

SPONSORSHIP AND SALES AGREEMENT

This Agreement (the "Agreement") is entered into this _____ day of _____, 2013, by and between Heartland Soccer Association ("Heartland Soccer Association") and the City of Overland Park (the "CITY").

RECITALS

WHEREAS, the CITY owns and operates certain real property and facilities known as the Overland Park Soccer Complex (the "Soccer Complex"), located at 13700 Switzer Road, Overland Park, KS 66221; and

WHEREAS, the CITY wishes to engage Heartland Soccer Association as a non-exclusive Sponsorship and Sales group to solicit and provide sponsors for the Soccer Complex;

WHEREAS, the Soccer Complex consists of, in part, 12 tournament-quality synthetic turf fields, lighted fields for night use, a multipurpose building (Field House), concession areas (Cafés), scoreboards, signage and other amenities; and

WHEREAS, Heartland Soccer Association wishes to serve as a non-exclusive Sponsorship and Sales group to handle such sponsorship activity for the Soccer Complex; and

WHEREAS, Heartland Soccer Association and the CITY wish to set out their agreement regarding their respective rights and responsibilities for this consulting arrangement.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1 Term of Agreement. Subject to the termination provisions set forth below, this Agreement shall commence on January 1, 2014, and shall continue for a term of five (5) years concluding on December 31, 2019 (the "Term").

2 Rights and Responsibilities of Heartland Soccer Association.

(a) Marketing and Sponsorship Sales of the Soccer Complex. Heartland Soccer Association shall have a non-exclusive right to market and sell sponsorships for the Soccer Complex. As part of Heartland Soccer Association's right to market the Soccer Complex, Heartland Soccer Association shall have the right to establish a corporate marketing program and other sponsorship packages as mutually agreed upon by Heartland Soccer Association and the CITY.

(b) Confidentiality. Heartland Soccer Association agrees to maintain confidentiality of any proprietary information prepared or developed by the CITY and which information the CITY identifies in writing to Heartland Soccer Association as proprietary information. Upon termination of this Agreement, all documents, records, notebooks, or other similar repositories of or documents containing any confidential information, including all existing copies or extractions thereof, then in Heartland Soccer Association's possession or control, whether prepared by Heartland Soccer Association or others, shall be the sole property of the CITY and shall promptly be returned to the CITY. Proprietary information, as used herein, does not include (i) information which is generally available to the public through no act or failure to act of Heartland Soccer Association, (ii) information which was known to the party prior to this Agreement being executed or becomes known after execution of this Agreement through a third party not previously known to Heartland Soccer Association to be prohibited from making such disclosure or (iii) information that is required by law or legal process to be made available to third parties.

(c) Services. Heartland Soccer Association shall work with the CITY to develop a strategic sponsorship program seeking corporate sponsorships for Soccer Complex specific sponsorships. Heartland Soccer Association shall provide the CITY with an initial prospect list, with regular progress updates and sales tracking log or other progress review.

(d) Notification. Heartland Soccer Association shall provide notice to the CITY of receipt of any notice, whether oral or written, of any action proposed to be taken, or being taken, against Heartland Soccer Association by or on behalf of any governmental agency, vendor of services or supplies, individual, association, corporation, or other person which action would result in Heartland Soccer Association being unable to fulfill its obligations pursuant to this Agreement. Heartland Soccer Association shall provide written notice of such proposed or actual action to be taken within three (3) business days of its receipt of such notification.

3 Rights and Responsibilities of the CITY.

(a) Rights and Ownership. The CITY is the rightful owner of the Soccer Complex and has taken all steps reasonably necessary to file a trade name or trademark and otherwise protect the Soccer Complex and its name. Heartland Soccer Association agrees that the Soccer Complex and all intellectual property rights relating to the Soccer Complex, its name and logo, shall be and remain the sole property of the CITY. Heartland Soccer Association expressly agrees that neither it nor its agents, including sponsors, will assert any rights to any ideas, inventions, discoveries, concepts or methods, or improvements thereof, relating to the Facility during or related to the Term of this Agreement. All such ideas, inventions, discoveries, concepts and methods, or improvements thereof, shall be automatically the sole and absolute property of the CITY.

(b) Services. The CITY shall provide Heartland Soccer Association with all necessary information, including but not limited to, building details, renderings, construction timelines and any other reasonable information about the Soccer Complex requested by Heartland Soccer Association to allow for accurate presentation to potential corporate sponsors.

(c) Right to Deny. The CITY retains the right to approve all sponsorship requests obtained and provided by Heartland Soccer Association; and the CITY maintains the right to deny any such sponsorship request for any reason.

(d) Confidentiality. The CITY agrees to maintain confidentiality of any proprietary information related to sponsorship procurement prepared or developed by Heartland Soccer Association and which information Heartland Soccer Association identifies in writing to the CITY as proprietary information. Upon termination of this Agreement, all documents, records, notebooks, or other similar repositories of or documents containing any confidential information, including all existing copies or extractions thereof, then in the CITY'S possession or control, shall be the sole property of Heartland Soccer Association, and shall be promptly returned to Heartland Soccer Association. Proprietary information, as used herein, does not include (i) information which is generally available to the public through no act or failure to act of the CITY, (ii) information which was known to the party prior to this Agreement being executed, or becomes known after execution of this Agreement through a third party, not previously known to the CITY to be prohibited from making such disclosure, or (iii) information that is required by law or legal process to be made available to third parties.

(e) Notification. The CITY shall provide notice to Heartland Soccer Association of receipt of any notice, whether oral or written, of any action proposed to be taken, or being taken, against the CITY by or on behalf of any governmental agency, vendor of services or supplies, individual, association, corporation, or other person which action would result in the CITY being unable to fulfill its obligations pursuant to this Agreement. The CITY shall provide written notice of such proposed or actual action to be taken within three (3) business days of its receipt of such notification.

4 Compensation. All proceeds from Soccer Complex specific sponsorships initiated and obtained by Heartland Soccer Association shall be divided as follows:

(a) An initial 10% of each gross sale shall be retained by Heartland Soccer Association for sales commission.

(b) After the payment of subsection (a), the CITY shall receive \$250 per year per banner location associated with each Soccer Complex specific sponsorship.

(c) After the payments of subsections (a) and (b), the remaining balance of the gross sale shall be divided as follows:

- (i) The CITY will receive 60% and Heartland Soccer Association will receive 40% for each Soccer Complex specific sponsorship, individually or as part of a larger package, initiated and obtained by Heartland Soccer Association in 2014.
- (ii) For single year sponsorships after 2014, the CITY will receive 50% and Heartland Soccer Association will receive 50% for each Soccer Complex specific sponsorship, individually or as part of a larger package, initiated and obtained by Heartland Soccer Association. This formula shall apply to both renewals and future sponsorships.
- (iii) For multi-year sponsorships, the CITY will receive 60% and Heartland Soccer Association will receive 40% for year 1 and 50/50 for each subsequent year for each Soccer Complex specific sponsorship, individually or as part of a larger package, initiated and obtained by Heartland Soccer Association.
- (iv) Both Parties acknowledge that on occasion Heartland Soccer Association leases the Soccer Complex for soccer tournaments. The Parties further acknowledge that, upon CITY approval, tournament organizers are often allowed to put up tournament sponsor signage within the Soccer Complex during the tournament. Accordingly, to the extent Heartland Soccer Association has tournament sponsor signage for display during one of its tournaments in the Soccer Complex, such additional signage will not be considered a sponsorship subject to this Agreement; and Heartland Soccer Association will be treated as any other tournament organizer requesting tournament sponsor signage.
- (v) Heartland Soccer Association shall work in good faith from the CITY's sponsorship inventory rate card to attempt to achieve rate card rates, but for the purposes of calculating these percentages, the calculations will be based upon the final value of the sponsorship inventory as approved by the CITY.
- (vi) When Heartland Soccer Association initiates and obtains a Soccer Complex specific sponsorship as part of a larger package (for example, a sponsorship for both the Soccer Complex and the Heritage soccer fields), Heartland Soccer Association shall provide the CITY with all of the

compensation specifics of the larger package so that the CITY can verify that it is receiving fair compensation. In the event of a dispute, the parties will work in good faith to reasonably resolve the matter.

(d) Payment. Payment pursuant to subsection (a) and (b) shall be made implementation of sponsorship unless otherwise agreed to in writing by the parties. Upon request, Heartland Soccer Association will timely provide the CITY with all documentation related to any sponsorship or payment therefore.

(e) Value-in-Kind. Notwithstanding the above, Heartland Soccer Association and the CITY shall split 50/50 any trade of Soccer Complex specific sponsorship agreements commonly referred to as Value-in-Kind. Products, goods and services provided to the Soccer Complex in exchange for sponsorship benefits shall be eligible for the same 50/50 split but no cash shall be paid to either Heartland Soccer Association or the CITY for such Value-in-Kind. As an example, if Heartland Soccer Association sells a sponsorship package to a company or brand that includes an agreed upon dollar amount of said company's products, the CITY shall receive fifty (50) percent of product allotment and Heartland Soccer Association shall receive fifty (50) percent of product allotment. If product or services have no value to the CITY then the CITY may elect to waive its share of the sponsorship agreement.

(f) Other Sponsorships. This Agreement and the compensation provisions set forth above shall only apply to Soccer Complex specific sponsorships initiated and obtained by Heartland Soccer Association. Heartland Soccer Association shall not be entitled to any funds or Value-in-Kind initiated and obtained by the CITY or any third party.

5 Independent Contractor Status. It is mutually understood and agreed that Heartland Soccer Association shall act as an independent contractor in its performance under this Agreement. No provision herein shall be deemed or construed to create a joint venture, partnership or employment relationship between Heartland Soccer Association and the CITY.

6 Termination of the Agreement. This Agreement shall terminate upon any one or more of the following events:

(a) the mutual agreement by the parties in writing setting forth the effective date of termination;

(b) either party becoming insolvent, or the subject of bankruptcy, receivership, reorganization, dissolution, liquidation or other similar proceedings, which proceedings are not dismissed within sixty (60) days of their commencement;

(c) Heartland Soccer Association fails to provide an initial prospect list of Soccer Complex specific sponsorships, regular progress updates and sales tracking log or other review;

(d) a material breach by either party of any term or condition set forth in this Agreement; provided, however, the non-breaching party must provide written notice of the breach to the other party and allow for a cure period of not less than thirty (30) days in which event, if the cure is effected within the time set forth, the Agreement shall continue or, in the event that the breaching party does not cure within the stated time, the Agreement shall terminate at the end of the stated cure period.

7 Termination for Convenience. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the CITY to terminate, in whole or in part, with or without cause, the services of Heartland Soccer Association at any time, subject to written notice to Heartland Soccer Association. If the CITY terminates the Agreement prior to completion of services or the expiration of the Term, Heartland Soccer Association shall be compensate for all services satisfactorily completed as of the date of Heartland Soccer Association's receipt of the termination notice. Compensation shall not include consequential damages.

8 Non-Discrimination. Heartland Soccer Association agrees that:

(a) During the performance of this Agreement or any subcontract resulting thereof, Heartland Soccer Association, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;

(b) In all solicitations or advertisements for employees Heartland Soccer Association, all subcontractors and vendors shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission;

(c) If Heartland Soccer Association, a subcontractor or vendor fails to comply with the manner in which Heartland Soccer Association, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Heartland Soccer Association, subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the CITY;

(d) If Heartland Soccer Association, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final,

Heartland Soccer Association, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the CITY;

(e) Heartland Soccer Association shall include the provisions of paragraphs 8(a) through 8(d) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

Heartland Soccer Association further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

9 Miscellaneous.

(a) Non-Assignability. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns. This Agreement shall not be assigned by either party without the prior written consent of the other party.

(b) Subcontracting of Services. Heartland Soccer Association shall not subcontract or delegate all or substantially all of its responsibilities hereunder without the prior written consent of the CITY.

(c) Severability. The invalidity or unenforceability of any terms or provisions of this Agreement shall not affect the validity or enforceability of any other terms or provisions.

(d) Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties hereto and supersedes all other agreements, oral or otherwise, regarding the subject matter of the parties hereto. This Agreement may be amended only by mutual agreement of the parties in writing and signed by both parties.

(e) Headings. The headings of the various sections of the Agreement are inserted merely for the purpose of convenience and do not, expressly or implicitly, limit or define or extend the specific terms of the sections so designated.

(f) Jurisdiction. The validity, enforceability and interpretation of any of the provisions of this Agreement shall be determined and governed by the applicable laws and regulations of the State of Kansas. The parties hereto agree that appropriate jurisdiction and venue in connection with this Agreement and the subject matter hereof shall be in the District Courts of Johnson County, Kansas.

(g) Waiver. Any failure by any party hereto to enforce at any time or for any period of time any one or more of the terms or conditions of this Agreement, shall not be a waiver of such terms or conditions or of any party's right thereafter to enforce each and every term and condition of this Agreement.

(h) Notices. Any notice required to be given hereunder shall be sufficient and deemed given when in writing, and hand-delivered or sent by certified or registered mail, return receipt requested, first class postage prepaid, or by courier service, addressed as follows:

If to the City:
City Overland Park
City Hall
8500 Santa Fe Drive
Overland Park, KS 66212
Attn: Director of Recreation Services

If to Heartland Soccer Association:
9161 W. 133rd St
Overland Park, KS 66213
Attn; Executive Director

Notice will be deemed to have been given when delivered by hand or delivery service, or when received as evidenced by the return receipt or the date such notice is first refused, if that be the case.

(i) Remedies Cumulative. The parties agree that any and all remedies of either party for the breach of the Agreement shall be cumulative, and pursuing one remedy shall not be deemed to exclude any and all other remedies with respect to the subject matter hereof.

(j) Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement is executed by each of the parties on the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

HEARTLAND SOCCER ASSOCIATION

Tony Cosby
Director, Recreation Services

By: _____
Name: _____
Title: _____

ATTEST:

ATTEST:

Marian Cook, City Clerk

By: _____
Name: _____
Title: _____

