

FIELD USE AND YOUTH SOCCER PROGRAM AGREEMENT
FOR THE REDLANDS SPORTS PARK

This agreement for field use and the provision of a youth soccer program ("Agreement") is made and entered into this 4th day of March, 2008 ("Effective Date") by and between the City of Redlands, a municipal corporation ("City"), and the American Youth Soccer Organization ("AYSO"), a nonprofit organization organized under the laws of the State of California, relating to the use and programming of eight (8) City soccer fields (the "Fields") located on the property commonly known as Redlands' sports park. City and AYSO are sometimes individually referred to herein as a "Party" and collectively, as the "Parties."

RECITALS

- A. City owns approximately one hundred (100) acres of real property bounded by Wabash Avenue, San Bernardino Avenue, Dearborn Street and Sessums Drive in the City of Redlands on which it intends to construct a multi-recreational sports park. As part of its sports park, City proposes to construct approximately eight (8) high quality, regulation, competition soccer fields, and a general recreation play/practice area for soccer within a detention basin at the sports park and the installation of irrigation, turf, lighting and restroom improvements for the Fields. Construction will occur in three phases which are referred to herein as "Phase Ia," "Phase Ib" and "Phase Ic." Phase Ia consists of grading of the Fields and the construction of certain infrastructure improvements. Phase Ib refers to the installation of irrigation, turf, lighting and restroom improvements for the Fields, and Phase Ic consists of installing irrigation and turf for the remaining proposed soccer fields, and additional lighting. See Exhibit "B," attached, for the location of Phase Ic.
- B. City wishes to contract for the scheduling and operation of a youth soccer program at the sports park and for assistance in maintaining the quality of the Fields with an experienced entity. AYSO has such experience in conducting youth soccer programs in the City. Therefore, City and AYSO wish to enter into this Agreement to provide for a long term operations and programming arrangement for youth soccer at City's sports park. It is the intent of the Parties that by entering into this Agreement, that youth sports programs in the City of Redlands will be promoted and enhanced. To provide the optimum beneficial use of the sports park facilities, City and AYSO commit to work cooperatively on scheduling for the Fields.
- C. Except for those activities taking place on school district property, it is the intent of the Parties that, upon completion of the Fields, AYSO shall conduct all of its youth soccer programs within the City upon the Fields pursuant to the terms and conditions of this Agreement.

In consideration of the mutual promises contained herein, and for such other good and

valuable consideration, the receipt of which is hereby acknowledged, the City of Redlands and the American Youth Soccer Organization agree as follows:

AGREEMENT

Section 1. Recitals. The Parties acknowledge and agree that the foregoing recitals are true and correct, and that they are incorporated into this Agreement by this reference.

Section 2. Term. The term of this Agreement shall commence on the Effective Date of this Agreement and shall be for a period of twenty-five (25) years, unless earlier terminated pursuant to the provisions of this Agreement.

Section 3. Payment for Field Use. Within ninety (90) days from the award of a contract for the restroom facilities, AYSO shall pay to City the sum of five hundred thousand dollars (\$500,000), which represents an annual charge by City of twenty thousand dollars (\$20,000) for each year of use and programming of the Fields by AYSO during the term of this Agreement. City shall apply such payment to the costs incurred by City in connection with its construction of the Fields at City's sports park.

Section 4. Reimbursement on Early Termination. In the event this Agreement is terminated prior to its term being completed, City shall reimburse AYSO on a pro-rata basis, and with interest calculated at the then-existing rate at which City earns interest on its investments in the State's Local Agency Investment Fund, any monies paid by AYSO to City towards construction of the Fields for the unexpired portion of the term of this Agreement, including without limitation the payments made by AYSO under Section 3; provided, however, that if termination is a result of AYSO's default under this Agreement, City shall be entitled to deduct from such reimbursement an amount equivalent to any damages sustained by City as result of AYSO's default.

Section 5. Designation of Fields. The specific Fields that are the subject of this Agreement are the eight (8) regulation, competitive soccer fields which are identified on the map attached hereto as Exhibit "A."

Section 6. Permitted Use. The Fields shall be used by AYSO solely for the purpose of operating a youth soccer program and any fund raising activities undertaken by AYSO in support of its youth soccer program. No improvements shall be made or constructed on or around the Fields by AYSO, except with the prior written consent of City. AYSO shall have use of the Fields from 4:30 pm to 10:00 pm Monday through Friday, 6:00 am to 10:00 pm Saturday and Sunday. Sunday is normally a rest day for the Fields. City shall have use of the Fields for youth related activities at all other times, and shall consult with and coordinate its use of the Fields during such times with AYSO. To support this coordination effort, City hereby designates its Community Services Superintendent as liaison to AYSO's Regional Commissioner to facilitate scheduling of the Fields. At least annually, City and AYSO shall meet to determine

mutually agreeable City-operated youth programs that may utilize the Fields cooperatively with AYSO's programs. It is the express intent of City and AYSO that all use of the Fields by either Party shall maintain the integrity and quality of the Fields, and that no use of the Fields be approved for adult sports programs, or any other activity that would denigrate the quality of the Fields. A general schedule of availability showing all available times for use, and any scheduled downtime for "resting," weather related closures, and maintenance of the Fields, shall be maintained by AYSO and published on its website at www.redlandsayso.org.

Section 7. Maintenance of Fields.

A. City Obligation: City shall be responsible for maintenance of the Fields. For purposes of this Agreement, "maintenance" shall include, but not be limited to, watering, mowing and maintenance of turf, and repair and maintenance of the irrigation systems serving the Fields. Further, City shall be responsible for maintenance of all other infrastructure associated with or supporting the Fields, including but not limited to, lights, buildings and pavement. After the completion of construction of Phase Ib and between the dates of July 1 and August 15 of each year during the term of this Agreement, City and AYSO shall meet and agree upon minimum standards for turf maintenance of the Fields.

B. AYSO Obligation: After the completion of construction for Phase Ib in accordance with the plans and specifications and all applicable laws and, prior to any use or occupancy of the Fields by AYSO, AYSO shall pay annually to City the sum of thirty thousand dollars (\$30,000) towards City's maintenance costs for the Fields for such year, and shall provide City with volunteer labor towards annual maintenance of the Fields having an agreed upon "value" of fifteen thousand dollars (\$15,000). After the fifth annual payment, each subsequent annual payment, and the "value" of the provided labor, shall be adjusted by an amount equivalent to the percentage change in the consumer price index - all urban consumers (Los Angeles - Riverside - Orange County). All volunteer labor provided by AYSO for the Fields shall comply with the requirements of California Labor Code section 1720.4 as of the Effective Date of this Agreement, or as such section is subsequently amended. AYSO acknowledges and agrees that it is informed by City that AYSO's failure to comply with California Labor Code section 1720.4 may cause such volunteer labor to be deemed a "public work" for purposes of California Labor Code section 1720 et seq, (including the payment of prevailing wages for public works) and that AYSO shall be solely responsible for compliance with such public works laws. AYSO acknowledges and agrees that this section satisfies City's obligations imposed by California Labor Code section 1781. From time to time, AYSO, with the prior written consent of City, may undertake special work projects at the Fields, such as rehabilitation or vandalism repair, to support its youth soccer program and enhance the Fields. If the value of such special work projects exceeds the value of AYSO's annual labor contribution for that year, the City shall credit the value attributed to such special work project against the subsequent year's annual cash contribution, up to a maximum of ten thousand dollars (\$10,000) in any one year. The "value" of the special work projects shall be agreed upon by City and AYSO prior to AYSO undertaking any such work.

C. Scheduling of Volunteer Labor: After the completion of construction of Phase Ib and between the dates of July 1 and August 15 of each year during the term of this Agreement, City and AYSO shall meet and agree upon a schedule of the volunteer work to be performed by AYSO and its value.

Section 8. Construction of Future Phase Ic Fields. As part of Phase Ic of City's construction of its sports park, City intends to construct an additional recreation play/practice area in the detention basin. To ensure efficient and economical operations, use and scheduling of youth soccer programs at its sports park, City and AYSO agree that AYSO shall have a "first right of refusal" to use and operate its youth soccer program on any future soccer fields constructed within Phase Ic at the Sports Park, on terms and conditions substantially similar to those contained in this Agreement. At least ninety (90) days prior to the completion of construction of any such future soccer fields, City and AYSO shall enter into good faith negotiations for an agreement for the use and operation of a youth soccer program for such fields. The terms and conditions of any such agreement shall reflect the relative contributions, in cash or by volunteer labor, of AYSO to the Phase Ic project. In the event the Parties fail to reach an agreement within ninety (90) days after the completion of construction of such future field, City shall be entitled to enter into negotiations with other persons and entities for the use of the future fields and AYSO's "first right of refusal" shall be deemed terminated. Notwithstanding the foregoing and any other provision of this Agreement, no provision of this Agreement shall be construed as requiring or otherwise obligating City to construct any future soccer fields.

Section 9. Non Discrimination. AYSO shall make its soccer program for the Fields available to all youth, and AYSO shall not discriminate against any youth because of race, religion, color, national origin, handicap, ancestry or sex.

Section 10. Waste or Nuisance. AYSO shall not commit, and use reasonable efforts not to permit the commission by others of, any waste or nuisance on the Fields, and AYSO shall not use or permit the use of the Fields for any unlawful purpose.

Section 11. Compliance with Laws. AYSO shall keep itself fully informed of and shall comply with all applicable federal, state, county and City laws, regulations and rules governing or applicable to AYSO's use and occupancy of the Fields, whether those laws are now in force or are subsequently enacted. AYSO shall be solely liable for all violations of such laws, regulations and rules in connection with AYSO's use of the Fields. The judgment of any court of competent jurisdiction, or the admission by AYSO in a proceeding brought against AYSO by any governmental entity that AYSO has violated any such law shall be conclusive as between City and AYSO and shall constitute cause for immediate termination of this Agreement by City. Notwithstanding the foregoing AYSO shall not be responsible for hazardous waste or other conditions not specifically caused by AYSO.

Section 12. Utilities. During the term of this Agreement, AYSO shall be responsible for payment of the cost of electricity to light the Fields directly to the provider of such electric utility. City shall be responsible for the payment of the cost of all other utilities to the Fields,

including all storage areas and snack facilities that may be constructed at the Fields.

Section 13. Indemnity. AYSO shall defend, indemnify and hold harmless City and its elected officials, officers and employees from and against any and all liability resulting exclusively from AYSO's and its agents', employees', and invitees' negligent and/or intentionally wrongful acts and omissions in connection with and during the course of their occupation and use of the Fields, specifically including, without limitation any claim, liability, loss or damage arising by reason of:

(A) The death or injury of any person or persons, including any person who is an employee or agent of AYSO, or by reason of the damage to or destruction of any property, including property owned by AYSO or any person who is an employee or agent of AYSO, and caused or allegedly caused by either the condition of the Fields, or some act or omission of AYSO or of some agent, contractor, employee or invitee of AYSO on the Fields;

(B) Any work performed on the Fields or materials furnished to the Fields at the insistence or request of AYSO or any agent, employee or invitee of AYSO, other than work performed by City, its agents, employees or contractors; and

(C) AYSO's failure to perform in any material respect any obligation under this Agreement or to comply with any requirement of law or any requirement imposed on City by any duly authorized governmental agency applicable to AYSO's use of the Fields.

Section 14. Indemnity. City shall defend, indemnify and hold harmless AYSO and its elected officials, officers and employees from and against any and all liability resulting exclusively from City's and its officials, employees, agents and invitees negligent and/or intentionally wrongful acts and omissions in connection with their occupation and use of the Fields, specifically including without limitation, any claim, liability other than those covered by Section 13 but including, loss or damage arising by reason of:

(A) The death or injury of any person or persons, including any person who is an employee or agent of City, or by reason of the damage to or destruction of any property, including property owned by City or any person who is an employee or agent of City, and caused or allegedly caused by either the condition of the Fields, or some act or omission of City or of some agent, contractor, employee or invitee of City on the Fields;

(B) Any work performed on the Fields or materials furnished to the Fields at the insistence or request of City or any agent or employee of City, other than work performed by AYSO, its agents, employees or contractors; and

(C) City's failure to perform any obligation under this Agreement or to comply with any requirement of law or any requirement imposed on City by any duly authorized governmental agency.

Section 15. Public Liability and Property Damage Insurance. AYSO shall, at its own cost and expense, procure and maintain during the term of this Agreement public liability insurance and property damage insurance issued by an insurance company acceptable to City and insuring City against loss or liability caused by or associated with AYSO's occupation and use of the Fields in amounts not less than:

(A) One Million Dollars (\$1,000,000) for injury to or death of one person and, subject to that limitation for the injury or death of one person, of not less than Two Million Dollars (\$2,000,000) for injury to or death of two or more persons as a result of any one accident or incident; and

(B) Five Hundred Thousand Dollars (\$500,000) for damage to or destruction of any property of AYSO or others.

The insurance required under this section shall be issued by a responsible insurance company authorized to do business in California and shall be in a form reasonably satisfactory to City. The insurance shall name City as an additional insured and such insurance shall be primary and non-contributing to any other insurance or self-insurance maintained by City. In addition, AYSO shall maintain, at AYSO's own cost and expense, an insurance policy issued by a reputable company authorized to conduct insurance business in California insuring for their full insurable value all fixtures and equipment, in or on the Fields against damage or destruction by fire, theft or the elements. Each of the insurance policies shall be in a form reasonably satisfactory to City and shall carry an endorsement that, before modifying or canceling any policy, the issuing insurance company shall give City at least thirty (30) days prior written notice. Duplicate originals or certificates of all such insurance policies shall be delivered by AYSO to the Risk Management Division of the City's Finance Department prior to AYSO occupying or making any use of the Fields. Such insurance shall be limited to the use of the Fields by AYSO.

Section 16. Restriction against Subletting or Assignment. AYSO shall not encumber, assign, or otherwise transfer this Agreement, any right or interest in this Agreement, or any right or interest in the Fields or any of the improvements that may now or hereafter be constructed or installed on the Fields. AYSO shall not sublet the Fields or any part of the Fields or allow any other person, other than AYSO's agents, employees and invitees to occupy the Fields without the prior written consent of City. The consent by City to one assignment, one subletting or one occupation of the Fields by another person or entity shall not be deemed to be consent to any subsequent assignment, subletting or occupation of the Fields by another person or entity. Any encumbrance, assignment, transfer or subletting without the prior written consent of City, whether voluntary or involuntary, by operation of law or otherwise, is void and shall at the option of City, be cause for the immediate termination of this Agreement. The consent of City to any assignment of AYSO's interest in this Agreement or the subletting by AYSO of the Fields or portions of the Fields shall not be unreasonably withheld.

Section 17. Possessory Interest. AYSO acknowledges and agrees that in the event any governmental authority having appropriate jurisdiction determines that AYSO's use, occupancy and programming of the Fields results in the determination that AYSO has a possessory interest in the Fields as defined by California Revenue and Taxation Code section 107 et seq, that such possessory interest may be subject to property taxation, and that AYSO shall be obligated and solely responsible for the payment of property taxes levied on such possessory interest.

Section 18. Default

A. AYSO's Default. The occurrence of any of the following shall constitute a default by AYSO:

(1) Failure to Perform. AYSO's failure to perform in any material respect any covenant or provision of this Agreement, if the failure to perform is not cured within thirty (30) days after delivery by City to AYSO of written notice of default specifying with particularity the nature of the default. If the failure to perform cannot reasonably be cured within thirty (30) days, AYSO shall not be in default of this Agreement if AYSO commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion.

(2) Insolvency Proceeding. If AYSO applies for or consents to the appointment of a receiver, trustee or liquidator of itself or of all or a substantial part of its assets; files a voluntary petition in bankruptcy or commences a proceeding seeking reorganization, liquidation, or an arrangement with creditors; files an answer admitting the material allegations of a bankruptcy petition, reorganization proceeding or insolvency proceeding filed against it; admits in writing its inability to pay its debts as they come due; makes a general assignment for the benefit of creditors; or an order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor, adjudicating AYSO a bankrupt or insolvent or approving a petition seeking reorganization of AYSO or appointing a receiver, trustee or liquidator of AYSO or of all or a substantial part of its assets, and such order, judgment or decree continues unstayed and in effect for any period of sixty (60) consecutive days.

B. City's Default. The occurrence of the following shall constitute a default by City:

(1) Failure to Perform. City's failure to perform in any material respect any covenant or provision of this Agreement, if the failure to perform is not cured within thirty (30) days after delivery by AYSO to City of written notice of default specifying with particularity the nature of the default. If the failure to perform cannot reasonably be cured within thirty (30) days, City shall not be in default of this Agreement if City commences to cure the failure to perform within the thirty (30) day period and thereafter diligently and in good faith prosecutes the cure to completion.

Section 19. Remedies.

(1) City's Remedies. If any default by AYSO under Section 18.A(1) hereof shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, City may at its election terminate this Agreement by giving AYSO written notice of termination and this Agreement shall terminate effective thirty (30) days after the date of such written notice. Upon the occurrence of any of the events specified under Section 18.A(2) hereof, City may at its election terminate this Agreement by giving AYSO written notice of termination and this Agreement shall terminate immediately upon receipt of such written notice by AYSO. The foregoing remedies are in addition to all other rights and remedies provided by law or equity, to which City may resort cumulatively or in the alternatively.

(2) AYSO Remedies. If any default by City under Section 18.1B(1) shall continue uncured, following notice of default as required by this Agreement, for the period applicable to the default under the applicable provision of this Agreement, AYSO may at its election terminate this Agreement by giving City written notice of termination and this Agreement shall terminate thirty (30) days after the date of such written notice. The foregoing remedies are in addition to all other rights and remedies provided by law or equity, to which AYSO may resort cumulatively or in the alternative.

Section 20. Attorneys' Fees. In the event any action is commenced to enforce or interpret the terms or conditions of this Agreement the prevailing Party shall, in addition to any costs and other relief, be entitled to recovery of its reasonable attorneys' fees, including fees for in-house counsel of the Parties at rates prevailing in San Bernardino County, California.

Section 21. Notices. Except as otherwise provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either Party to this Agreement by the other Party to this Agreement shall be in writing and shall be deemed duly served and given when personally delivered to the Party to whom they are directed, or in lieu of personal service, when deposited in the United States mail, first-class postage pre-paid, addressed to AYSO as follows: Regional Commissioner, Redlands AYSO, PO Box 8487, Redlands, California, 92375 and to City as follows: City Manager, City of Redlands, PO Box 3005, Redlands, CA 92373. Either Party may change its address for the purpose of this section by giving written notice of that change to the other Party in the manner provided in this section.

Section 22. Independent Contractor. AYSO shall at all times be considered an independent contractor under this Agreement. Nothing contained in this Agreement shall be construed to be, or create, a partnership or joint venture between City and AYSO.

Section 23. Termination. This Agreement may be terminated by either Party by providing the other Party with at least one hundred eighty days (180) prior written notice of its intent to terminate this Agreement and specifying the termination date; provided, however, that

City shall have no right to terminate this Agreement pursuant to this Section 23 if such termination is for the purpose of permitting any sports program other than AYSO's program to be conducted at the Redlands Sports Park in either of which cases, AYSO shall be entitled to reimbursement pursuant to Section 4, together with the interest contemplated by that Section.

Section 24. Governing Law. The laws of the State of California, without giving effect to its conflict of laws principles, govern all matters arising out of or relating to this Agreement and the transactions it contemplates, including, without limitation, its interpretation, construction, performance and enforcement.

Section 25. Third Party Beneficiaries. This Agreement does not and is not intended to confer any rights or remedies upon any person or entity, other than the signatories.

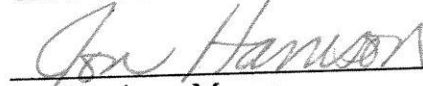
Section 26. Entire Agreement. This Agreement constitutes the entire agreement between City and AYSO respecting the use of the Fields by AYSO, and correctly sets forth the obligations of City and AYSO to each other as of its date. Any prior agreements or representations respecting the Fields or their use by AYSO, whether verbal or written, that are not expressly set forth in this Agreement are null and void.

Section 27. Time of the Essence. Time is of the essence of this Agreement. The time for performance of each Party's obligations hereunder has been the subject of negotiation by the Parties.

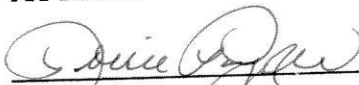
Section 28. Signatories' Authority. The signatories of this Agreement each represent and warrant to the other that they have the authority to sign in behalf of, and enter into and bind, their respective organizations to the terms and conditions of this Agreement.

Executed on February 19, 2008, at Redlands, California.

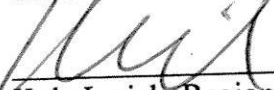
CITY OF REDLANDS


Jon Harrison, Mayor

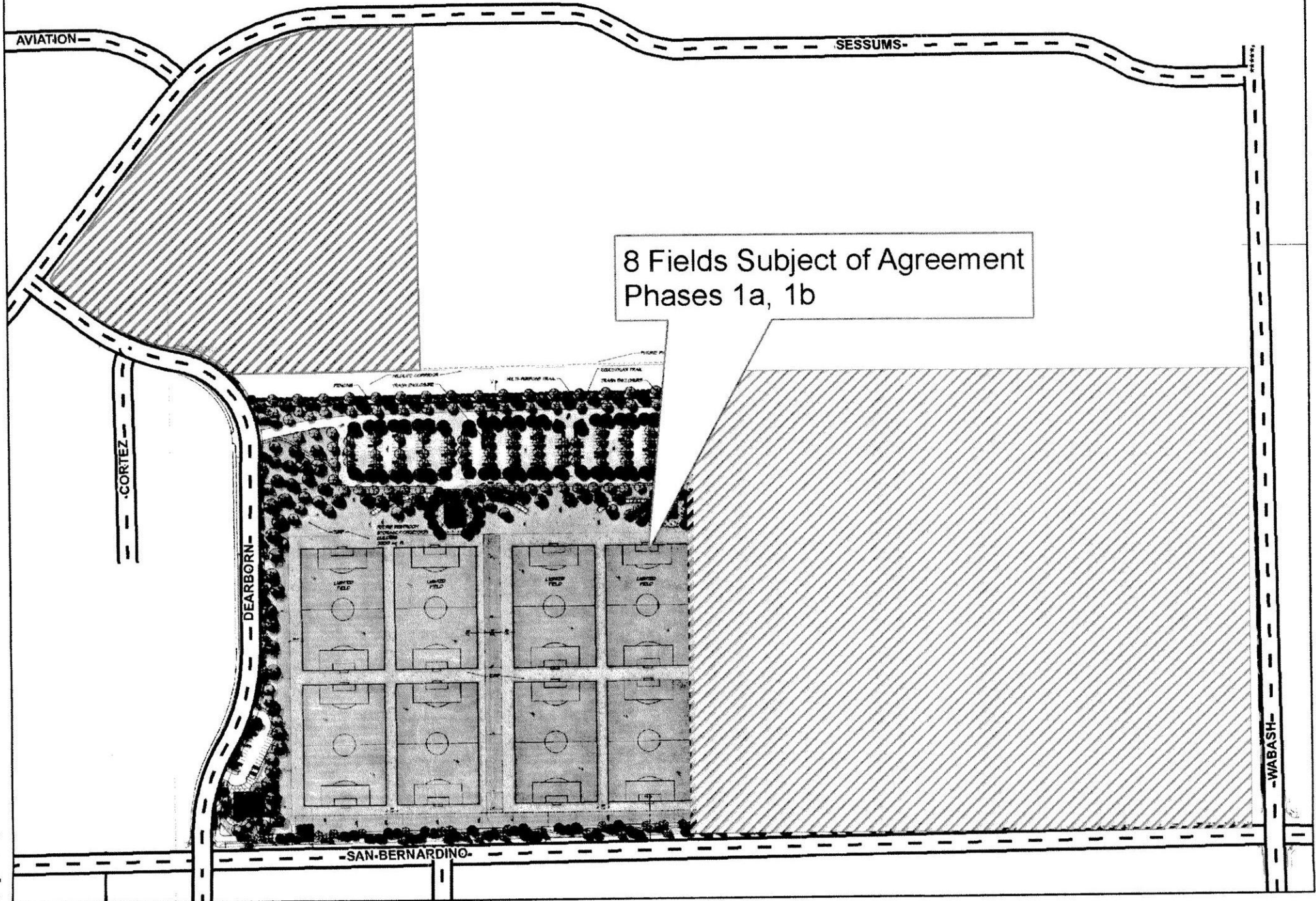
ATTEST:


City Clerk

AMERICAN YOUTH SOCCER
ORGANIZATION

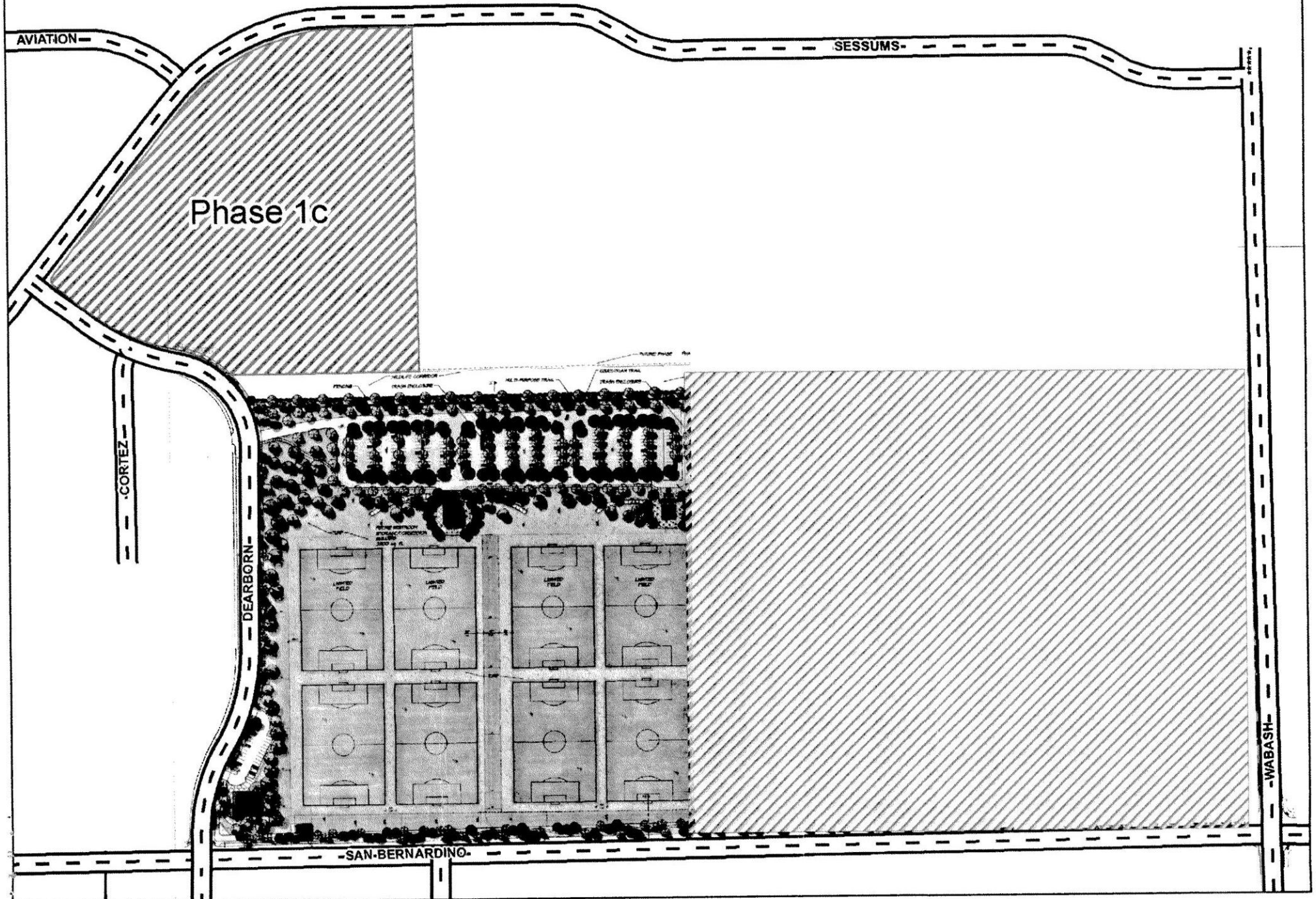

Kyle Larick, Regional Commissioner

AYSO Facility Use Agreement Exhibit A



AYSO Facility Use Agreement

Exhibit B



Agreement - American Youth Soccer Organization - Due to a potential conflict of interest, Councilmember Gallagher retired from the Council Chambers and did not participate in this matter; a Public Disclosure of Potential Conflict of Interest form is on file in the City Clerk's Office. Quality of Life Director Van Dorst presented an agreement with the American Youth Soccer Organization (AYSO) pertaining to the use of fields at the Redlands Sports Park. The proposed agreement incorporates the revised phasing of the Redlands Sports Park. No other changes were made to the agreement from November 2005. On behalf of AYSO, Kyle Larick addressed the City Council and answered their questions. Mayor Harrison asked staff and Mr. Larick to consider setting up an endowment fund for future renovations and refurbishing of the fields. Mayor Harrison also expressed interest in including an Exhibit B to show the "duck's head" with a notation indicating first right of refusal by AYSO for development. Discussion also included an explanation that the area identified on Exhibit A as a future phase was outside the scope of this agreement and the City was not obligated to develop it. Councilmember Gilbreath moved to approve the field use and youth soccer agreement with the American Youth Soccer Organization (AYSO) pertaining to the use of fields at the Redlands Sports Park and authorized the Mayor to execute, and the City Clerk to attest to, the document on behalf of the City. Motion seconded by Councilmember Bean and carried by AYE votes of all present with Councilmember Gallagher having abstained. Mr. Larick expressed his appreciation for the City's support.

Utility Advisory Committee - Mayor Harrison asked for City Council concurrence to direct staff to prepare a recommendation for the Utility Advisory Committee (UAC) process. Presently, the ordinance that established this committee contains no specifics as to the membership of the committee or the committee's term. Staff's recommendation should include the size of the committee, the term and scope of charge and any related ordinance amendments to implement that recommendation. In the past, the City Council has appointed the same residents who had previously served. At this time, Mayor Harrison recommended a more defined process be developed and that the committee composition be analyzed further. He also recommended staff coordinate with the City's rate study consultant as to any modifications to the consultant's scope of work and associated costs that may be needed to accommodate the Utility Advisory Committee as part of the consultants work program. Councilmember Harrison moved to direct staff to prepare a recommendation for the Utility Advisory Committee selection process for the next evaluation period of the utility rates and to coordinate with the City's rate study consultant as to any modifications to the consultant's scope of work and associated costs that may be needed to accommodate the UAC as part of the consultant's work program and recommended modifications to the ordinance that implements the Utility Advisory Committee in terms of clarifying how it would operate in the future. Motion seconded by Councilmember Gilbreath and carried unanimously.