibit A to the 1999 Operating Agreement.

**PASSED AND ADOPTED**, by the City Council of the City of Hollister at a regular meeting held this 1st day of February, 2016, by the following vote:

**AYES:** Council Members Klauer, Gomez, Friend, Luna, and Mayor Velazquez.  
**NOES:** None.  
**ABSTAINED:** None.  
**ABSENT:** None.

  
\_\_\_\_\_  
Ignacio Velazquez, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Thomas A. Graves, CMC, City Clerk

**APPROVED AS TO FORM:**

L+G LLP, Attorneys at Law

  
\_\_\_\_\_  
City Attorney

**DUPLICATE OF ORIGINAL  
ON FILE IN THE  
OFFICE OF THE CITY CLERK  
CITY OF HOLLISTER**



Exhibit A  
**ADDENDUM TO OPERATING AGREEMENT WITH THE CITY OF HOLLISTER RELATING  
TO THE SOFTBALL FIELDS AT VETERANS MEMORIAL PARK**

This addendum is hereby made part of the 1999 "Operating Agreement" between the County of San Benito ("County") and the City of Hollister ("City"), which is attached hereto as Exhibit "A" and incorporated herein by this reference.

The parties agree to the following terms and conditions which shall be now incorporated by reference into the agreement:

1. Paragraph 14 of the Operating Agreement shall be amended to read as follows:

**14. PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING:** CITY shall not assign CITY'S interest under this lease, or sublet any portion of the premises except as stated below:

The CITY may sublet or assign its interest in the Small Softball Field if the sublease or assignment agreement is reviewed and approved by (a) the Veterans Memorial Park Commission, (b) the Chair of the Board of Supervisors (who may in his/her discretion agendaize the matter for full Board approval), and (c) as to legal form by County Counsel.

Any sublease or license shall terminate upon the termination of the Operating Agreement between the County of San Benito and the City of Hollister, upon 30 days prior written notice to Sublease or Licensee of such termination.

Any sublease or license agreement shall not relieve the County and City's mutual obligations to one another under the Operating Agreement.

2. All other terms and conditions of the agreement remain unchanged.

County of San Benito

By: [Signature]  
Robert Rivas, Chair  
San Benito County Board of Supervisors

Date: 1/26/16

APPROVED:

By: [Signature]  
Matthew W. Granger, County Counsel

Date: 3-22-2016

CITY OF HOLLISTER

By: [Signature]  
Ignacio Velazquez  
Mayor, City of Hollister

Date: 2-1-2016

APPROVED:

By: [Signature]  
City Attorney

Date: 2-1-2016

## OPERATING AGREEMENT

The COUNTY OF SAN BENITO ("COUNTY"), and the CITY OF HOLLISTER ("CITY") enter into this OPERATING AGREEMENT, effective on the date specified in Paragraph 1.

### TERMS

1. DURATION. This Operating Agreement shall commence on ~~July 1, 1999~~ April 1, 2020 and terminate on ~~April 1, 2021~~ July 1, 2009. Unless either party gives written notice to the other party thirty (30) days in advance of the expiration of the term, this Operating Agreement shall automatically renew for successive one(1) year terms under the contract terms specified in this agreement.

2. DESCRIPTION OF PREMISES. The premises subject to this Operating Agreement are a portion of the east side of Veterans Memorial Park. The premises are further described by the attached diagram which shall be called Attachment "A" and which is made a part of this Operating Agreement. As depicted on Attachment "A", other portions of Veterans Memorial Park are to be within the primary operating control of the community youth organizations, San Benito County Little League, Hollister Heat, and Babe Ruth League. These portions of Veterans Memorial Park are covered by separate agreements and are not subject to this Agreement.

NOTWITHSTANDING THE ABOVE, the parties may mutually agree to expand the premises subject to this Operating Agreement, by the mutual written agreement between the County, acting through the County Administrative Officer, with the prior approval of the Veterans Park Commission, and the City of Hollister, acting through its City Manager.

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3. CONTROL OF PREMISES: CITY shall have exclusive control of the premises designed in Attachment "A". "Control" shall mean that CITY will maintain and operate the premises as a public park and playground and that CITY shall have exclusive right to use the designated baseball/softball facilities for CITY Recreation Department programs during CITY'S normal Recreation Department season and tournaments associated with the CITY Recreation Department programs. CITY shall provide for use of facilities by community groups or individual members of the public to the extent such use does not conflict with the exclusive right to use the facilities as specified in this paragraph. CITY shall ensure that any use of the premises is consistent with COUNTY Ordinance No. 167 ½, as subsequently recodified.

4. FEES. CITY shall not charge any fee for the use of the facilities by individuals or groups, except for charges incidental to the program offered through CITY'S Recreation Department or expressly authorized by the Vets Park Commission. CITY shall not charge residents of unincorporated area of COUNTY more than CITY residents for participation in any CITY Recreation Department program at the premises. CITY shall obtain Veterans Memorial Park Commission (Commission) approval to charge fees for special events. Any revenue received

from fees for use of the facilities, not including fees for programs offered through the Recreation Department, shall be used exclusively for upkeep and maintenance of the facilities. Current process allows for volunteers and donations to be used to maintain the fields, but in the event that management of the fields needs to be improved, the Vets Park Commission may recommend a fee to the City to Hollister for adoption.

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5. OTHER ACTIVITIES: Except as authorized by paragraph 3, City shall not allow any organized activities at the premises except those authorized by COUNTY through a review by the Commission. Other organized events open to all COUNTY and CITY residents shall/may be approved by the Commission. If the Commission approves a CITY sponsored event, CITY shall pay to COUNTY 20% of all revenues received by CITY for such events.
6. MAINTENANCE/OPERATION: The maintenance of premises includes, without limitation, maintenance of all fields, back stops, dug outs, viewing stands, and other structures identified in Attachment "A". CITY shall maintain the premises in a reasonable condition and as further described herein. CITY shall operate the premises in a reasonable manner.
7. ENFORCEMENT OF REGULATION: CITY shall enforce all CITY laws and regulations applicable to the premises, including those rules related to dogs running at large and alcohol consumption.
8. RESTROOMS: CITY shall open all restrooms within the premises during facilities use for CITY programs and events as authorized by CITY and CITY shall lock and secure the restrooms following such events. CITY shall immediately repair any damage to the restrooms caused as a result of CITY'S failure to adequately lock and secure the restrooms.
9. RECEIPROCAL INDEMNIFICATION: Each Party ("the indemnifying part") agrees to indemnify, defend and save harmless the other party and the other party's officers, agents and employees, from and against any and all claims and losses whatsoever arising out of or in any way related to the indemnifying party's performance under this Operating Agreement, including but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneysattorney's fees, court costs, investigation costs and expert fees) incurred by the indemnitee in connection with such claims. The indemnifying party's "performance" includes the indemnifying party's action or inaction, and the action or inaction of the indemnifying party's officers, employees, agents or subcontractors.
10. CONDITION OF THE PREMISES. CITY has inspected the premises, its furnishings and equipment and has found them to be satisfactory. All plumbing, heating and electrical systems, if applicable, are operative and are deemed satisfactory.

11. WATER. CITY shall supply irrigation and domestic water to Veterans Memorial Park from its municipal water system at no cost to COUNTY.
12. CITY BOOSTER PUMP: CITY and COUNTY acknowledge that pursuant to a previous agreement between the parties, COUNTY has granted CITY the right to construct, install, maintain, operate and remove a booster pump with the underground pipelines to and from the same location in the most northwesterly corner of Veterans Memorial Park. CITY and COUNTY agree that CITY may continue to maintain and operate the booster pump and pressure tank together with underground pipelines to and from the same location in Veterans Memorial Park.
13. CITY SERVICES: CITY shall continue to provide storm drain and sanitary sewer service for the restrooms situated in Veterans Memorial Park through its municipal sanitary sewer system.
14. PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING: CITY shall not assign CITY'S interest under this lease, or sublet any portion of the premises.
15. UTILITIES AND SERVICES: CITY is responsible for payment of all utilities and service charges related to operating the premises.
16. MISCELLANEOUS OBLIGATIONS: CITY agrees to perform the following obligations:
  - a) To keep the premises as clean and sanitary as their condition permits;
  - b) To dispose of all solid waste deposited on the premises in a clean and sanitary manner;
  - c) To use and operate properly all appliances and facilities, gas, and plumbing fixtures and pipes, and to keep them as clean and sanitary as their condition permits;
  - d) To refrain from willfully or wantonly destroying, defacing, damaging, impairing, or removing any part of the premises or the facilities, equipment, or appurtenances, or permitting any person to do so who is on the premises with CITY'S consent in connection with CITY sponsored events.
  - e) Within ninety days (90) of the execution of this Agreement, the CITY shall establish a policy to enforce use of the facilities. Said policy shall be subject to the review and approval of the Vets Park Commission. Upon violations of the policy, as may be established, a user of the park may be prohibited from future use of the facilities. The policy shall address, among other issues, that assigned practice times shall be strictly respected if other teams are waiting to use a field. Within 90 days, the CITY shall also establish a conflict of interest policy.
  - f) CITY shall be responsible for the scheduling of use of the premises. If competing persons wish to use the premises at the same time, the CITY RECREATION DEPARTMENT

shall have exclusive authority to resolve the conflict. CITY shall periodically update the Vets Park Commission on conflict resolution and receive direction from the Vets Park Commission on how to resolve future conflict, including the order for priority for use.

- g) When there is multiple conflicting requests for use, CITY shall draft a policy which prioritizes use of the facilities to (1) for local residents (with a verification process, and definitions about what constitutes a local resident or a local team), (2) for local teams with no other available practice facilities, (3) existing leagues/user groups, and (4) for actual tournaments; this list is not in order of preference. This policy shall be subject to review and approval of the Vets Park Commission.
- i) All teams allowed to the use the facilities shall ensure that access/keys are provided to the City of Hollister Recreation Department.
- j) Quarterly reporting. The CITY shall provide quarterly updates to the Vets Park Commission regarding items requested by the Commission, which may include but not limited to: use of the fields, maintenance, conflicts, conflict resolution, revenue, master scheduling, reporting of memberships, registrations, and verification process for local players/teams.

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17. CITY'S CONDUCT: CITY shall not disturb, annoy , endanger or interfere with occupants of neighboring buildings or residences. CITY shall not use the premises for any unlawful purpose, violate any law or ordinance, or commit waste or nuisance on the premises. CITY is responsible for all costs associated with any improper conduct or violations of any law or ordinance caused by the CITY.
18. USE OF THE PREMISES: The premises are rented to CITY for the following purpose(s) only:  
  
Public park and playgroup, including the exclusive right of use of the ball fields to conduct organized sports for youth and incidentally for adults through CITY'S Recreation Department programs or through CITY sponsored programs approved by COUNTY on a case by case basis pursuant to paragraph 5.
19. CITY'S OBLIGATIONS TO MAINTAIN PREMISES: CITY at its cost shall maintain the premises in good condition. COUNTY shall not have any responsibility to maintain the premises. CITY waives the provisions of Civil Code §§-sections 1941 and 1942 with respect to COUNTY'S obligations for tenantability of the premises and CITY'S right to make repairs and deduct the expenses of such repairs from rent, should this agreement be construed as a lease.

20. COUNTY'S RIGHT OF ENTRY: COUNTY and its authorized representatives shall have the right to enter the premises at all reasonable times to determine whether the premises are in good condition and whether CITY is complying with its obligations under this Operating Agreement.
21. ALTERATION: CITY shall not make any alterations to the premises without COUNTY's prior written consent, except as specified under paragraph ~~seven~~six. CITY shall make any request for alterations, not covered by paragraph ~~seven~~six to the Commission, which shall consider and decide any request. Any alterations or improvements made to the field shall be consider permanent donations to the County, and are not subject to removal, even upon expiration of this Operating Agreement.
22. PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE: CITY at its cost shall maintain public liability and property damage insurance with a combined limit of \$1,000,000 and property damage limits of not less than \$200,000.00 insuring against all liability of CITY and COUNTY and their authorized representatives arising out of and in connection with CITY'S use or occupancy of the premises. In lieu of providing insurance, CITY may self-insure, provided that CITY'S self-insurance provides substantially the same protection to COUNTY as the insurance required herein.
23. CERTIFICATE OF INSURANCE: Upon the execution of this agreement, CITY shall provide to COUNTY proof of self-insurance as required by this agreement. CITY further agrees to notify COUNTY in the event change of self-insurance occurs which change alters the obligations undertaken by CITY in this contract. Such notification shall occur within thirty (30) days of any change in self-insurance, which is an alteration of the obligations required by this contract.
24. BREACH OF COVENANT: The parties consider each and every term, covenant, and provision of this Operating Agreement to be material and reasonable.
25. ATTORNEY'S FEES: In any legal action brought by either party to enforce the terms of this Operating Agreement, the prevailing party is entitled to all costs incurred in connection which such an action, including reasonable attorney's fees.
26. WAIVER. Waiver by either party of a breach of any covenant of this Operating Agreement will not be construed to be a continuing waiver of any subsequent breach. COUNTY's receipt of consideration with knowledge of CITY'S violation of a covenant does not waive its right to enforce any covenant of this Operating Agreement. No waiver by either party of a provision of this Lease will be considered to have been made unless expressed in writing and signed by all parties.
27. POSSESSORY INTEREST TAX: This Operating Agreement may create a possessory interest subject to property taxation. If such an interest is created, the party in whom the

possessory interest is vested may be subject to the payment of the property taxes levied on such interest.

28. TIME IS OF THE ESSENCE. Time is of the essence of each Provision of this Operating Agreement.

~~29. ENTIRE AGREEMENT. This Operating Agreement contains all of the agreements of the parties.~~

~~30~~29. NEGOTIATED AGREEMENT: This agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this agreement within the meaning of Civil Code section §1654.

~~31~~30. SEVERABILITY: Should any provision herein be found or deemed to be invalid, this agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this agreement are declared to be severable.

~~32~~31. ENTIRE AGREEMENT: This agreement is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this agreement or in any document attached hereto or incorporated herein by reference.

33: NOTICE: Notices to the parties in connection with the agreement shall be given personally or by regular mail addressed as follows:

COUNTY OF SAN BENITO

CITY OF HOLLISTER

~~Harry Mavrogenes, Max Bridges, Public Works RMA Director~~ \_\_\_\_\_

Brett Miller, Interim City Manager

~~3220 Southside Road~~ 2301 Technology Parkway \_\_\_\_\_

375 Fifth Street

Hollister, CA 95023

Hollister, CA 95023

Notices will be deemed received on the date they are personally delivered to the office of the persons indicated above, with a written notation that the notice is to be given to the person indicated above, or five days after the date they are deposited in the U.S. mail, addressed as indicated above, with first-class postage fully prepaid.



