



Agenda Item 6E

**Approvals:**

City Manager [Signature]

Dept. Head [Signature]

Attorney JAG

Finance [Signature]

# AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING

Meeting Date: October 15, 2013

**Department:** Beaches, Parks & Recreation

**Prepared By:** Pamela Passow, Recreation Manager

**Subject:** *SAN CLEMENTE AQUATICS AGREEMENT.*

**Fiscal Impact:** None. It is estimated that the revenue for San Clemente Aquatics will be \$65,220, which is the amount budgeted for this fiscal year.

**Summary:** San Clemente Aquatics has met with staff several times, and has approved the attached agreement including changes recommended by the City Council and the City Attorney. Staff is recommending the approval of an agreement between the City and San Clemente Aquatics for a period of one year.

**Background:** On March 19, 2013, the City Council conceptually approved a draft agreement between the City and San Clemente Aquatics. Since that time, the City Attorney and California Joint Powers Insurance Authority have approved the agreement with minor changes to the language. The substance of the agreement has not changed.

**Discussion:** The City Attorney has made language changes to the agreement between the City of San Clemente and San Clemente Aquatics. The agreement has been reviewed by San Clemente Aquatics and discussed with staff.

The term of the agreement is one year from the date of approval. Discounts include a 70% discount for pool lane, meeting room, and grass event space rentals. It also includes an 80% discount for off-peak swim meets and a 50% discount for peak swim meets.

**Recommended**

**Action:** STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute the agreement between the City and San Clemente Aquatics.

**Attachments:** Agreement between the City of San Clemente and San Clemente Aquatics.

**Notification:** San Clemente Aquatics

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**AQUATICS PROGRAM AGREEMENT**

This AQUATICS PROGRAM AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2013 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and SAN CLEMENTE AQUATICS, a youth sports organization ("SCA") for the period of one (1) year from and after the Effective Date.

**RECITALS:**

A. The City of San Clemente owns and operates the San Clemente Aquatics Center at the Vista Hermosa Sports Park, which features a 50-meter competition pool and a 25-yard activity pool with play feature.

B. San Clemente Aquatics is a private non-profit organization that has been involved in competitive and non-competitive swimming activities in San Clemente for 35 years. San Clemente Aquatics currently serves 450 swimmers ranging from novice to Olympic Trials qualifiers.

C. San Clemente Aquatics currently uses the 50-meter pool at the San Clemente Aquatics Center and desires to enter into this Agreement to establish a program of pool usage to better serve its membership.

**COVENANTS:**

Based on the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, City and SCA hereby agree as follows:

**1. SCA Program Requirements**

1.1. As a material inducement to City's entering into this Agreement with SCA, SCA agrees and covenants that, during the term of this Agreement, SCA shall operate its program in compliance with the following requirements, and agrees that any failure to strictly comply with any of the following requirements is a material breach of this Agreement:

1.1.1. SCA is and shall remain currently registered and active with the State of California as a not-for-profit community organization under Section 501(c)(3) or (c)(4) of the Internal Revenue Code.

1.1.2. SCA is not and shall not be the subject of any investigation by any government or administrative agency whether at the City, County, State or Federal level and demonstrated history of adherence to City rules, policies and allocations.

1.1.3. SCA shall carry Commercial General Liability insurance with limits no less than \$2,000,000 per occurrence, and \$4,000,000 annual aggregate, with an additional insured endorsements in favor of City, and approved by the city's risk manager.

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SCA's liability insurance shall be primary insurance without rights of subrogation.

- 1.1.4. SCA remains able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and SCA is required to pay regular rates for use of City amenities, fields, pools and/or facilities.
- 1.1.5. SCA has and shall maintain an open enrollment policy regardless of participant's skill level.
- 1.1.6. SCA shall have minimum play rules of 50% play for all participants.
- 1.1.7. SCA shall provide financial scholarships to at least 10% of participants in the amount of not less than 50-100% of the registration fees for those in financial need.
- 1.1.8. SCA has and shall continue to have a "no discrimination" and "no alcohol" policy.
- 1.1.9. SCA supplies and shall continue to supply participant rosters annually to City. SCA membership shall be comprised of no less than 90% San Clemente residents.

### **2. SCA Representatives To City**

2.1. SCA shall designate one official representative who shall be City's primary contact and who shall coordinate the program, pool space and overall agreement with the City. The SCA representative shall have authority to make decisions for SCA, sign applications with City on behalf of SCA for pool use, approve billing, and understand the pool operations regarding both scheduling and maintenance, assist with SCA planning of pool and lane space, and be responsible for resolving conflicts if/when they arise.

2.2. SCA is responsible for notifying City in writing within thirty (30) days of any change in its designated SCA representative referenced in Section 2.1.

2.3. The City Beaches, Parks and Recreation Department will be the City liaison coordinating all City operations. City responsibilities are designated to the following division and staff position:

Recreation Division, Aquatics Recreation Coordinator  
987 Avenida Vista Hermosa, San Clemente, CA 92673 (949) 429-8797

### **3. San Clemente Aquatics Center Rental Rates**

SCA shall timely pay the following use fees to the City. The fees noted below shall remain in effect during the entire term of this Agreement unless the Agreement is terminated:

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<b>Aquatics Center Rental Rates</b>	<b>Rental Discounted Rates</b>
\$25 per hour per 25 Yard Lane	70% discount = \$7.50 per hour per 25 Yard Lane
\$53.13 per hour per 50 Meter Lane	70% discount = \$15.94 per hour per 50 Meter Lane
Meeting Room = \$150 per hour	Meeting Room = 70% discount (\$45/hour)
Grass Event Space = \$200 per hour	Grass Event Space = 70% discount (\$60/hour)
Swim Meets = \$400 per hour	Swim Meets off peak = 80% discount (\$80 per hour) Swim Meets peak (June-August) = 50% discount (\$200/hour)
Lifeguard Fees = 2 at \$26 per hour	No discount. Only applied when facility is closed.

**4. Aquatics Center Storage and Office Space**

During the term of this Agreement, SCA is permitted to place a storage bin(s) for equipment and supplies as follows:

4.1. A designated storage space will be provided for SCA to store their supplies behind the bleachers located on the west deck of the 50-meter pool. SCA is not permitted to store any food, equipment or other belongings at the Aquatics Center without prior City approval. City and SCA shall work cooperatively to install permanent fencing to create a secured storage area between the existing bleachers and existing pool fencing on the west deck of the 50 meter pool and shall share costs proportionally.

4.2. SCA's Head Coach may use one designated locker in the locker room for use and storage. No food, wet towels or clothing may be stored in the locker overnight.

**5. Aquatics Center Scheduling**

Although community programs and community contract classes have priority, SCA shall be able to reserve up to 63% of the pool space in the 50-meter pool during short course (10 lanes), 37% of the 50m pool space during long course (3 lanes) and 30% of pool space in the 25-yard pool (2 lanes) for practices Monday through Friday for a total of four hours of time, based on availability. City and SCA representatives will meet on a quarterly basis to determine Aquatics Center rentals. Rentals of the San Clemente Aquatics Center include lane allocations, private coaching, room rentals, swim meets and grass space. SCA's representative shall provide a written request of rentals one (1) month in advance to assist City in determining a Master Aquatics Center Calendar. SCA shall request any changes or additions to their rental permit two (2) weeks in advance of the date of change.

5.1. Lanes booked for SCA are to be utilized for SCA programs only. SCA shall not sublet pool space or lanes to outside organizations. SCA shall not absorb lanes from City contract classes or City programs that are canceled or moved. All lane allocations shall be included in the rental permit for lane use. This includes grass event space and meeting room usage by SCA.

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5.2. SCA shall request only needed lane space and not overbook the lanes. If City determines, in its sole and absolute discretion, that SCA has overbooked lane space, City may adjust the lane allocation unilaterally.

5.3. City will notify SCA of any excess lane capacity available when City classes are canceled or moved. SCA may use the additional lane capacity when SCA and the City determine that additional capacity is necessary during the period that such excess capacity is available.

5.4. It is the responsibility of SCA to coordinate all pool schedules with its participants and coaches.

### **6. Use of Colorado Timing Equipment**

6.1. SCA may utilize City's Colorado Timing System. The SCA representative shall sign a City approved release/waiver agreement holding SCA responsible for the equipment. The release is required each time the equipment is checked out and used. When use is complete, City staff will examine the equipment. Any damage to the equipment during SCA's use will be the responsibility of SCA. Only trained SCA representatives and City staff may use the Colorado Timing System equipment.

### **7. SCA Provision of Lifeguards During SCA Events**

7.1. City lifeguards shall be on duty at all times non-SCA members are in the pool, including but not limited to all times during all SCA practices. SCA may lifeguard their own swim meets providing: (a) SCA executes a full defense and indemnification agreement holding City harmless from all claims, demands, and lawsuits relating to SCA's use of the pool; (b) SCA demonstrates to the satisfaction of City's Risk Management Department that SCA has procured and maintains in effect during the term of this Agreement adequate insurance to cover its indemnification obligation and that City is listed on the insurance policy as an additional insured; (c) all SCA lifeguards receive American Red Cross Lifeguard Training and Certification from the City Contract Class offered on a seasonal basis; (d) SCA ensures only swim meet participants are in the pool; and (e) SCA shall follow American Red Cross Lifeguarding Standards.

### **8. Pool Supplies and Standards**

8.1. City will provide lane lines, diving blocks and flags for SCA practices and meets. SCA is responsible for any and all additional equipment they may require. All additional equipment is subject to City approval.

8.2. SCA may rent certain other City equipment, on an as-available basis, including but not limited to the sound system, tables, chairs, etc. SCA shall request use of the equipment at least three (3) business days prior to undertaking said use. City shall bill SCA for the rental fee.

8.3. 50-Meter Pool Competition Guidelines

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- (i) City will attempt to maintain, but has no obligation to maintain, a water temperature between 78–82 degrees Fahrenheit (25.5–27.5 degrees Celsius) during swim meets.
- (ii) City will lock-up diving boards out of use or removed diving boards during swim meets.
- (iii) City will provide flags for swim meets.

### **9. Pool Closure Procedures**

When the Aquatics Center must be closed due to inclement weather, maintenance, damage or other conditions needing immediate attention, the Recreation Division will determine the closure term and begin procedures as follows:

- 9.1. Post-closure signs in the Aquatics Center.
- 9.2. Any Aquatics Center closure in excess of one week will be posted on City's official website: [www.san-clemente.org](http://www.san-clemente.org).
- 9.3. City will contact the SCA representative by phone and/or email to notify SCA of the closure.
- 9.4. SCA will be responsible to contact their coaches and participants to notify them of the closure.
- 9.5. SCA agrees to reimburse City for any and all maintenance costs directly attributed to damage of the Aquatics Center or any City equipment, including unauthorized alteration of a City site, caused by SCA, any SCA member, and/or SCA invitee.
- 9.6. City will credit SCA lane space for pool closures that are not the fault of SCA.

### **10. Clean Up**

10.1. SCA shall be responsible for cleaning the Aquatics Center after each use by SCA. This includes, but is not limited to, the removal of litter left behind from SCA members or fans in the bleachers or snack concession stand areas. City will provide adequate trash containers.

10.2. Materials or wastewater from cleaning up after an event are not permitted to enter the storm drain system (i.e., street gutters or catch basins). SCA shall follow all applicable City policies and codes.

### **11. Concessions**

11.1. SCA may only sell food products to the program participants and fans during the scheduled swim meet dates with City approval.

11.2. SCA shall adhere to Orange County Health Department standards for storage, preparation, and service of food items. SCA shall obtain the appropriate permits from the Orange County Health Department prior to any food service.

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11.3. SCA will not permit persons under age 18 to operate a barbeque and other appliances or flammable liquids or materials. City retains the discretion to approve the use and location of a barbeque.

11.4. In accordance with San Clemente Resolution No. 04-27, there will be no use of Styrofoam products at any location within the Aquatics Center. SCA shall prevent the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam," by any SCA attendee or vendor (caterer) during the term of this Agreement. Failure to abide by this resolution will result in the automatic denial of future pool rentals.

### **12. Crowd Control**

SCA shall keep registered participants and all attending SCA events from engaging in un-sportsmanlike conduct, such as fighting or rude and abusive verbal confrontations. If team representatives or meet officials cannot control the situation, SCA shall contact City staff and/or the Orange County Sheriff's Department for assistance.

### **13. Swim Meet and Rental Conditions**

SCA shall be permitted to host three (3) swim meets per year after first having obtained City approval of each such event. SCA shall file an application on a City approved form to hold a swim meet no less than eight (8) weeks in advance of the proposed date. City's Recreation Division will review and coordinate the appropriate meet and rental permits and services, such as planning for additional staffing, overflow parking and sound permits. SCA will make their best effort to host these meets during non-peak times (September-May).

### **14. General Conditions for Special Events and Swim Meets**

14.1. SCA shall provide City-approved recycling containers at all SCA events.

14.2. SCA shall ensure that neither its members nor its invitees consume alcoholic beverages at any location in the San Clemente Aquatics Center.

14.3. SCA shall comply with the City's Noise Ordinance. Sound permits are required for all amplified sound, including but not limited to PA systems, DJ and live entertainment, such as bands that include amplification for instruments, drums, horns, etc. Applications for sound permits must be filed at least ten (10) working days prior to the proposed event and are reviewed by City's Beaches, Parks and Recreation Department.

14.4. Per Orange County Fire Authority Guidelines (OCFA Guideline F-05), an OCFA permit is required to erect or operate a tent or air-supported temporary membrane structure having an area in excess of 200 square feet, or a canopy in excess of 400 square feet, except for structures used exclusively for camping. (UFC 105.8t.1.) The regulations of the State Fire Marshal for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320.)

### **15. Team Promotions**

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15.1. Trophy Case: Half of one trophy case at the San Clemente Aquatics Center, as selected by the City, will be provided to SCA to promote their program and showcase their awards; all displays shall have City's prior approval.

15.2. Magazine/Web Space: City will list SCA each quarter in the Recreation Magazine and City website in the youth sports section. Space will be limited to information for registration dates, phone numbers and contacts. SCA is responsible for submitting accurate information to the Aquatics Recreation Coordinator in a timely fashion in accordance with the publishing schedule. Additional space in the Recreation Magazine may be available and will be included in the Recreation section of the magazine.

15.3. Printed Materials: Except as provided above, SCA will be responsible for all printed promotional materials. City does not provide for copying of flyers, posters, registration packets or any other printed materials. SCA is encouraged to use the designated City brochure racks located at the Community Center and San Clemente Aquatics Center.

15.4. Team Apparel/Uniforms: SCA will provide a consistent brand and logo to promote their team through the use of team uniforms, jackets, sweatshirts and similar merchandise. Apparel and uniforms shall not duplicate the colors or design of any City staff uniforms in order for the public to clearly identify the difference between City safety staff and SCA representatives.

15.5. Banners at San Clemente Aquatics Center or on Pool Deck: SCA may place temporary sponsor banners to be located on the pool deck and on the grass space adjacent to the pool deck during swim meets.

15.6. Overhead Banner Reservation: City has an overhead banner program that is offered to community partners for promotional space. Banner fees are \$367 for the banner hanging. Space in the calendar is based on date availability in conjunction with other City programs and partners. Applications are available in November of each calendar year and are processed by January.

15.7. City's logo is not to be used on any promotional materials or merchandise without prior City approval, which approval may be withheld in City's sole and absolute discretion.

### **16. SCA Annual Charitable Contribution to Pool Maintenance**

As proposed by SCA, SCA shall make an annual contribution as follows:

16.1. Athlete donation of \$25 per person.

16.2. Annual gift back to City as determined by SCA.

16.3. Annual gift back to City will be given within sixty (60) days of signing the Agreement.

### **17. Indemnification and Insurance**



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To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), SCA shall defend (with legal counsel reasonably acceptable to City), indemnify, and hold free and harmless City and City's agents, officers, and employees, (collectively, the "Indemnitees") from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of any SCA participants, invitees officers, agents, employees, representatives, or subcontractors of SCA [collectively, the "SCA ENTITIES"]), expense and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees, litigation expenses and fees of expert Contractors or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of SCA's use of the City facilities including but not limited to the San Clemente Aquatics Center Pool, by any of the SCA entities, anyone directly or indirectly employed by any of them, or anyone that they control (collectively, the "Liabilities"). Such obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole and active negligence or willful misconduct of such Indemnitee.

Prior to the City's execution of this Agreement, and as a condition to the effectiveness hereof, SCA shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and SCA shall maintain such insurance in effect during the entire term of this Agreement: Commercial General Liability, personal injury and property damage liability, contractual liability, independent contractor's liability, and automobile liability insurance, with minimum combined liability limits of Two Million Dollars (\$2,000,000) per occurrence for all covered losses, and Four Million Dollars (\$4,000,000) in the aggregate. Any deductible or self-insured retention in excess of Five Thousand Dollars (\$5,000) shall be declared to the City and requires the prior approval of the City's Risk Manager. Each such policy of insurance shall:

- (i) be issued by companies that hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by City's Risk Manager for all coverage's except surety.
- (ii) name and list as additional insured City and City's officers, employees, and agents. An endorsement shall accompany the insurance certificate naming such additional insured. Additional Insured Endorsement is subject to approval by the city's risk manager, at their sole discretion.
- (iii) specify it acts as primary insurance and that no insurance held or owned by City shall be called upon to cover a loss under said policy;
- (iv) contain a clause substantially in the following words: "it is hereby understood and agreed that this policy may not be canceled or materially changed except upon thirty (30) days prior written notice to City of such cancellation or material change as evidenced by a return receipt for a registered letter;"
- (v) cover the operations of SCA pursuant to the terms of this Agreement; and
- (vi) be written on an occurrence and not a claims made basis.

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Original documents sent to:  
City of San Clemente  
Risk Management Office  
100 Presidio, San Clemente, CA 92672

One additional copy sent to:  
Beaches, Parks and Recreation Department  
987 Avenida Vista Hermosa, San Clemente, CA 92673

### **18. Violation Warning Procedure and Disciplinary Policy**

18.1. Purpose: The purpose of this policy is to implement a systematic method of enforcing the Municipal Code and Pool Rules, Use and Allocation Policy.

18.2. Policy: City reserves the right to cancel or suspend any and all permits issued to SCA as well as any other use of City facilities as provided for under this Agreement for meets, practices, and other usages based upon SCA's violation of the City Municipal Code or this Agreement.

18.3. Commitment: SCA's Board of Directors will work closely with their volunteer coaches, parents and participants to ensure that each team is following the rules within the established pool use agreements. The Recreation Division will work closely with pool user groups to address concerns and to enhance communications between staff, pool users, and community.

18.4. Outcome: With the help of SCA, many public pool users' concerns and Aquatics Center use policy issues may be eliminated. SCA understands that being better neighbors would benefit everyone. SCA therefore shall regularly communicate with SCA members to educate participants, coaches and parents to become increasingly more responsible working within the Municipal Code and Aquatics Center rules, and user agreements, especially where traffic, noise, parking, trash and issues are concerned. By enhancing communication all parties involved will benefit.

18.5. Violations: City shall document violations resulting from SCA not following the rules as set forth in this Agreement or violating City's Municipal Codes or Department policies and procedures.

18.6. Notification: City staff will contact the SCA representative to discuss any noticed incident or violation. City shall e-mail SCA's representative, with a copy to the President, and will follow-up on the telephone conversation confirming the discussion and details of the incident or violation.

18.7. Proposed Resolution and Timeline: SCA's representative will work with staff to propose a resolution and define the timeline in which the issue will be resolved. This information will be confirmed in writing to both the SCA's representative and President. If SCA fails to take the necessary actions to resolve the issue as agreed upon between the parties, City

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may resolve the issue and charge SCA for any manpower and/or equipment used to resolve the issue. SCA shall bear all costs and expenses to completely resolve the issue.

18.8. **Warning Issued:** If the issue is not resolved by the agreed-upon date, City shall send a warning to SCA.

- (i) **First Warning:** The first warning letter will be sent upon SCA's first failure to resolve an issue resulting from a direct violation of the City Municipal Code, this Agreement, or Aquatic Center operating policy or rules. A letter will be written to SCA's President and representative documenting the violation and will be placed in SCA's file. A report and/or pictures of the violation will be included for reference. The matter may be appealed by SCA to the Beaches, Parks and Recreation Department Director.
- (ii) **Second Warning:** Second warning occurs after a second documented violation within one year from first warning. City will send SCA a letter notifying SCA that a City staff member will be assigned to monitor SCA activities due to the violation. SCA will be billed for the assigned hours of said staff member at the staff member's appropriate hourly rate. The staff member will act as a City representative on duty to monitor activity at the pools and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.
- (iii) **Third Warning:** The third documented violation within a one-year (365 days) time frame from the first violation. This Agreement will be reviewed and potentially terminated. This may be appealed to the Beaches, Parks and Recreation Department Director and ultimately appealed to the Commission and/or City Council.

18.9. **Termination:**

- (i) City may, at any time, terminate this Agreement for any cause, by providing a thirty (30) day advance written notice.

## 19. **Term and Cooperation**

19.1. The term of this agreement shall be one year from the Effective Date the Mayor executes this Agreement, and will continue until cancelled under the provisions of Section 18.9.

19.2. SCA shall adhere to all the policies and procedures of City and cooperate with the Department and City staff to ensure that the purpose of this Agreement is met. SCA shall not discriminate against those in its employ, volunteers or participants on account of race, religion, national origin, ethnicity, sexual orientation or gender (except where gender is a bona fide issue for the sports program.).

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### 20. Miscellaneous

20.1. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

20.2. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

20.3. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of City shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

20.4. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

20.5. Singular and Plural. As used herein, the singular of any word includes the plural.

20.6. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

20.7. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

20.8. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

20.9. Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

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20.10. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

20.11. Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

20.12. Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or such other appropriate court in said county, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court. Service of process on City shall be made in accordance with California law. Service of process shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the Parties seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorney's fees.

20.13. Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon the recommendation of the Community Development Director and approval of the City Attorney.

20.14. Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

20.15. Notices. All notices under this Agreement shall be effective upon personal delivery, via facsimile so long as the sender receives confirmation of successful transmission from the sending machine, or three (3) business days after deposit in the United States mail, registered, certified, postage fully prepaid and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing:

If to City: City of San Clemente  
100 Avenida Presidio  
San Clemente, CA 92672  
Attention: City Manager

ATTACHMENT

With a copy to: Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Attention: Jeffrey A. Goldfarb, City Attorney

If to SCA: San Clemente Aquatics  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

[End – signature page follows]

ATTACHMENT

IN WITNESS WHEREOF, City and SCA have caused this Agreement to be executed on their behalf by their respective officers or agents herein duly authorized as of the date first written above.

“CITY”

CITY OF SAN CLEMENTE,  
a municipal corporation

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

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk of the City of  
San Clemente, California

APPROVED AS TO FORM:  
RUTAN & TUCKER, LLP

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

“SCA”

SAN CLEMENTE AQUATICS,  
a youth sports organization

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

Its: \_\_\_\_\_