



Agenda Item 6th

Approvals:

City Manager [Signature]

Dept. Head [Signature]

Attorney [Signature]

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: *RECREATION SPORTS PARTNERSHIP AGREEMENTS.*

Fiscal Impact: \$18,000 in decreased revenue annually. Staff budgeted appropriately for the discounts approved for Senior Partners. About \$18,000 in revenue will be lost for the Junior Partner discount not budgeted in the current fiscal year.

Summary: Staff is recommending the approval of the Sports Partnership agreements with AYSO, San Clemente Girls Softball, San Clemente Little League, South Coast Youth Football, and Elite Soccer for a period of one year.

Background: At the December 18, 2012 meeting, City Council approved Senior Partnership status with AYSO, San Clemente Girls Softball, San Clemente Little League, and South Coast Youth Football. On June 4, 2013, City Council approved Junior Partnership status for Elite Soccer.

Discussion: The City Attorney and California Joint Powers Insurance Authority have made language changes to the Partnership Agreements between the City of San Clemente and AYSO, San Clemente Girls Softball, San Clemente Little League, South Coast Youth Football, and Elite Soccer. Included in the revised agreements includes language that the organizations must have a "no discrimination" policy and a "zero tolerance" policy requiring the organization to terminate membership and any and all right to participate in Organization activities to any member who is found to have used any alcohol, controlled substances, or tobacco.

The term of the agreement is one year from the date of approval. Discounts for Senior Partners include a 98% field rental discount and 50% discount on camps and tournaments. Discount for the Junior Partner includes a 60% discount on field rental and 25% discount on camps and tournaments.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute the Recreation Sports Senior Partnership Agreements between the City of San Clemente and 1) AYSO, 2) San Clemente Girls Softball, 3) San Clemente Little League, and 4) South Coast Youth Football, and 5) the Junior Sports Partnership Agreement between the City of San Clemente and Elite Soccer.

Attachments: Senior Partnership Agreement between the City and AYSO

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Senior Partnership Agreement between the City and San Clemente Girls Softball
Senior Partnership Agreement between the City and San Clemente Little League
Senior Partnership Agreement between the City and South Coast Youth Football
Junior Partnership Agreement between the City and Elite Soccer

Notification:

AYSO
San Clemente Girls Softball
San Clemente Little League
South Coast Youth Football
Elite Soccer

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City of San Clemente Beaches, Parks and Recreation Department

SENIOR PARTNERSHIP AGREEMENT

This SENIOR PARTNERSHIP AGREEMENT is entered into this 15th day of October, 2013 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and AMERICAN YOUTH SOCCER ORGANIZATION 111, a youth sports organization ("AYSO") for the period of one (1) year from and after the Effective Date.

RECITALS:

A. The City of San Clemente owns and operates athletic fields throughout the community. A permit is required for reservations, lighted evening use and use of the sports fields by all club and sports organizations.

B. AYSO is a private non-profit organization that has been involved in recreational soccer activities in San Clemente for the past 25 years. AYSO served 1,666 children, aged four to nineteen years old in 2012. The AYSO Soccer program (the "Program") is well established, showing league structure for game rules and field policy, a governing board to regulate program standards, and proven history of providing programs for San Clemente residents.

C. AYSO currently uses Vista Hermosa Sports Park, Forster Ranch, and Liberty Parks and desires to enter into this Senior Partnership Agreement to establish a standard and schedule of athletic field 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 AYSO hereby agree as follows:

1. AYSO Program Requirements

1.1. As a material inducement to City's entering into this Agreement with AYSO, AYSO agrees and covenants that, during the term of this Agreement, AYSO 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. AYSO 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. AYSO 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.
- 1.1.3. AYSO 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. AYSO's liability insurance shall be primary insurance without rights of subrogation. Each such policy of insurance shall comply with section 17 below.
- 1.1.4. AYSO shall remain able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and AYSO is required to pay regular rates for use of City amenities, fields, pools and/or facilities.
- 1.1.5. AYSO has and shall maintain an open enrollment policy regardless of participant's skill level. For purposes of this Agreement and "Open Enrollment Policy" shall mean no child shall be denied enrollment based on skill level.
- 1.1.6. AYSO shall maintain and enforce a "minimum play rule" which requires that each person enrolled in the Program shall play 50% of the time for each game.
- 1.1.7. AYSO shall provide financial scholarships covering at least 10% of the participants enrolled for 50-100% of their registration fees to those participants that are in "financial need." For purposes of this Agreement, "financial need" shall mean those families that can prove a financial and/or special hardship. The scholarship is given to the child to provide an opportunity to enroll in the league activities. AYSO shall operate on the philosophy that no child will be denied a chance to play soccer due to a financial hardship. AYSO will be required to submit to CITY their financial reports outlining their scholarship distribution at the conclusion of the registration period.
- 1.1.8. AYSO shall have a no discrimination policy, and a "zero tolerance" policy requiring the organization to terminate membership and any and all right to enroll in any organization activities to any member who is found to have used any alcohol, controlled substances (which have not been prescribed for the member), or tobacco.
- 1.1.9. AYSO supplies and shall continue to supply participant rosters annually to City. AYSO membership shall be comprised of no less than 90% San Clemente residents.

AYSO shall maintain all documentation necessary to demonstrate compliance with all of the above. City shall be permitted to inspect and copy any documentation necessary to verify Program compliance with this Article 1.

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2. AYSO Representatives To City

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

2.2. AYSO is responsible for notifying City in writing within thirty (30) days of any change in its designated AYSO 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:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Coordinator (949) 361-8249

Parks Maintenance Division:

- Field Improvements, Maintenance, Modifications, Closures, Vandalism: Parks Maintenance, (949) 361-8317

3. Athletic Field Rental Rates

All field assignments shall be made by City in its sole and absolute discretion. AYSO shall pay a Field Rental Fee to the City within 14 business days after receipt of Field Use Permits for the upcoming season.

Field Rental Fee. The fees noted below shall remain in effect during the entire term of this Agreement unless the Agreement is terminated. The following use fees for non-profit youth sports organizations were established in July 2012 for the fields and are collected by the Recreation Division. Fees remain in effect and apply to AYSO Senior Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Fee
Neighborhood	\$40/hour	98% Discount	\$.80/hour
Community	\$50/hour	98% Discount	\$1.00/hour
Sport	\$60/hour	98% Discount	\$1.20/hour
Tournaments	See hourly rates above	50% Discount	---
Camps/Clinics	See hourly rates above	50% Discount	---
Light Fee	\$15/hour	0%	---

4. Field Storage

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During the term of this Agreement, AYSO is permitted to place a storage bin(s) for equipment and supplies to be used at the field at which the equipment is stored as follows:

4.1. Designated space is provided for storage at Forster Ranch field 2 restroom building, Forster field 4 bathroom building, Liberty Park storage room, Vista Hermosa Sports Park bathroom building near fields 5 and 6, and small storage container at field 5 near bleachers.

4.2. Keys for City park storage areas will be given only to AYSO representative. A \$25 dollar key deposit and signature is required on all keys. AYSO is required to keep control over keys and assignment of keys.

4.3. AYSO is responsible for maintenance, rental, and safety of the storage unit, and all supplies therein. At no time will combustible supplies or hazardous materials be permitted to be stored on City Property. The forgoing prohibition applies to materials which include but is not limited to flammable products such as gasoline for equipment or propane for barbecues.

5. Concessions

AYSO is approved to utilize the concession buildings at Forster Ranch (located near field 4/5) and Vista Hermosa Sports Park (located near field 6), to sell concessions to their participants provided they apply for the appropriate permits from the Orange County Health Department.

5.1 AYSO may only sell food products to the program participants and fans during the scheduled league dates.

5.2 AYSO must adhere to Orange County Health Department standards for storage and preparation of food items.

5.3 Any food items left in storage should be properly stored in airtight containers to control pests and to protect the quality of the food.

5.4 AYSO will not permit children or those under 18 to operate a BBQ and other appliances or use flammable liquids or materials.

5.5 No use of Styro Foam products: The City of San Clemente passed Resolution No. 04-27 on April 20, 2004, prohibiting the use of food service items comprised of expandable polystyrene, commonly referred to by the trade name "Styrofoam." Rental agreements for usage of any City-owned property or facility shall require the renter assume the responsibility for preventing the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam", by any attendee or vendor (caterer) utilizing the City property or facility during the term of the rental agreement. Failure to abide by this resolution will result in the automatic denial of future field rentals.

6. Ball Field Scheduling

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Although community programs and community contract classes have priority, the City offers Senior Partners the opportunity to schedule field space in two, six month increments for the year. The scheduling of "blocks" of time is coordinated by the Recreation Division. Fields booked for AYSO are to be utilized solely for AYSO programs. AYSO may not sublet field space to any non-AYSO or other organization. The City is making strides to offer AYSO game fields when possible in the primary season to lessen the impacts on fields by other user groups and to offer AYSO the opportunity to contribute to field maintenance. There is no exclusive use on any fields; therefore, the City has a right to rent any field to other organizations.

6.1. To assist the City in determining a Master Field Calendar for each allocation period, AYSO must complete the necessary application requesting needed field space by the first week of October for the January 1 through June 30 allocation period and by the first week of April for the July 1 through December 31 allocation period.

6.2. AYSO representatives must attend the field allocation meeting bi-annually to coordinate other group needs in the community.

6.3. AYSO shall request only needed field space, and not over book the fields. The Recreation Division will assist AYSO in determining necessary field space by reviewing the number of participants in AYSO and length of primary season games.

6.4. AYSO will be required to submit all practice and game schedules to the City for review prior to Opening Ceremonies.

6.5. AYSO will be required to relinquish all field space that is not needed to the City prior to Opening Ceremonies.

6.6. If once regular season league play begins and City determines that not all field space is needed by AYSO, the City will request that AYSO relinquish reserved time for other rentals. It is the responsibility of AYSO to coordinate all field schedules with its participants and coaches.

6.7. It is the responsibility of AYSO to coordinate all block schedules with their participants. This includes scheduling of fields, light keys, and monitoring the fields for use. Fields that are consistently left vacant within block permit time will be reviewed by the Recreation Division for reassignment.

6.8. AYSO will be required to submit practice and games schedules to the Recreation Division for review one week prior to Opening Day Ceremonies.

7. Field Use and Parking

7.1. Sports fields without lights are closed at dusk, and no later than 9:00pm. Lighted sports fields close at 10:00pm. AYSO is required to vacate all fields prior to closing time.

7.2. Entry gates at Tierra Grande Park close at 10:00pm. Once the gates at Tierra Grande Park are locked for the evening, vehicles will be under the authority of the Orange County Sheriff's Department and subject to ticketing and impound.

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7.3. City parks with athletic fields have limited parking. Some of these parks also have restricted parking on the street (Talega, Liberty, and Tierra Grande). AYSO must communicate these parking limitations to their participants. City is not responsible for providing parking to AYSO participants.

7.4. In an effort to reduce the impact on parking and congestion in these parks, the City will limit the number of rental permits on weekends during league play and summer months.

7.5. When scheduled at neighborhood park fields, AYSO must coordinate game schedules to reduce overlap of game times and allow for adequate time between games for players leaving the games to vacate parking spaces for those coming in.

7.6. AYSO has a duty to inspect and notify City of any safety hazards at facilities and fields.

8. Field Light Use

AYSO shall be charged a separate Light Use fee from the hourly Field Use Fee or flat rate Administrative Fee. The Light Use fee varies by ball field and will be billed according to use.

8.1. Key Operated Lights: Youth Sport Organizations that have reserved and paid for lighted sports fields will be granted a key to operate the field lights. Keys will be checked out at the San Clemente Aquatics Center to AYSO by the City Recreation Division. AYSO shall post a \$25 refundable deposit per key. Duplication of keys is not permitted. Representatives must note the rules and operation of the lights. AYSO is required to keep control over keys and assignment of keys.

8.2. Computer Operated Lights: Once a light schedule is determined by the user and is approved by the Recreation Division by permit, the Recreation Division will code the light towers by scheduling with MUSCO. Lights are automatically turned on and off by block time and are not permitted later than the closing time.

8.3. AYSO must designate field representatives to monitor the field use in the evening to ensure that the fields are not vacant with lights on. AYSO shall shut the lights off if /when they plan to leave the park in advance of the time issued. The City will issue a toll free phone number to contact MUSCO Lighting and a password that allows AYSO direct contact with the lighting company. Recreation Staff will monitor the MUSCO statements for changes made by the league and adjust the billing.

9. AYSO Charitable Contribution to Field Maintenance

As a Senior Partner to the City, AYSO shall assist with the stewardship and maintenance of sports fields through in-kind services and/or financial contributions. AYSO shall contribute to the City \$25 for each participant in the form of an annual charitable donation. A written proposal outlining how the charitable donation will be paid will be due to the CITY 60 days prior to Opening Ceremonies. CITY will notify AYSO of their decision within 30 days of proposal submittal. Payment must be made to the CITY within 14 working days from said notification. If AYSO demonstrates a full or partial financial inability to contribute, City may approve in-kind services, such as

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field/facility maintenance, cleaning, community service, City image promotion, and/or volunteer support of City activities as approved by City; or combination of the above, as approved by City. This proposal and donation will be required to be submitted prior to AYSO's primary season (fall).

9.1. AYSO shall obtain prior written consent of City to make any alterations, additions, or improvements to City fields including routine field maintenance and preparations which include mowing, picking weeds, raking and/or chalking. AYSO understands that any other such alterations, additions, or improvements must comply with all state and local standards.

10. AYSO Supplies and Equipment Contribution

AYSO will continue to provide for their own field equipment, including net fencing, outfield short fences, portable mounds and other supplies as necessary as well as be responsible for field preparation as assigned below.

10.1. AYSO will be responsible for lining fields for game play as necessary for their leagues.

10.2. AYSO may store specialized field equipment and game supplies in available storage sheds as per agreement. AYSO may not sublet the storage area to other groups.

10.3. Maintenance field equipment left on City fields for the duration of the season will be the responsibility of AYSO.

11. Inclement Weather Field Procedures

When fields must be closed due to rain or other inclement weather, saturated field conditions due to irrigation problems, any damage due to vandalism, or other conditions needing immediate attention, the Parks Maintenance Division will determine the closure term and begin procedures as follows.

11.1. City will determine the appropriate amount of days for the field to remain closed to the greatest degree possible by utilizing weather reports and on-site field inspections each day and post closure signs on the fields.

11.2. Field closures will be listed on the City's official MUDLINE that can be accessed at the City's website. There is also a cell phone application that can be downloaded to access these updates from this site.

11.3. AYSO shall ensure that their league coaches and participants stay off all closed fields.

11.4. AYSO agrees to reimburse the City for any and all maintenance costs directly attributed to damage or misuse of athletic fields including unauthorized alteration of a City park site.

12. Vehicle Access

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Vehicles are not permitted on City fields. AYSO agrees and acknowledges that volunteer coaches and other program participants will not drive vehicles onto the fields. This includes vehicles driven by coaches to unload game equipment or supplies for the program.

12.1. With approval from the Parks Maintenance Division, AYSO may designate a Field Representative that may have access to the field to unload FIELD maintenance supplies such as brick dust or larger game equipment such as goal posts or temporary fencing.

13. Field and Park Clean Up

AYSO shall clean up fields and associated park areas in proximity of the field after each use by AYSO. This includes litter left behind from fans in the bleachers, dug outs, or snack concession stand areas. The City will provide adequate trash containers.

13.1. AYSO shall prevent all materials or water from cleaning up after the event from entering the storm drain system (i.e. street gutters or catch basins).

14. Crowd Control

It is the responsibility of AYSO to keep registered participants and their fans from engaging in un-sportsmanlike conduct, such as fighting, or rude and abusive verbal confrontations. If field representatives or game officials of the league cannot control the situation, AYSO should contact Orange County Sheriffs Department for assistance.

15. Tournaments, Camps/Clinics, Special Events and Opening Day

AYSO may apply to organize other programs in conjunction with the league, such as tournaments, camps/clinics, special events and opening day ceremonies (HEREIN "Program Events"). AYSO shall give notice of all Program Events to the Beaches, Parks and Recreation Department by way of application thirty (30) days in advance of the rental. In reviewing Program Event requests, City shall consider the potential impacts to the neighborhood and park amenities. The Recreation Division will review and coordinate the appropriate permits and services it deems necessary for any Program Events, such as planning for additional janitorial in restrooms, overflow parking, and sound permits. Please note the rules regarding tournaments, special programs and events which is outlined in the Tournament Application and Policy Guidelines.

15.1. AYSO will receive the Senior Partnership discount of 98% for Challenger/VIP Events, which is a program that provides a quality soccer experience for children and adults with physical or mental disabilities, and Opening and Closing Day Ceremonies.

15.2. AYSO will receive a 50% discount for Tournaments and Camps/Clinics.

15.3. AYSO must submit a field request and meet with City staff at least thirty (30) days prior to the Program Event date and complete an Orientation Checklist.

15.4. AYSO is encouraged to participate in a recycling program outlined in the Tournament Application and Policy Guidelines.

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15.5. AYSO shall prohibit the consumption of alcoholic beverages at all Program Events.

15.6. Amplified sound is subject to enforcement as per the City of San Clemente Noise Ordinance. Sound Permits are required for all amplified sounds, including but not limited to PA systems and DJ's and as well as for any live entertainment such as bands that include amplification for the instruments, drums, horns etc. Please review the sound ordinance for your event prior to booking or organizing the program. Applications are reviewed by the City's Beaches, Parks, and Recreation Department.

15.7. Bounce houses or similar inflatable features are not permitted on City Parks unless approved in advance with appropriate 1 million dollars of liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance at (949) 361-8200, and Business Licenses at (949) 361-6166.

15.8. Per (Orange County Fire Authority ("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 Marshall for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320).

16. League Promotions

16.1. Printed Materials: AYSO will be responsible for all printed promotional materials for its leagues and tournaments. The City shall not copy flyers, posters, registration packets or any other printed materials. AYSO is encouraged to use the designated City brochure racks located at the Community Center and the San Clemente Aquatics Center located in the Vista Hermosa Sports Park.

16.2. Magazine/Website Space: The City will include information on AYSO registration dates, phone numbers and contacts once each quarter in the City's Recreation Magazine and City Recreation Website in the youth sports section. AYSO is responsible for submitting accurate information to the City prior to the attached publishing schedule.

16.3. Overhead Banner Reservation: AYSO may seek to participate in the City's overhead banner program in the same manner as any other Community Partner. Regular banner fees apply 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 processed by January.

16.4. Banners on Field Fences and Park Areas: AYSO shall not use City parks or facilities to hang banners on the fences or buildings except as provided for herein. During games, Program Events, and registration days, AYSO may temporarily hang banners on the ball field fences provided such banners are removed when vacating the field the same date. Exceptions may be made for seasonal banners on hub fields that are not regularly used by any other organization in the City's sole and absolute discretion. Any such exceptions shall be negotiated and pre approved by the Recreation Division prior to placing banners.

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17. Indemnification and Insurance

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), AYSO 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 AYSO participants, invitees officers, agents, employees, representatives, or subcontractors of AYSO [collectively, the "AYSO 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 AYSO's use of the City facilities including but not limited to the San Clemente fields, by any of the AYSO 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, AYSO shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and AYSO 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 AYSO pursuant to the terms of this Agreement; and

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(vi) be written on an occurrence and not a claims made basis.

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 Field Rules, Use and Allocation Policy.

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

18.3. Commitment: AYSO's Board of Directors are is required to notify their volunteer coaches, parents and participants about the rules and regulations set forth in the Ball Field and Park Rental Policies, municipal codes and guidelines within this agreement . The Recreation Division will work closely with AYSO to address concerns and to enhance communications between staff, field users, and community. It is the responsibility of AYSO to notify City of any concerns.

18.4. Outcome: AYSO shall regularly communicate with AYSO members to educate participants, coaches and parents to become increasingly more responsible working within the Municipal Code and field 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 AYSO 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 AYSO representative to discuss any noticed violation. City shall e-mail AYSO'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: AYSO'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 AYSO's representative and President. If AYSO fails to take the necessary actions to resolve the issue as agreed upon between the parties, City may resolve the issue and charge AYSO for any manpower and/or equipment used to resolve the issue. AYSO shall bear all costs and expenses City deems necessary to completely resolve the issue.

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

- (i) **First Warning:** The first warning letter will be sent upon AYSO's first failure to resolve an issue resulting from a direct violation of the City Municipal Code, or this Agreement, park operating policy or rules. A letter will be written to AYSO's President and representative documenting the violation and will be placed in AYSO's file. A report and/or pictures of the violation will be included for reference. The matter may be appealed by AYSO to the Beaches, Parks and Recreation Department Director.
- (ii) **Second Warning:** A Second warning is issued after a second documented violation occurs within one year (365 days) from first violation. City will send AYSO a letter notifying AYSO that a City staff member will be assigned to monitor AYSO activities due to the violation. AYSO 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 fields and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.
- (iii) **Third Warning:** A third warning is issued after a third documented violation occurs within one year (365 days) from first violation. Upon issuance of a Third Warning City shall review this Agreement. The Agreement is subject to termination upon such review. Any termination may be appealed to the Beaches, Parks and Recreation Department Director and ultimately appealed to the Beaches, Parks and Recreation Commission and/or City Council.

18.9. **Termination:** City can terminate the Agreement without cause on thirty (30) days 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. AYSO 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. AYSO 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).

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

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

If to AYSO: AYSO 111
647 Camino de los Mares, Suite 108, PMB 164
San Clemente, CA 92673
Attention: Kent Yomogida

With a copy to: _____

Attention: _____

[End – signature page follows]

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IN WITNESS WHEREOF, City and AYSO 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

“AYSO”

AMERICAN YOUTH SOCCER
ORGANIZATION 111,
a youth sports organization

By: _____

Its: _____

6-11-18



City of San Clemente Beaches, Parks and Recreation Department

SENIOR PARTNERSHIP AGREEMENT

This SENIOR PARTNERSHIP AGREEMENT is entered into this 15th day of October, 2013 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and SAN CLEMENTE GIRLS SOFTBALL, a youth sports organization ("SCGS") for the period of one (1) year from and after the Effective Date.

RECITALS:

A. The City of San Clemente owns and operates athletic fields throughout the community. A permit is required for reservations, lighted evening use and use of the sports fields by all club and sports organizations.

B. SCGS is a private non-profit organization that has been involved in recreational softball activities in San Clemente for the past 65 years, 12 years with the City of San Clemente. SCGS served 275 children, aged five to fourteen years old in 2012. The SCGS Softball program (the "Program") is well established, showing league structure for game rules and field policy, a governing board to regulate program standards, and proven history of providing programs for San Clemente residents.

C. SCGS currently uses Richard T. Steed Memorial, Tierra Grande, Talega and Liberty Parks and desires to enter into this Senior Partnership Agreement to establish a standard and schedule of athletic field 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 SCGS hereby agree as follows:

1. SCGS Program Requirements

1.1. As a material inducement to City's entering into this Agreement with SCGS, SCGS agrees and covenants that, during the term of this Agreement, SCGS 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. SCGS 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. SCGS 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.

- 1.1.3. SCGS 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. SCGS's liability insurance shall be primary insurance without rights of subrogation. Each such policy of insurance shall comply with section 17 below.
- 1.1.4. SCGS shall remain able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and SCGS is required to pay regular rates for use of City amenities, fields, pools and/or facilities.
- 1.1.5. SCGS has and shall maintain an open enrollment policy regardless of participant's skill level. For purposes of this Agreement and "Open Enrollment Policy" shall mean no child shall be denied enrollment based on skill level.
- 1.1.6. SCGS shall maintain and enforce a "minimum play rule" which requires that each person enrolled in the Program shall play 50% of the time for each game.
- 1.1.7. SCGS shall provide financial scholarships covering at least 10% of the participants enrolled for 50-100% of their registration fees to those participants that are in "financial need." For purposes of this Agreement, "financial need" shall mean those families that can prove a financial and/or special hardship. The scholarship is given to the child to provide an opportunity to enroll in the league activities. SCGS shall operate on the philosophy that no child will be denied a chance to play softball due to a financial hardship. SCGS will be required to submit to CITY their financial reports outlining their scholarship distribution at the conclusion of the registration period.
- 1.1.8. SCGS shall have a no discrimination policy, and a "zero tolerance" policy requiring the organization to terminate membership and any and all right to enroll in any organization activities to any member who is found to have used any alcohol, controlled substances (which have not been prescribed for the member), or tobacco.
- 1.1.9. SCGS supplies and shall continue to supply participant rosters annually to City. SCGS membership shall be comprised of no less than 90% San Clemente residents.

SCGS shall maintain all documentation necessary to demonstrate compliance with all of the above. City shall be permitted to inspect and copy any documentation necessary to verify Program compliance with this Article 1.

2. SCGS Representatives To City

2.1. SCGS shall designate one official representative who shall be City's primary contact and who shall coordinate the program, field space and overall agreement

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with the City. The SCGS representative shall have authority to make decisions for SCGS, sign applications with City on behalf of SCGS for field use, approve billing, and understand the field operations regarding both scheduling and maintenance, assist with SCGS planning of field allocations, and be responsible for resolving conflicts if/when they arise.

2.2. SCGS is responsible for notifying City in writing within thirty (30) days of any change in its designated SCGS 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:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Coordinator (949) 361-8249

Parks Maintenance Division:

- Field Improvements, Maintenance, Modifications, Closures, Vandalism: Parks Maintenance, (949) 361-8317

3. Athletic Field Rental Rates

All field assignments shall be made by City in its sole and absolute discretion. SCGS shall pay a Field Rental Fee to the City within 14 business days after receipt of Field Use Permits for the upcoming season.

Field Rental Fee. The fees noted below shall remain in effect during the entire term of this Agreement unless the Agreement is terminated. The following use fees for non-profit youth sports organizations were established in July 2012 for the fields and are collected by the Recreation Division. Fees remain in effect and apply to SCGS Senior Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Fee
Neighborhood	\$40/hour	98% Discount	\$.80/hour
Community	\$50/hour	98% Discount	\$1.00/hour
Sport	\$60/hour	98% Discount	\$1.20/hour
Tournaments	See hourly rates above	50% Discount	---
Camps/Clinics	See hourly rates above	50% Discount	---
Light Fee	\$15/hour	0%	---

4. Field Storage

During the term of this Agreement, SCGS is permitted to place a storage bin(s) for equipment and supplies to be used at the field at which the equipment is stored as follows:

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4.1. Designated space is provided for Storage Bins at Talega Park- field 1 (one-3'x4'), Tierra Grande fields 2-3 (two-3'x6'), Richard T. Steed Memorial Park (five - 3'x6' and one that is 21') and Bonita Canyon Park (one-3'x4').

4.2. Keys for City park storage areas will be given only to SCGS representative. A \$25 dollar key deposit and signature is required on all keys. SCGS is required to keep control over keys and assignment of keys.

4.3. SCGS is responsible for maintenance, rental, and safety of the storage unit, and all supplies therein. At no time will combustible supplies or hazardous materials be permitted to be stored on City Property. The forgoing prohibition applies to materials which include but is not limited to flammable products such as gasoline for equipment or propane for barbecues.

5. Concessions

SCGS is approved to utilize the concession buildings at Tierra Grande Park, to sell concessions to their participants provided they apply for the appropriate permits from the Orange County Health Department.

5.1 SCGS may only sell food products to the program participants and fans during the scheduled league dates.

5.2 SCGS must adhere to Orange County Health Department standards for storage and preparation of food items.

5.3 Any food items left in storage should be properly stored in airtight containers to control pests and to protect the quality of the food.

5.4 SCGS will not permit children or those under 18 to operate a BBQ and other appliances or use flammable liquids or materials.

5.5 No use of Styro Foam products: The City of San Clemente passed Resolution No. 04-27 on April 20, 2004, prohibiting the use of food service items comprised of expandable polystyrene, commonly referred to by the trade name "Styrofoam." Rental agreements for usage of any City-owned property or facility shall require the renter assume the responsibility for preventing the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam", by any attendee or vendor (caterer) utilizing the City property or facility during the term of the rental agreement. Failure to abide by this resolution will result in the automatic denial of future field rentals.

6. Ball Field Scheduling

Although community programs and community contract classes have priority, the City offers Senior Partners the opportunity to schedule field space in two, six month increments for the year. The scheduling of "blocks" of time is coordinated by the Recreation Division. Fields booked for SCGS are to be utilized solely for SCGS programs. SCGS may not sublet field space to any non-SCGS or other organization. The City is making strides to offer SCGS game fields when possible in the primary season to

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lessen the impacts on fields by other user groups and to offer SCGS the opportunity to contribute to field maintenance. There is no exclusive use on any fields; therefore, the City has a right to rent any field to other organizations.

6.1. To assist the City in determining a Master Field Calendar for each allocation period, SCGS must complete the necessary application requesting needed field space by the first week of October for the January 1 through June 30 allocation period and by the first week of April for the July 1 through December 31 allocation period.

6.2. SCGS representatives must attend the field allocation meeting bi-annually to coordinate other group needs in the community.

6.3. SCGS shall request only needed field space, and not over book the fields. The Recreation Division will assist SCGS in determining necessary field space by reviewing the number of participants in SCGS and length of primary season games.

6.4. SCGS will be required to submit all practice and game schedules to the City for review prior to Opening Ceremonies.

6.5. SCGS will be required to relinquish all field space that is not needed to the City prior to Opening Ceremonies.

6.6. If once regular season league play begins and City determines that not all field space is needed by SCGS, the City will request that SCGS relinquish reserved time for other rentals. It is the responsibility of SCGS to coordinate all field schedules with its participants and coaches.

6.7. It is the responsibility of SCGS to coordinate all block schedules with their participants. This includes scheduling of fields, light keys, and monitoring the fields for use. Fields that are consistently left vacant within block permit time will be reviewed by the Recreation Division for reassignment.

6.8. SCGS will be required to submit practice and games schedules to the Recreation Division for review one week prior to Opening Day Ceremonies.

7. Field Use and Parking

7.1. Sports fields without lights are closed at dusk, and no later than 9:00pm. Lighted sports fields close at 10:00pm. SCGS is required to vacate all fields prior to closing time.

7.2. Entry gates at Tierra Grande Park close at 10:00pm. Once the gates at Tierra Grande Park are locked for the evening, vehicles will be under the authority of the Orange County Sheriff's Department and subject to ticketing and impound.

7.3. City parks with athletic fields have limited parking. Some of these parks also have restricted parking on the street (Talega, Liberty, and Tierra Grande). SCGS must communicate these parking limitations to their participants. City is not responsible for providing parking to SCGS participants.

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7.4. In an effort to reduce the impact on parking and congestion in these parks, the City will limit the number of rental permits on weekends during league play and summer months.

7.5. When scheduled at neighborhood park fields, SCGS must coordinate game schedules to reduce overlap of game times and allow for adequate time between games for players leaving the games to vacate parking spaces for those coming in.

7.6. SCGS has a duty to inspect and notify City of any safety hazards at facilities and fields.

8. Field Light Use

SCGS shall be charged a separate Light Use fee from the hourly Field Use Fee or flat rate Administrative Fee. The Light Use fee varies by ball field and will be billed according to use.

8.1. Key Operated Lights: Youth Sport Organizations that have reserved and paid for lighted sports fields will be granted a key to operate the field lights. Keys will be checked out at the San Clemente Aquatics Center to SCGS by the City Recreation Division. SCGS shall post a \$25 refundable deposit per key. Duplication of keys is not permitted. Representatives must note the rules and operation of the lights. SCGS is required to keep control over keys and assignment of keys.

8.2. Computer Operated Lights: Once a light schedule is determined by the user and is approved by the Recreation Division by permit, the Recreation Division will code the light towers by scheduling with MUSCO. Lights are automatically turned on and off by block time and are not permitted later than the closing time.

8.3. SCGS must designate field representatives to monitor the field use in the evening to ensure that the fields are not vacant with lights on. SCGS shall shut the lights off if /when they plan to leave the park in advance of the time issued. The City will issue a toll free phone number to contact MUSCO Lighting and a password that allows SCGS direct contact with the lighting company. Recreation Staff will monitor the MUSCO statements for changes made by the league and adjust the billing.

9. SCGS Charitable Contribution to Field Maintenance

As a Senior Partner to the City, SCGS shall assist with the stewardship and maintenance of sports fields through in-kind services and/or financial contributions. SCGS shall contribute to the City \$25 for each participant in the form of an annual charitable donation. A written proposal outlining how the charitable donation will be paid will be due to the CITY 60 days prior to Opening Ceremonies. CITY will notify SCGS of their decision within 30 days of proposal submittal. Payment must be made to the CITY within 14 working days from said notification. If SCGS demonstrates a full or partial financial inability to contribute, City may approve in-kind services, such as field/facility maintenance, cleaning, community service, City image promotion, and/or volunteer support of City activities as approved by City; or combination of the above, as approved by City. This proposal and donation will be required to be submitted prior to SCGS's primary season (spring).

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9.1. SCGS shall obtain prior written consent of City to make any alterations, additions, or improvements to City fields including routine field maintenance and preparations which include mowing, picking weeds, raking and/or chalking. SCGS understands that any other such alterations, additions, or improvements must comply with all state and local standards.

10. SCGS Supplies and Equipment Contribution

SCGS will continue to provide for their own field equipment, including net fencing, outfield short fences, portable mounds and other supplies as necessary as well as be responsible for field preparation as assigned below.

10.1. SCGS will be responsible for lining fields for game play as necessary for their leagues.

10.2. SCGS may store specialized field equipment and game supplies in available storage sheds as per agreement. SCGS may not sublet the storage area to other groups.

10.3. Maintenance field equipment left on City fields for the duration of the season will be the responsibility of SCGS.

11. Inclement Weather Field Procedures

When fields must be closed due to rain or other inclement weather, saturated field conditions due to irrigation problems, any damage due to vandalism, or other conditions needing immediate attention, the Parks Maintenance Division will determine the closure term and begin procedures as follows.

11.1. City will determine the appropriate amount of days for the field to remain closed to the greatest degree possible by utilizing weather reports and on-site field inspections each day and post closure signs on the fields.

11.2. Field closures will be listed on the City's official MUDLINE that can be accessed at the City's website. There is also a cell phone application that can be downloaded to access these updates from this site.

11.3. SCGS shall ensure that their league coaches and participants stay off all closed fields.

11.4. SCGS agrees to reimburse the City for any and all maintenance costs directly attributed to damage or misuse of athletic fields including unauthorized alteration of a City park site.

12. Vehicle Access

Vehicles are not permitted on City fields. SCGS agrees and acknowledges that volunteer coaches and other program participants will not drive vehicles onto the fields. This includes vehicles driven by coaches to unload game equipment or supplies for the program.

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12.1. With approval from the Parks Maintenance Division, SCGS may designate a Field Representative that may have access to the field to unload FIELD maintenance supplies such as brick dust or larger game equipment such as goal posts or temporary fencing.

13. Field and Park Clean Up

SCGS shall clean up fields and associated park areas in proximity of the field after each use by SCGS. This includes litter left behind from fans in the bleachers, dug outs, or snack concession stand areas. The City will provide adequate trash containers.

13.1. SCGS shall prevent all materials or water from cleaning up after the event from entering the storm drain system (i.e. street gutters or catch basins).

14. Crowd Control

It is the responsibility of SCGS to keep registered participants and their fans from engaging in un-sportsmanlike conduct, such as fighting, or rude and abusive verbal confrontations. If field representatives or game officials of the league cannot control the situation, SCGS should contact Orange County Sheriffs Department for assistance.

15. Tournaments, Camps/Clinics, Special Events and Opening Day

SCGS may apply to organize other programs in conjunction with the league, such as tournaments, camps/clinics, special events and opening day ceremonies (HEREIN "Program Events" SCGS shall give notice of all Program Events to the Beaches, Parks and Recreation Department by way of application thirty (30) days in advance of the rental. In reviewing Program Event requests, City shall consider the potential impacts to the neighborhood and park amenities. The Recreation Division will review and coordinate the appropriate permits and services it deems necessary for any Program Events, such as planning for additional janitorial in restrooms, overflow parking, and sound permits. Please note the rules regarding tournaments, special programs and events which is outlined in the Tournament Application and Policy Guidelines.

15.1. SCGS will receive the Senior Partnership discount of 98% for Challenger/VIP Events, which is a program that provides a quality softball experience for children and adults with physical or mental disabilities, and Opening and Closing Day Ceremonies.

15.2. SCGS will receive a 50% discount for Tournaments and Camps/Clinics.

15.3. SCGS must submit a field request and meet with City staff at least thirty (30) days prior to the Program Event date and complete an Orientation Checklist.

15.4. SCGS is encouraged to participate in a recycling program outlined in the Tournament Application and Policy Guidelines.

15.5. SCGS shall prohibit the consumption of alcoholic beverages at all Program Events.

6H.26

15.6. Amplified sound is subject to enforcement as per the City of San Clemente Noise Ordinance. Sound Permits are required for all amplified sounds, including but not limited to PA systems and DJ's and as well as for any live entertainment such as bands that include amplification for the instruments, drums, horns etc. Please review the sound ordinance for your event prior to booking or organizing the program. Applications are reviewed by the City's Beaches, Parks, and Recreation Department.

15.7. Bounce houses or similar inflatable features are not permitted on City Parks unless approved in advance with appropriate 1 million dollars of liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance at (949) 361-8200, and Business Licenses at (949) 361-6166.

15.8. Per (Orange County Fire Authority ("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 Marshall for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320).

16. League Promotions

16.1. Printed Materials: SCGS will be responsible for all printed promotional materials for its leagues and tournaments. The City shall not copy flyers, posters, registration packets or any other printed materials. SCGS is encouraged to use the designated City brochure racks located at the Community Center and the San Clemente Aquatics Center located in the Vista Hermosa Sports Park.

16.2. Magazine/Website Space: The City will include information on SCGS registration dates, phone numbers and contacts once each quarter in the City's Recreation Magazine and City Recreation Website in the youth sports section. SCGS is responsible for submitting accurate information to the City prior to the attached publishing schedule.

16.3. Overhead Banner Reservation: SCGS may seek to participate in the City's overhead banner program in the same manner as any other Community Partner. Regular banner fees apply 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 processed by January.

16.4. Banners on Field Fences and Park Areas: SCGS shall not use City parks or facilities to hang banners on the fences or buildings except as provided for herein. During games, Program Events, and registration days, SCGS may temporarily hang banners on the ball field fences provided such banners are removed when vacating the field the same date. Exceptions may be made for seasonal banners on hub fields that are not regularly used by any other organization in the City's sole and absolute discretion. Any such exceptions shall be negotiated and pre approved by the Recreation Division prior to placing banners.

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), SCGS 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 SCGS participants, invitees officers, agents, employees, representatives, or subcontractors of SCGS [collectively, the "SCGS 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 SCGS's use of the City facilities including but not limited to the San Clemente fields, by any of the SCGS 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, SCGS shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and SCGS 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 SCGS pursuant to the terms of this Agreement; and
- (vi) be written on an occurrence and not a claims made basis.

6/1/28

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 Field Rules, Use and Allocation Policy.

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

18.3. Commitment: SCGS's Board of Directors are is required to notify their volunteer coaches, parents and participants about the rules and regulations set forth in the Ball Field and Park Rental Policies, municipal codes and guidelines within this agreement . The Recreation Division will work closely with SCGS to address concerns and to enhance communications between staff, field users, and community. It is the responsibility of SCGS to notify City of any concerns.

18.4. Outcome: SCGS shall regularly communicate with SCGS members to educate participants, coaches and parents to become increasingly more responsible working within the Municipal Code and field 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 SCGS 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 SCGS representative to discuss any noticed violation. City shall e-mail SCGS'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: SCGS'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 SCGS's representative and President. If SCGS fails to take the necessary actions to resolve the issue as agreed upon between the parties, City may resolve the issue and charge SCGS for any manpower and/or equipment used to resolve the issue. SCGS shall bear all costs and expenses City deems necessary to completely resolve the issue.

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

- (i) **First Warning:** The first warning letter will be sent upon SCGS's first failure to resolve an issue resulting from a direct violation of the City Municipal Code, or this Agreement, park operating policy or rules. A letter will be written to SCGS's President and representative documenting the violation and will be placed in SCGS's file. A report and/or pictures of the violation will be included for reference. The matter may be appealed by SCGS to the Beaches, Parks and Recreation Department Director.
- (ii) **Second Warning:** A Second warning is issued after a second documented violation occurs within one year (365 days) from first violation. City will send SCGS a letter notifying SCGS that a City staff member will be assigned to monitor SCGS activities due to the violation. SCGS 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 fields and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.
- (iii) **Third Warning:** A third warning is issued after a third documented violation occurs within one year (365 days) from first violation. Upon issuance of a Third Warning City shall review this Agreement. The Agreement is subject to termination upon such review. Any termination may be appealed to the Beaches, Parks and Recreation Department Director and ultimately appealed to the Beaches, Parks and Recreation Commission and/or City Council.

18.9. **Termination:** City can terminate the Agreement without cause on thirty (30) days 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. SCGS 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. SCGS 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).

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

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

If to SCGS: San Clemente Girls Softball
P.O. Box 4586
San Clemente CA 92674
Attention: Jack Cannon

With a copy to: _____

Attention: _____

[End – signature page follows]

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IN WITNESS WHEREOF, City and SCGS 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

“SCGS”

SAN CLEMENTE GIRLS SOFTBALL,
a youth sports organization

By: _____

Its: _____

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City of San Clemente Beaches, Parks and Recreation Department

SENIOR PARTNERSHIP AGREEMENT

This SENIOR PARTNERSHIP AGREEMENT is entered into this 15th day of October, 2013 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and BASEBALL SAN CLEMENTE LITTLE LEAGUE, a youth sports organization ("SCLL") for the period of one (1) year from and after the Effective Date.

RECITALS:

A. The City of San Clemente owns and operates athletic fields throughout the community. A permit is required for reservations, lighted evening use and use of the sports fields by all club and sports organizations.

B. SCLL is a private non-profit organization that has been involved in recreational baseball activities in San Clemente since 1954. SCLL served 1,181 children, aged four to eighteen years old in 2012. The SCLL Baseball program (the "Program") is well established, showing league structure for game rules and field policy, a governing board to regulate program standards, and proven history of providing programs for San Clemente residents.

C. SCLL currently uses Vista Hermosa Sports Park, Richard T. Steed Memorial, Forster Ranch, San Gorgonio, Talega and Liberty Parks and desires to enter into this Senior Partnership Agreement to establish a standard and schedule of athletic field 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 SCLL hereby agree as follows:

1. SCLL Program Requirements

1.1. As a material inducement to City's entering into this Agreement with SCLL, SCLL agrees and covenants that, during the term of this Agreement, SCLL 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. SCLL 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.

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- 1.1.2. SCLL 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.
- 1.1.3. SCLL 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. SCLL's liability insurance shall be primary insurance without rights of subrogation. Each such policy of insurance shall comply with section 17 below.
- 1.1.4. SCLL shall remain able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and SCLL is required to pay regular rates for use of City amenities, fields, pools and/or facilities.
- 1.1.5. SCLL has and shall maintain an open enrollment policy regardless of participant's skill level. For purposes of this Agreement and "Open Enrollment Policy" shall mean no child shall be denied enrollment based on skill level.
- 1.1.6. SCLL shall maintain and enforce a "minimum play rule" which requires that each person enrolled in the Program shall play 50% of the time for each game.
- 1.1.7. SCLL shall provide financial scholarships covering at least 10% of the participants enrolled for 50-100% of their registration fees to those participants that are in "financial need." For purposes of this Agreement, "financial need" shall mean those families that can prove a financial and/or special hardship. The scholarship is given to the child to provide an opportunity to enroll in the league activities. SCLL shall operate on the philosophy that no child will be denied a chance to play baseball due to a financial hardship. SCLL will be required to submit to CITY their financial reports outlining their scholarship distribution at the conclusion of the registration period.
- 1.1.8. SCLL shall have a no discrimination policy, and a "zero tolerance" policy requiring the organization to terminate membership and any and all right to enroll in any organization activities to any member who is found to have used any alcohol, controlled substances (which have not been prescribed for the member), or tobacco.
- 1.1.9. SCLL supplies and shall continue to supply participant rosters annually to City. SCLL membership shall be comprised of no less than 90% San Clemente residents.

SCLL shall maintain all documentation necessary to demonstrate compliance with all of the above. City shall be permitted to inspect and copy any documentation necessary to verify Program compliance with this Article 1.

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2. SCLL Representatives To City

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

2.2. SCLL is responsible for notifying City in writing within thirty (30) days of any change in its designated SCLL 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:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Coordinator (949) 361-8249

Parks Maintenance Division:

- Field Improvements, Maintenance, Modifications, Closures, Vandalism: Parks Maintenance, (949) 361-8317

3. Athletic Field Rental Rates

All field assignments shall be made by City in its sole and absolute discretion. SCLL shall pay a Field Rental Fee to the City within 14 business days after receipt of Field Use Permits for the upcoming season.

Field Rental Fee. The fees noted below shall remain in effect during the entire term of this Agreement unless the Agreement is terminated. The following use fees for non-profit youth sports organizations were established in July 2012 for the fields and are collected by the Recreation Division. Fees remain in effect and apply to SCLL Senior Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Fee
Neighborhood	\$40/hour	98% Discount	\$.80/hour
Community	\$50/hour	98% Discount	\$1.00/hour
Sport	\$60/hour	98% Discount	\$1.20/hour
Tournaments	See hourly rates above	50% Discount	---
Camps/Clinics	See hourly rates above	50% Discount	---
Light Fee	\$15/hour	0%	---

4. Field Storage

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During the term of this Agreement, SCLL is permitted to place a storage bin(s) for equipment and supplies to be used at the field at which the equipment is stored as follows:

4.1. Designated space is provided for Storage Bins at Vista Bahia near snack bar building (one-10'x20'), San Gorgonio field 1 (one-10'x20'), Liberty Park (currently two small job boxes), Talega (one small job box), Forster Ranch snack bar storage room and the addition of a 20' container at Vista Hermosa Sports Park.

4.2. Keys for City park storage areas will be given only to SCLL representative. A \$25 dollar key deposit and signature is required on all keys. SCLL is required to keep control over keys and assignment of keys.

4.3. SCLL is responsible for maintenance, rental, and safety of the storage unit, and all supplies therein. At no time will combustible supplies or hazardous materials be permitted to be stored on City Property. The forgoing prohibition applies to materials which include but is not limited to flammable products such as gasoline for equipment or propane for barbecues.

5. Concessions

SCLL is approved to utilize the concession buildings at Liberty, Forster Ranch, Vista Bahia, Vista Hermosa Sports Park, and San Gorgonio, to sell concessions to their participants provided they apply for the appropriate permits from the Orange County Health Department.

5.1 SCLL may only sell food products to the program participants and fans during the scheduled league dates.

5.2 SCLL must adhere to Orange County Health Department standards for storage and preparation of food items.

5.3 Any food items left in storage should be properly stored in airtight containers to control pests and to protect the quality of the food.

5.4 SCLL will not permit children or those under 18 to operate a BBQ and other appliances or use flammable liquids or materials.

5.5 No use of Styro Foam products: The City of San Clemente passed Resolution No. 04-27 on April 20, 2004, prohibiting the use of food service items comprised of expandable polystyrene, commonly referred to by the trade name "Styrofoam." Rental agreements for usage of any City-owned property or facility shall require the renter assume the responsibility for preventing the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam", by any attendee or vendor (caterer) utilizing the City property or facility during the term of the rental agreement. Failure to abide by this resolution will result in the automatic denial of future field rentals.

6. Ball Field Scheduling

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Although community programs and community contract classes have priority, the City offers Senior Partners the opportunity to schedule field space in two, six month increments for the year. The scheduling of "blocks" of time is coordinated by the Recreation Division. Fields booked for SCLL are to be utilized solely for SCLL programs. SCLL may not sublet field space to any non-SCLL or other organization. The City is making strides to offer SCLL game fields when possible in the primary season to lessen the impacts on fields by other user groups and to offer SCLL the opportunity to contribute to field maintenance. There is no exclusive use on any fields; therefore, the City has a right to rent any field to other organizations.

6.1. To assist the City in determining a Master Field Calendar for each allocation period, SCLL must complete the necessary application requesting needed field space by the first week of October for the January 1 through June 30 allocation period and by the first week of April for the July 1 through December 31 allocation period.

6.2. SCLL representatives must attend the field allocation meeting bi-annually to coordinate other group needs in the community.

6.3. SCLL shall request only needed field space, and not over book the fields. The Recreation Division will assist SCLL in determining necessary field space by reviewing the number of participants in SCLL and length of primary season games.

6.4. SCLL will be required to submit all practice and game schedules to the City for review prior to Opening Ceremonies.

6.5. SCLL will be required to relinquish all field space that is not needed to the City prior to Opening Ceremonies.

6.6. If once regular season league play begins and City determines that not all field space is needed by SCLL, the City will request that SCLL relinquish reserved time for other rentals. It is the responsibility of SCLL to coordinate all field schedules with its participants and coaches.

6.7. It is the responsibility of SCLL to coordinate all block schedules with their participants. This includes scheduling of fields, light keys, and monitoring the fields for use. Fields that are consistently left vacant within block permit time will be reviewed by the Recreation Division for reassignment.

6.8. SCLL will be required to submit practice and games schedules to the Recreation Division for review one week prior to Opening Day Ceremonies.

7. Field Use and Parking

7.1. Sports fields without lights are closed at dusk, and no later than 9:00pm. Lighted sports fields close at 10:00pm. SCLL is required to vacate all fields prior to closing time.

7.2. Entry gates at Tierra Grande Park close at 10:00pm. Once the gates at Tierra Grande Park are locked for the evening, vehicles will be under the authority of the Orange County Sheriff's Department and subject to ticketing and impound.

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7.3. City parks with athletic fields have limited parking. Some of these parks also have restricted parking on the street (Talega, Liberty, and Tierra Grande). SCLL must communicate these parking limitations to their participants. City is not responsible for providing parking to SCLL participants.

7.4. In an effort to reduce the impact on parking and congestion in these parks, the City will limit the number of rental permits on weekends during league play and summer months.

7.5. When scheduled at neighborhood park fields, SCLL must coordinate game schedules to reduce overlap of game times and allow for adequate time between games for players leaving the games to vacate parking spaces for those coming in.

7.6. SCLL has a duty to inspect and notify City of any safety hazards at facilities and fields.

8. Field Light Use

SCLL shall be charged a separate Light Use fee from the hourly Field Use Fee or flat rate Administrative Fee. The Light Use fee varies by ball field and will be billed according to use.

8.1. Key Operated Lights: Youth Sport Organizations that have reserved and paid for lighted sports fields will be granted a key to operate the field lights. Keys will be checked out at the San Clemente Aquatics Center to SCLL by the City Recreation Division. SCLL shall post a \$25 refundable deposit per key. Duplication of keys is not permitted. Representatives must note the rules and operation of the lights. SCLL is required to keep control over keys and assignment of keys.

8.2. Computer Operated Lights: Once a light schedule is determined by the user and is approved by the Recreation Division by permit, the Recreation Division will code the light towers by scheduling with MUSCO. Lights are automatically turned on and off by block time and are not permitted later than the closing time.

8.3. SCLL must designate field representatives to monitor the field use in the evening to ensure that the fields are not vacant with lights on. SCLL shall shut the lights off if/when they plan to leave the park in advance of the time issued. The City will issue a toll free phone number to contact MUSCO Lighting and a password that allows SCLL direct contact with the lighting company. Recreation Staff will monitor the MUSCO statements for changes made by the league and adjust the billing.

9. SCLL Charitable Contribution to Field Maintenance

As a Senior Partner to the City, SCLL shall assist with the stewardship and maintenance of sports fields through in-kind services and/or financial contributions. SCLL shall contribute to the City \$25 for each participant in the form of an annual charitable donation. A written proposal outlining how the charitable donation will be paid will be due to the CITY 60 days prior to Opening Ceremonies. CITY will notify SCLL of their decision within 30 days of proposal submittal. Payment must be made to the CITY within 14 working days from said notification. If SCLL demonstrates a full or partial financial inability to contribute, City may approve in-kind services, such as

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field/facility maintenance, cleaning, community service, City image promotion, and/or volunteer support of City activities as approved by City; or combination of the above, as approved by City. This proposal and donation will be required to be submitted prior to SCLL's primary season (spring).

9.1. SCLL shall obtain prior written consent of City to make any alterations, additions, or improvements to City fields including routine field maintenance and preparations which include mowing, picking weeds, raking and/or chalking. SCLL understands that any other such alterations, additions, or improvements must comply with all state and local standards.

10. SCLL Supplies and Equipment Contribution

SCLL will continue to provide for their own field equipment, including net fencing, outfield short fences, portable mounds and other supplies as necessary as well as be responsible for field preparation as assigned below.

10.1. SCLL will be responsible for lining fields for game play as necessary for their leagues.

10.2. SCLL may store specialized field equipment and game supplies in available storage sheds as per agreement. SCLL may not sublet the storage area to other groups.

10.3. Maintenance field equipment left on City fields for the duration of the season will be the responsibility of SCLL.

11. Inclement Weather Field Procedures

When fields must be closed due to rain or other inclement weather, saturated field conditions due to irrigation problems, any damage due to vandalism, or other conditions needing immediate attention, the Parks Maintenance Division will determine the closure term and begin procedures as follows.

11.1. City will determine the appropriate amount of days for the field to remain closed to the greatest degree possible by utilizing weather reports and on-site field inspections each day and post closure signs on the fields.

11.2. Field closures will be listed on the City's official MUDLINE that can be accessed at the City's website. There is also a cell phone application that can be downloaded to access these updates from this site.

11.3. SCLL shall ensure that their league coaches and participants stay off all closed fields.

11.4. SCLL agrees to reimburse the City for any and all maintenance costs directly attributed to damage or misuse of athletic fields including unauthorized alteration of a City park site.

12. Vehicle Access

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Vehicles are not permitted on City fields. SCLL agrees and acknowledges that volunteer coaches and other program participants will not drive vehicles onto the fields. This includes vehicles driven by coaches to unload game equipment or supplies for the program.

12.1. With approval from the Parks Maintenance Division, SCLL may designate a Field Representative that may have access to the field to unload FIELD maintenance supplies such as brick dust or larger game equipment such as goal posts or temporary fencing.

13. Field and Park Clean Up

SCLL shall clean up fields and associated park areas in proximity of the field after each use by SCLL. This includes litter left behind from fans in the bleachers, dug outs, or snack concession stand areas. The City will provide adequate trash containers.

13.1. SCLL shall prevent all materials or water from cleaning up after the event from entering the storm drain system (i.e. street gutters or catch basins).

14. Crowd Control

It is the responsibility of SCLL to keep registered participants and their fans from engaging in un-sportsmanlike conduct, such as fighting, or rude and abusive verbal confrontations. If field representatives or game officials of the league cannot control the situation, SCLL should contact Orange County Sheriffs Department for assistance.

15. Tournaments, Camps/Clinics, Special Events and Opening Day

SCLL may apply to organize other programs in conjunction with the league, such as tournaments, camps/clinics, special events and opening day ceremonies (HEREIN "Program Events" SCLL shall give notice of all Program Events to the Beaches, Parks and Recreation Department by way of application thirty (30) days in advance of the rental. In reviewing Program Event requests, City shall consider the potential impacts to the neighborhood and park amenities. The Recreation Division will review and coordinate the appropriate permits and services it deems necessary for any Program Events, such as planning for additional janitorial in restrooms, overflow parking, and sound permits. Please note the rules regarding tournaments, special programs and events which is outlined in the Tournament Application and Policy Guidelines.

15.1. SCLL will receive the Senior Partnership discount of 98% for Challenger/VIP Events, which is a program that provides a quality baseball experience for children and adults with physical or mental disabilities, and Opening and Closing Day Ceremonies.

15.2. SCLL will receive a 50% discount for Tournaments and Camps/Clinics.

15.3. SCLL must submit a field request and meet with City staff at least thirty (30) days prior to the Program Event date and complete an Orientation Checklist.

15.4. SCLL is encouraged to participate in a recycling program outlined in the Tournament Application and Policy Guidelines.

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15.5. SCLL shall prohibit the consumption of alcoholic beverages at all Program Events.

15.6. Amplified sound is subject to enforcement as per the City of San Clemente Noise Ordinance. Sound Permits are required for all amplified sounds, including but not limited to PA systems and DJ's and as well as for any live entertainment such as bands that include amplification for the instruments, drums, horns etc. Please review the sound ordinance for your event prior to booking or organizing the program. Applications are reviewed by the City's Beaches, Parks, and Recreation Department.

15.7. Bounce houses or similar inflatable features are not permitted on City Parks unless approved in advance with appropriate 1 million dollars of liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance at (949) 361-8200, and Business Licenses at (949) 361-6166.

15.8. Per (Orange County Fire Authority ("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 Marshall for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320).

16. League Promotions

16.1. Printed Materials: SCLL will be responsible for all printed promotional materials for its leagues and tournaments. The City shall not copy flyers, posters, registration packets or any other printed materials. SCLL is encouraged to use the designated City brochure racks located at the Community Center and the San Clemente Aquatics Center located in the Vista Hermosa Sports Park.

16.2. Magazine/Website Space: The City will include information on SCLL registration dates, phone numbers and contacts once each quarter in the City's Recreation Magazine and City Recreation Website in the youth sports section. SCLL is responsible for submitting accurate information to the City prior to the attached publishing schedule.

16.3. Overhead Banner Reservation: SCLL may seek to participate in the City's overhead banner program in the same manner as any other Community Partner. Regular banner fees apply 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 processed by January.

16.4. Banners on Field Fences and Park Areas: SCLL shall not use City parks or facilities to hang banners on the fences or buildings except as provided for herein. During games, Program Events, and registration days, SCLL may temporarily hang banners on the ball field fences provided such banners are removed when vacating the field the same date. Exceptions may be made for seasonal banners on hub fields that are not regularly used by any other organization in the City's sole and absolute discretion. Any such exceptions shall be negotiated and pre approved by the Recreation Division prior to placing banners.

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17. Indemnification and Insurance

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), SCLL 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 SCLL participants, invitees officers, agents, employees, representatives, or subcontractors of SCLL [collectively, the "SCLL 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 SCLL's use of the City facilities including but not limited to the San Clemente fields, by any of the SCLL 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, SCLL shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and SCLL 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 SCLL pursuant to the terms of this Agreement; and

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(vi) be written on an occurrence and not a claims made basis.

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 Field Rules, Use and Allocation Policy.

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

18.3. Commitment: SCLL's Board of Directors are is required to notify their volunteer coaches, parents and participants about the rules and regulations set forth in the Ball Field and Park Rental Policies, municipal codes and guidelines within this agreement . The Recreation Division will work closely with SCLL to address concerns and to enhance communications between staff, field users, and community. It is the responsibility of SCLL to notify City of any concerns.

18.4. Outcome: SCLL shall regularly communicate with SCLL members to educate participants, coaches and parents to become increasingly more responsible working within the Municipal Code and field 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 SCLL 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 SCLL representative to discuss any noticed violation. City shall e-mail SCLL'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: SCLL'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 SCLL's representative and President. If SCLL fails to take the necessary actions to resolve the issue as agreed upon between the parties, City may resolve the issue and charge SCLL for any manpower and/or equipment used to resolve the issue. SCLL shall bear all costs and expenses City deems necessary to completely resolve the issue.

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

- (i) **First Warning:** The first warning letter will be sent upon SCLL's first failure to resolve an issue resulting from a direct violation of the City Municipal Code, or this Agreement, park operating policy or rules. A letter will be written to SCLL's President and representative documenting the violation and will be placed in SCLL's file. A report and/or pictures of the violation will be included for reference. The matter may be appealed by SCLL to the Beaches, Parks and Recreation Department Director.
- (ii) **Second Warning:** A Second warning is issued after a second documented violation occurs within one year (365 days) from first violation. City will send SCLL a letter notifying SCLL that a City staff member will be assigned to monitor SCLL activities due to the violation. SCLL 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 fields and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.
- (iii) **Third Warning:** A third warning is issued after a third documented violation occurs within one year (365 days) from first violation. Upon issuance of a Third Warning City shall review this Agreement. The Agreement is subject to termination upon such review. Any termination may be appealed to the Beaches, Parks and Recreation Department Director and ultimately appealed to the Beaches, Parks and Recreation Commission and/or City Council.

18.9. **Termination:** City can terminate the Agreement without cause on thirty (30) days 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. SCLL 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. SCLL 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).

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

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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

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

If to SCLL: San Clemente Little League
P.O. Box 84
San Clemente, CA 92674
Attention: Sam Masotto

With a copy to: _____

Attention: _____

[End – signature page follows]

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IN WITNESS WHEREOF, City and SCLL 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

“SCLL”

SAN CLEMENTE LITTLE LEAGUE,
a youth sports organization

By: _____

Its: _____

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City of San Clemente Beaches, Parks and Recreation Department

SENIOR PARTNERSHIP AGREEMENT

This SENIOR PARTNERSHIP AGREEMENT is entered into this 15th day of October, 2013 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and SOUTH COAST YOUTH FOOTBALL, a youth sports organization ("SCYF") for the period of one (1) year from and after the Effective Date.

RECITALS:

A. The City of San Clemente owns and operates athletic fields throughout the community. A permit is required for reservations, lighted evening use and use of the sports fields by all club and sports organizations.

B. SCYF is a private non-profit organization that has been involved in recreational football activities in San Clemente for 18 years. SCYF served 304 children, aged five to fifteen years old in 2012. The SCYF Football program (the "Program") is well established, showing league structure for game rules and field policy, a governing board to regulate program standards, and proven history of providing programs for San Clemente residents.

C. SCYF currently uses Vista Hermosa Sports Park Football Field #1, Bonito Canyon, Liberty, and Talega Parks and desires to enter into this Senior Partnership Agreement to establish a standard and schedule of athletic field 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 SCYF hereby agree as follows:

1. SCYF Program Requirements

1.1. As a material inducement to City's entering into this Agreement with SCYF, SCYF agrees and covenants that, during the term of this Agreement, SCYF 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. SCYF 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. SCYF 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.
- 1.1.3. SCYF 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. SCYF's liability insurance shall be primary insurance without rights of subrogation. Each such policy of insurance shall comply with section 17 below.
- 1.1.4. SCYF shall remain able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and SCYF is required to pay regular rates for use of City amenities, fields, pools and/or facilities.
- 1.1.5. SCYF has and shall maintain an open enrollment policy regardless of participant's skill level. For purposes of this Agreement and "Open Enrollment Policy" shall mean no child shall be denied enrollment based on skill level.
- 1.1.6. SCYF shall maintain and enforce a "minimum play rule" which requires that each person enrolled in the Program shall play 50% of the time for each game.
- 1.1.7. SCYF shall provide financial scholarships covering at least 10% of the participants enrolled for 50-100% of their registration fees to those participants that are in "financial need." For purposes of this Agreement, "financial need" shall mean those families that can prove a financial and/or special hardship. The scholarship is given to the child to provide an opportunity to enroll in the league activities. SCYF shall operate on the philosophy that no child will be denied a chance to play football due to a financial hardship. SCYF will be required to submit to CITY their financial reports outlining their scholarship distribution at the conclusion of the registration period.
- 1.1.8. SCYF shall have a no discrimination policy, and a "zero tolerance" policy requiring the organization to terminate membership and any and all right to enroll in any organization activities to any member who is found to have used any alcohol, controlled substances (which have not been prescribed for the member), or tobacco.
- 1.1.9. SCYF supplies and shall continue to supply participant rosters annually to City. SCYF membership shall be comprised of no less than 90% San Clemente residents.

SCYF shall maintain all documentation necessary to demonstrate compliance with all of the above. City shall be permitted to inspect and copy any documentation necessary to verify Program compliance with this Article 1.

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2. SCYF Representatives To City

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

2.2. SCYF is responsible for notifying City in writing within thirty (30) days of any change in its designated SCYF 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:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Coordinator (949) 361-8249

Parks Maintenance Division:

- Field Improvements, Maintenance, Modifications, Closures, Vandalism: Parks Maintenance, (949) 361-8317

3. Athletic Field Rental Rates

All field assignments shall be made by City in its sole and absolute discretion. SCYF shall pay a Field Rental Fee to the City within 14 business days after receipt of Field Use Permits for the upcoming season.

Field Rental Fee. The fees noted below shall remain in effect during the entire term of this Agreement unless the Agreement is terminated. The following use fees for non-profit youth sports organizations were established in July 2012 for the fields and are collected by the Recreation Division. Fees remain in effect and apply to SCYF Senior Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Fee
Neighborhood	\$40/hour	98% Discount	\$.80/hour
Community	\$50/hour	98% Discount	\$1.00/hour
Sport	\$60/hour	98% Discount	\$1.20/hour
Tournaments	See hourly rates above	50% Discount	---
Camps/Clinics	See hourly rates above	50% Discount	---
Light Fee	\$15/hour	0%	---

4. Field Storage

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During the term of this Agreement, SCYF has not been allocated a storage area. Any requests for storage must be submitted in writing to the Recreation Division for approval.

5. Concessions

During the term of this Agreement, SCYF has not been allocated concession rights. Any requests for concessions must be submitted in writing to the Recreation Division for approval.

5.1 No use of Styro Foam products: The City of San Clemente passed Resolution No. 04-27 on April 20, 2004, prohibiting the use of food service items comprised of expandable polystyrene, commonly referred to by the trade name "Styrofoam." Rental agreements for usage of any City-owned property or facility shall require the renter assume the responsibility for preventing the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam", by any attendee or vendor (caterer) utilizing the City property or facility during the term of the rental agreement. Failure to abide by this resolution will result in the automatic denial of future field rentals.

6. Ball Field Scheduling

Although community programs and community contract classes have priority, the City offers Senior Partners the opportunity to schedule field space in two, six month increments for the year. The scheduling of "blocks" of time is coordinated by the Recreation Division. Fields booked for SCYF are to be utilized solely for SCYF programs. SCYF may not sublet field space to any non-SCYF or other organization. The City is making strides to offer SCYF game fields when possible in the primary season to lessen the impacts on fields by other user groups and to offer SCYF the opportunity to contribute to field maintenance. There is no exclusive use on any fields; therefore, the City has a right to rent any field to other organizations.

6.1. To assist the City in determining a Master Field Calendar for each allocation period, SCYF must complete the necessary application requesting needed field space by the first week of October for the January 1 through June 30 allocation period and by the first week of April for the July 1 through December 31 allocation period.

6.2. SCYF representatives must attend the field allocation meeting bi-annually to coordinate other group needs in the community.

6.3. SCYF shall request only needed field space, and not over book the fields. The Recreation Division will assist SCYF in determining necessary field space by reviewing the number of participants in SCYF and length of primary season games.

6.4. SCYF will be required to submit all practice and game schedules to the City for review prior to Opening Ceremonies.

6.5. SCYF will be required to relinquish all field space that is not needed to the City prior to Opening Ceremonies.

6.6. If once regular season league play begins and City determines that not all field space is needed by SCYF, the City will request that SCYF relinquish reserved time

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for other rentals. It is the responsibility of SCYF to coordinate all field schedules with its participants and coaches.

6.7. It is the responsibility of SCYF to coordinate all block schedules with their participants. This includes scheduling of fields, light keys, and monitoring the fields for use. Fields that are consistently left vacant within block permit time will be reviewed by the Recreation Division for reassignment.

6.8. SCYF will be required to submit practice and games schedules to the Recreation Division for review one week prior to Opening Day Ceremonies.

7. Field Use and Parking

7.1. Sports fields without lights are closed at dusk, and no later than 9:00pm. Lighted sports fields close at 10:00pm. SCYF is required to vacate all fields prior to closing time.

7.2. Entry gates at Tierra Grande Park close at 10:00pm. Once the gates at Tierra Grande Park are locked for the evening, vehicles will be under the authority of the Orange County Sheriff's Department and subject to ticketing and impound.

7.3. City parks with athletic fields have limited parking. Some of these parks also have restricted parking on the street (Talega, Liberty, and Tierra Grande). SCYF must communicate these parking limitations to their participants. City is not responsible for providing parking to SCYF participants.

7.4. In an effort to reduce the impact on parking and congestion in these parks, the City will limit the number of rental permits on weekends during league play and summer months.

7.5. When scheduled at neighborhood park fields, SCYF must coordinate game schedules to reduce overlap of game times and allow for adequate time between games for players leaving the games to vacate parking spaces for those coming in.

7.6. SCYF has a duty to inspect and notify City of any safety hazards at facilities and fields.

8. Field Light Use

SCYF shall be charged a separate Light Use fee from the hourly Field Use Fee or flat rate Administrative Fee. The Light Use fee varies by ball field and will be billed according to use.

8.1. Key Operated Lights: Youth Sport Organizations that have reserved and paid for lighted sports fields will be granted a key to operate the field lights. Keys will be checked out at the San Clemente Aquatics Center to SCYF by the City Recreation Division. SCYF shall post a \$25 refundable deposit per key. Duplication of keys is not permitted. Representatives must note the rules and operation of the lights. SCYF is required to keep control over keys and assignment of keys.

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8.2. Computer Operated Lights: Once a light schedule is determined by the user and is approved by the Recreation Division by permit, the Recreation Division will code the light towers by scheduling with MUSCO. Lights are automatically turned on and off by block time and are not permitted later than the closing time.

8.3. SCYF must designate field representatives to monitor the field use in the evening to ensure that the fields are not vacant with lights on. SCYF shall shut the lights off if /when they plan to leave the park in advance of the time issued. The City will issue a toll free phone number to contact MUSCO Lighting and a password that allows SCYF direct contact with the lighting company. Recreation Staff will monitor the MUSCO statements for changes made by the league and adjust the billing.

9. SCYF Charitable Contribution to Field Maintenance

As a Senior Partner to the City, SCYF shall assist with the stewardship and maintenance of sports fields through in-kind services and/or financial contributions. SCYF shall contribute to the City \$25 for each participant in the form of an annual charitable donation. A written proposal outlining how the charitable donation will be paid will be due to the CITY 60 days prior to Opening Ceremonies. CITY will notify SCYF of their decision within 30 days of proposal submittal. Payment must be made to the CITY within 14 working days from said notification. If SCYF demonstrates a full or partial financial inability to contribute, City may approve in-kind services, such as field/facility maintenance, cleaning, community service, City image promotion, and/or volunteer support of City activities as approved by City; or combination of the above, as approved by City. This proposal and donation will be required to be submitted prior to SCYF's primary season (fall).

9.1. SCYF shall obtain prior written consent of City to make any alterations, additions, or improvements to City fields including routine field maintenance and preparations which include mowing, picking weeds, raking and/or chalking. SCYF understands that any other such alterations, additions, or improvements must comply with all state and local standards.

10. SCYF Supplies and Equipment Contribution

SCYF will continue to provide for their own field equipment, including net fencing, outfield short fences, portable mounds and other supplies as necessary as well as be responsible for field preparation as assigned below.

10.1. SCYF will be responsible for lining fields for game play as necessary for their leagues.

10.2. SCYF may store specialized field equipment and game supplies in available storage sheds as per agreement. SCYF may not sublet the storage area to other groups.

10.3. Maintenance field equipment left on City fields for the duration of the season will be the responsibility of SCYF.

11. Inclement Weather Field Procedures

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When fields must be closed due to rain or other inclement weather, saturated field conditions due to irrigation problems, any damage due to vandalism, or other conditions needing immediate attention, the Parks Maintenance Division will determine the closure term and begin procedures as follows.

11.1. City will determine the appropriate amount of days for the field to remain closed to the greatest degree possible by utilizing weather reports and on-site field inspections each day and post closure signs on the fields.

11.2. Field closures will be listed on the City's official MUDLINE that can be accessed at the City's website. There is also a cell phone application that can be downloaded to access these updates from this site.

11.3. SCYF shall ensure that their league coaches and participants stay off all closed fields.

11.4. SCYF agrees to reimburse the City for any and all maintenance costs directly attributed to damage or misuse of athletic fields including unauthorized alteration of a City park site.

12. Vehicle Access

Vehicles are not permitted on City fields. SCYF agrees and acknowledges that volunteer coaches and other program participants will not drive vehicles onto the fields. This includes vehicles driven by coaches to unload game equipment or supplies for the program.

12.1. With approval from the Parks Maintenance Division, SCYF may designate a Field Representative that may have access to the field to unload FIELD maintenance supplies such as brick dust or larger game equipment such as goal posts or temporary fencing.

13. Field and Park Clean Up

SCYF shall clean up fields and associated park areas in proximity of the field after each use by SCYF. This includes litter left behind from fans in the bleachers, dug outs, or snack concession stand areas. The City will provide adequate trash containers.

13.1. SCYF shall prevent all materials or water from cleaning up after the event from entering the storm drain system (i.e. street gutters or catch basins).

14. Crowd Control

It is the responsibility of SCYF to keep registered participants and their fans from engaging in un-sportsmanlike conduct, such as fighting, or rude and abusive verbal confrontations. If field representatives or game officials of the league cannot control the situation, SCYF should contact Orange County Sheriffs Department for assistance.

15. Tournaments, Camps/Clinics, Special Events and Opening Day

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SCYF may apply to organize other programs in conjunction with the league, such as tournaments, camps/clinics, special events and opening day ceremonies (HEREIN "Program Events" SCYF shall give notice of all Program Events to the Beaches, Parks and Recreation Department by way of application thirty (30) days in advance of the rental. In reviewing Program Event requests, City shall consider the potential impacts to the neighborhood and park amenities. The Recreation Division will review and coordinate the appropriate permits and services it deems necessary for any Program Events, such as planning for additional janitorial in restrooms, overflow parking, and sound permits. Please note the rules regarding tournaments, special programs and events which is outlined in the Tournament Application and Policy Guidelines.

15.1. SCYF will receive the Senior Partnership discount of 98% for Challenger/VIP Events, which is a program that provides a quality football experience for children and adults with physical or mental disabilities, and Opening and Closing Day Ceremonies.

15.2. SCYF will receive a 50% discount for Tournaments and Camps/Clinics.

15.3. SCYF must submit a field request and meet with City staff at least thirty (30) days prior to the Program Event date and complete an Orientation Checklist.

15.4. SCYF is encouraged to participate in a recycling program outlined in the Tournament Application and Policy Guidelines.

15.5. SCYF shall prohibit the consumption of alcoholic beverages at all Program Events.

15.6. Amplified sound is subject to enforcement as per the City of San Clemente Noise Ordinance. Sound Permits are required for all amplified sounds, including but not limited to PA systems and DJ's and as well as for any live entertainment such as bands that include amplification for the instruments, drums, horns etc. Please review the sound ordinance for your event prior to booking or organizing the program. Applications are reviewed by the City's Beaches, Parks, and Recreation Department.

15.7. Bounce houses or similar inflatable features are not permitted on City Parks unless approved in advance with appropriate 1 million dollars of liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance at (949) 361-8200, and Business Licenses at (949) 361-6166.

15.8. Per (Orange County Fire Authority ("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 Marshall for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320).

16. League Promotions

16.1. Printed Materials: SCYF will be responsible for all printed promotional materials for its leagues and tournaments. The City shall not copy flyers, posters,

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registration packets or any other printed materials. SCYF is encouraged to use the designated City brochure racks located at the Community Center and the San Clemente Aquatics Center located in the Vista Hermosa Sports Park.

16.2. Magazine/Website Space: The City will include information on SCYF registration dates, phone numbers and contacts once each quarter in the City's Recreation Magazine and City Recreation Website in the youth sports section. SCYF is responsible for submitting accurate information to the City prior to the attached publishing schedule.

16.3. Overhead Banner Reservation: SCYF may seek to participate in the City's overhead banner program in the same manner as any other Community Partner. Regular banner fees apply 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 processed by January.

16.4. Banners on Field Fences and Park Areas: SCYF shall not use City parks or facilities to hang banners on the fences or buildings except as provided for herein. During games, Program Events, and registration days, SCYF may temporarily hang banners on the ball field fences provided such banners are removed when vacating the field the same date. Exceptions may be made for seasonal banners on hub fields that are not regularly used by any other organization in the City's sole and absolute discretion. Any such exceptions shall be negotiated and pre approved by the Recreation Division prior to placing banners.

17. Indemnification and Insurance

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), SCYF 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 SCYF participants, invitees officers, agents, employees, representatives, or subcontractors of SCYF [collectively, the "SCYF 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 SCYF's use of the City facilities including but not limited to the San Clemente fields, by any of the SCYF 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, SCYF shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and SCYF 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

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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 SCYF pursuant to the terms of this Agreement; and
- (vi) be written on an occurrence and not a claims made basis.

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 Field Rules, Use and Allocation Policy.

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

18.3. Commitment: SCYF's Board of Directors are is required to notify their volunteer coaches, parents and participants about the rules and regulations set forth in the Ball Field and Park Rental Policies, municipal codes and guidelines within this agreement . The Recreation Division will work closely with SCYF to address concerns

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and to enhance communications between staff, field users, and community. It is the responsibility of SCYF to notify City of any concerns.

18.4. Outcome: SCYF shall regularly communicate with SCYF members to educate participants, coaches and parents to become increasingly more responsible working within the Municipal Code and field 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 SCYF 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 SCYF representative to discuss any noticed violation. City shall e-mail SCYF'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: SCYF'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 SCYF's representative and President. If SCYF fails to take the necessary actions to resolve the issue as agreed upon between the parties, City may resolve the issue and charge SCYF for any manpower and/or equipment used to resolve the issue. SCYF shall bear all costs and expenses City deems necessary to completely resolve the issue.

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

- (i) First Warning: The first warning letter will be sent upon SCYF's first failure to resolve an issue resulting from a direct violation of the City Municipal Code, or this Agreement, park operating policy or rules. A letter will be written to SCYF's President and representative documenting the violation and will be placed in SCYF's file. A report and/or pictures of the violation will be included for reference. The matter may be appealed by SCYF to the Beaches, Parks and Recreation Department Director.
- (ii) Second Warning: A Second warning is issued after a second documented violation occurs within one year (365 days) from first violation. City will send SCYF a letter notifying SCYF that a City staff member will be assigned to monitor SCYF activities due to the violation. SCYF 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 fields and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.
- (iii) Third Warning: A third warning is issued after a third documented violation occurs within one year (365 days) from first violation.

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Upon issuance of a Third Warning City shall review this Agreement. The Agreement is subject to termination upon such review. Any termination may be appealed to the Beaches, Parks and Recreation Department Director and ultimately appealed to the Beaches, Parks and Recreation Commission and/or City Council.

18.9. Termination: City can terminate the Agreement without cause on thirty (30) days 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. SCYF 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. SCYF 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).

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.

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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.

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

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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

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

If to SCYF: South Coast Youth Football
63 Via Pico Plaza, #403
San Clemente, CA 92672
Attention: Lance Scott

With a copy to: _____

Attention: _____

[End – signature page follows]

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IN WITNESS WHEREOF, City and SCYF 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

“SCYF”

SOUTH COAST YOUTH FOOTBALL,
a youth sports organization

By: _____

Its: _____

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City of San Clemente Beaches, Parks and Recreation Department

JUNIOR PARTNERSHIP AGREEMENT

This JUNIOR PARTNERSHIP AGREEMENT is entered into this 15th day of October, 2013 (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and ELITE SOCCER, a youth sports organization ("ELITE") for the period of one (1) year from and after the Effective Date.

RECITALS:

A. The City of San Clemente owns and operates athletic fields throughout the community. A permit is required for reservations, lighted evening use and use of the sports fields by all club and sports organizations.

B. ELITE is a private non-profit organization that has been involved in recreational soccer activities in San Clemente for the past 7 years. ELITE served 282 children, aged four to sixteen years old in 2012. The ELITE Soccer program (the "Program") is well established, showing league structure for game rules and field policy, a governing board to regulate program standards, and proven history of providing programs for San Clemente residents.

C. ELITE currently uses Vista Hermosa Sports Park, Forster Ranch, San Geronio and Liberty Parks and desires to enter into this Junior Partnership Agreement to establish a standard and schedule of athletic field 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 ELITE hereby agree as follows:

1. ELITE Program Requirements

1.1. As a material inducement to City's entering into this Agreement with ELITE, ELITE agrees and covenants that, during the term of this Agreement, ELITE 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. ELITE 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. ELITE 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.

- 1.1.3. ELITE 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. ELITE's liability insurance shall be primary insurance without rights of subrogation. Each such policy of insurance shall comply with section 17 below.
- 1.1.4. ELITE shall remain able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and ELITE is required to pay regular rates for use of City amenities, fields, pools and/or facilities.
- 1.1.5. ELITE has and shall maintain an open enrollment policy regardless of participant's skill level. For purposes of this Agreement and "Open Enrollment Policy" shall mean no child shall be denied enrollment based on skill level.
- 1.1.6. ELITE shall maintain and enforce a "minimum play rule" which requires that each person enrolled in the Program shall play 50% of the time for each game.
- 1.1.7. ELITE shall provide financial scholarships covering at least 10% of the participants enrolled for 50-100% of their registration fees to those participants that are in "financial need." For purposes of this Agreement, "financial need" shall mean those families that can prove a financial and/or special hardship. The scholarship is given to the child to provide an opportunity to enroll in the league activities. ELITE shall operate on the philosophy that no child will be denied a chance to play soccer due to a financial hardship. ELITE will be required to submit to CITY their financial reports outlining their scholarship distribution at the conclusion of the registration period.
- 1.1.8. ELITE shall have a no discrimination policy, and a "zero tolerance" policy requiring the organization to terminate membership and any and all right to enroll in any organization activities to any member who is found to have used any alcohol, controlled substances (which have not been prescribed for the member), or tobacco.
- 1.1.9. ELITE supplies and shall continue to supply participant rosters annually to City. ELITE membership shall be comprised of no less than 75% San Clemente residents.

ELITE shall maintain all documentation necessary to demonstrate compliance with all of the above. City shall be permitted to inspect and copy any documentation necessary to verify Program compliance with this Article 1.

2. ELITE Representatives To City

- 2.1. ELITE shall designate one official representative who shall be City's primary contact and who shall coordinate the program, field space and overall agreement

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with the City. The ELITE representative shall have authority to make decisions for ELITE, sign applications with City on behalf of ELITE for field use, approve billing, and understand the field operations regarding both scheduling and maintenance, assist with ELITE planning of field allocations, and be responsible for resolving conflicts if/when they arise.

2.2. ELITE is responsible for notifying City in writing within thirty (30) days of any change in its designated ELITE 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:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Coordinator (949) 361-8249

Parks Maintenance Division:

- Field Improvements, Maintenance, Modifications, Closures, Vandalism: Parks Maintenance, (949) 361-8317

3. Athletic Field Rental Rates

All field assignments shall be made by City in its sole and absolute discretion. ELITE shall pay a Field Rental Fee to the City within 14 business days after receipt of Field Use Permits for the upcoming season.

Field Rental Fee. The fees noted below shall remain in effect during the entire term of this Agreement unless the Agreement is terminated. The following use fees for non-profit youth sports organizations were established in July 2012 for the fields and are collected by the Recreation Division. Fees remain in effect and apply to ELITE Junior Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Fee
Neighborhood	\$40/hour	60% Discount	\$16/hour
Community	\$50/hour	60% Discount	\$20/hour
Sport	\$60/hour	60% Discount	\$24/hour
Tournaments	See hourly rates above	25% Discount	---
Camps/Clinics	See hourly rates above	25% Discount	---
Light Fee	\$15/hour	0%	---

4. Field Storage

During the term of this Agreement, ELITE has not been allocated a storage area. Any requests for storage must be submitted in writing to the Recreation Division for approval.

5. Concessions

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During the term of this Agreement, ELITE has not been allocated concession rights. Any requests for concessions must be submitted in writing to the Recreation Division for approval.

5.1 No use of Styro Foam products: The City of San Clemente passed Resolution No. 04-27 on April 20, 2004, prohibiting the use of food service items comprised of expandable polystyrene, commonly referred to by the trade name "Styrofoam." Rental agreements for usage of any City-owned property or facility shall require the renter assume the responsibility for preventing the utilization and/or distribution of expandable polystyrene food service products, commonly referred to by the trade name "Styrofoam", by any attendee or vendor (caterer) utilizing the City property or facility during the term of the rental agreement. Failure to abide by this resolution will result in the automatic denial of future field rentals.

6. Ball Field Scheduling

Although community programs and community contract classes have priority, the City offers Junior Partners the opportunity to schedule field space in two, six month increments for the year. The scheduling of "blocks" of time is coordinated by the Recreation Division. Fields booked for ELITE are to be utilized solely for ELITE programs. ELITE may not sublet field space to any non-ELITE or other organization. The City is making strides to offer ELITE game fields when possible in the primary season to lessen the impacts on fields by other user groups and to offer ELITE the opportunity to contribute to field maintenance. There is no exclusive use on any fields; therefore, the City has a right to rent any field to other organizations.

6.1. To assist the City in determining a Master Field Calendar for each allocation period, ELITE must complete the necessary application requesting needed field space by the first week of October for the January 1 through June 30 allocation period and by the first week of April for the July 1 through December 31 allocation period.

6.2. ELITE representatives must attend the field allocation meeting bi-annually to coordinate other group needs in the community.

6.3. ELITE shall request only needed field space, and not over book the fields. The Recreation Division will assist ELITE in determining necessary field space by reviewing the number of participants in ELITE and length of primary season games.

6.4. ELITE will be required to submit all practice and game schedules to the City for review prior to Opening Ceremonies.

6.5. ELITE will be required to relinquish all field space that is not needed to the City prior to Opening Ceremonies.

6.6. If once regular season league play begins and City determines that not all field space is needed by ELITE, the City will request that ELITE relinquish reserved time for other rentals. It is the responsibility of ELITE to coordinate all field schedules with its participants and coaches.

6.7. It is the responsibility of ELITE to coordinate all block schedules with their participants. This includes scheduling of fields, light keys, and monitoring the fields

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for use. Fields that are consistently left vacant within block permit time will be reviewed by the Recreation Division for reassignment.

6.8. ELITE will be required to submit practice and games schedules to the Recreation Division for review one week prior to Opening Day Ceremonies.

7. Field Use and Parking

7.1. Sports fields without lights are closed at dusk, and no later than 9:00pm. Lighted sports fields close at 10:00pm. ELITE is required to vacate all fields prior to closing time.

7.2. Entry gates at Tierra Grande Park close at 10:00pm. Once the gates at Tierra Grande Park are locked for the evening, vehicles will be under the authority of the Orange County Sheriff's Department and subject to ticketing and impound.

7.3. City parks with athletic fields have limited parking. Some of these parks also have restricted parking on the street (Talega, Liberty, and Tierra Grande). ELITE must communicate these parking limitations to their participants. City is not responsible for providing parking to ELITE participants.

7.4. In an effort to reduce the impact on parking and congestion in these parks, the City will limit the number of rental permits on weekends during league play and summer months.

7.5. When scheduled at neighborhood park fields, ELITE must coordinate game schedules to reduce overlap of game times and allow for adequate time between games for players leaving the games to vacate parking spaces for those coming in.

7.6. ELITE has a duty to inspect and notify City of any safety hazards at facilities and fields.

8. Field Light Use

ELITE shall be charged a separate Light Use fee from the hourly Field Use Fee or flat rate Administrative Fee. The Light Use fee varies by ball field and will be billed according to use.

8.1. Key Operated Lights: Youth Sport Organizations that have reserved and paid for lighted sports fields will be granted a key to operate the field lights. Keys will be checked out at the San Clemente Aquatics Center to ELITE by the City Recreation Division. ELITE shall post a \$25 refundable deposit per key. Duplication of keys is not permitted. Representatives must note the rules and operation of the lights. ELITE is required to keep control over keys and assignment of keys. ELITE is required to keep control over keys and assignment of keys.

8.2. Computer Operated Lights: Once a light schedule is determined by the user and is approved by the Recreation Division by permit, the Recreation Division will code the light towers by scheduling with MUSCO. Lights are automatically turned on and off by block time and are not permitted later than the closing time.

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8.3. ELITE must designate field representatives to monitor the field use in the evening to ensure that the fields are not vacant with lights on. ELITE shall shut the lights off if /when they plan to leave the park in advance of the time issued. The City will issue a toll free phone number to contact MUSCO Lighting and a password that allows ELITE direct contact with the lighting company. Recreation Staff will monitor the MUSCO statements for changes made by the league and adjust the billing.

9. ELITE Charitable Contribution to Field Maintenance

As a Junior Partner to the City, ELITE shall assist with the stewardship and maintenance of sports fields through in-kind services and/or financial contributions. ELITE shall contribute to the City \$25 for each participant in the form of an annual charitable donation. A written proposal outlining how the charitable donation will be paid will be due to the CITY 60 days prior to Opening Ceremonies. CITY will notify ELITE of their decision within 30 days of proposal submittal. Payment must be made to the CITY within 14 working days from said notification. If ELITE demonstrates a full or partial financial inability to contribute, City may approve in-kind services, such as field/facility maintenance, cleaning, community service, City image promotion, and/or volunteer support of City activities as approved by City; or combination of the above, as approved by City. This proposal and donation will be required to be submitted prior to ELITE's primary season (fall).

9.1. ELITE shall obtain prior written consent of City to make any alterations, additions, or improvements to City fields including routine field maintenance and preparations which include mowing, picking weeds, raking and/or chalking. ELITE understands that any other such alterations, additions, or improvements must comply with all state and local standards.

10. ELITE Supplies and Equipment Contribution

ELITE will continue to provide for their own field equipment, including net fencing, outfield short fences, portable mounds and other supplies as necessary as well as be responsible for field preparation as assigned below.

10.1. ELITE will be responsible for lining fields for game play as necessary for their leagues.

10.2. ELITE may store specialized field equipment and game supplies in available storage sheds as per agreement. ELITE may not sublet the storage area to other groups.

10.3. Maintenance field equipment left on City fields for the duration of the season will be the responsibility of ELITE.

11. Inclement Weather Field Procedures

When fields must be closed due to rain or other inclement weather, saturated field conditions due to irrigation problems, any damage due to vandalism, or other conditions needing immediate attention, the Parks Maintenance Division will determine the closure term and begin procedures as follows.

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11.1. City will determine the appropriate amount of days for the field to remain closed to the greatest degree possible by utilizing weather reports and on-site field inspections each day and post closure signs on the fields.

11.2. Field closures will be listed on the City's official MUDLINE that can be accessed at the City's website. There is also a cell phone application that can be downloaded to access these updates from this site.

11.3. ELITE shall ensure that their league coaches and participants stay off all closed fields.

11.4. ELITE agrees to reimburse the City for any and all maintenance costs directly attributed to damage or misuse of athletic fields including unauthorized alteration of a City park site.

12. Vehicle Access

Vehicles are not permitted on City fields. ELITE agrees and acknowledges that volunteer coaches and other program participants will not drive vehicles onto the fields. This includes vehicles driven by coaches to unload game equipment or supplies for the program.

12.1. With approval from the Parks Maintenance Division, ELITE may designate a Field Representative that may have access to the field to unload FIELD maintenance supplies such as brick dust or larger game equipment such as goal posts or temporary fencing.

13. Field and Park Clean Up

ELITE shall clean up fields and associated park areas in proximity of the field after each use by ELITE. This includes litter left behind from fans in the bleachers, dug outs, or snack concession stand areas. The City will provide adequate trash containers.

13.1. ELITE shall prevent all materials or water from cleaning up after the event from entering the storm drain system (i.e. street gutters or catch basins).

14. Crowd Control

It is the responsibility of ELITE to keep registered participants and their fans from engaging in un-sportsmanlike conduct, such as fighting, or rude and abusive verbal confrontations. If field representatives or game officials of the league cannot control the situation, ELITE should contact Orange County Sheriffs Department for assistance.

15. Tournaments, Camps/Clinics, Special Events and Opening Day

ELITE may apply to organize other programs in conjunction with the league, such as tournaments, camps/clinics, special events and opening day ceremonies (HEREIN "Program Events" ELITE shall give notice of all Program Events to the Beaches, Parks and Recreation Department by way of application thirty (30) days in advance of the rental. In reviewing Program Event requests, City shall consider the potential impacts to

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the neighborhood and park amenities. The Recreation Division will review and coordinate the appropriate permits and services it deems necessary for any Program Events, such as planning for additional janitorial in restrooms, overflow parking, and sound permits. Please note the rules regarding tournaments, special programs and events which is outlined in the Tournament Application and Policy Guidelines.

15.1. ELITE will receive the Junior Partnership discount of 60% for Challenger/VIP Events, which is a program that provides a quality soccer experience for children and adults with physical or mental disabilities, and Opening and Closing Day Ceremonies.

15.2. ELITE will receive a 25% discount for Tournaments and Camps/Clinics.

15.3. ELITE must submit a field request and meet with City staff at least thirty (30) days prior to the Program Event date and complete an Orientation Checklist.

15.4. ELITE is encouraged to participate in a recycling program outlined in the Tournament Application and Policy Guidelines.

15.5. ELITE shall prohibit the consumption of alcoholic beverages at all Program Events.

15.6. Amplified sound is subject to enforcement as per the City of San Clemente Noise Ordinance. Sound Permits are required for all amplified sounds, including but not limited to PA systems and DJ's and as well as for any live entertainment such as bands that include amplification for the instruments, drums, horns etc. Please review the sound ordinance for your event prior to booking or organizing the program. Applications are reviewed by the City's Beaches, Parks, and Recreation Department.

15.7. Bounce houses or similar inflatable features are not permitted on City Parks unless approved in advance with appropriate 1 million dollars of liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance at (949) 361-8200, and Business Licenses at (949) 361-6166.

15.8. Per (Orange County Fire Authority ("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 Marshall for large and small tents, awnings and other fabric enclosures shall also apply. (UFC 320).

16. League Promotions

16.1. Printed Materials: ELITE will be responsible for all printed promotional materials for its leagues and tournaments. The City shall not copy flyers, posters, registration packets or any other printed materials. ELITE is encouraged to use the designated City brochure racks located at the Community Center and the San Clemente Aquatics Center located in the Vista Hermosa Sports Park.

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16.2. Magazine/Website Space: The City will include information on ELITE registration dates, phone numbers and contacts once each quarter in the City's Recreation Magazine and City Recreation Website in the youth sports section. ELITE is responsible for submitting accurate information to the City prior to the attached publishing schedule.

16.3. Overhead Banner Reservation: ELITE may seek to participate in the City's overhead banner program in the same manner as any other Community Partner. Regular banner fees apply 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 processed by January.

16.4. Banners on Field Fences and Park Areas: ELITE shall not use City parks or facilities to hang banners on the fences or buildings except as provided for herein. During games, Program Events, and registration days, ELITE may temporarily hang banners on the ball field fences provided such banners are removed when vacating the field the same date. Exceptions may be made for seasonal banners on hub fields that are not regularly used by any other organization in the City's sole and absolute discretion. Any such exceptions shall be negotiated and pre approved by the Recreation Division prior to placing banners.

17. Indemnification and Insurance

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), ELITE 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 ELITE participants, invitees officers, agents, employees, representatives, or subcontractors of ELITE [collectively, the "ELITE 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 ELITE's use of the City facilities including but not limited to the San Clemente fields, by any of the ELITE 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, ELITE shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and ELITE 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:

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- (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 ELITE pursuant to the terms of this Agreement; and
- (vi) be written on an occurrence and not a claims made basis.

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 Field Rules, Use and Allocation Policy.

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

18.3. Commitment: ELITE's Board of Directors are is required to notify their volunteer coaches, parents and participants about the rules and regulations set forth in the Ball Field and Park Rental Policies, municipal codes and guidelines within this agreement . The Recreation Division will work closely with ELITE to address concerns and to enhance communications between staff, field users, and community. It is the responsibility of ELITE to notify City of any concerns.

18.4. Outcome: ELITE shall regularly communicate with ELITE members to educate participants, coaches and parents to become increasingly more responsible

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working within the Municipal Code and field 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 ELITE 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 ELITE representative to discuss any noticed violation. City shall e-mail ELITE'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:** ELITE'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 ELITE's representative and President. If ELITE fails to take the necessary actions to resolve the issue as agreed upon between the parties, City may resolve the issue and charge ELITE for any manpower and/or equipment used to resolve the issue. ELITE shall bear all costs and expenses City deems necessary to completely resolve the issue.

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

- (i) **First Warning:** The first warning letter will be sent upon ELITE's first failure to resolve an issue resulting from a direct violation of the City Municipal Code, or this Agreement, park operating policy or rules. A letter will be written to ELITE's President and representative documenting the violation and will be placed in ELITE's file. A report and/or pictures of the violation will be included for reference. The matter may be appealed by ELITE to the Beaches, Parks and Recreation Department Director.
- (ii) **Second Warning:** A Second warning is issued after a second documented violation occurs within one year (365 days) from first violation. City will send ELITE a letter notifying ELITE that a City staff member will be assigned to monitor ELITE activities due to the violation. ELITE 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 fields and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.
- (iii) **Third Warning:** A third warning is issued after a third documented violation occurs within one year (365 days) from first violation. Upon issuance of a Third Warning City shall review this Agreement. The Agreement is subject to termination upon such review. Any termination may be appealed to the Beaches, Parks and Recreation Department Director and ultimately appealed to the Beaches, Parks and Recreation Commission and/or City Council.

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18.9. Termination: City can terminate the Agreement without cause on thirty (30) days 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. ELITE 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. ELITE 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).

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.

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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.

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.

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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

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

If to ELITE: Elite Soccer
22912 Pacific Park Dr
Suite 201
Aliso Viejo Ca 92656
Attention: Mike Affleck

With a copy to: _____

Attention: _____

[End – signature page follows]

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IN WITNESS WHEREOF, City and ELITE 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

“ELITE”

ELITE SOCCER,
a youth sports organization

By: _____

Its: _____

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