



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: January 15, 2019

Agenda Item	<u>let</u>
Approvals:	
City Manager	<u>[Signature]</u>
Dept. Head	<u>[Signature]</u>
Attorney	<u>[Signature]</u>
Finance	<u>[Signature]</u>

Department: Beaches, Parks and Recreation
Prepared By: Samantha Wylie, Recreation Manager

Subject: *APPROVAL OF SPORTS AND AQUATICS PARTNERSHIP AGREEMENTS.*

Fiscal Impact: Yes. The execution of these Agreements will result in the City subsidizing approximately \$812,853, annually, of sports field and pool rental fees.

Summary: Staff recommends that Council approve and authorize the Mayor to execute a Platinum Partnership Agreement with AYSO and San Clemente Little League for three years a Gold Sports Partnership Agreement with Elise Soccer League for two years and a Senior Aquatics Partnership Agreement with San Clemente Aquatics for three years.

Background: At its December 18, 2018 meeting, the City Council reviewed and authorized staff to draft four agreements for Recreation Partnership. The Council approved San Clemente Aquatics (SCA) for Senior Partnership for three years; American Youth Soccer Organization (AYSO) and San Clemente Little League (SCLL) for Platinum Sports Partnership for three years; and Elite Soccer League (ESL) for Gold Sports Partnership for two years.

Discussion: The attached Agreements provide guidelines and expectations for each organization's usage of City fields and/or facilities. Additionally, they outline the fee structure and discounts given based on the level of partnership received. Specific conditions may be set forth dependent on the type of activity or level of partnership.

Recommended

Action: STAFF RECOMMENDS THAT the City Council approve and authorize the Mayor to execute a

- 1.) Platinum Partnership Agreement(s) with AYSO and San Clemente Little League for three years;
- 2.) Gold Sports Partnership Agreement with Elise Soccer League for two years; and
- 3.) Senior Aquatics Partnership Agreement with San Clemente Aquatics for three years.

Attachments:

- 1.) AYSO Platinum Partnership Agreement
- 2.) Elite Soccer League Gold Partnership Agreement
- 3.) San Clemente Little League Platinum Partnership Agreement
- 4.) San Clemente Aquatics Senior Partnership Agreement

Notification: American Youth Soccer Organization
Elite Soccer League
San Clemente Little League
San Clemente Aquatics Team



**PLATINUM RECREATION SPORTS PARTNERSHIP AGREEMENT FOR
AMERICAN YOUTH SOCCER ORGANIZATION 111**

This PLATINUM PARTNERSHIP AGREEMENT is entered into this ____ day of _____, 20____ (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 incorporated in California ("AYSO") for a period of three (3) years starting on the Effective Date.

RECITALS:

WHEREAS 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.

WHEREAS AYSO is a private non-profit organization that has been involved in recreational soccer activities in San Clemente for the past 25 years. AYSO serves 1,600 children, aged four to nineteen years old. 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.

WHEREAS AYSO currently uses Vista Hermosa Sports Park, Forster Ranch, and Liberty Parks and desires to enter into this Platinum Partnership Agreement to establish a standard and schedule of athletic field usage to better serve its membership.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties AGREE as follow:

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 aware that it is the subject of any formal investigation by any government agency of the City, the County of Orange, the State of California, or the United States Government. AYSO shall immediately notify the City in

writing if it becomes aware that AYSO is the subject of any formal investigation by a government agency.

- 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, "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" for all levels of programming 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 program registration periods.
- 1.1.8. AYSO shall prohibit discrimination on the basis of race, religion, national origin, ethnicity, sexual orientation or gender. In order to promote a positive drug-free and child-friendly environment at City facilities, AYSO shall enforce a "zero tolerance" policy. Any AYSO officer, employee, agent, volunteer, or participant who is found to have abused alcohol, controlled substances (which have not been prescribed for the member), cannabis, or tobacco shall be prohibited from participating in AYSO activities.
- 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 make and retain copies of any documentation necessary to verify Program compliance with this Article 1.

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 delegated to the following division and staff position:

Recreation Division:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Supervisor (949) 361-8275

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. The following use fees for non-profit youth sports organizations are collected by the Recreation Division. Fees are subject to change based on City Council resolution. Organizations will be notified of any changes prior to any public meeting. Fees remain in effect and apply to AYSO Platinum Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Partner Fee
Neighborhood	\$40/hour	90% Discount	\$4/hour
Community	\$50/hour	90% Discount	\$5/hour
Sport	\$60/hour	90% Discount	\$6/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, 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 Ranch 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 Park (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 Styrofoam 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. Field Scheduling

Although community programs and community contract classes have priority, the City offers Platinum Partners the opportunity to schedule field space in two 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. 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 November 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. All parks close at 10:00pm. Should park gates at be 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). 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. Sport 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. Discounts do not apply to light fees.

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 custody and 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 Contributions to Field Maintenance

As a Platinum Partner to the City, AYSO shall assist with the stewardship and maintenance of sports fields.

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 provide for their own field equipment, 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 extent possible by utilizing weather reports and daily on-site field inspections. The City shall post closure signs on the fields, accordingly.

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 by AYSO participants or during their use by AYSO, including unauthorized alteration of a City park site.

12. Vehicle Access

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. AYSO shall prevent all materials or water related to clean up activities 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 Sheriff's 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 ("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 Platinum Partnership discount of 90% for 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.

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 liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance requirements 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. Flyers may not be left on parked vehicles at any City Park or facility.

16.2. Magazine/Website Space: The City will include contact information for AYSO once each quarter in the City's Recreation Magazine and on the City Website in the youth sports section. AYSO is responsible for submitting accurate information to the City prior to the 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.

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 or invite to the premises (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
- (vi) be written on an occurrence and not a claims made basis.

Original documents sent to:
City of San Clemente
Risk Management Office
910 Calle Negocio, San Clemente, CA 92673

One additional copy sent to:
Beaches, Parks and Recreation Department
100 Calle Seville, San Clemente, CA 92672

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 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's failure to follow the terms of this Agreement, the Municipal Code, and City 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 representatives will work with City 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.

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 this Agreement, the Municipal Code, or 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 may terminate this Agreement without cause by providing thirty (30) days' notice in writing.

18.10. San Clemente Municipal Code: Nothing in this Agreement shall limit the City's authority to enforce the San Clemente Municipal Code or otherwise take legal action under State law.

19. Term and Cooperation

19.1. The term of this agreement shall be three years 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 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.

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 N. Calle Seville
 San Clemente, CA 92672
 Attention: Recreation Manager

With a copy to: Best Best & Krieger
 18101 Von Karman, Suite 1000
 Irvine, CA 92612
 Attn: Scott Smith, City Attorney

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

With a copy to:

Attention: _____

[End – signature page follows]

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:
Best Best & Krieger LLP

Scott Smith, City Attorney

“AYSO”

AMERICAN YOUTH SOCCER
ORGANIZATION 111,
a youth sports organization

By: _____

Its: _____



**GOLD RECREATION SPORTS PARTNERSHIP AGREEMENT FOR
ELITE SOCCER LEAGUE**

This GOLD PARTNERSHIP AGREEMENT is entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and ELITE SOCCER LEAGUE, a youth sports organization incorporated in California ("ELITE") for a period of two (2) years starting on the Effective Date.

RECITALS:

WHEREAS 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.

WHEREAS ELITE is a private non-profit organization that has been involved in recreational soccer activities in San Clemente for the past 25 years. ELITE serves 522 children, aged four to sixteen years old. The ELITE soccer program (the "Program") is 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.

WHEREAS ELITE currently uses Vista Hermosa Sports Park, Forster Ranch, San Gorgonio and Liberty Parks and desires to enter into this Gold Partnership Agreement to establish a standard and schedule of athletic field usage to better serve its membership.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties AGREE as follow:

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 aware that it is the subject of any formal investigation by any government agency of the City, the County of Orange, the State of California, or the United States Government. ELITE shall immediately notify the City in writing if it becomes aware that ELITE is the subject of any formal investigation by a government agency.
- 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" for all levels of programming 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 program registration periods.
- 1.1.8. ELITE shall prohibit discrimination on the basis of race, religion, national origin, ethnicity, sexual orientation or gender. In order to promote a positive drug-free and child-friendly environment at City facilities, ELITE shall enforce a "zero tolerance" policy. Any ELITE officer, employee, agent, volunteer, or participant who is found to have abused alcohol, controlled substances (which have not been prescribed for the member), cannabis, or tobacco shall be prohibited from participating in ELITE activities.
- 1.1.9. ELITE supplies and shall continue to supply participant rosters annually to City. ELITE membership shall be comprised of no less than 80% San Clemente residents.

ELITE shall maintain all documentation necessary to demonstrate compliance with all of the above. City shall be permitted to inspect and make and retain copies of 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 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 delegated to the following division and staff position:

Recreation Division:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Supervisor (949) 361-8275

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. The following use fees for non-profit youth sports organizations are collected by the Recreation Division. Fees are subject to change based on City Council resolution. Organizations will be notified of any changes prior to any public meeting. Fees remain in effect and apply to ELITE Gold Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Partner Fee
Neighborhood	\$40/hour	70% Discount	\$12/hour
Community	\$50/hour	70% Discount	\$15/hour
Sport	\$60/hour	70% Discount	\$18/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

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 Styrofoam 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. Field Scheduling

Although community programs and community contract classes have priority, the City offers Gold Partners the opportunity to schedule field space in two 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. 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 November 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 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. All parks close at 10:00pm. Should park gates at be 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. Sport 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. Discounts do not apply to light fees.

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 custody and 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. 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 Contributions to Field Maintenance

As a Gold Partner to the City, ELITE shall assist with the stewardship and maintenance of sports fields.

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, 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. 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.

11.1. City will determine the appropriate amount of days for the field to remain closed to the extent possible by utilizing weather reports and daily on-site field inspections. The City shall post closure signs on the fields, accordingly.

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 by ELITE participants or during their use by ELITE, 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 Sheriff's 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 ("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 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 Gold Partnership discount of 70% for 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 liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance requirements 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. Flyers may not be left on parked vehicles at any City Park or facility.

16.2. Magazine/Website Space: The City will include contact information for AYSO once each quarter in the City's Recreation Magazine and on the City Website in the youth sports section. AYSO is responsible for submitting accurate information to the City prior to the 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 or invite to the premises (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:

- (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
910 Calle Negocio, San Clemente, CA 92673

One additional copy sent to:
Beaches, Parks and Recreation Department
100 Calle Seville, San Clemente, CA 92672

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 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 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's failure to follow the terms of this Agreement, the Municipal Code, and City 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 representatives will work with City 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 this Agreement, the Municipal Code, or 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.

18.9. Termination: City may terminate this Agreement without cause by providing thirty (30) days' notice in writing.

18.10. San Clemente Municipal Code: Nothing in this Agreement shall limit the City's authority to enforce the San Clemente Municipal Code or otherwise take legal action under State law.

19. Term and Cooperation

19.1. The term of this agreement shall be three years 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.

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.

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 N. Calle Seville
 San Clemente, CA 92672
 Attention: Recreation Manager

With a copy to: Best Best & Krieger
 18101 Von Karman, Suite 1000
 Irvine, CA 92612
 Attn: Scott Smith, City Attorney

If to ELITE: Elite Soccer
 1001 Avenida Pico, Suite C
 San Clemente, CA 92673
 Attention: Mike Affleck

With a copy to: _____

 Attention: _____

[End – signature page follows]

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:
Best Best & Krieger LLP**

Scott Smith, City Attorney

"ELITE"

**ELITE SOCCER,
a youth sports organization**

By: _____

Its: _____



**PLATINUM RECREATION SPORTS PARTNERSHIP AGREEMENT FOR
SAN CLEMENTE LITTLE LEAGUE**

This PLATINUM PARTNERSHIP AGREEMENT is entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and SAN CLEMENTE LITTLE LEAGUE, a youth sports organization incorporated in California ("SCLL") for a period of three (3) years starting on 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 1,100 children, aged four to eighteen years old in 2015. 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 Platinum 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.

1.1.2. SCLL is not aware that it is the subject of any formal investigation by any government agency of the City, the County of Orange, the State of California, or the United States Government. SCLL shall immediately notify the City in writing

if it becomes aware that SCLL is the subject of any formal investigation by a government agency.

- 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" for all levels of programming 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 program registration periods.
- 1.1.8. SCLL shall prohibit discrimination on the basis of race, religion, national origin, ethnicity, sexual orientation or gender. In order to promote a positive drug-free and child-friendly environment at City facilities, SCLL shall enforce a "zero tolerance" policy. Any SCLL officer, employee, agent, volunteer, or participant who is found to have abused alcohol, controlled substances (which have not been prescribed for the member), cannabis, or tobacco shall be prohibited from participating in SCLL activities.
- 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 make and retain copies of any documentation necessary to verify Program compliance with this Article 1.

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 delegated to the following division and staff position:

Recreation Division:

- Field Allocations, Applications, Billing, Insurance, Lights & Park Monitors, Conflicts: Recreation Supervisor (949) 361-8275

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. The following use fees for non-profit youth sports organizations are collected by the Recreation Division. Fees are subject to change based on City Council resolution. Organizations will be notified of any changes prior to any public meeting. Fees remain in effect and apply to SCLL Platinum Partnership:

Park/Rental Type	Hourly/Daily Fee	Discount	Partner Fee
Neighborhood	\$40/hour	90% Discount	\$4/hour
Community	\$50/hour	90% Discount	\$5/hour
Sport	\$60/hour	90% Discount	\$6/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, 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: Vista Bahia near snack bar building (one-10'x20'), San Gorgonio field 2 (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 10 x 20 and 3 smalls bins 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 for each key. SCLL is required to keep custody and 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 and 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 Styrofoam 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. Field Scheduling

Although community programs and community contract classes have priority, the City offers Platinum Partners the opportunity to schedule field space in three 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. 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 November for the January 1 through June 30 allocation period and by the first week of April for the July 1 through August 31 allocation period and by the first week July for the September 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.

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. Sport 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. Discounts do not apply to light fees.

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 custody and 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 Contributions to Field Maintenance

As a Platinum Partner to the City, SCLL shall assist with the stewardship and maintenance of sports fields.

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 extent possible by utilizing weather reports and daily on-site field inspections. The City shall post closure signs on the fields, accordingly.

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 by SCLL participants or during their use by SCLL, including unauthorized alteration of a City park site.

12. Vehicle Access

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 Sheriff's 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 ("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 Platinum Partnership discount of 90% 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.

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 liability insurance naming the City of San Clemente as additionally insured and meeting all requirements of section 17 below. Contact Risk Management for insurance requirements 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. Flyers may not be left on parked vehicles at any City Park or facility.

16.2. Magazine/Website Space: The City will include contact information for AYSO once each quarter in the City's Recreation Magazine and on the City Website in the youth sports section. AYSO is responsible for submitting accurate information to the City prior to the 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.

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 or invite to the premises (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
- (vi) be written on an occurrence and not a claims made basis.

Original documents sent to:
City of San Clemente
Risk Management Office
910 Calle Negocio, San Clemente, CA 92673

One additional copy sent to:
Beaches, Parks and Recreation Department
100 Calle Seville, San Clemente, CA 92672

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 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's failure to follow the terms of this Agreement, the Municipal Code, and City 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 representatives will work with City 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.

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 this Agreement, the Municipal Code, or 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 may terminate this Agreement without cause by providing thirty (30) days' notice in writing.

18.10. San Clemente Municipal Code: Nothing in this Agreement shall limit the City's authority to enforce the San Clemente Municipal Code or otherwise take legal action under State law.

19. Term and Cooperation

19.1. The term of this agreement shall be three years 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 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.

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 N Calle Seville
 San Clemente, CA 92672
 Attention: Recreation Manager

With a copy to: Best Best & Krieger
 18101 Von Karman, Suite 1000
 Irvine, CA 92612
 Attn: Scott Smith, City Attorney

If to SCLL:

San Clemente Little League
P.O. Box 84
San Clemente, CA 92674
Attention:

With a copy to:

Attention: _____

[End – signature page follows]

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:
Best Best & Krieger LLP

Scott Smith, City Attorney

“SCLL”

SAN CLEMENTE LITTLE LEAGUE,
a youth sports organization

By: _____

Its: _____



**SENIOR AQUATICS PARTNERSHIP AGREEMENT FOR
SAN CLEMENTE AQUATIC ASSOCIATION**

This SENIOR PARTNERSHIP AGREEMENT is entered into this ____ day of _____, 20____ (the "Effective Date"), by and between the CITY OF SAN CLEMENTE, a municipal corporation ("City") and THE SAN CLEMENTE AQUATIC ASSOCIATION, a youth sports organization incorporated in California ("SCA") for a period of three (3) years from starting on the Effective Date.

RECITALS:

WHEREAS the City owns and operates the San Clemente Aquatics Center at the Vista Hermosa Sports Park, which features a 50-meter competition pool and a 25-yard activity pool with play features, and the historic Ole Hanson Beach Club Municipal Pool.

WHEREAS SCA is a private non-profit organization that has been involved in competitive and non-competitive swimming activities in San Clemente for 35 years. San Clemente Aquatics currently serves 308 swimmers ranging from novice to Olympic Trials qualifiers.

WHEREAS SCA currently uses the 50-meter and 25-yard pools at the San Clemente Aquatics Center, and the 25-yard pool at the Ole Hanson Beach Club, and desires to enter into this Agreement to continue a program of pool usage to SCA members and City residents.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained, the parties AGREE as follow:

COVENANTS:

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

1. Program Requirements

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

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

1.1.2. SCA is not aware that it is the subject of any formal investigation by any government agency of the City, the County of Orange, the State of California, or the United States Government. SCA shall immediately notify the City in writing if it

becomes aware that SCA is the subject of any formal investigation by a government agency.

- 1.1.3. SCA shall carry Commercial General Liability insurance with limits no less than \$2,000,000 per occurrence, and \$4,000,000 annual aggregate, with an additional insured endorsements in favor of City, and approved by the city's risk manager. SCA'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. SCA shall remain able to demonstrate financial hardship if the discounts provided for by this Agreement are denied and SCA is required to pay regular rates for use of City amenities, pools, and/or facilities.
- 1.1.5. SCA 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. SCA 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 SCA activities. SCA shall operate on the philosophy that no child will be denied a chance to participate due to a financial hardship. SCA will be required to submit to CITY their financial reports outlining their scholarship distribution at the conclusion of the registration period.
- 1.1.7. SCA shall prohibit discrimination on the basis of race, religion, national origin, ethnicity, sexual orientation or gender. In order to promote a positive drug-free and child-friendly environment at City facilities, SCA shall enforce a "zero tolerance" policy. Any SCA officer, employee, agent, volunteer, or participant who is found to have abused alcohol, controlled substances (which have not been prescribed for the member), cannabis, or tobacco shall be prohibited from participating in SCA activities.
- 1.1.8. SCA supplies and shall continue to supply participant rosters annually to City. SCA membership shall be comprised of no less than 90% San Clemente residents.

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

2. SCA Representatives To City

2.1. SCA shall designate one official representative who shall be City's primary contact and who shall coordinate the program, pool space and overall agreement with the City. The SCA representative shall have authority to make decisions for SCA, sign applications with City on behalf of SCA for pool use, approve billing, and understand the pool operations regarding both

scheduling and maintenance, assist with SCA planning of pool allocations, and be responsible for resolving conflicts if/when they arise.

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

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

Recreation Division

- Pool Allocations, Applications, Billing, Insurance, Lights, Conflicts: Aquatics Supervisor, (949) 429-8865

3. San Clemente Aquatics Center Rental Rates

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

Pool Rental Fee. The fees noted below shall remain in effect during the entire term of this Agreement. The following use fees for non-profit youth sports organizations are collected by the Recreation Division. Fees are subject to change based on City Council resolution. Organizations will be notified of any changes prior to any public meeting. Fees remain in effect and apply to SCA Senior Partnership:

Facility Amenity	Standard Rental Rate	Discount	Discounted Rate
25-Yard Pool Lane	\$25.00/Hour/Lane	60%	\$10.00/Hour
50-Meter Pool Lane	\$53.13/Hour/Lane	60%	\$21.25/Hour
Meeting Room	\$150.00/Hour	70%	\$45.00/Hour
Grass Event Space	\$200.00/Hour	70%	\$60.00/Hour
Swim Meets	\$400.00/Hour	50% Peak (Jun –Aug) 70% Off-Peak	\$120.00/Hour \$200.00/Hour
Lifeguard Fee	\$13.00/Hour/Lifeguard	None	----

4. Aquatics Center Storage and Office Space

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

4.1. A designated storage space will be provided for SCA at the San Clemente Aquatic Center to store their supplies behind the bleachers located on the west deck of the 50-meter pool. SCA is not permitted to store any food, equipment or other belongings at the Aquatics Center without prior City approval.

4.2. A designated storage space for one plastic storage shelving unit will be provided for SCA in the Ole Hanson Beach Club storage room to store their supplies at the Ole Hanson

Beach Club. SCA is not permitted to store any food, equipment or other belongings at the Beach Club without prior City approval

4.3. SCA will put away equipment on a daily basis, keeping storage areas free of scattered supplies, reducing risks for outdoor pests or potential theft.

4.4. Misuse or failure to abide the preceding standards of the provided storage areas may result in the revocation of any designated space.

5. Lane Allocation and Scheduling

Although community programs and community contract classes have priority, SCA shall be able to reserve pool space at the San Clemente Aquatic Center in the 50-meter pool and pool space in the 25-yard pool and at the Ole Hanson Beach Club in a maximum of four lanes in the 25-yard pool and pool space in the teaching pool, for practices Monday through Saturday. City and SCA representatives will meet on a quarterly basis to determine Aquatics Center rentals. Rentals of the San Clemente Aquatics Center include lane allocations, private coaching, room rentals, swim meets, grass space and special events. SCA's representative shall provide a written request of rentals one to three months in advance to assist City in determining a Master Aquatics Center Calendar. SCA shall request any changes or additions to their rental permit two (2) weeks in advance of the date of change. These changes will be used to finalize the monthly billing. If the changes are significant, the notice should be given 4 weeks prior to allow for the management of staffing, lane availability, and other conflicts. This includes use of the pool for inter-squad meets.

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

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

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

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

5.5. SCA will not be allocated pool time for private swim lessons. This is a direct conflict with City programming and City policy prohibiting private instruction without an agreement with the City.

6. Use of Colorado Timing Equipment

6.1. SCA may utilize City's Colorado Timing System. The SCA representative shall sign a City approved release/waiver agreement holding SCA responsible for the equipment. The

release is required each time the equipment is checked out and used. When use is complete, City staff will examine the equipment. Any damage to the equipment during SCA's use will be the responsibility of SCA. Only trained SCA representatives and City staff may use the Colorado Timing System equipment.

7. SCA Provision of Lifeguards

7.1 The City provides City lifeguards at all time when SCA members are in the pool. SCA practices shall be held at times when City lifeguards are available and on duty. For SCA swim meets, rentals, and practice times that occur outside of regular facility operating hours Lifeguard Fees will apply. One lifeguard is included in the rental fee. Additional lifeguards are billed at the current rate, \$13.00 per hour per guard at this time. One lifeguard is required for every 25 attendees. Example: 1-25 (1 guard); 26-50 (2 guards); etc. Number of attendees include non-swimming guests on pool deck.

8. Pool Supplies and Standards

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

8.2. The SCA coaches, and representatives will communicate any issues with City pool or deck equipment. When/If items are damaged, or in poor repair, it is the responsibility of the coach that day to ensure the SCA participants are not in the water until City approves it is safe to do so.

8.3. 50-Meter Pool Competition Guidelines

- (i) City will attempt to maintain, but has no obligation to maintain, a water temperature between 78–82 degrees Fahrenheit (25.5–27.5 degrees Celsius) during swim meets.
- (ii) City will remove and secure diving boards that not in use.

9. Pool Closure Procedures

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

9.1. Closure signs shall be posted at the Aquatics Center.

9.2. Any Aquatics Center closure in excess of one week will be posted on City's official website: www.san-clemente.org.

9.3. City will contact the SCA representative by phone and/or email to notify SCA of the closure.

9.4. SCA will be responsible to contact their coaches and participants to notify them of the closure.

9.5. SCA agrees to reimburse City for any and all maintenance costs directly attributed to damage of the Aquatics Center or any City equipment, including unauthorized alteration of a City site, caused by SCA, any SCA member, and/or SCA invitee.

9.6. City will credit SCA lane space for pool closures that are not the fault of SCA.

10. Pool and Park Clean Up

SCA shall clean up pools, restrooms, locker rooms, and associated areas in proximity of the pool after each use by SCA. This includes litter left behind from fans in the bleachers, or snack concession stand areas. The City will provide adequate trash containers.

10.1. When cleaning up after an event, SCA shall prevent cleaning materials, trash, sediment, cleaning chemicals, and runoff from entering the storm drain system (i.e. street gutters or catch basins).

11. Concessions

11.1. SCA may only sell food products to the program participants and fans during the scheduled swim meet dates with City approval. City requests a site plan for area food sales, and will require that food not be brought into the pool. All clean up is the responsibility of SCA, including litter associated with the concession packaging, spills or food on the deck, and excess piling in trash cans.

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

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

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

12. Crowd Control

It is the responsibility of SCA to keep registered participants and their fans from engaging in un-sportsmanlike conduct, such as fighting, or rude and abusive verbal confrontations. If pool

representatives or game officials of the league cannot control the situation, SCA should contact Orange County Sheriffs Department for assistance.

13. Swim Meet and Rental Conditions

13.1 SCA shall be permitted to host swim meets after first having obtained City approval of each such event. SCA shall file an application on a City approved form to hold a swim meet no less than twelve (12) weeks in advance of the proposed date. City's Recreation Division will review and coordinate the appropriate meet and rental permits and services, such as planning for additional staffing, overflow parking and sound permits. SCA will be required to submit pool and deck site plans, requests for equipment, activity timeline, number of participants expected, times for load in and any other requests of staff to ensure a smooth operation.

13.2 SCA will make their best effort to host these meets during non-peak times (September-May).

14. General Conditions for Special Events and Swim Meets

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

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

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

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

15. Team Promotions

15.1. Trophy Case: City staff shall allocate space in the trophy case at the San Clemente Aquatics Center. Space will be provided to SCA to promote their program and showcase participant awards. All displays and space allocations shall require approval by City staff in its sole discretion.

15.2. Magazine/Web Space: City will list SCA once each quarter in the City's Recreation Magazine and on the City Website in the youth sports section. SCA is responsible for submitting accurate information to the City prior to the publishing schedule.

15.3. Printed Materials: Except as provided above, SCA will be responsible for all printed promotional materials. City does not provide for copying of flyers, posters, registration packets or

any other printed materials. SCA is encouraged to use the designated City brochure racks located at the Community Center and San Clemente Aquatics Center. Flyers may not be placed on parked vehicles at any City parks or facilities.

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

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

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

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

16. SCA Contributions to Pool Maintenance

As a Senior Partner to the City, SCA shall assist with the stewardship and maintenance of pools.

16.1. SCA shall obtain prior written consent of City to make any alterations, additions, or improvements to City pools including routine pool maintenance and preparations. SCA understands that any other such alterations, additions, or improvements must comply with all state and local standards.

17. Indemnification and Insurance

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

obligation to defend, hold harmless and indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused by the sole and active negligence or willful misconduct of such Indemnitee.

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

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

Original documents sent to:
City of San Clemente
Risk Management Office
910 Calle Negocio, San Clemente, CA 92673

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

18. Violation Warning Procedure and Disciplinary Policy

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

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

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

18.4. Outcome: SCA shall regularly communicate with SCA members to educate participants, coaches and parents to become increasingly more responsible working within the Municipal Code and pool rules, and user agreements, especially where traffic, noise, parking, trash and issues are concerned. By enhancing communication all parties involved will benefit.

18.5. Violations: City shall document violations resulting from SCA's failure to follow the terms of this Agreement, the Municipal Code, and City Department policies and procedures.

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

18.7. Proposed Resolution and Timeline: SCA's representatives will work with staff to propose a resolution and define the timeline in which the issue will be resolved. This information will be confirmed in writing to both the SCA's representative and President. If SCA fails to take the necessary actions to resolve the issue as agreed upon between the parties, City may resolve the issue and charge SCA for any manpower and/or equipment used to resolve the issue. SCA shall bear all costs and expenses 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 SCA.

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

monitor activity at the pools and to report further violations to City. This may be appealed to the Beaches, Parks and Recreation Department Director.

- (iii) Third Warning: 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 may terminate this Agreement without cause by providing thirty (30) days' notice in writing.

18.10. San Clemente Municipal Code: Nothing in this Agreement shall limit the City's authority to enforce the San Clemente Municipal Code or otherwise take legal action under State law.

19. Term and Cooperation

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

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

20. Miscellaneous

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

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

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

employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

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

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

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

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 N. Calle Seville
 San Clemente, CA 92672
 Attention: Recreation Manager

With a copy to: Best Best & Krieger
 18101 Von Karman, Suite 1000
 Irvine, CA 92612
 Attn: Scott Smith, City Attorney

If to SCA: San Clemente Aquatics

 Attention: _____

With a copy to: _____

 Attention: _____

[End – signature page follows]

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

“CITY”

CITY OF SAN CLEMENTE,
a municipal corporation

By: _____

Its: _____

ATTEST:

City Clerk of the City of
San Clemente, California

APPROVED AS TO FORM:
Best Best & Krieger LLP

Scott Smith, City Attorney

“SCA”

SAN CLEMENTE AQUATICS
a youth sports organization

By: _____

Its: _____