



AGENDA REPORT

CITY OF SAN CLEMENTE

CITY COUNCIL MEETING

910 Calle Negocio
2nd Floor
San Clemente, California
www.san-clemente.org

Meeting Date: May 21, 2024

Agenda Item: 11H

Submitted By: Beaches, Parks and Recreation

Prepared By: Samantha Wylie, Beaches, Parks & Recreation Director

Subject:

REQUEST FOR SPECIAL EVENT PARTNERSHIP AGREEMENT WITH THE HAWAIIAN SURF CLUB OF SAN ONOFRE FOR THE ANNUAL POLYNESIAN FESTIVAL

Fiscal Impact:

Approving a partnership agreement will result in the waiver of facility rental fees, estimated at \$2,175. Fees to be waived include facility rental fees, amplified sound fee (flat rate), and reserved parking space fees. The event application fee and refundable facility deposit are not recommended for waiver.

Summary:

The Hawaiian Surf Club of San Onofre (the "Surf Club"), a not-for-profit 501(c)(3) organization, has hosted its annual Polynesian Festival and Luau at the Community Center for over 30 years. The event was established as an opportunity "to perpetuate the spirit of Hawai'i" while contributing to the Surfing Heritage and Cultural Center and the Surfrider Foundation. The annual Festival features arts and crafts vendors, a Woody car show, a Hawaiian-style lunch plate, live music, and Polynesian and hula dance exhibitions and performances throughout the day.

Based on the findings of Policy No 204-1 (Attachment 2), staff and the Beaches, Parks and Recreation Commission recommend that the City Council approve a partnership agreement fee waiver of all rental fees, not to exceed \$2,175 annually, associated with the annual Polynesian Festival and Luau hosted by the Surf Club. The Surf Club has received two fee waivers for its events in 2022 and 2023, making them eligible to apply for partnership status (Attachment 3).

The purpose of this partnership agreement is to formalize the relationship between the City and the San Clemente Surf Club, including the waiver of all fees associated with the special event. Staff further recommends entering into an Agreement for an initial three-year term with the option to extend for one additional two-year term (Attachment 4). This would make the Agreement applicable for up to five years.

Background:

A Partnership Policy was adopted by the City Council to encourage and promote activities, facility rentals, and special events/programs on a year-round basis that provide valuable cultural, recreational, and civic benefits to residents, visitors, and businesses of San Clemente. The process to become a Partner requires a minimum of two fee waiver requests for the activity, facility rental, or special event within two years. Over the two years, the City reviews the success of the program before formalizing a Partnership. The primary criterion to qualify for a fee waiver under the policy is that the organization be a non-profit civic or social organization, and all

revenue generated by the event largely benefits the residents, visitors, and businesses of San Clemente.

Council Options:

- Adopt Resolution 24-77, which will approve a Partnership Agreement with the Hawaiian Surf Club of San Onofre to host its annual Polynesian Festival event at the Community Center.
- Modify the Resolution by (a) increasing the waiver amount, or (b) decreasing the waiver amount or services provided.
- Continue the item with directions to staff for additional information.

Environmental Review/Analysis:

This is not a project pursuant to California Environmental Quality Guidelines Section 15378 (14 CCR § 15378). The action of waiving fees has no potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.

Recommended Actions:

Staff Recommendation

Staff and the Beaches, Parks & Recreation Commission recommend the City Council adopt Resolution No. 24-77, which will approve and authorize the City Manager to execute a Partnership Agreement with the Hawaiian Surf Club of San Onofre for the waiver of all rental fees, not to exceed \$2,175 annually.

Attachment:

1. Resolution No. 24-77
2. Policy 204-1, Partnership of Activities, Facility Rentals and Special Events
3. Hawaiian Surf Club of San Onofre Club Application for Partnership
4. Partnership Agreement – Polynesian Festival Draft

Notification:

Hawaiian Surf Club of San Onofre

RESOLUTION NO. 24-77

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
SAN CLEMENTE, CALIFORNIA, APPROVING A SPECIAL
EVENT PARTNERSHIP WITH THE HAWAIIAN SURF CLUB
OF SAN ONOFRE

WHEREAS, the Hawaiian Surf Club of San Onofre (the “Surf Club”), a not-for-profit 501(c)(3) organization, has hosted its annual Polynesian Festival and Luau at the Community Center for over 30 years; and

WHEREAS, the event was established as an opportunity “to perpetuate the spirit of Hawai’i” while contributing to the Surfing Heritage and Cultural Center and the Surfrider Foundation; and

WHEREAS, the City Council has established Policy No. 204-1 which encourages partnership with not-for-profit organizations to promote activities, facility rentals, and special events/programs on a year-round basis that provide valuable cultural, recreational, and civic benefits to residents, visitors, and businesses of San Clemente. The Policy requires a minimum of two fee waiver requests for the activity, facility rental, or special event within two years prior to formalizing the partnership; and

WHEREAS, the Surf Club received two fee waivers in 2022 and 2023, therefore qualifying the organization for a partnership agreement.

NOW, THEREFORE, the City Council of the City of San Clemente does hereby resolve as follows:

Section 1. A Partnership Agreement (“Partnership”) is approved by and between the Surf Club and the City of San Clemente. Through this Partnership, the Surf Club is permitted to host its annual Polynesian Festival and Luau at the San Clemente Community Center, located at 100 N. Calle Seville, for one day per year. It is authorized to hold the activity with all fees waived that are associated with the facility rental portion of the permit, not to exceed \$2,175 annually. Certain fees are not waived, including the compliance damage deposit and event application fee.

Section 2. The Surf Club is required to apply for a Special Event Permit (“SEP”) annually. The SEP process may impose further restrictions on the event as outlined in Chapter 12.34 of the San Clemente Municipal Code or as considered necessary for the safety and health of the public.

Section 3. The Partnership shall remain in effect for an initial term of three years with an option to extend for one additional one-year term. In approving this Partnership, the City Council reserves the right to recall the Agreement at any time, including the review of fees waived.

Section 4. The City Manager is authorized and directed to execute the Partnership in a form substantially similar to that presented to the City Council on May 21, 2024.

Section 5. The City Clerk shall certify the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED AND ADOPTED this _____ day of _____, _____.

ATTEST:

City Clerk of the City of
San Clemente, California

Mayor of the City of San
Clemente, California

STATE OF CALIFORNIA)
COUNTY OF ORANGE) §
CITY OF SAN CLEMENTE)

I, LAURA CAMPAGNOLO, City Clerk of the City of San Clemente, California, do hereby certify that Resolution No. 24-77 was adopted at a regular meeting of the City Council of the City of San Clemente held on the _____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

CITY CLERK of the City of
San Clemente, California

Approved as to form:

Elizabeth A. Mitchell, City Attorney

POLICY AND PROCEDURE

Subject: Partnership of Activities, Facility Rentals and Special Events	Index: Financial Services
	Number: 204-1
Effective Date: May 20, 1999	Prepared By: Beaches, Parks and Recreation
Supersedes: 204-1, dated 3/15/95	Approved By:

1.0 **PURPOSE:**

It is the purpose of this policy to define criteria and procedure for the Partnership activities, facility rentals and special events in the City including provisions for in-kind services and financial support.

2.0 **ORGANIZATIONS AFFECTED:**

All city departments

3.0 **REFERENCES:**

San Clemente Municipal Code Chapter 29B

4.0 **POLICY:**

4.1 It is the desire of the City of San Clemente to encourage and promote activities, facility rentals and special events on a year round basis within the city limits that provide valuable cultural, recreational and civic benefits to the residents, visitors and businesses of the community. In order to create an atmosphere of partnership between the City, the activity, facility rental and special event organizations, this policy and procedure is designed to provide consistent criteria to evaluate activities, facility rentals, special event partnerships and financial support requests.

4.2 Partnership is utilized to provide support services to an organization that is presenting an activity, facility rental or special event. Support services provided through the City include but are not limited to the following:

1. Facility rental/related special fees
2. Site preparation and maintenance
3. Parking/traffic control

4. Program security
5. Program coordination/facility supervision
6. Site inspection
7. Event insurance

4.3 General City Administrative Support Services are not available for allocation including but not limited to: data processing, word processing, printing, purchasing/clerical support and legal services.

4.4 Partnership funding levels are based upon estimates of the direct staff, equipment or rental facility costs associated with providing City services for the program. Related processing administrative overhead charges will not be included in the pricing procedure.

4.5 The organization and program must meet and comply with the following established funding guidelines to be eligible for Partnership.

4.5.1 Guidelines for Partnership:

City Council may waive any of the following guidelines at their discretion.

- a. Be registered with the State of California as a not-for-profit community organization, exempt under Section 501 (c) (3) of the Internal Revenue Code, or for new organizations, be registered at the time the City Council approves the Partnership request.
- b. Adhere to the stated policies of the City of San Clemente.
- c. Provide the City of San Clemente with a copy of current constitution/by-laws and policies/procedures if so requested by the City.
- d. Carry adequate public liability insurance naming the City of San Clemente as additional insured if so required by the City.
- e. Not discriminate in employment or in customers served because of race, religion, national origin, or sex.
- f. Provide access for activity/facility rental/special event review by City representatives for purposes of monitoring the program.
- g. Provide a financial accounting and narrative report in writing evaluating the activity/facility rental/special event if so requested by the City.

4.6 The Parks and Recreation Commission shall utilize the following criteria to make recommendations to City Council regarding Partnership requests. Please note that under the Special Events Ordinance, San Clemente Municipal Code Chapter 29B, Protected Free Speech Special Events shall automatically be granted a waiver of fees, without City Partnership, upon showing the City Manager that the fee requirements create a material financial hardship.

4.6.1 Guidelines: Partnership Qualifications:

City Council may waive any of the following guidelines at their discretion.

- a. The organization requesting Partnership is a not-for-profit civic or social organization, exempt under Section 501 (c) (3) of the Internal Revenue Code, committed to enhancing the quality of life of San Clemente residents, visitors and businesses.
- b. The activity/facility rental/special event provides valuable cultural, recreational and civic benefits to the residents, visitors and businesses of the community.
- c. The revenue generated by the activity/facility rental/special event largely or entirely benefits the residents, visitors and businesses of San Clemente to such an extent that the Partnership is justified.
- d. The payment of the fees or costs associated with the activity/facility rental/special event create a financial hardship on the organization and/or persons sponsoring the program.
- e. The organization requesting Partnership demonstrates its ability to generate financial and human resources from other sources. . .
- f. The activity/facility rental/special event is held primarily within San Clemente city limits or can be
- g. The organization requesting partnership agrees that if its events will involve the sale or service of alcoholic beverages, all persons selling or serving such alcoholic beverages will have attended a responsible beverage service training class prior to the occurrence of the event or, if such a class is not available prior to the date on which the event is to occur that, prior to the event, all persons who will be selling or serving alcoholic beverages will have obtained the Responsible Beverage Service Training Manual from the City, will have reviewed the manual, taken and passed the Special Event Alcohol Serving quiz incorporated into the manual, signed the Responsible Alcohol Service Agreement and returned all of the above to the City prior the Event.

5.0 **DEFINITIONS:**

- 5.1 Activity: Any organized program that is not encompassed in the definitions for special event or facility rental provided below.
- 5.2 Facility Rental: An organization that utilizes a City of San Clemente building or park for the sole purpose of implementing a organized program. Under this definition, the facility rental will not partially occur or impact public right-of-way.
- 5.3 Partnership: An association created between the City of San Clemente and another organization for the specific purpose of implementing an activity, facility rental or special event. The Partnership may allocate specific responsibilities for the implementation of the program to each partner.
- 5.4 Special Event: Any organized activity within the City that lasts for either 45 consecutive days or less, or 14 non-consecutive days or less in a year. Special events include, but are not limited to, amusement attractions, athletic events, concerts, exhibitions, fairs, fund raising events, parades, surfing contests and carnivals. It does not include construction projects, funerals or other activities which do not partially occur or impact upon the public right-of-way, nor attract more than 20 people during any given 24-hour period. As defined by the Special Event Ordinance, special events fall within two categories: "Commercial Special Event" and "Non-Commercial Special Event". Although the ordinance utilizes these terms for technical legal reasons, they are likely to be misinterpreted by most people. In order to avoid this potential problem, staff shall use the name "Regular Special Event" to identify a "Commercial Special Event" and "Protected Free Speech Special Event" to identify a "Non-Commercial Special Event", as defined below.
- 5.4.1 Protected Free Speech Special Events (Non-Commercial Special Event): A protected Free Speech Special Event is an event whose principal or primary purpose is the dissemination of political, philosophical, or social views. This includes fund raising activities for non-profit organizations which enable such organizations to disseminate their views. The United States Supreme Court has said that "because charitable solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political or social issues,...it must be treated as fully protected activity under the First Amendment." Examples of Protected Free Speech Special Events include demonstrations and similar types of parades or marches, the sale of products by a group or organization when such products contain a political, philosophical, social or religious message; and prayer groups.

5.4.2 Regular Special Events (Commercial Special Event): Regular Special Events involve the vast majority of the special events, including most of those listed above under 5.4 involving profit and non-profit organizations.

6.0 **PROCEDURE:**

6.1 **Requests for Partnership of Activities, Facility Rentals or Special Events**

6.1.1 All requests for Partnership activities, facility rentals or special events shall be submitted to the Beaches, Parks and Recreation Department for review a minimum of 90 days prior to the proposed activity, facility rental or special event. After initial review by the Department, a report on the request shall be forwarded to the Parks and Recreation Commission for consideration.

6.1.2 The Parks and Recreation Commission shall make a recommendation to City Council either approving the requested activity, facility rental or special event and associated adjustment or waiver in fees/services or deny said activity, facility rental or special event. Requests for Partnership are not to be considered in the first year the activity, facility rental or special event is held. However, it is important for the Parks and Recreation Commission to know that the sponsoring organization is interested in a future Partnership with the City. Based upon approval of the activity, facility rental or special event by City Council, said activity, facility rental or special event may be implemented by the sponsoring organization.

6.1.3 The sponsoring organization shall be required to re-apply for Partnership of their activity, facility rental or special event in the second year. Once again, the request shall be submitted to the Beaches, Parks and Recreation Department 90 days prior to the proposed activity, facility rental or special event. After initial review by the Department, a report on the request shall be forwarded to the Parks and Recreation Commission for consideration. The Commission shall review the activity, facility rental or special event based upon the experience of the prior year and make a recommendation to City Council approving or denying the activity, facility rental or special event. At this time, the Commission has the option to recommend City Council approval of a tentative Partnership between the event organizer and the City based upon satisfactory performance of the activity, facility rental or special event in the second year.

6.1.4 At the next regularly scheduled Parks and Recreation Commission meeting after completion of the approved activity, facility rental or special event in its second year, any member of the Parks and Recreation Commission may request that the activity or special event be placed on the next Commission agenda for review. If no commission member requests said review, the

activity, facility rental or special event shall automatically be accepted as a Partnership activity, facility rental or special event.

6.1.5 Upon acceptance of an activity, facility rental or special event as a Partnership, the activity, facility rental or special event no longer requires Parks and Recreation Commission review or City Council approval on a year to year basis. In addition, all responsibilities required of the organization and the City, including adjustment or waiver of fees/services, that were approved by City Council in the prior year shall become a part of the Partnership and automatically be authorized on a year to year basis. This Partnership shall remain in effect unless the purpose of the activity, facility rental or special event substantially changes or the sponsoring organization requests a change in the responsibilities or fees/services provided by the City.

6.1.6 The Parks and Recreation Commission or City Council shall have the authority to request a review of any Partnership activity, facility rental or special event at any time. City Council may discontinue support of a Partnership activity, facility rental or special event at any time and the Parks and Recreation Commission may recommend that City Council discontinue support at any time.

6.2 Existing Co-Sponsorship Activities, Facility Rentals or Special Events

6.2.1 All City Council approved co-sponsored activities, facility rentals and special events in existence prior to January 1, 1995, shall be grandfathered in as City Partnership activities, facility rentals or special events at the current City Council approved level of support (associated responsibilities and adjustment or waiver of fees/services). These Partnership activities, facility rentals and special events shall be subject to all of the requirements of this Partnership of Activities, Facilities and Special Events Policy and Procedure.

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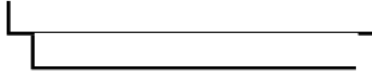
CITY OF SAN CLEMENTE APPLICATION REQUEST FOR PARTNERSHIP OF ACTIVITIES, FACILITY RENTALS, & EVENTS

PLEASE SUBMIT COMPLETED APPLICATION AT LEAST 90 DAYS IN ADVANCE OF EVENT

APPLICANT INFORMATION	
Name of Program:	Polynesian Festival
Organization Name:	Hawaiiina Surf Club of San Onofre
Contact Name/Title:	Kim Bryant/Treasurer
Address:	_____
Email:	_____
Primary Ph:	_____
Secondary Ph:	_____ (Dan O'Dowd)
GENERAL PROGRAM INFORMATION	
Has this program/organization requested or received partnership status from the city in the past?	<input checked="" type="checkbox"/> YES, SEE BELOW <input type="checkbox"/> NO
If yes, identify all specific of past partnership:	The Hawaiian Surf Club of San Onofre requested partnership with the city in 2019
Has this program/activity occurred at least two (2) times with an approved fee waiver by city council?	<input checked="" type="checkbox"/> YES, SEE BELOW <input type="checkbox"/> NO
If yes, provide dates of past events:	_____
Date(s) of program:	05/25/19, 09/25/21, 05/28/22, 05/27/23
Time(s) of program:	10:00 AM - 5:00 PM
Description Of Program: (attach extra pages as needed)	See Attached
Summarize the objectives of the program in terms of service/benefit to the community, its residents, visitors and businesses (attach extra pages as needed):	
See Attached	

Estimated Attendance:		
Provide percentage estimates of ages of persons attending the program:		
0-12 Years: 25 % 13-21 Years: 25 % 22-40 Years: 25 % 40+ Years: 25 %		
Is this a fundraiser?	<input checked="" type="checkbox"/> YES, SEE BELOW <input type="checkbox"/> NO	
If yes, what is the intended use of the revenue?	See attached	
General Budget Overview (itemized budget must be attached)	Total Expenses	Total Revenue
	12,291.00	16,500.00
CITY SERVICE REQUESTS (CHECK ALL THAT APPLY)		
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Facility rental fees	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Fencing/barricades	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Posting signs/banners	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Street closure	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Reserved parking	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Traffic control	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Dumpsters	
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Police services	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Electrical	
<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Water	
Please list all other requests that may not be included in the information above:		
SIGNATURE & ACCEPTANCE		
PRINTED NAME	SIGNATURE	DATE
PLEASE INCLUDE THE FOLLOWING ITEMS WITH YOUR FINAL SUBMISSION:		
<ul style="list-style-type: none"> ○ Not-for-profit tax exemption certificate from the State of California ○ Names/Addresses of Board of Directors ○ Itemized budget for the event/activity 		

Please submit this application to the Recreation Division by email at recreation@san-clemente.org or mail to 100 N. Calle Seville, San Clemente 92672. For questions, contact Recreation at (949) 361-8264.



This will be the 33rd Hawaiian Surf Club of San Onofre's Polynesian Festival. The purpose of our festival is to introduce the public to the culture and traditions of Hawai'i.

The daytime festival starts at 10:00 AM and ends at 5:00PM. There will be music, Hawaiian dance groups (hulau's) from the very young to the very old, and vendors selling hand made crafts, and clothing. We also serve a delicious plate lunch of chicken teriyaki, rice and salad. The daytime festival is open to the public free of charge and usually a large crowd sets up their chairs and blankets on the grass to watch the entertainment.

Our purpose as a nonprofit is to educate perpetuate and share Hawai'i and its culture, traditions, and values representing the Aloha spirit, mutual respect, family, dance, music, surfing, and ocean conservation. We achieve that in part by putting on our annual Polynesian Festival. Additional funds are earmarked for the support of the Surfing Heritage & Cultural Center, our annual "Clean the Beach" program, and the Surfrider Foundation for the protection of the oceans, waves and beaches.

Date of this notice: 08-24-2017

Employer Identification Number:
82-2586725

Form: SS-4

Number of this notice: CP 575 E

HAWAIIAN SURF CLUB OF SAN ONOFRE
% KIM BRYANT
3990 HIGHLAND DR
CARLSBAD, CA 92008

For assistance you may call us at:
1-800-829-4933

IF YOU WRITE, ATTACH THE
STUB AT THE END OF THIS NOTICE.

WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER

Thank you for applying for an Employer Identification Number (EIN). We assigned you EIN 82-2586725. This EIN will identify you, your business accounts, tax returns, and documents, even if you have no employees. Please keep this notice in your permanent records.

When filing tax documents, payments, and related correspondence, it is very important that you use your EIN and complete name and address exactly as shown above. Any variation may cause a delay in processing, result in incorrect information in your account, or even cause you to be assigned more than one EIN. If the information is not correct as shown above, please make the correction using the attached tear-off stub and return it to us.

When you submitted your application for an EIN, you checked the box indicating you are a non-profit organization. Assigning an EIN does not grant tax-exempt status to non-profit organizations. Publication 557, Tax-Exempt Status for Your Organization, has details on the application process, as well as information on returns you may need to file. To apply for recognition of tax-exempt status under Internal Revenue Code Section 501(c)(3), organizations must complete a Form 1023-series application for recognition. All other entities should file Form 1024 if they want to request recognition under Section 501(a).

Nearly all organizations claiming tax-exempt status must file a Form 990-series annual information return (Form 990, 990-EZ, or 990-PF) or notice (Form 990-N) beginning with the year they legally form, even if they have not yet applied for or received recognition of tax-exempt status.

Unless a filing exception applies to you (search www.irs.gov for Annual Exempt Organization Return: Who Must File), you will lose your tax-exempt status if you fail to file a required return or notice for three consecutive years. We start calculating this three-year period from the tax year we assigned the EIN to you. If that first tax year isn't a full twelve months, you're still responsible for submitting a return for that year. If you didn't legally form in the same tax year in which you obtained your EIN, contact us at the phone number or address listed at the top of this letter.

For the most current information on your filing requirements and other important information, visit www.irs.gov/charities.

**Hawaiian Surf Club of San Onofre
Board of Directors**

Kalani Akui

San Clemente, CA 92672

Isaia Fa'alafua

San Clemente, CA 92672

Ken Shue

San Clemente, CA 92672

Paul Straugh

San Clemente, CA 92672

Edmond Escandon

San Clemente, CA 92672

Loren Grier

San Clemente, CA 92672

Dan O'Dowd

San Clemente, CA 92672



**PARTNERSHIP AGREEMENT
FOR HAWAIIAN SURF CLUB OF SAN ONOFRE**

THIS PARTNERSHIP AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2024 (the “Effective Date”), by and between the CITY OF SAN CLEMENTE, a municipal corporation (“City”) and HAWAIIAN SURF CLUB OF SAN ONOFRE, a California not-for-profit corporation (the “Surf Club”).

R E C I T A L S:

WHEREAS, the City desires to encourage and promote activities that provide cultural and recreational benefits by partnering with local not-for-profit organizations; and

WHEREAS, the Hawaiian Surf Club of San Onofre (the “Surf Club”) is a not-for-profit 501(c)(3) organization and has hosted its annual Polynesian Festival and Luau at the Community Center for over 30 years; and

WHEREAS, the event was established as an opportunity “to perpetuate the spirit of Hawai’i” while contributing to the Surfing Heritage and Cultural Center and the Surfrider Foundation.

C O V E N A N T S:

Based on the foregoing Recitals, which are incorporated herein by this reference, and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by both parties, City and Surf Club hereby agree as follows:

1. **Purpose.** The purpose of this Agreement is to establish the terms and conditions under which the Surf Club will host the Polynesian Festival and Luau (the “Event”) annually. The Surf Club will utilize the Community Center, located at 100 N. Calle Seville, San Clemente, CA 92672 for the Event.
2. **Term.** The term of this Agreement shall be three (3) years plus one (1) possible two-year extension from the Effective Date, which shall be the date that the City Manager executes this Agreement. Extensions shall be executed conjointly without lapse should both parties mutually agree to continue the Agreement.

This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice, which notice shall be delivered by email and by certified mail to the address listed below.

3. **Responsibilities of Surf Club.** The Surf Club shall be responsible for the following components of the activity:
 - 3.1. Schedule of activities. Surf Club shall submit a Special Event Permit Application, annually, to the Beaches, Parks and Recreation Department to reserve the facilities required to host the Event;

- 3.2. **Duties.** Surf Club shall abide by all established rental policies and shall inform its volunteers, agents, and participants of all policies and require compliance therewith; and
- 3.3. **Equipment.** Surf Club shall provide its volunteers and participants with any necessary equipment to organize all components of the Event. Equipment may include, but is not limited to, sound systems, staging, tables, chairs, tents, dance floors, and linens.
- 3.4. **Compliance with Laws.** Surf Club shall comply with all applicable federal, state and local laws and inform and require that its volunteers, agents, and participants do the same.
4. **Responsibilities of CITY.** The City shall be responsible for the following components of the activity:
- 4.1. Waive all fees associated with the rental of the Community Center Grounds and Ole Hanson Fireside Room, not to exceed \$2,175 annually.
5. **General Provisions.**
- 5.1. **Amendments.** Either party may request changes to this Agreement. Any changes, modifications, revisions or amendments to this Agreement which are mutually agreed upon by and between the parties to this Agreement shall be incorporated by written instrument, and effective when executed and signed by all parties to this Agreement.
- 5.2. **Insurance.** Prior to the execution of this Agreement, and as a condition to the effectiveness hereof, Surf Club shall submit certificates and endorsements to City indicating compliance with the following minimum insurance requirements, and Surf Club shall maintain such insurance in effect during the entire term of this Agreement.
- Commercial General Liability with minimum combined liability limits of One Million Dollars (\$1,000,000) per occurrence for all covered losses. 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.
- 5.3. **Applicable Law.** The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of California. The courts of the State of California in the County of Orange shall have jurisdiction over any action arising out of this Agreement and over the parties and any such action shall be venued there. Surf Club waives any rights that it may have under California Code of Civil Procedure section 394.
- 5.4. **Entirety of Agreement.** This Agreement, consisting of four (4) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral.
- 5.5. **Severability.** Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of the Agreement shall continue in full force and effect, and either party may renegotiate the terms affected by the severance.

5.6. **Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of a third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the parties to this Agreement, and shall inure solely to the benefit of the parties to this Agreement. The provisions of this Agreement are intended only to assist the parties in determining and performing their obligations under this Agreement. The parties to this Agreement intend and expressly agree that only parties signatory to this Agreement shall have any legal or equitable right to seek to enforce this Agreement, to seek any remedy arising out of a party’s performance or failure to perform any term or condition of this Agreement, or to bring an action for the breach of this Agreement.

5.7. **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, with a copy by email:

If to City: City of San Clemente
100 N Calle Seville
San Clemente, CA 92672
Attention: City Clerk and Beaches, Parks &
Recreation Director
email: WylieS@san-clemente.org

If to Surf Club: Hawaiian Surf Club of San Onofre
134 W. Avenida San Antonio
San Clemente, CA 92672
ATTN: Kim Bryant
email:

5.8. **Counterparts/Electronic Signatures.** This Agreement may be executed in any number of counterparts, which together shall form one complete original agreement. This Agreement may be executed electronically with the same force and effect as original ink signatures.

IN WITNESS WHEREOF, the parties to this Agreement through their duly authorized representatives have executed this Agreement on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions as set forth herein with this Agreement effective on the date first written above.

“CITY”

CITY OF SAN CLEMENTE,
a municipal corporation

By: _____
Andy Hall, City Manager

Dated: _____, 2024

ATTEST:

City Clerk of the City of
San Clemente, California

APPROVED AS TO FORM:

“SURF CLUB”

HAWAIIAN SURF CLUB OF SAN
ONOFRE,
a non-profit foundation

Elizabeth A. Mitchell, City Attorney

By: _____
Kim Bryant, Chief Financial Officer

Dated: _____, 2024

By: _____
Glenn Alapag, Chief Executive Officer

Dated: _____, 2024