

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into as of November 7, 2012 by and between the City of Manhattan Beach, a California municipal corporation ("City") and American Youth Soccer Organization, Region 18, a division of AYSO, a tax-exempt not-for-profit youth sports organization ("AYSO") (hereinafter together referred to as the "Parties").

RECITALS

- A. The City owns and maintains public facilities for the purpose of encouraging community recreational activities and promoting the public health, wellness, and fitness.
- B. AYSO's Vision is to provide world class youth soccer programs that enrich children's lives. AYSO's Mission is to develop and deliver quality youth soccer programs which promote a fun, family environment based on the philosophies of everyone plays, balanced teams, open registration, positive coaching, player development, and good sportsmanship.
- C. The City owns and maintains Marine Avenue Park, an improved public park that serves as a venue for AYSO-sponsored soccer games.
- D. The soccer field at Marine Avenue Park is in disrepair and the Parties desire to work together to upgrade the field to support a first-class soccer program.
- E. The Parties have a mutual interest in accomplishing the following goals:
 - 1. To provide wholesome, high-quality sports programming for youth;
 - 2. To provide a first-class soccer program to meet the recreational needs of the community;
 - 3. To ensure that children and adults of all economic levels are provided with the opportunity to enjoy and have access to athletic programs and proper facilities; and
 - 4. To ensure that the community's parks and recreation programs are operated in the most responsible, cost-effective, and efficient manner possible.
- F. AYSO desires to donate sufficient funds to the City to allow it to install state-of-the-art artificial turf on the dedicated soccer field at Marine Avenue Park (the "Improvements") so that the field can accommodate the demand placed on it by AYSO and other users.
- G. The purpose of this Memorandum of Understanding ("MOU") is to satisfy the objectives set forth above.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein, the Parties agree as follows:

- 1. **AYSO**
 - 1.1 AYSO shall, at its sole cost and expense, cause to be prepared by a qualified architect or engineer Design Plans and Specifications for the

Improvements. The Design Plans and Specifications shall include a Cost Estimate for the Improvements, and shall be sufficiently detailed to serve as the basis for an invitation for bids.

- AYSO will utilize the same Design Plans which were completed and submitted to the City in October 2011.
- AYSO will submit the completed Specifications and Cost Estimate to the City 30 days after this MOU is approved by the City Council and signed by AYSO and the City.

AYSO may proceed with said design engineering and project scope requirements based on engineering due diligence and on a site that is free and clear of any site restrictions and limitations, to the best of the City's and AYSO's knowledge.

- 1.2 In an effort to have the field available for the start of the AYSO Fall 2013-2014 season, AYSO intends to raise and donate to the City, on or before February 1, 2013, funds sufficient to construct the Improvements, based on AYSO's Cost Estimate. If AYSO cannot collect all of the required funds by February 1, 2013, AYSO plans to continue its fundraising efforts and get the required amount to the City as soon as possible. AYSO understands that the completion date for the new field slips "day for day" for every day past February 1, 2013 that it takes AYSO to provide the funds to the City.
- 1.3 At no cost to the City, AYSO may commit the services of Johnnie Morgan as an AYSO Representative to consult with the City staff, at City's request, to evaluate the final engineering plans and specifications and manage the successful completion of the Improvements, including participation in monthly progress meetings at a day and time arranged by mutual agreement between the designated City staff and the AYSO Representative.

2. City

- 2.1 On or before October 10, 2012, City shall provide to AYSO a hard copy of the plans and specifications for Village Field, which were previously developed, and all additional City requirements for the final engineering plans for the Village Field project, for AYSO's reference only.
- 2.2 Upon approval of the Design Plans and Specifications referenced in paragraph 1.1 above, the City shall verify the estimate and, after consultation with the AYSO Representative, cause to be prepared an engineer's estimate of the cost of the Improvements.

2.2.1 If AYSO completes its fundraising efforts and such efforts do not result in the collection of all of the required funds, the City Council for City may decide to contribute the additional funds required to meet the

fundraising needs, or the City may require that AYSO continue its fundraising efforts and defer the start of the project until sufficient funds are provided by AYSO.

- 2.3 Upon receipt of the donation referenced in paragraph 1.2 above, the City will put out to bid a project for the construction of the Improvements in accordance with City's standard practice for soliciting bids for public projects.
- 2.4 Provided that the bid from the lowest responsible bidder is no more than five percent over the amount of the engineer's estimate, City shall use AYSO's donation to construct the Improvements in accordance with the plans and specifications provided by AYSO and the City will bear the additional cost, provided that the City Council authorizes the additional cost. Should the lowest responsible bid be less than the engineer's estimate, the City shall utilize AYSO's donation to construct the Improvements in accordance with the Design Plans and Specifications provided by AYSO and dedicate the remaining portion of the donation to maintenance of the field. Should the lowest responsible bid exceed the engineer's estimate by more than five percent of the estimate, City must elect one of the following options:
 - (i) to proceed with the project, bearing the additional cost, or
 - (ii) to request additional funds from AYSO and defer the project until sufficient funds are provided by AYSO, or
 - (iii) to return the donation less the reasonable amounts expended for design and construction, if any, to AYSO, and not proceed with the project, or
 - (iv) to renegotiate the time to perform or other terms of this MOU.
- 2.5 City will bear responsibility for its internal staff administrative costs of the project and AYSO funds will not be used toward those staff costs.
- 2.6 City shall exercise its best efforts, taking into consideration unanticipated delays in bid or construction phases, to complete construction of the Improvements:
 - (i) on or before August 15, 2013, provided that City receives AYSO's donation by February 1, 2013, or
 - (ii) within six months of receipt of AYSO's donation, if AYSO's donation is received after Feb. 1, 2013.
- 2.7 Upon completion of the Improvements, City shall maintain the field pursuant to City's regular policies and standards. The field shall be striped for soccer use and display City and AYSO logos.
- 2.8 City shall grant AYSO priority use of the field and lights, at no charge for

the term of this MOU, as long as the Improvements remain in usable condition, pursuant to City's standard field use permit (including, but not limited to indemnification and insurance requirements), from September 1 to December 1 and March 1 to June 1, during the following hours:

- Saturdays 8:00 a.m. to 8:00 p.m.
- Sundays 10:00 a.m. to 8:00 p.m. (except that during November, the hours will be 8:00 a.m. to 8:00 p.m.)
- Mondays through Fridays 4:00 p.m. to 8:00 p.m.
- Special events as mutually agreed by the parties, including post season weekdays and weekends for Playoff and All Star practices and matches.

2.8.1 AYSO shall not receive priority status for the use of the field for times that are not included in the days/hours stated in Section 2.8. In addition, AYSO shall pay for the use of the field for any time not included in the days/hours stated in Section 2.8.

2.8.2 In the event a separate donor wishes to contribute to the cost of the Improvements through the efforts of AYSO, and that donor wishes to use the field, the City Manager for the City may allocate to that donor field time within the times specified in Section 2.8 and pursuant to the terms therein. If the times specified in Section 2.8 do not meet the new donor's needs, the City Manager may consider granting that field user priority based on the amount of funds donated and will not charge that User for the use of lights or field time in proportion to the amount of funds donated.

2.9 During all times other than those specified in paragraph 2.8 and during those times specified in 2.8 when AYSO is not using the field, City may schedule use of the field in its absolute discretion.

2.10 City Manager may approve how AYSO can recognize those who contributed to AYSO's donation to the City. Recognition may occur at, on, or near the field. All recognition shall be done in "good taste" without "commercializing" the field, turf, or the park and only after obtaining the City Manager's written approval.

2.11 At no cost to the City, the City will support AYSO in the communication of the Turf project, fundraising activities, and other events.

2.12 The City's maintenance obligations are subject to force majeure and the City's obligations hereunder shall be excused if it is unable to perform due to Acts of God or any other cause beyond City's reasonable control.

3. **Term**

This MOU shall commence on November 6, 2012, and remain in effect until September 1, 2023, or for 10 years following the City's acceptance of the

Improvements, whichever is later, unless extended by written agreement of the parties or cancelled pursuant to the next sentence. In the event AYSO has not donated the funds referenced in Section 1.2 to the City by December 31, 2013, the City may cancel this MOU by providing AYSO 30 days written notice.

4. **Binding Effect**

This MOU is binding on the parties in accordance with its terms. The parties signing below represent and warrant that they have the legal authority to bind the party for whom they are signing.

5. **Governing Law**

This MOU shall be governed by the laws of the State of California.

6. **Notices**

All notices permitted or required under this MOU shall be in writing, and shall be deemed made when delivered to the applicable party at the following addresses either by first class mail postage prepaid, facsimile, or personal delivery:

If to City:

**City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
Attention: City Manager**

If to AYSO:

**AYSO Regional Commissioner and Turf Committee
P.O. Box 3597
Manhattan Beach, CA 90266**

7. **Entire Agreement**

This MOU represents the entire integrated agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, representations or agreements, written or oral, regarding the matters described herein. This MOU may be amended only by a written instrument signed by the parties.


8. **Authority to bind**

The undersigned represent and warrant that they are authorized to sign on behalf of and bind to the terms of this MOU the party each represents.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

CITY OF MANHATTAN BEACH

AYSO




David N. Carmany
City Manager



Ross Kay
AYSO Region 18 Commissioner

ATTEST:



Liza Tamura, City Clerk

 10/31/12

Michael Hinz
Region 18 Board Member and
Marine Avenue Park Turf Committee Manager

APPROVED AS TO FORM:



Quinn M. Barrow, City Attorney