

AGREEMENT FOR NAMING RIGHTS AND SPONSORSHIP OF THE CITY OF COSTA MESA SKATEBOARD FACILITY IN TEWINKLE PARK

This Agreement is made and entered into this _____ day of _____, 2005 (“Effective Date”), by and between the City of Costa Mesa, a California municipal corporation (“City”), and Volcom, a California Corporation (“Sponsor”).

RECITALS

WHEREAS, City has recently constructed a skate park facility in TeWinkle Park located at 970 Arlington Avenue, Costa Mesa (the “TeWinkle Skate Park”); and

WHEREAS, Sponsor is a worldwide clothing licensing company that also produces artwork, marketing and other skate boarding youth lifestyle items; and

WHEREAS, City wishes to raise additional revenue with which to fund City operations and services;

WHEREAS, Sponsor wishes to put its name on the TeWinkle Skate Park

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions contained herein, the parties hereby agree as follows:

1. SPONSORSHIP RIGHTS

During the term of this Agreement, Sponsor shall have the rights and benefits enumerated below.

1.1 TeWinkle Skate Park will be known as “Volcom Skate Park Costa Mesa”. City shall refer to the TeWinkle Skate Park as “Volcom Skate Park Costa Mesa” in all City publications and communications.

1.2 Sponsor shall have the right to use TeWinkle Skate Park two (2) weekends per calendar year. City and Sponsor shall meet at least annually on or before March 15th of each year to schedule the dates for the two uses and to discuss and agree on all logistics to operate the events. City, at its option, may co-sponsor these events. For each event that the City does not co-sponsor, Sponsor shall apply for a City “special event permit” and comply with the requirements therein.

1.3 Sponsor shall have the right to use the City’s name and its trademark, “CostaMazing”, in its marketing and advertising programs. All copy and proposed use shall be submitted to the City for prior approval as to design, content and use. City shall process such approval as expeditiously as reasonably possible.

1.4 Sponsor shall have the right to utilize as advertising space one-fourth of the inside cover of each Recreation Brochure that is issued by the City. City shall notify Sponsor of the publication dates of each issue of the Recreation Brochure at the beginning of every calendar

year during the term of this Agreement. Sponsor must submit the advertisement for an issue of the Recreation Brochure not less than ninety (90) days prior to the publication date of that issue.

1.5 City shall provide a link from the City website, www.ci.costa-mesa.ca.us, to Sponsor's website, www.volcom.com, as part of the web page that lists City facilities.

1.6 Sponsor shall have the right to conduct promotion and distribution activities at TeWinkle Park with prior approval of City as to date, time and content of such promotion or distribution.

1.7 Sponsor shall have the right to design and provide banners to be mounted on the six (6) light poles inside TeWinkle Skate Park. Sponsor shall submit a copy of the proposed banners to City for prior approval as to design, content, size and location. Upon City's approval of the banners, City shall install the banners provided by Sponsor in a timely manner.

1.8 If City installs portable bleachers at TeWinkle Skate Park, Sponsor shall have the right to design signage for use on such bleachers. Sponsor shall submit a copy of the proposed signage to City for its prior approval as to design, content, size and location. If the City does not have adequate funding to purchase and install said bleachers, Sponsor may, at its option, pay City for such expense. Regardless of which party funds the purchase, City shall own any bleachers installed at TeWinkle Skate Park and retains the right and responsibility to design, construct and install said bleachers.

1.9 Within the first year of this Agreement, City shall install Sponsor's name and artwork on the entryway/monument sign at the edge of the park parking lot located on Arlington Avenue. Sponsor shall provide the City with the artwork for the entry signage for City's installation and prior approval as to design, content and size.

1.10 If City installs a shade shelter at TeWinkle Skate Park, Sponsor shall have the right to design signage for use on such shade shelter. Sponsor shall submit a copy of the proposed signage to City for prior approval as to design, size and location. If the City does not have adequate funding to purchase and install said shade shelter, Sponsor may, at its option, pay City for such expense. Regardless of which party funds the purchase, City shall own any shade shelters installed at TeWinkle Skate Park and retains the right and responsibility to design, construct and install said shade shelters.

1.11 Within the first year of this Agreement, City shall imprint Sponsor's logo, a copy of which is attached hereto as Exhibit A, on the bottom of both bowls inside TeWinkle Skate Park. Sponsor shall provide City with logo artwork for City to use in imprinting the logo in the bowls. City shall have the right to determine the final size and location of Sponsor's logo on the bowls. Sponsor shall pay the City an amount equal to the City's actual cost to imprint Sponsor's logo on the bowls. This installation fee shall be in addition to the sponsorship fee required by Section 3 of this Agreement. City shall obtain Sponsor's approval of the estimated cost prior to putting the proposed logo installation contract out for bid and imprinting the logo on the two bowls. Sponsor may, at its option, choose not to pay for the imprinting, in which case the City has no obligation to engage in public bidding or do the imprinting.

1.12 The rights enumerated in this Section 1 are exclusive to Sponsor. City shall not enter into agreements with other sponsors for sponsorships and services similar to the sponsorship and services that are subject to this Agreement, except that City may, from time to time, enter into agreements with other sponsors for special events or activities at TeWinkle Skate Park for similar obligations and services with the consent of Sponsor. City shall secure Sponsor's consent in writing prior to entering into such sponsorship agreement.

1.13 City shall make its best effort to provide all benefits enumerated in this Agreement, provided such provision of benefits are legal for the City to provide and are in accordance with all laws that govern the City's ability to provide such benefits. Sponsor understands that such laws may change over the course of this Agreement and may affect the City's ability to perform and provide some or all of the benefits enumerated in this Agreement. City shall advise Sponsor of any changes in any laws that may affect City's ability to provide the benefits enumerated in this Agreement within a reasonable time from the time the City is informed of any such law.

2. CITY RIGHTS

2.1 The City will retain all asset management rights, all rentals and permit rights, and all other promotional rights not specifically granted Sponsor in this agreement.

2.2 City shall have the right to approve all on site advertising and promotions by Sponsor.

2.3 City shall be responsible for maintaining the TeWinkle Skate Park. City reserves the right to remove any of advertisements or signage that has become worn, disfigured or otherwise unsuitable for display. Upon such removal, Sponsor shall have the right to replace the removed advertisement or signage subject to the provisions of this Agreement.

3. PAYMENT OF SPONSORSHIP FEE

3.1 Sponsor shall pay an annual sponsorship fee to City. The first year's sponsorship fee shall be paid within one (1) week of the Effective Date. Each sponsorship fee after the first payment shall be paid no later than March 15th of each year of this Agreement. Failure by Sponsor to pay the sponsorship fee by this date shall be grounds for termination of this Agreement. If a payment is not received by April 1st of each year of this Agreement, a ten percent (10%) penalty shall be added the amount due.

3.2 The sponsorship fee for the first 3 years of this Agreement is Thirty Thousand Dollars (\$30,000) per year.

3.3 The sponsorship fee due on March 15, 2008 shall be \$30,000 plus \$30,000 multiplied by the cumulative total percentage increase of the Orange County Consumer Price Index from January 2005 through December 2007 (the "Adjusted Fee").

3.4 Sponsor shall pay the City an amount equal to the Adjusted Fee for the payments due during the years 2008-2010.

3.5 The sponsorship fee due on March 15, 2011 shall be the Adjusted Fee plus the Adjusted Fee multiplied by the cumulative total percentage increase of the Orange County Consumer Price Index from January 2008 through December 2010 (the "Second Adjusted Fee").

3.6 Sponsor shall pay the City an amount equal to the Second Adjusted Fee for the payments due during the years 2011-2013.

3.7 The sponsorship fee due on March 15, 2014 shall be the Second Adjusted Fee plus the Second Adjusted Fee multiplied by the cumulative total percentage increase of the Orange County Consumer Price Index from January 2011 through December 2013 (the "Third Adjusted Fee").

3.8 If the parties do not extend the Agreement, there shall be no sponsorship fee due on March 15, 2015. If the parties do extend the Agreement, such payment shall be an amount equal to the Third Adjusted Fee. The amount due for all other payments due during any extension of this Agreement shall be determined by mutual consent of both parties in a separate writing to be made a part of this Agreement. If the parties cannot agree on a sponsorship fee schedule for any renewal term by March 15, 2016, the Agreement shall terminate on March 31, 2016.

4. TERM

4.1 This Agreement shall commence on the Effective Date and continue for a period of approximately ten (10) year(s), ending on March 31, 2015, unless previously terminated as provided herein or as otherwise agreed to in writing by the parties.

4.2 Except as set forth in Paragraph 3.8, Sponsor shall have the first right of refusal to extend this Agreement under the same terms and conditions, excepting the amount of the sponsorship fee, for another ten (10) years if the City determines it wishes to continue to seek a naming rights sponsor for the TeWinkle Skate Park.

4.3 During the term of this Agreement, Sponsor shall also have the first right of refusal for any naming rights sponsorship agreement for any future skate parks to be developed by the City in Costa Mesa. City shall offer Sponsor the proposed naming rights sponsorship package for additional skate parks under the same or then existing terms and conditions and Sponsor shall have ninety (90) days from date of offer to respond if it wishes to accept the naming rights sponsorship package for any additional skate park. If Sponsor does not respond within ninety (90) days, the City may, at its option, either continue to negotiate with Sponsor or offer the package to other interested parties.

4.4 Either party may cancel this Agreement, without liability to the other party, if the defaulting party: (1) repudiates or breaches any of the terms of this Agreement; or (2) fails to make progress so as to endanger timely and proper completion of its services; and does not correct such failure or breach within ten (10) days, or such shorter period if commercially reasonable, after receipt of written notice from the non-defaulting party specifying such failure or breach. In the event of a termination where Sponsor is the breaching party, Sponsor shall pay City for the cost of removing any artwork installed and logo imprinted pursuant to Paragraph 1.9 and 1.11, respectively, of this Agreement.

4.5 Either party may cancel this Agreement immediately, without liability to the other party, upon the happening of any of the following or any other comparable event: (1) insolvency of the other party; (2) filing of any petition by or against the other party under any bankruptcy, reorganization or receivership law; (3) execution of any assignment for the benefit of the other party's creditors; or (4) appointment of any trustee or receiver of the other party's business or assets or any part thereof; unless such petition, assignment or appointment be withdrawn or nullified within fifteen (15) days of such event.

4.6 The City shall have the right to cancel this Agreement immediately, without liability to Sponsor, upon the happening of the following or any other comparable events: 1) Sponsor, or any of its officers, is charged with a criminal offense; (2) Sponsor engages in the sale or marketing of alcohol, tobacco or firearms; and (3) Sponsor acquires, is acquired or merges with another business that sells or markets alcohol, tobacco or firearms.

4.8 In the event of termination, Sponsor shall pay City the pro-rated sponsorship fee amount for the time the Agreement was effective.

4.9 Neither party shall be responsible for delays or lack of performance resulting from acts beyond the reasonable control of the party or parties. Such acts shall include, but not be limited to, acts of God, fire, strikes, compliance with laws or regulations, riots, acts of war, or any other conditions beyond the reasonable control of a party.

5. MUTUAL COVENANTS

5.1 Sponsor shall defend, indemnify and hold harmless City from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against City for, or on account of any liability which may be incurred by reason of, or arising out of, Sponsor's performance under this Agreement, including but not limited to any claims which arise from Sponsor's promotional or distribution activities, and its use of TeWinkle Skate Park as provided in section 1.2 hereof. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Sponsor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Sponsor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the activities of Sponsor, its employees, and/or authorized subcontractors under this Agreement, whether or not the contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, Sponsor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole negligence or willful misconduct of the City.

5.2 City shall defend, indemnify and hold harmless Sponsor from and against all claims, demands, payments, suits, actions, proceedings, and judgments of every nature and description including attorneys' fees and costs, presented, brought, or recovered against Sponsor for, or on account of any liability which may be incurred by reason of City's performance under this Agreement, or arising out of the City's operation or maintenance of TeWinkle Skate Park,

excepting Sponsor's events held pursuant to section 1.2 hereof. City shall maintain comprehensive general liability insurance, including premises operations, broad form property damage, and personal injury insurance coverages, or it shall be self-insured as authorized by law with no greater than a two million dollar self-insured retention. City shall require any third party who operates or sponsors events at TeWinkle Skate Park as provided for in section 1.2 above to maintain comprehensive general liability insurance, including premises operations, broad form property damage, and personal injury insurance coverages.

5.3 City and Sponsor acknowledge that each party owns certain names, trademarks, service marks, copyrights and other intellectual property ("Marks"), and owns or has certain merchandising rights in and to the Marks, and all goodwill associated with or symbolized by the Marks. It is understood that in promoting the City's activities, the City and Sponsor may make various references to the activities and may display the Marks of the City and Sponsor, and pictures of the activities. Each party hereto grants to the other a nonexclusive, nontransferable license to use its Marks during the term of this Agreement and subject to the terms and conditions hereinafter set forth, solely in connection with advertising and promoting any event or activity incidental hereto.

5.4 City and Sponsor must agree in writing as to the form and content of any promotional or advertising materials and the media in which such materials are to be used prior to their use, which approval the parties shall not unreasonably withhold; and such use may be subject to such reasonable conditions as either party may impose, including, but not limited to, conditions affording each party adequate protection of its Marks. Upon termination or expiration of this Agreement, both parties shall cease all use of the Marks of the other party as soon as practicable, but in any event within thirty (30) days unless the particular media which has been approved requires a longer lead time, but in no event longer than ninety (90) days.

5.5 Neither party will impugn, challenge or assist in any challenge to the validity of the other party's Marks, any registrations thereof, or the ownership thereof. Each party will be solely responsible for taking such actions as it deems appropriate to obtain trademark, service mark or copyright registration for its respective Marks. All uses of or references to the Marks shall inure to the benefit of the respective owner, and all rights with respect to the Marks not specifically granted in this Agreement shall be and are hereby reserved to the respective owner.

5.6 Neither party is granted any right or license under this Agreement to sell, or otherwise distribute for sale, any of the promotional or advertising materials, or items related thereto. If a party desires to sell, or distribute for sale, any of such materials or other merchandising or novelty items bearing the names, trademarks, copyrights or other intellectual property of the other party, then it shall request permission to do so from the other party, and if granted, the parties shall negotiate in good faith a separate licensing agreement covering such materials or items before they may be sold or distributed for sale.

5.7 Sponsor may from time to time provide the City with promotional material, supplies, merchandise, or other services that it feels will enhance its promotional presence at the TeWinkle Skate Park. Provision of such items is solely at the discretion of the Sponsor and not required under the terms and conditions of this agreement. The City is not required to accept or allow any promotional material, supplies, merchandise, or other services as part of its obligations under this Agreement.

5.8 Each party shall designate a representative for purposes of this Agreement. Sponsor's representative shall be authorized to issue all consents, approvals, directives and agreements on behalf of Sponsor called for by this Agreement, except as otherwise expressly provided in this Agreement.

5.9 City and Sponsor representatives shall meet as frequently as needed to implement the terms and conditions of this Agreement, however both City and Sponsor shall meet at least annually on or before March 15th of each year this Agreement is in force to discuss calendar dates for promotional services, use of the skate park facility, review of each parties' performance to date, exchange of ideas on promotions, operations, etc., approval of graphics and other promotional material; and any desired changes in the Agreement. Both parties understand that good communication is the key to a successful sponsorship and will make its best effort to communicate to each other during the course of this Agreement.

6. INSURANCE

Sponsor shall obtain and maintain during the term of this Agreement comprehensive general liability, including premises operations, broad form property damage, and personal injury insurance coverages.

(a) At commencement of the term, and thereafter from time to time as may be required, Sponsor shall provide to City certificates of insurance from an insurance company certified to do business in the State of California, with original endorsements, evidencing the coverage required herein.

(b) Sponsor shall provide the following insurance, with Best's Class B or better carriers:

(i) Workers' Compensation insuring statutory Workers' Compensation limits as required by the California Labor Code;

(ii) Commercial general liability insurance covering third party liability risks, including without limitation, contractual liability, in a minimum amount of \$1,000,000 (one million) combined single limit per occurrence for bodily injury, personal injury and property damage. If the policy contains a general aggregate limit, then the aggregate limit shall not be less than \$2,000,000 (two million dollars);

(iii) Commercial auto liability and property insurance covering all owned and rented vehicles of Sponsor or its Agents coverage Code 7 "Specified Autos" with a minimum amount of \$2,000,000 (two million dollars) combined single limit per accident for bodily injury and property damage;

(c) Endorsements shall be obtained for the policies providing the above insurance for the following three provisions:

i. Additional Insureds:

"The City of Costa Mesa and its elected and appointed boards, officers, agents, volunteers and employees are additional insureds with respect to this subject contract with City."

ii. Notice:

"Said policy shall not terminate, nor shall it be cancelled, nor the coverage reduced, until thirty (30) days after written notice is given to City."

iii. Other Insurance:

"Solely in connection with claims arising out of Volcom's performance hereunder or duties set forth in section 5.1 of this Agreement, any other insurance maintained by the City of Costa Mesa shall be excess and not contributing with the insurance provided by this policy."

7.0. GENERAL PROVISIONS

7.1. This Agreement constitutes the entire agreement between the parties with respect to any matter referenced herein and supersedes any and all other prior writings and oral negotiations. The terms of this Agreement shall prevail over any inconsistent provision in any other contract document appurtenant hereto, including exhibits to this Agreement.

7.2 This Agreement may be modified only in writing, and signed by the parties in interest at the time of such modification.

7.3 Any notices, documents, correspondence or other communications concerning this Agreement may be provided by personal delivery, facsimile or mail and shall be addressed as set forth below. Such communication shall be deemed served or delivered: a) at the time of delivery if such communication is sent by personal delivery; b) at the time of transmission if such communication is sent by facsimile; and c) 48 hours after deposit in the U.S. Mail as reflected by the official U.S. postmark if such communication is sent through regular United States mail.

IF TO SPONSOR:
Volcom
1740 Monrovia Avenue
Costa Mesa, CA 92627

Fax: 949-999-1219
Tel: 949-646-2175
Attn: Doug Collier

IF TO CITY:
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Fax: 714-754-5166
Tel: 714-754-5300
Attn: Jana Ransom

7.4. In the event that litigation is brought by any party in connection with this Agreement, the prevailing party shall be entitled to recover from the opposing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the exercise of any of its rights or remedies hereunder or the enforcement of any of the terms, conditions, or provisions hereof.

7.5. This Agreement shall be governed by and construed under the laws of the State of California without giving effect to that body of laws pertaining to conflict of laws. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.

7.6. Sponsor shall not voluntarily or by operation of law assign, transfer, sublet or encumber all or any part of Sponsor's rights, interests, or duties in this Agreement without City's prior written consent. Any attempted assignment, transfer, subletting or encumbrance shall be void and shall constitute a breach of this Agreement and cause for termination of this Agreement. Regardless of City's consent, no subletting or assignment shall release Sponsor of Sponsor's obligation to perform all other obligations to be performed by Sponsor hereunder for the term of this Agreement.

7.7. Sponsor has been advised and is aware that this agreement and any other reports, documents, information and data including, but not limited to, computer tapes, discs or files furnished or prepared by City may be subject to public disclosure as required by the California Public Records Act (California Government Code Section 6250 et. seq.).

7.8. Sponsor will not employ any regular employee of City while this Agreement is in effect.

7.9. In performing this Agreement, Sponsor shall not engage in, nor permit its agents to engage in, discrimination in employment of persons because of their race, religion, color, national origin, ancestry, age, physical handicap, medical condition, marital status, sexual gender or sexual orientation, except as permitted pursuant to Section 12940 of the Government Code. Violation of this provision may result in the imposition of penalties referred to in Labor Code, Section 1735.

7.10. Each party shall bear its own costs and fees incurred in the preparation and negotiation of this Agreement and in the performance of its obligations hereunder except as expressly provided herein.

7.11. This Agreement is entered into for the sole benefit of City and Sponsor and no other parties are intended to be direct or incidental beneficiaries of this Agreement and no third party shall have any right in, under or to this Agreement.

7.12. Section headings contained in this Agreement are included solely for convenience and are not intended to modify, explain or to be a full or accurate description of the content thereof and shall not in any way affect the meaning or interpretation of this Agreement.

7.13. The parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the parties and in accordance with its fair meaning. There shall be no presumption or burden of proof favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

7.14. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable in any circumstance, such determination shall not affect the validity or enforceability of the remaining terms and provisions hereof or of the offending provision in any other circumstance. Notwithstanding the foregoing, if the value of this Agreement, based upon the substantial benefit of the bargain for any party is materially impaired, which determination as made by the presiding court or arbitrator of competent jurisdiction shall

be binding, then both parties agree to substitute such provision(s) through good faith negotiations.

7.15. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. All counterparts shall be construed together and shall constitute one agreement.

7.16. The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by doing so, the parties hereto are formally bound to the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their respective authorized officers, as of the date first above written.

CITY OF COSTA MESA,
A municipal corporation

Mayor of the City of Costa Mesa

Date: _____

SPONSOR
A California Corporation

Signature

Date: _____

Name and Title

ATTEST:

Deputy City Clerk and ex-officio Clerk
of the City of Costa Mesa

APPROVED AS TO FORM:

City Attorney

Date: _____

APPROVED AS TO CONTENT:

Recreation Manager

Date: _____