

## CONTRACT FOR SERVICES

This Contract for Services is made between **Town of Horizon City 4B Economic Development Corporation (“EDC”)** a Texas corporation organized and existing pursuant to Chapter 501 and 505 of the Texas Local Government Code known as the Development Corporation Act and **P I Sports, LLC (“Pinnacle”)**.

**WHEREAS**, the EDC desires to procure a customized market study and possibly a financial model regarding the construction, development, and operation of a new indoor/outdoor multi-sport facility in east Horizon City, Texas (the “Project”); and

**WHEREAS**, Pinnacle has the expertise and resources necessary to gather data, analyze, prepare and present both a market study and a financial model in the form required by the EDC and is willing to undertake such a project under the following terms and conditions.

- 1. Term:** This Contract shall commence upon the date of the last signature of principals for both parties and receipt of the initial payment by Pinnacle and shall terminate no later than July 30, 2022, if the EDC authorizes only Phase I the Market Study set forth in Attachment A to this Agreement; and no later than December 31, 2022, if the EDC authorizes Phase II the Financial Model and Impact Analysis set forth in Attachment B.
- 2. Pinnacle Deliverables:** See Attachment A for the Phase I- Market Study and Attachment B for the optional Phase II -Financial Model and Economic Impact Analysis (provided in Excel). Upon full payment for the deliverables, the Market Study and the Financial Model and Impact Analysis shall be the property of the EDC. Pinnacle shall keep the data gathered and the Market Study and the Financial Model and Impact Analysis confidential and will not release them or information gathered in conjunction with completing this assignment to any third parties without the express written consent of the EDC. The obligation to keep the Market Study and the Financial Model and Impact Analysis and information gathered to prepare them shall survive the expiration date of this Contract. Failure to comply with the confidentiality provision contained in this

paragraph, may at the option of the EDC result in legal action to enforce the agreement and/or seek damages, including attorney’s fees and court costs.

**3. Additional Services:** As part of Phase I, Pinnacle will make at least one trip to Horizon City, Texas to assess the potential location of the Project, to meet with potential stakeholders and local and regional sports groups. Additionally, Pinnacle will travel to Horizon City to present their findings to the Town of Horizon City Council at the conclusion of Phase I and when Phase II is completed; if the work is authorized by the EDC. Pinnacle will be reimbursed for expenses as set forth in paragraph 5 below.

**4. Cost/Payment Schedule:**

<u>Phase I – Attachment A</u>	<u>Cost</u>	<u>Payment Schedule</u>
Market Study – initial payment	\$5,000	Due upon signing
progress payment	\$5,000	Due upon submission of report
final payment	\$5,000	After presentation to Council
 <u>Phase II -Attachment B</u>		
Financial Model & Economic Impact Analysis	\$12,500	After presentation to Council

**5. Expenses:** The EDC will reimburse Pinnacle in a timely manner for all reasonable expenses related to the on-site visit and presentation to City Council including travel; lodging; meals (at \$75 per diem); and other reasonable out of pocket expenses as necessary to conduct the site visit and presentations before City Council. All individual expenses more than \$200.00 require authorization in advance from the EDC Director. These expenses will be capped at \$5,000.

6. **Time for Completion.** Phase I shall be completed no later than 6 months from the commencement date of the Contract and Phase II shall be completed no less than 90 days from the date Pinnacle receives written notice from the EDC that the work is authorized. Failure to complete each Phase by the deadline set forth in this paragraph shall be an event of default and EDC may, at its option terminate this Contract and request reimbursement for funds that have been advanced prior to completion of each Phase.
7. **Option for Phase II.** The option to proceed with Phase II of the Contract as set forth in Attachment B is at the sole discretion of the EDC. The option to contract for Phase II as described in Attachment B at the price specified in paragraph 4 above will continue for the duration of Pinnacle's performance of the Phase I-Attachment A components. If such option has not been exercised within ninety (90) days of the end of Pinnacle's performance of the Phase I - Attachment A components, such option will terminate, and the prices listed herein for those components will no longer be valid. Should EDC decide to contract for these services after this option period, a new contract will be required.
8. **Time and effort:** The time and effort that Pinnacle shall devote to the services, as well as the means or method by which Pinnacle shall perform the services, shall be within Pinnacle's control and discretion; but Pinnacle shall devote such time, effort and attention to the services as may be reasonably necessary to fulfill the purposes of this Contract within the time frame specified and agreed to by the parties.
9. **Relationship of parties:** The parties intend that, under this Contract, the relationship between the EDC and Pinnacle is an independent contractor relationship.
10. **Governing law and venue:** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas, and venue for any dispute

arising from this Contract shall be El Paso County, Texas.

11. **Paragraph Headings**: Paragraph headings have been inserted in this Contract for convenience. If paragraph headings conflict with the text in the construction of this Contract, the text shall control.
12. **Severability**: Each provision of this Contract shall be considered severable, and if for any reason any provision or provisions of this Contract are determined to be invalid and contrary to any existing or future law, the invalidity shall not affect or impair the operation of those portions of this Contract that are valid, or the application of such provisions in situations in which that are not invalid.
13. **Amendment; counterparts**: No change or modification of any of the provisions of this Contract shall be valid unless in writing and signed by both the parties to this Contract. This Contract may be executed simultaneously in one (1) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one (1) and the same instrument.
14. **Standard of Care/Warranty**: Pinnacle shall perform the work using reasonable diligence, exercising its best judgment, and using the care and skill ordinarily used by similar persons in providing the same or similar services under similar circumstances. There is no guarantee of success in any business and that all business ventures entail some risks that simply cannot be planned for in advance. PINNACLE MAKES NO ADDITIONAL WARRANTIES WITH RESPECT TO THE PRODUCTS OR SERVICES SOLD HEREUNDER. ANY IMPLIED WARRANTY OF MERCHANTABILITY, AND ANY IMPLIED WARRANTY THAT THE GOODS OR SERVICES ARE FIT FOR A PARTICULAR PURPOSE, ARE HEREBY

DISCLAIMED. Pinnacle shall not be liable for any error of judgment or mistake of law or for any loss, **except a loss resulting from willful malfeasance, bad faith, or gross negligence on the part of Pinnacle.** Neither Pinnacle nor its officers, members, managers, employees, or agents shall be liable for any special, incidental, indirect or consequential damages.

**15. Non-Compete:** Pinnacle agrees not to contract with any other new, proposed, or existing indoor/outdoor sports facility located within 15 miles of the location listed in Attachment A during the term of this Contract and for the 6 months immediately following the completion of all services being provided by Pinnacle under this Contract. Pinnacle also agrees that it will keep confidential the market study report developed by it on your behalf and that it will not share the market study report with any persons or entities other than you and your representatives.

While providing services, Pinnacle may reveal, or EDC personnel may be otherwise exposed to Pinnacle's confidential or proprietary business information ("Confidential Information"). Such Confidential Information shall not include any information that is: (i) already known to you prior to the date of this Contract or independently developed by you after the date hereof; or (ii) rightfully received by you from a third party without similar restriction from such party and the disclosure of which by such third party does not constitute a violation of any obligation by such third party to Pinnacle. To the extent permitted by applicable Texas laws, for a period of two (2) years from the completion of this Contract, the EDC will hold in confidence and for its own use, the Confidential Information and will not, without prior written consent of Pinnacle, duplicate, disseminate, disclose or transfer any portion of the material or

media on which the Confidential Information is presented to any other person or entity not directly related to your efforts to develop an indoor/outdoor sports facility in the market specified in Attachment A. Disclosure of the Confidential Information to such persons or entities with a legitimate need to know for the purposes of developing an indoor/outdoor sports facility in the market specified in Attachment A will not be prohibited so long as such persons or entities agree to hold the Confidential Information in confidence as set forth herein. **Pinnacle will clearly mark any information it considers to be confidential or proprietary business information before providing it to the EDC.** In the event the EDC receives a request pursuant to the Texas Public Information Act (“TPIA”) that would result in having to disclose the confidential information, the EDC will notify Pinnacle so Pinnacle can assert any confidentiality claims with the Texas Attorney General and a court of law, if necessary. The EDC will not have an obligation to raise the exceptions to disclosure pursuant to the TPIA and **Pinnacle is advised to engage legal counsel familiar with Texas open government laws to protect its confidentiality interests.** At the conclusion of two years from the completion of the work under the Contract the EDC will no longer be bound by this confidentiality agreement and will not be required to notify Pinnacle in the event, it receives a request under the TPIA that will result in information marked “confidential or proprietary business information” being released.

16. **Addresses for Notice.** Any notice required pursuant to the terms of this contract shall be deemed to have been properly given if it is hand-delivered or mailed to the person at the address below:

**For the EDC:**

Mr. Eduardo Garcia  
Executive Director  
Horizon Economic Development Corporation  
14999 Darrington Rd.  
Horizon City, Texas 79928

**With Copy to:**  
Ms. Sylvia Borunda Firth  
Bojorquez Law Firm  
11675 Jollyville Road, Suite 300  
Austin, Texas 78759

**For Pinnacle:**

Mr. Norm Gill  
P I Sports, LLC  
12468 LaGrange Rd.  
Louisville, KY 40245

**With Copy to:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**17. Logos and Names.** Pinnacle Indoor Sports; P I Sports, LLC; and Pinnacle all retain exclusive rights to all names, logos, programs (including names and logos), and operational procedures and have not licensed or otherwise transferred these to you as a part of this agreement.

Accepted and agreed to:

\_\_\_\_\_  
Norm Gill  
P I Sports, LLC

\_\_\_\_\_  
Date

\_\_\_\_\_  
Eduardo Garcia  
Executive Director  
Horizon City EDC

\_\_\_\_\_  
Date



# Attachment A

## Phase I - Market Study

**Location: Horizon City / El Paso, TX Region (4-hour drive)Market Study Elements (where applicable)**

### **1. General population analysis of the effective local MSA.**

- A. Locate and obtain socio-economic data from:
  - 1. U.S. Census Bureau
  - 2. Claritas, Inc.
  - 3. Other available private sources
  - 4. State, regional, and city planning agencies
  - 5. Business organizations such as Chambers of Commerce
  
- B. Perform a population trend analysis by Zip Code of:
  - 1. Age
  - 2. Family status
  - 3. Household income
  - 4. Housing attributes
  
- C. Establish an economic overlay of:
  - 1. Target customer populations
  - 2. Access traffic patterns
  - 3. Geographic or political considerations

### **2. Specific analysis of existing local and regional organized recreational sports groups.**

- A. Identify and obtain demographic data from relevant sources such as:
  - 1. National governing bodies
  - 2. National organizations for other target sports, i.e., AAU
  - 3. US Soccer Association, US Lax, etc.
  - 4. Organized but unaffiliated ethnic groups
  - 5. Local, state, regional and national organizations for targeted sports such as:

- a. Basketball
- b. Soccer
- c. Volleyball
- d. Baseball/Softball
- e. Track and Field
- f. Rugby
- g. Swimming
- h. Lacrosse
- i. Field Hockey
- j. Futsal
- k. Boxing
- l. Wrestling

- B. Factor in historical and projected growth patterns of target market populations
- C. Develop contact lists for all the key organizations and interview the key actors to determine:
  - 1. Attitudes concerning existing recreational opportunities
  - 2. Willingness to entertain a change in venue
  - 3. Input in the placement of proposed new indoor/outdoor multi-sport facilities

### **3. Public and private schools; colleges and universities; and military intramural sports leagues in the local MSA.**

- A. Determine current facility usage as competitors
- B. Investigate partnership opportunities to provide contract space for:
  - 1. Overflow needs
  - 2. Expansion of programming
  - 3. Formation of cooperative leagues

### **4. Existing organized social, ethnic, and religious groups.**

- A. Identify and quantify groups that sponsor sports-related activities such as:
  - 1. Church leagues—usually basketball and volleyball leagues
  - 2. Latino soccer leagues
  - 3. Foreign national expatriate organizations
  - 4. College sports associations

**5. Identify other targeted recreational sports with varying degrees of organization:**

- A. Investigate school gymnasium off-hours usage
- B. Electronic community bulletin boards
- C. Community centers
- D. YMCA's
- E. Regional and community sports connections

**6. Competitive analyses—identify, investigate, and document existing venues and facilities for recreational sports (both local and regional).**

- A. Commercial indoor/outdoor multi-sport facilities.
  - 1. Identify all facilities providing direct competition in at least one of the contemplated activities within a 60-minute driving radius and determine:
    - a. Mode of operation
    - b. Market positioning
    - c. Pricing
    - d. Level of success
    - e. Clientele.
- B. Other commercial indoor/outdoor sports facilities.
  - 1. Identify and profile venues such as:
    - a. Athletic clubs
    - b. Fitness centers
    - c. Tennis facilities
    - d. Volleyball centers
- C. Municipalities and school districts.
  - 1. Identify all structures, sports offerings, amenities, and pricing of public venues in direct competition with a proposed new indoor/outdoor facility such as:
    - a. Gymnasiums
    - b. Field houses
    - c. Covered fields (bubbles)

- d. Ice and roller rinks
- e. Community centers

#### D. YMCA's and church facilities

1. Identify existing facilities and offerings as a competitive component relating to:
  - a. Target sports communities
  - b. Sports camp offerings to youth
2. Investigate possible future partnerships to provide expansion space

### **7. Evaluate the corporate climate for partnership, sponsorship, and other advertising opportunities.**

1. Quantify the area employer/employee base:
2. Identify the market for corporate partners and sponsors
3. Identify and assess possible employee benefit program tie-ins

### **8. Site identification and evaluation.**

- A. Evaluate the MSA as a whole and identify preferred locales based on:
  1. Socio-economic demographic analysis
  2. High travel period commute times
  3. Ease of access and/or visibility
  4. Public perception of nighttime safety issues
- B. Evaluate specific identified sites for suitability

### **9. Recommendations.**

- A. Pinnacle will present an executive summary of data gathered, analyses, evaluations and conclusions as respects the entry of a new indoor/outdoor multi-sport facility in East Horizon City / El Paso region.
- B. Pinnacle will present recommendations based on these conclusions and Pinnacle's experience with similar installations in similar markets.

# Attachment B (optional)

## Phase II

### 1. Financial Model.

Following the completion of the market study, Pinnacle will construct a detailed (expanded lineitem) 3-year financial model for the proposed facility based on the market study findings and analysis, and proprietary historical data from Pinnacle affiliates and customers. The process is a cooperative, iterative exercise requiring good-faith input from client in response to proposed revenue scenarios specific to the applicable market and estimated expense factors calculated by Pinnacle from existing available data.

This Pinnacle deliverable incorporates a table-driven financial model that clearly identifies all the inputs at a verifiable level of detail, including: price points for each projected activity; seasonal revenue variability based on projected team and individual attendance by activity; corresponding expense factors derived from actual facility operations; capitalized monthly cost projections; and personnel cost estimates.

Along with all base assumptions the model provides monthly projections of: space utilization by activity; annual revenue by source of revenue, and corresponding expenses; resulting cashflows; pre-opening expenses; and permanent and seasonal investment requirements.

The financial model will be included in any subsequent business plans that are developed for presentation to the capital markets. The projections will be updated and revised as additional/better information becomes available.

### Economic Impact Analysis

With our partner, Impact DataSource, LLC, we will conduct a 10-year economic analysis of the proposed sports facility and prepare a report showing the results of that analysis.

We will estimate the impact of the indoor/outdoor sports facility in terms of direct, indirect, and induced economic activity. This economic activity would include both the facility's operations activity and the spending by visitors that takes place in the city but "off-site". We will then translate these economic impacts into tax revenues for city and other local taxing districts.

This will include identifying the local vs. out-of-town visitor spending and lodging spending.

The economic impact of the operations of the facility will include the direct and indirect economic impacts, including:

- Amount of direct and indirect sales and revenues to be generated in the community

- Number of new direct and indirect jobs created in the community
- Salaries to be paid to these workers
- Number of new workers moving to the community
- Number of new residents
- Number of out-of-town and area visitors to the facility
- Taxable sales expected in the community including sales generated by direct and indirect workers, sales at the facility and sales generated in the city by out-of-town visitors to the facility
- Lodging sales expected in the community

Further, these economic impacts will be translated into revenues for the city and other local taxing districts, including:

- Sales taxes
- Property tax on new commercial property on local tax rolls
- Hotel taxes and other taxes and user fees
- The annual net benefits for the City and local taxing districts will be calculated for ten years