

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Mike Atkin, Recreation and Community Services Manager, *MA*

DATE: July 11, 2007 (Meeting of July 18, 2007)

SUBJECT: Consider Use Agreements with Moorpark Packer Football, Moorpark American Youth Soccer Organization and Moorpark Soccer Club

BACKGROUND

In 1997 and then again in 2002, the City Council approved five-year use agreements with the major youth sports organizations in Moorpark. Among other things, the agreements identify parks and park amenities, use dates, site and amenity improvements, and maintenance responsibilities granted to each organization. The annual use fee for those organizations using sports fields is \$1.00 per year; Moorpark Basketball Association pays a reduced hourly use fee for the use of the Arroyo Vista Recreation Center (AVRC) gymnasium. Moorpark Girls Softball Association, AYSO, and Packer Football also pay for the use of the concession stands at AVCP from the proceeds of their food sales.

DISCUSSION

Moorpark Packers (Packers), American Youth Soccer Organization (AYSO) and Moorpark Soccer Club (MSC) agreements expire in 2007 and the City Council is being asked to approve new five-year agreements. Language has been added to the proposed agreements requiring all groups to adhere to the City's sign policy and providing for the implementation of a non-resident player fee at the start of the 2008 season. As a fairness issue, staff proposes setting a youth sports non-resident fee equal to the amount Moorpark residents pay annually to maintain City parks. In FY 2006/2007, single-family residences paid \$47.32. Staff proposes working with the youth sport organizations to develop a fee methodology whereby a non-resident participant would pay an equivalent of \$47.32 (current amount for a single-family unit for the Parks Maintenance Assessment) per year to participate in Moorpark based youth sports. To address the probability that a non-resident youth may play in more than one sport or

000235

several youth family members may participate with Moorpark youth sports organizations, the fee methodology may include a prorated formula or other means, to ensure that a non-resident family does not pay more than the then current assessment rate approved each year. The final methodology will be a topic at the next Youth Sports Committee and will be presented to the Council for action prior to implementation.

Other than the aforementioned additions, only minor cleanup changes were made to the previous agreement's provisions. The respective organizations were provided with draft copies for their review and comment. The agreements address the following conditions:

Moorpark Packers

Packers have the use of the football field and "practice" field at Arroyo Vista Community Park (AVCP) between approximately the third week of July to the second week of December, at \$1.00 per year, each year the agreement is in effect. As with the previous agreement, Packers may use portions of the City's storage room to store equipment and a maintenance vehicle; and perform certain field maintenance work with the approval of, and under the supervision of, the City. The City also allows use of amplified sound by the Packers for authorized football games between the hours of 9 a.m. and 6 p.m. on Saturday provided that the noise level resulting from the amplified sound does not exceed 55 decibels at the southern property boundary of AVCP and that said sound system is operated by an adult at all times.

AYSO

The use agreement with AYSO provides them with use of soccer fields at AVCP between the dates of August through December (Fall Season) and April through June (Spring Season). AYSO's winter season overlaps with Girls Softball's season, although Girls Softball plays its games on Saturday and AYSO plays on Sundays during the winter. Similar to the other youth sports agreements, AYSO's use fee is \$1.00 for use of the fields and \$1,000 for the use of the concession facility, payable each year. Additionally, AYSO is granted the use of storage room space to store equipment and a maintenance vehicle; and to perform certain field maintenance work with the approval of, and under the supervision of the City.

Moorpark Soccer Club

Moorpark Soccer Club (MSC) has use of the athletic field and park area at Campus Canyon Park from August through November each year. The agreement ensures MSC agrees not to drive any vehicle, or allow any vehicle to be driven onto the Premises or any area of Campus Canyon Park with out the written consent of the City or store any property at Campus Canyon Park.

000236

Most of the Moorpark youth sports organizations like to host regional tournaments. They often serve as fundraising events for the organization. In an effort to provide consistency among the Youth Sports Use Agreements and to ensure that the City is not overly burdened with the cost of wear and tear of its park facilities, staff proposes that each agreement include one tournament with no additional fees except direct costs, including, but not limited to ball field lights, additional trash and recycling bins, portable toilets and a minimum of one staff person to monitor facility use and respond to the public's needs, at the City's sole discretion. Tournaments generate an intense use of park facilities, typically over a two-day period. Any tournaments beyond the one granted in the use agreement would be subject to the City's approved Park Facility Rental Fee Schedule.

While the youth sports groups who enter into use agreements with the City have primary rights to use the facilities granted in the agreement during the dates identified, the City maintains its exclusive right to manage the use of its facilities, including the softball and baseball fields, and to allow for their use by other groups or individuals when they are not in use by the aforementioned parties. Additionally, the City may preempt the use of said facilities upon thirty days written notice. Each Use Agreement also includes a Use Fee Adjustment provision that allows the City to adjust use fees thirty days before the start of each respective season, upon written notice.

STAFF RECOMMENDATION

Approve five-year Use Agreements with Moorpark American Youth Soccer Organization, Moorpark Packer Football, and Moorpark Soccer Club, subject to final language approval of the City Manager and City Attorney, and authorize the City Manager to execute the agreements on behalf of the City.

Attachments A: AYSO Agreement
B: Packer Football Agreement
C: Soccer Club Agreement

000237

**AGREEMENT BETWEEN THE CITY OF MOORPARK
AND AMERICAN YOUTH SOCCER ORGANIZATION, REGION 363**

THIS USE AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2007 by and between the CITY OF MOORPARK (hereinafter "City") and American Youth Soccer Association, Region 363, a Non - Profit Corporation (hereinafter "AYSO").

THE PARTIES AGREE THAT:

Section 1. PREMISES

City, in consideration of the fees to be paid and of the indemnifications, covenants, and agreements agreed to herein, hereby grants to AYSO, and AYSO hereby accepts from City, the use of certain real property and associated facilities and equipment including but not limited to the park area between the baseball diamonds east to the football field (hereinafter "Park Area") and the snack bar and its storage room which is accessible from the food service area (hereinafter "Snack Bar") at Arroyo Vista Community Park (hereinafter "AVCP") described in Exhibit "A" attached hereto and by this reference incorporated herein, together with any and all improvements thereon (all of which are hereinafter referred to as the "Premises").

Section 2. TERM

The term of this Agreement shall be for five years, commencing on March 1, 2007 and ending on February 28, 2012, provided however, that City's obligations hereunder shall be contingent upon AYSO's payment in full of all use and related fees and fulfillment of all obligations as set forth in this Agreement.

This Agreement may be terminated by either party with or without cause by providing written notice no less than thirty (30) days in advance of such termination.

Section 3. USE FEES

AYSO further agrees to pay the City at time of execution of Agreement, in total, annual use fees as follows:

- A. One Dollar (\$1.00) for the period of August 1, 2007, through July 31, 2008, and for every year thereafter on August 1 through the

000238

term of Agreement for the use of Park Area.

Section 4. ADJUSTMENTS OF USE FEES

For the year August 1, 2007, and for each year this Agreement is in effect, the City may adjust the Use Fees, referenced in Section 3.A on or before the beginning of the new year by giving AYSO written notice prior to March 1. Furthermore, Organization agrees to work with the City to implement a non-resident Use Fee if so directed by City. If no such notification is given, the Use Fees for the next year shall be the same amount as the prior year.

Section 5. USE

The Premises shall be used for the following specified purposes only and shall not be used for any other purpose without the prior written consent of the City:

- A. The field portion of Premises shall be used for AYSO's authorized games, practices and training sessions for coaches and referees tied specially to official seasons, held during the months of August through December (Fall Season) and April through June (Spring Season) each year. A schedule of said games and practices shall be furnished to the Director of Community Services for the City's written approval prior to August 1 of each year, which approval shall not be unreasonably withheld.
- B. The Snack Bar shall be used for AYSO's authorized games and practices for the Fall Season.
- C. AYSO agrees to remove its property from the Snack Bar one week after its last game of each season and shall not begin storage of its property until the first day of each Season. AYSO shall use storage room to store maintenance and game equipment and food and drink supplies only. AYSO shall be provided with a key to the Snack Bar prior to the start of the Fall season and shall be responsible for securing it. Said key(s) shall not be duplicated. Upon vacating the Snack Bar, AYSO shall return the key(s) to the City. AYSO shall be required to vacate the storage room adjacent to the snack bar upon thirty (30) days written notice from the City if they are needed for City purposes.
- D. At all times, City retains the right to use Premises at its discretion for City sponsored and co-sponsored events upon no less than thirty (30) days written notice to AYSO. During the fall and spring seasons, the general public shall have access to and use of said Premises at a time of day and or on a day that is not included in the schedule submitted by

AYSO in writing and approved in writing by the City. AYSO shall not have priority use of Premises outside of the approved schedule.

- E. The sale and consumption of food and beverages shall be at the discretion of AYSO with the exception that no alcoholic beverages shall be sold or consumed on Premises. AYSO shall obtain all required health and other permits for the preparation and sale of food and beverages.
- F. City agrees to allow AYSO to access the field portion of Premises with no more than two vehicles for the specific purpose of setting up and taking down soccer equipment only. AYSO agrees not to use vehicles on the field whenever the ground is wet, for whatever reason, without obtaining City's written approval. AYSO also agrees that vehicles it uses for this purpose shall not exceed a gross vehicle weight (GVW) of 5,400 pounds.

Section 6. SIGNS

AYSO agrees not to permit the construction or placement of any sign, signboard or other form of outdoor advertising on the Premises without the prior written consent of the City. In the event of a violation of this provision by AYSO or any one claiming under AYSO,

AYSO hereby authorizes City as AYSO's Agent, to enter the Premises and to remove and dispose of any such sign, signboard or other advertising, and to charge the cost and expense of any such removal and disposal to AYSO who agrees to pay the same upon demand.

This provision does not exclude the use of identification banners for individual teams and sponsors, which may be displayed during games and shall be removed following the end of each game.

Section 7. INDEMNIFICATION AND HOLD HARMLESS

AYSO hereby agrees to hold harmless and indemnify City, its officers, agents, and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising or growing out of loss or damage to property, including City's own personal property, or injury to or death of persons, including employees of City, resulting in any manner whatsoever directly or indirectly, by reason of this Agreement or the use of the Premises by AYSO or any person claiming use under or through AYSO unless such loss, damage, injury, or death is due to the sole negligence of the City. AYSO shall also hold the City harmless from all costs and expenses, including costs of investigation arising

out of or incurred in the defense of any claim, proceeding, or action brought for injury to persons or damage to property, resulting from or associated with the use of said Premises under this Agreement and shall further save and hold harmless the City from any and all orders, judgments, and decrees which may be entered in any and all such suit or actions. AYSO and all others using said Premises under this Agreement hereby waive any and all claims against the City of damage to persons or property in, or about said Premises.

The City does not, and shall not, waive any rights that it may have against AYSO by reason of this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. Said hold harmless and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in this Section. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

Section 8. LIABILITY INSURANCE

As a condition precedent of the effectiveness of this Agreement, AYSO shall procure, and thereafter maintain in full force and effect at AYSO's sole cost and expense, a public liability insurance policy written with a company acceptable to City and authorized to do business in the State of California. Such policy shall provide for a minimum coverage of Two Million Dollars (\$2,000,000.00) for bodily injury or death of any person or persons in any one occurrence, and One Million Dollars (\$1,000,000.00) for loss by damage or injury to property in any one occurrence and shall include automobile coverage. The policy shall contain a provision providing for a broad form of contractual liability, including Product Liability coverage if food and beverages are dispensed on Premises. The policy or policies shall be written on an occurrence basis. The policy shall name AYSO as the insured and the City of Moorpark, its officials, employees, and agents as an additional insured. The policy shall also provide that the City shall be notified in writing, at least thirty (30) days prior to any termination, amendment cancellation or expiration thereof. AYSO shall furnish City evidence of all insurance policies required by this Agreement in the form of a Certificate of Insurance.

Section 9. CASUALTY INSURANCE

The parties each specifically acknowledge that City shall not be obligated to keep the Premises insured against fire, or any other insurable risk. AYSO hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the Premises by fire, earthquake, flooding, storm or any other cause.

Section 10. IMPROVEMENTS

AYSO shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City. All alterations, additions and improvements shall be done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all Federal, State, County, and local laws, ordinances, codes and standards relating thereto. Performance of work shall be subject to City monitoring and inspection. At City's sole discretion, work may be stopped if it does not conform to City specifications and standards. Unless otherwise expressly agreed to in writing by the City, any alterations, additions and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Agreement. AYSO shall timely pay all costs associated with any and all improvements, and shall keep the Premises free and clear of all mechanics liens. AYSO agrees to and shall indemnify, defend and save City free and harmless against all liability, loss, damage, costs, attorney's fees and other expenses of any nature resulting from any AYSO alterations, additions or improvements to the Premises.

At such time as AYSO vacates Premises, all improvements to Premises not already owned by City shall become the property of the City unless otherwise authorized by City in writing.

Section 11. FLAMMABLE MATERIAL, WASTE AND NUISANCES

AYSO agrees that it will not place or store any flammable materials on the Premises, that it will not commit any waste or damage, nor suffer any to be done. AYSO also specifically agrees that it will not allow others to take such actions on the Premises. AYSO further agrees that it will keep the Premises clean, free from weeds, rubbish and debris and in a condition satisfactory to City.

AYSO shall also provide adequate controls for dust, odors, noise which may emanate from the Premises or from AYSO's activities on adjacent property and take appropriate steps necessary to prevent dust contamination of City's facilities located on, near or adjacent to the Premises. AYSO agrees to take preventative action to eliminate such dust, odor, noise or any other nuisance which may disturb the adjacent or nearby community and agrees to be responsible for and to assume all liability for such dust, odor, noise or other nuisance disturbances. AYSO also agrees that it shall not use amplified

sound or field lighting on Premises for any reason, without the prior written consent of City.

Notwithstanding the above, AYSO shall not install, operate or maintain, or cause, or permit to be installed, operated or maintained any electrically charged fence on the Premises.

Section 12. PESTICIDES AND HERBICIDES

AYSO agrees that prior to any application of either pesticides or herbicides, it shall receive written consent from City, and further any pesticide or herbicide applications on the Premises shall be made in accordance with all Federal, State, County and local laws. AYSO further agrees to dispose of any pesticides, herbicides or any other toxic substances which are declared to be either a health or environmental hazard in such a manner as prescribed by law. This shall include, but shall not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

Section 13. STORAGE TANKS

Notwithstanding anything to the contrary set forth in this Agreement, AYSO shall not have the right to install underground or above ground storage tanks, as defined by any and all applicable laws or regulations, without the prior written consent of the City.

Section 14. HAZARDOUS MATERIALS INDEMNITY

AYSO hereby agrees to indemnify and hold harmless City, and its respective officers, employees and agents from and against any and all claims, actions, losses, liabilities, costs and expenses: (a) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal of Hazardous Material on the Premises by AYSO; and (b) including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence, or use, generation, storage, release, threatened release, or disposal of Hazardous Materials on the Premises by AYSO. As used in this Section, Hazardous Materials means any flammable explosives, radioactive materials, asbestos, PCBs, hazardous water, toxic substances of related materials, including, without limitation, substances, defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of

1980, as amended, 42 USC, Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC, Section 6901, et seq.; the Toxic Substances Control Act, 15 USC, Section 2601, et seq.; any other Federal, State or local law applicable to the Premises; and in the rules and regulations adopted or promulgated under or pursuant to any of said laws. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 15. MAINTENANCE

Except as specifically provided for in the Agreement, all maintenance of, and repairs to Premises shall be done at City's sole discretion and shall be performed by City force account or by City's authorized agent unless approved by City in writing. All maintenance and repair authorized to be performed by AYSO shall adhere to City specifications and standards. All improvements shall meet City and other applicable codes, regulations, and standards including but not limited to building and zoning codes.

A. During the period of August 1 through December 31 and April 1 through June 30, AYSO shall be responsible to perform the following maintenance on Premises (Park Area and Snack Bar).

1. Mark soccer field lines using a water base paint only.
2. Pickup trash on and around Premises and provide for additional trash containers. On each day of use following the last scheduled game or practice, if trash containers are full, empty contents of trash containers into trash dumpster located at AYCP.
3. Throughout the term of this Agreement, maintain storage bin in good working order, repainting when necessary. Graffiti shall be removed within seventy-two (72) hours of City's notification to do so. In the event of violation of this provision, AYSO hereby authorizes City, as AYSO's agent, to remove graffiti and to charge the cost and expense of any such removal to AYSO who agrees to pay the same upon demand.
4. Maintain and clean Snack Bar including counters, sinks, floors, and walls after each use; remove and dispose of all trash in and around Snack Bar to trash bins provided by City.
5. Notify City, prior to the start of spring season, regarding the number of goals needed. All available goals will be installed

for the fall season.

B. During the period of August 1 through December 31 and April 1 through June 30, City shall be responsible to perform the following:

1. Install and secure soccer goals for fall and spring seasons. City shall attempt to vary the placement of the goals from season to season to maintain the integrity of the turf and shall consult with AYSO to identify mutually agreeable locations prior to installation.
2. Irrigate, and mow turf areas which comprise the soccer fields contained within Premises at City's expense.
3. During AYSO's authorized use period for the Snack Bar, City shall, at its expense, perform routine maintenance for normal wear and tear and arrange for and schedule pest control services for, in and around the facility.
4. City shall remove a majority of the goals after AYSO's seasons for storage.

City shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Agreement. City shall not be obligated to perform any precautionary or preventative measures with respect to the Premises, including, but not limited to drainage and flood control measures. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services.

City shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Agreement. City shall not be obligated to perform any precautionary or preventative measures with respect to the Premises, including, but not limited to drainage and flood control measures. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services.

Section 16. ENTRY BY CITY

City may enter upon the Premises at all reasonable times to examine the condition thereof, and for the purpose of providing maintenance and making

such repairs as City desires to make.

Section 17. GOVERNING LAW

AYSO agrees that in the exercise of its rights under this Agreement, AYSO shall comply with all applicable Federal, State, County and City laws and regulations in connection with its use of the Premises. The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California.

Section 18. DISCRIMINATION

AYSO agrees not to discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the Premises.

Section 19. ASSIGNMENT AND SUBLETTING

AYSO shall not assign this Agreement, or any interest therein, and shall not assign use of the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of AYSO excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of City. A consent to one assignment, subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. This Agreement shall not, nor shall any interest therein, be assignable, as to the interest of AYSO, by operation of law, without the written consent of City. Any assignment or subletting without such consent shall be void, and shall, at the option of the City, terminate this Agreement. No legal title or interest in Premises is created or vested in AYSO by this Agreement.

Section 20. INSOLVENCY OR BANKRUPTCY

If AYSO shall be adjudged bankrupt or insolvent, this Agreement shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the AYSO under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Agreement shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the AYSO thereupon shall cease and terminate.

Section 21. DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Agreement is in default or breach in the performance of any of the terms and conditions of this Agreement, the other party shall give written notice to remedy such default or breach. If default or breach is remedied within 30 days following such notice, then this Agreement shall continue in full force and effect. If such default or breach is not remedied within 30 days following such notice or if the nature of the default is such that it cannot reasonably be cured within 30 days, if AYSO fails to commence to cure within the 30 day period, the other party may, at its option, terminate this Agreement. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Agreement shall be deemed to be both a covenant and a condition.

Section 22. INTERPRETATION

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

Section 23. WAIVER

A waiver by either party or any default or breach by the other party in the performance of any of the covenants, terms or conditions of this Agreement shall not constitute or be deemed a waiver of any subsequent or other default or breach.

Section 24. ACQUIESCENCE

No acquiescence, failure or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

Section 25. PARTIES BOUND AND BENEFITED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 26. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Agreement shall cease on the day of possession by the public authority. If a part only of the Premises should be taken under eminent domain, AYSO shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Premises. If AYSO remains in possession, all of the terms hereof shall continue in effect, with the fees payable being reduced proportionately for the balance of the Agreement term.

Section 27. TIME

Time is of the essence of this Agreement.

Section 28. REMEDIES

In case of the failure or refusal of AYSO to comply with and perform each and all of the terms and covenants on its part herein contained, this Agreement and all rights hereby given shall, at the option of City, cease and terminate, and City shall have the right forthwith to remove AYSO's personal property from the Premises at the sole cost, expense and risk of AYSO, which cost and expense AYSO agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City.

Section 29. ATTORNEY'S FEES

In case City shall bring suit to compel performance of or to recover for breach of any covenant, agreement or condition herein contained and such suit results in a judgment for City, League will pay to City reasonable attorney's fees in addition to the amount of judgment.

Section 30. NOTICES AND PAYMENTS

All notices required under this Agreement including change of address shall be in writing, and all notices and payments shall be made as follows:

A. All payments and notices to AYSO shall be given or mailed to the current AYSO Regional Commissioner. It is the responsibility of AYSO to notify City when there has been a change with regard to the individual serving as Regional Commissioner and to provide the City with name, address, and 24-hour contact phone number of the new Commissioner:

Moorpark AYSO
P.O. Box 241
Moorpark, CA 92020
24-Hour Emergency Contact Person: Niall Stewart
Phone Number: (805) 630-0668

B. All payments and notices to City shall be given or mailed to:

City of Moorpark
Director of parks, Recreation and Community Services
799 Moorpark Avenue
Moorpark, CA 93021

Section 31. PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is found by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 32. GENDER AND NUMBER

For the purpose of this Agreement wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

Section 33. PARAGRAPH HEADINGS

Paragraph headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

Section 34. MODIFICATION

This Agreement may be terminated, extended or amended in writing by the mutual written consent of the parties hereto. Such amendments may be executed by the City Manager on behalf of the City.

Section 35. VENUE

This Agreement is made, entered into, executed in Ventura County,

California, and any action filed in any court for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.

Section 36. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous negotiations and understandings between the parties. There are no representations, warranties or commitments, oral or written, other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

City of Moorpark

AYSO

By: _____

By: _____

Steven Kueny, City Manager

Niall Stewart, Regional Commissioner

Attest:

By: _____

Deborah Traffenstedt, City Clerk

DRAFT

**AGREEMENT BETWEEN THE CITY OF MOORPARK
AND THE MOORPARK PACKERS**

THIS USE AGREEMENT (hereinafter "Agreement") is made and entered into as of this ____ day of _____, 2007 by and between the CITY OF MOORPARK (hereinafter "City") and MOORPARK PACKERS, a California nonprofit public benefit corporation serving the City of Moorpark, California (hereinafter "Moorpark Packers").

THE PARTIES AGREE THAT:

Section 1. PREMISES

City, in consideration of the fees to be paid and of the indemnifications, covenants, and agreements agreed to herein, hereby grants to Moorpark Packers, and Moorpark Packers hereby accepts from City, the use of certain real property and associated facilities and equipment including but not limited to the park area incorporating the football field, adjacent practice field, snack bar and surrounding park areas (hereinafter Park Area) at Arroyo Vista Community Park (hereinafter "AVCP") described in Exhibit "A" attached hereto and by this reference incorporated herein, together with any and all improvements thereon (all of which are hereinafter referred to as the "Premises"). The City's contact regarding the day to-day activities and uses associated with this Agreement and use of Premises shall be with officials of Moorpark Packer Football as designated in writing by the Moorpark Packers.

Section 2. TERM

The term of this Agreement shall be for five years, commencing July 1, 2007 and ending on June 30, 2012, provided however, that City's obligations hereunder shall be contingent upon Moorpark Packers payment in full of all use and related fees and fulfillment of all obligations as set forth in this Agreement.

This Agreement may be terminated by either party with or without cause by providing written notice no less than thirty (30) days in advance of such termination.

Section 3. USE FEES

Moorpark Packers further agrees to pay the City at time of execution of Agreement, in total, annual use fees as follows:

- A. One Dollar (\$1.00) for the period of July 1, 2007, through June 30, 2008, and for every year thereafter on July 1 through the term of Agreement for the use of Park Area.

- B. Ten Dollars (\$10.00) per hour for Lighting Fees for the Practice Field.
- C. An annual use fee to City of eight hundred dollars (\$800) for the concession facility (identified in Exhibit A) at Premises for the fall season each year this Agreement remains in effect. Said fee shall be paid to City by November 30 of each year. City agrees that concession facility fees include use of water, electricity and pest control services specifically associated with the operation of the concession facility as authorized by this Agreement.

Section 4. ADJUSTMENTS USE OF FEES

For the year July 1, 2007 and for each year this Agreement is in effect, the City may adjust the Use Fees, referenced in Section 3.A. by giving Moorpark Packers written notice prior to August 1. Furthermore Packers agrees to work with the City to implement a non-resident Use Fee if so directed by City. If no such notification is given, the Use Fees for the next year shall be the same amount as the prior year.

Section 5. USE

The Premises shall be used for the following specified purposes only and shall not be used for any other purpose without the prior written consent of the City:

- A. Moorpark Packers shall use Premises for authorized Moorpark Packer Football games and practices only. Said use is granted during the period commencing the third week of July through the second week of December (Fall Season). A schedule of games and practices shall be furnished to the Director of Community Services for the City's written approval prior to August 1 of each year. At no time shall the Moorpark Packers authorize the use or schedule games for AVCP facilities where both participating teams are from out of town (non-Moorpark teams).
- B. City agrees to provide a storage room in the assigned snack bar and rest room building. Storage closet shall be used for storage of Packers equipment and supplies only. Packers shall be required, at its sole cost, to vacate storage room upon thirty (30) days written notice from City that the area is needed for City purposes.
- C. City authorizes Moorpark Packers to arrange for the placement and use of a refuse drop-box, at Moorpark Packers sole expense, during the fall season as identified in Section 5.A, for the purpose of disposing of solid waste. Moorpark Packers shall adhere to all provision of the City's Solid Waste Ordinance including the use of designated City approved refuse hauler. The

location of the bin shall be approved by City. Moorpark Packers agrees not to cause the bin to be placed at AVCP prior to August 1 of each year and to have the bin removed no later than December 31 of each year.

- D. City authorizes the use of amplified sound by Moorpark Packers for authorized football games between the hours of 9 a.m. and 6 p.m. on Saturday provided that the noise level resulting from the amplified sound does not exceed 55 decibels at the southern property boundary of AVCP and that said sound system is operated by an adult at all times. If City finds that Moorpark Packers has not adhered to the provision of this section, or if City receives substantiated complaints about the amplified sound, it may revoke the use of said amplified sound at its sole discretion. Moorpark Packers also agrees not to conduct activity that will generate excessive noise prior to 9 a.m., including the staging of a band for opening day ceremonies.
- E. City authorizes the Moorpark Packers to use semi-permanent lights on the football practice field, located north of the football field and further identified on Exhibit A of this Amendment. The lights may be used for Moorpark Packer Football practice purposes, Monday through Friday and must be turned off no later than 8 p.m. The Moorpark Packers agrees to pay the City an Electrical Use Fee of \$10 per hour for "electrical service" only, for said lights. The Moorpark Packers shall be responsible for maintenance, repair and replacement of the lights at its own cost and pursuant to Sections 10 and 15.

The City reserves the right to evaluate the continued use and location of said lights by the Moorpark Packers for future seasons. The City shall have sole discretion regarding continued use of said lights, or modification to the conditions set forth for use thereof.

- F. At all times, City retains the right to use Premise at its discretion for City sponsored and co-sponsored events upon no less than thirty- (30) days written notice to Moorpark Packers. During the fall season, the general public shall have access to and use of said Premises at a time of day and or on a day that is not included in the written schedule submitted by the Moorpark Packers and approved in writing by the City. Moorpark Packers shall not have priority use of Premises outside of the approved schedule.
- G. The sale and consumption of food and beverages shall be at the discretion of the Moorpark Packers with the exception that no alcoholic beverages shall be sold or consumed on Premises. Moorpark Packers shall obtain all required health and other permits for the preparation and sale of food and beverages at its own expense. Moorpark Packers also agrees to adhere to, and to conduct the sale and consumption of food and beverages in conformance with all applicable health codes.

- H. Moorpark Packers may have use of the snack bar located east of the football field on Premises during the fall season. Moorpark Packers shall not begin storage of its property in the snack bar until authorized by City. Moorpark Packers by mid January must remove its property from the Concession facility and disconnect any and all appliances (i.e. refrigerators, freezers, ice machines or soda machines) by mid January. Moorpark Packers shall be provided with a key to the Concession facility prior to the start of the fall season and shall be responsible for securing it. Said key(s) shall not be duplicated. Upon vacating the Concession facility, Moorpark Packers shall return the key(s) to the City. In the event the key is lost or is distributed to unauthorized persons, Moorpark Packers agrees to reimburse the City to change the lock on the Concession facility door.
- I. City agrees to allow Moorpark Packers to access the field portion of Premises with one vehicle. Moorpark packers agrees not to use vehicle on the fields whenever the ground is wet, for whatever reason, without obtaining City's written approval. Moorpark Packers agrees that vehicle it uses shall not exceed a gross vehicle weight (GVW) of 5,400 pounds. Vehicle is only to be driven by an adult twenty-one years and older.

Section 6. SIGNS

Moorpark Packers agrees not to permit the construction or placement of any sign, signboard or other form of outdoor advertising on the Premises without the prior written consent of the City. In the event of a violation of this provision by Moorpark Packers or any one claiming under Moorpark Packers, Moorpark Packers hereby authorizes City as Moorpark Packers Agent, to enter the Premises and to remove and dispose of any such sign, signboard or other advertising, and to charge the cost and expense of any such removal and disposal to Moorpark Packers who agrees to pay the same upon demand.

This provision does not exclude the use of identification banners for individual teams and sponsors, which may be displayed during games and shall be removed following the end of each game.

Section 7. INDEMNIFICATION AND HOLD HARMLESS

Moorpark Packers hereby agrees to hold harmless and indemnify City, its officers, agents, and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising or growing out of loss or damage to property, including City's own personal property, or injury to or death of persons, including employees of City, resulting in any manner whatsoever directly or indirectly, by reason of this Agreement or the use of the Premises by Moorpark Packers or any person claiming use under or through Moorpark Packers unless such loss, damage,

injury, or death is due to the sole negligence of the City. Moorpark Packers shall also hold the City harmless from all costs and expenses, including costs of investigation arising out of or incurred in the defense of any claim, proceeding, or action brought for injury to persons or damage to property, resulting from or associated with the use of said Premises under this Agreement and shall further save and hold harmless the City from any and all orders, judgments, and decrees which may be entered in any and all such suit or actions. Moorpark Packers and all others using said Premises under this Agreement hereby waive any and all claims against the City of damage to persons or property in or about said Premises.

The City does not, and shall not, waive any rights that it may have against Moorpark Packers by reason of this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. Said hold harmless and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in this Section. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

Section 8. LIABILITY INSURANCE

As a condition precedent of the effectiveness of this Agreement, Moorpark Packers shall procure, and thereafter maintain in full force and effect at Moorpark Packers sole cost and expense, a public liability insurance policy written with a company acceptable to City and authorized to do business in the State of California. Such policy shall provide for a minimum coverage of Two Million Dollars (\$2,000,000.00) for bodily injury or death of any person or persons in any one occurrence and One Million Dollars (\$1,000,000.00) for loss by damage or injury to property in any one occurrence and shall include automobile coverage. The policy shall contain a provision providing for a broad form of contractual liability, including Product Liability coverage if food and beverages are dispensed on Premises. The policy or policies shall be written on an occurrence basis. The policy shall name Moorpark Packers as the insured and the City of Moorpark, its officials, employees and agents as an additional insured. The policy shall also provide that the City shall be notified in writing, at least thirty (30) days prior to any termination, amendment cancellation or expiration thereof. Moorpark Packers shall furnish City evidence of all insurance policies required by this Agreement in the form of a Certificate of Insurance.

Section 9. CASUALTY INSURANCE

The parties each specifically acknowledge that City shall not be obligated to keep the Premises insured against fire, or any other insurable risk. Moorpark Packers hereby and forever waives all right to claim or recover damages from City in any

amount as the result of any damage to the Premises by fire, earthquake, flooding, storm or any other cause.

Section 10. IMPROVEMENTS

Moorpark Packers shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City. The City may require that any or all alterations, additions and improvements be done by a licensed contractor, and shall be performed and maintained in strict accord with all Federal, State, County, and local laws, ordinances, codes and standards relating thereto. Performance of work shall be subject to City monitoring and inspection. At City's sole discretion, work may be stopped if it does not conform to City specifications and standards. Unless otherwise expressly agreed to in writing by the City, any alterations, additions and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Agreement. Moorpark Packers shall timely pay all costs associated with any and all improvements, and shall keep the Premises free and clear of all mechanics liens. Moorpark Packers agrees to and shall indemnify, defend and save City free and harmless against all liability, loss, damage, costs, attorney's fees and other expenses of any nature resulting from any Moorpark Packers alterations, additions or improvements to the Premises.

At such time as Moorpark Packers vacates Premises, all improvements to Premises not already owned by City shall become the property of the City unless otherwise authorized by City in writing.

Section 11. FLAMMABLE MATERIAL, WASTE AND NUISANCES

Moorpark Packers agrees that it will not place or store any flammable materials on the Premises, that it will not commit any waste or damage, nor suffer any to be done. Moorpark Packers also specifically agrees that it will not allow others to take such actions on the Premises. Moorpark Packers further agrees that it will keep the Premises clean, free from weeds, rubbish and debris and in a condition satisfactory to City.

Moorpark Packers shall also provide adequate controls for dust, odors, noise which may emanate from the Premises or from Moorpark Packers activities on adjacent property and take appropriate steps necessary to prevent dust contamination of City's facilities located on, near or adjacent to the Premises. Moorpark packers agrees to take preventative action to eliminate such dust, odor, noise or any other nuisance which may disturb the adjacent or nearby community and agrees to be responsible for and to assume all liability for such dust, odor, noise or other nuisance disturbances. Moorpark Packers also agrees that it shall not use amplified sound or field lighting on Premises for any reason, without the

prior written consent of City.

Notwithstanding the above, Moorpark Packers shall not install, operate or maintain, or cause, or permit to be installed, operated or maintained any electrically charged fence on the Premises.

Section 12. PESTICIDES AND HERBICIDES

Moorpark Packers agrees that prior to any application of either pesticides or herbicides, it shall receive written consent from City, and further any pesticide or herbicide applications on the Premises shall be made in accordance with all Federal, State, County and local laws. Moorpark Packers further agrees to dispose of any pesticides, herbicides or any other toxic substances which are declared to be either a health or environmental hazard in such a manner as prescribed by law. This shall include, but shall not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

Section 13. STORAGE TANKS

Notwithstanding anything to the contrary set forth in this Agreement, Moorpark Packers shall not have the right to install underground or above ground storage tanks, as defined by any and all applicable laws or regulations, without the prior written consent of the City.

Section 14. HAZARDOUS MATERIALS INDEMNITY

Moorpark Packers hereby agrees to indemnify and hold harmless City, and its respective officers, employees, and agents, from and against any and all claims, actions, losses, liabilities, costs and expenses: (a) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal of Hazardous Material on the Premises; and (b) including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence, or use, generation, storage, release, threatened release, or disposal of Hazardous Materials on the Premises. As used in this Section, Hazardous Materials means any flammable explosives, radioactive materials, asbestos, PCBs, hazardous water, toxic substances of related materials, including, without limitation, substances, defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC, Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC, Section 6901, et seq.; the Toxic Substances Control Act, 15 USC, Section 2601, et seq.; any other Federal, State or local law applicable to the Premises;

and in the rules and regulations adopted or promulgated under or pursuant to any of said laws. The provisions of these Sections shall survive the expiration or earlier termination of this Agreement.

Section 15. UTILITIES

Moorpark Packers agrees to pay a pro rata share of all charges and assessments for or in connection with electricity, water, and sewer and any other utilities which may be furnished to or used upon the Premises by Moorpark Packers during the period covered by this Agreement with exception of those addressed in Section 3 of this Agreement and unless otherwise noted. It is further agreed that in the event Moorpark Packers shall fail to pay the above mentioned charges when due, City shall have the right to pay the same on demand, together with interest thereon at the maximum rate allowed by law and to charge the cost and expense to Moorpark Packers who agree to pay the same upon demand, City shall bill Moorpark Packers for said charges, which shall be in addition to Use Fee identified in Section 3.

Section 16. MAINTENANCE

Except as specifically provided for in the Agreement, all maintenance of, and repairs to Premises shall be done at City's sole discretion and shall be performed by City force account or by City's authorized agent unless approved by City in writing. All maintenance and repair authorized to be performed by Moorpark Packers shall adhere to City specifications and standards. All improvements shall meet City and other applicable codes, regulations, and standards including but not limited to building and zoning codes. The City reserves the right to require some or all maintenance work to be done by a licensed contractor at the City's discretion.

- A. During the period of August 1 through December 31, Moorpark Packers shall be responsible to perform the following maintenance on Premises:
1. Mark football field lines using a white, water-based acrylic paint, manufactured specifically for marking lines on sports turf and athletic fields. Athletic field paint should not contain calcium carbonate, vinyl copolymers, herbicides, or pesticides.
 2. Moorpark Packers agrees to maintain and replace all components installed for the operation of the lights on the practice field, including, but not limited to, underground and overhead electrical cabling, wooden light poles, light fixtures and bulbs. Moorpark Packers agrees to respond to City's request for repair and maintenance to the lights and light system within 48 hours of receipt of said request.

City previously authorized Moorpark Packers to install semi-permanent lights at the football practice field located on Premises. During the Packer Football season, Moorpark Packers agree to make any and all adjustments to the lights and electrical system as deemed necessary, and requests made by the City. It is the sole responsibility of Moorpark Packers to ensure that said lights are maintained in a safe & good workman like manner at all times.

3. Pickup trash on and around Premises. Following the last scheduled game or practice remove trash liners and dispose in trash dumpster located at AVCP. Insert replacement liners provided by City in trash containers.
4. Maintain and clean snack bar, including counters, sinks, floors, and walls after each use; remove and dispose of all trash in and around snack bar to trash bins provided by City.
5. Maintain the football goal posts. Ensure that they are adequately secured and take any corrective action when necessary. Repaint goals a minimum of once a year.
6. All equipment must be secured in the store room provided by the City. If an item of equipment cannot be stored, it must be secured in a manner that prevents the general public from accessing.
7. Maintain bleachers in good working order at all times. Moorpark Packers agrees to replace or repair any lose or missing parts within twenty-four (24) hours of being notified that a repair is needed.
8. Graffiti applied to goal posts and/or bleachers shall be removed within twenty-four (24) hours of City's notification to do so. In the event of violation of this provision, Moorpark Packers hereby authorizes City, as Moorpark Packers agent, to remove graffiti and to charge the cost and expense of any such removal to Moorpark Packers who agrees to pay the same upon demand.
9. Any additional fertilization or other turf maintenance, above maintenance work routinely performed by City or City's landscape maintenance contractor, requested by Moorpark Packers shall be performed by Moorpark Packers at its sole expense. Moorpark Packers shall obtain City's written approval prior to commencing with any turf maintenance. requests to perform turf maintenance shall to submitted to City in writing.

City shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Agreement. City shall not be obligated to perform any precautionary or preventative measures with respect to the Premises, including, but not limited to drainage and flood control measures. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services.

Section 17. ENTRY BY CITY

City may enter upon the Premises at all reasonable times to examine the condition thereof, and for the purpose of providing maintenance and making such repairs as City desires to make.

Section 18. GOVERNING LAW AND VENUE

Moorpark Packers agrees that in the exercise of its rights under this Agreement, Moorpark Packers shall comply with all applicable Federal, State, County and City laws and regulations in connection with its use of the Premises. The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California.

This Agreement is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants, referred to herein, shall be filed in the applicable court in Ventura County, California.

Section 19. DISCRIMINATION

Moorpark Packers agrees not to discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the Premises.

Section 20. ASSIGNMENT AND SUBLETTING

Moorpark Packers shall not assign this Agreement, or any interest therein, and shall not assign use of the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of Moorpark Packers excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of City. A consent to one assignment,

subletting, occupation, or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation, or use by another person. This Agreement shall not, nor shall any interest therein, be assignable, as to the interest of Moorpark Packers, by operation of law, without the written consent of City. Any assignment or

subletting without such consent shall be void, and shall, at the option of the City, terminate this Agreement. No legal title or interest in Premises is created or vested in Moorpark Packers by this Agreement.

Section 21. INSOLVENCY OR BANKRUPTCY

If Moorpark Packers shall be adjudged bankrupt or insolvent, this Agreement shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the Moorpark Packers under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Agreement shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the Moorpark Packers thereupon shall cease and terminate.

Section 22. DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Agreement is in default or breach in the performance of any of the terms and conditions of this Agreement, the other party shall give written notice to remedy such default or breach. If default or breach is remedied within 30 days following such notice, then this Agreement shall continue in full force and effect. If such default or breach is not remedied within 30 days following such notice or if the nature of the default is such that it cannot reasonably be cured within 30 days, if Moorpark Packers fails to commence to cure within the 30 day period, the other party may, at its option, terminate this Agreement. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Agreement shall be deemed to be both a covenant and a condition.

Section 23. INTERPRETATION

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

Section 24. WAIVER

A waiver by either party or any default or breach by the other party in the performance of any of the covenants, terms or conditions of this Agreement shall not constitute or be deemed a waiver of any subsequent or other default or breach.

Section 25. ACQUIESCENCE

No acquiescence, failure or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance

Section 26. PARTIES BOUND AND BENEFITED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 27. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Agreement shall cease on the day of possession by the public authority. If a part only of the Premises should be taken under eminent domain, Moorpark Packers shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Premises. If Moorpark Packers remains in possession, all of the terms hereof shall continue in effect, with the fees payable being reduced proportionately for the balance of the Agreement term.

Section 28. TIME

Time is of the essence of this Agreement.

Section 29. REMEDIES

In case of the failure or refusal of Moorpark Packers to comply with and perform each and all of the terms and covenants on its part herein contained, this Agreement and all rights hereby given shall, at the option of City, cease and terminate, and City shall have the right forthwith to remove Moorpark Packers personal property from the Premises at the sole cost, expense and risk of Moorpark Packers, which cost and expense Moorpark Packers agrees to pay to

City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City.

Section 30. NOTICES AND PAYMENTS

All notices required under this Agreement including change of address shall be in writing, and all notices and payments shall be made as follows:

- A. All payments and notices to Moorpark Packers shall be given or mailed to the current Packer Football President. It is the responsibility of Moorpark Packers to notify City when there has been a change with regard to the individual serving as Packer Football President and to provide City with name, address, and 24-hour contact phone number of the new President:

Moorpark Packers Football
4215 Tierra Rejada Road
Moorpark, CA 93021
Emergency Contact Person: Gary Lowenberg
Phone Number: (h.) 529-6585, (cell) 444-6700

- B. All payments and notices to City shall be given or mailed to:

City of Moorpark
City Manager
799 Moorpark Avenue
Moorpark, CA 93021

Section 31. PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is found by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 32. GENDER AND NUMBER

For the purpose of this Agreement wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

Section 33. PARAGRAPH HEADINGS

Paragraph headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

Section 34. MODIFICATION

This Agreement may be terminated, extended or amended in writing by the mutual written consent of the parties hereto. Such amendments may be executed by the City Manager on behalf of the City.

Section 35. VENUE

This Agreement is made, entered into, executed in Ventura County, California, and any action filed in any court for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.

Section 36. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous negotiations and understandings between the parties. There are no representations, warranties or commitments, oral or written, other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

City of Moorpark

Moorpark Packers, Inc.

By: _____
Steven Kueny, City Manager

By: _____
Gary Lowenberg, Moorpark Packers, President

Attest:

BY: _____
Deborah Traffenstedt, City Clerk

ATTACHMENT C

AGREEMENT BETWEEN THE CITY OF MOORPARK AND MOORPARK SOCCER CLUB

THIS USE AGREEMENT (hereinafter "Agreement") is made and entered into as of this _____ day of _____, 2007 by and between the CITY OF MOORPARK (hereinafter "City") and Moorpark Soccer Club, Inc. a non profit corporation (hereinafter "MSC").

THE PARTIES AGREE THAT:

Section 1. PREMISES

City, in consideration of the fees to be paid and of the indemnification, covenants, and agreements agreed to herein, hereby grants to MSC, and MSC hereby accepts from City, the use of certain real property and associated facilities and equipment including but not limited to the athletic field and park area at Campus Canyon Park (hereinafter "CCP") described in Exhibit "A" attached hereto and by this reference incorporated herein, together with any and all improvements thereon (all of which are hereinafter referred to as the "Premises").

Section 2. TERM

The term of this Agreement shall be for two (5) years, commencing on December 1, 2007 and ending on November 30, 2012 provided however, that City's obligations hereunder shall be contingent upon MSC's payment in full of all use and related fees and fulfillment of all obligations as set forth in this Agreement.

This Agreement may be terminated by either party with or without cause by providing written notice no less than thirty (30) days in advance of such termination.

Section 3. USE FEES

MSC further agrees to pay the City at time of execution of Agreement, in total, annual use fees as follows:

- A. One Dollar (\$1.00) for the period of December 1, 2007, through November 30, 2008, and for every year thereafter on December 1 through the term of Agreement for the use of Park Area; and
- B. In order for MSC to retain the rights granted under the Agreement, it must maintain a membership (players) that consists of no less than 75 (seventy-five) members and at least 80 (eighty) percent of the membership must live within the Moorpark City limits. Upon request, MSC agrees to provide to City a list of players names and addresses to be used to verify residency. If MSC fails to achieve the membership residency requirement, the City, at its sole discretion may impose additional rental fees.

Section 4. ADJUSTMENTS OF USE FEES

For the year December 1, 2008, and for each year this Agreement is in effect, the City may adjust the Use Fees, referenced in Section 3.A, by giving MSC written notice prior to October 1, of each year. Furthermore, Club agrees to work with the City to implement a non-resident Use Fee if so directed by City. If no such notification is given, the Use Fees for the next year shall be the same amount as the prior year, except for reasons provided in 3B of this agreement.

Section 5. USE

The Premises shall be used for the following specified purposes only and shall not be used for any other purpose without the prior written consent of the City:

- A. The field portion of Premises shall be used for MSC's authorized games, practices, and training sessions for coaches and referees tied specially to official seasons, held during the months of August through November (Fall Season) each year. A schedule of said games and practices shall be furnished to the Director of Community Services for the City's written approval prior to July 10 of each year, which approval shall not be unreasonably withheld.
- B. At all times, City retains the right to use Premises at its discretion for City sponsored and co-sponsored events upon no less than thirty (30) days written notice to MSC. During the Fall season, the general public shall have access to and use of said Premises at a time of day and on a day that is not included in the schedule submitted by MSC in writing and approved in writing by the City. MSC shall not have priority use of Premises outside of the approved schedule.
- B. The sale and consumption of food and beverages shall be at the discretion of MSC with the exception that no alcoholic beverages shall be sold or consumed on Premises. MSC shall obtain all required health and other permits for the preparation and sale of food and beverages.
- D. In the event the turf is too wet to conduct soccer games or practices without causing damage, as solely determined by the City, MSC agrees to cancel its scheduled game or practice.
- E. MSC agrees not to drive any vehicle, or allow any vehicle to be driven onto the Premises or any area of Campus Canyon Park with out the written consent of the City.
- F. MSC agrees not to store or leave any equipment on any park grounds without written consent of the City.

Section 6. SIGNS

MSC agrees not to permit the construction or placement of any sign, signboard or other form of outdoor advertising on the Premises without the prior written consent of the City. In the event of a violation of this provision by MSC or any one claiming under MSC, MSC hereby authorizes City as MSC's Agent, to enter the Premises and to remove and dispose of any such sign, signboard or other advertising, and to charge the cost and expense of any such removal and disposal to MSC who agrees to pay the same upon demand.

This provision does not exclude the use of identification banners for individual teams and sponsors, which may be displayed during games and shall be removed following the end of each game.

Section 7. INDEMNIFICATION AND HOLD HARMLESS

MSC hereby agrees to hold harmless and indemnify City, its officers, agents, and employees, and its successors and assigns, from and against all claims, loss, damage, actions, causes of actions, expense and/or liability arising or growing out of loss or damage to property, including City's own personal property, or injury to or death of persons, including employees of City, resulting in any manner whatsoever directly or indirectly, by reason of this Agreement or the use of the Premises by MSC or any person claiming use under or through MSC unless such loss, damage, injury, or death is due to the sole negligence of the City. MSC shall also hold the City harmless from all costs and expenses, including costs of investigation arising out of or incurred in the defense of any claim, proceeding, or action brought for injury to persons or damage to property, resulting from or associated with the use of said Premises under this Agreement and shall further save and hold harmless the City from any and all orders, judgments, and decrees which may be entered in any and all such suit or actions. MSC and all others using said Premises under this Agreement hereby waive any and all claims against the City of damage to persons or property in, or about said Premises.

The City does not, and shall not, waive any rights that it may have against MSC by reason of this Section, because of the acceptance by the City, or the deposit with the City, of any insurance policy or certificate required pursuant to this Agreement. Said hold harmless and indemnification provision shall apply regardless of whether or not said insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense described in this Section. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

Section 8. LIABILITY INSURANCE

As a condition precedent of the effectiveness of this Agreement, MSC shall procure, and thereafter maintain in full force and effect at MSC's sole cost and expense, a public liability insurance policy written with a company acceptable to City and authorized to do business in the State of California. Such policy shall provide for a minimum coverage of two Million Dollars (\$2,000,000.00) for bodily injury or death of any person or persons in any one occurrence, and One Million Dollars (1,000,000.00) for loss by damage or injury to property in any one occurrence and shall include automobile coverage. The policy shall contain a provision providing for a broad form of contractual liability, including Product Liability coverage if food and beverages are dispensed on Premises. The policy or policies shall be written on an occurrence basis. The policy shall name MSC as the insured and the City of Moorpark its officials, employees, and agents as an additional insured. The policy shall also provide that the City shall be notified in writing, at least thirty (30) days prior to any termination, amendment cancellation or expiration thereof. MSC shall furnish City evidence of all insurance policies required by this Agreement in the form of a Certificate of Insurance and Endorsement Certificate.

Section 9. CASUALTY INSURANCE

The parties each specifically acknowledge that City shall not be obligated to keep the Premises insured against fire, or any other insurable risk. MSC hereby and forever waives all right to claim or recover damages from City in any amount as the result of any damage to the Premises by fire, earthquake, flooding, storm or any other cause.

Section 10. IMPROVEMENTS

MSC shall not make any alterations, additions, or improvements upon the Premises without the prior written consent of the City. All alterations, additions and improvements shall be done in a good and workmanlike manner and diligently prosecuted to completion, and shall be performed and maintained in strict accord with all Federal, State, County, and local laws, ordinances, codes and standards relating thereto. Performance of work shall be subject to City monitoring and inspection. At City's sole discretion, work may be stopped if it does not conform to City specifications and standards. Unless otherwise expressly agreed to in writing by the City, any alterations, additions and improvements shall remain on and be surrendered with the Premises upon the expiration or termination of this Agreement. MSC shall timely pay all costs associated with any and all improvements, and shall keep the Premises free and clear of all mechanics liens. MSC agrees to and shall indemnify, defend and save City free and harmless against all liability, loss, damage, costs, attorney's fees and other expenses of any nature resulting from any MSC alterations, additions or improvements to the Premises.

At such time as MSC vacates Premises, all improvements to Premises not already owned by City shall become the property of the City unless otherwise authorized by City in writing.

Section 11. FLAMMABLE MATERIAL, WASTE AND NUISANCES

MSC agrees that it will not place or store any flammable materials on the Premises, that it will not commit any waste or damage, nor suffer any to be done. MSC also specifically agrees that it will not allow others to take such actions on the Premises. MSC further agrees that it will keep the Premises clean, free from weeds, rubbish and debris and in a condition satisfactory to City.

MSC shall also provide adequate controls for dust, odors, noise which may emanate from the Premises or from MSC's activities on adjacent property and take appropriate steps necessary to prevent dust contamination of City's facilities located on, near or adjacent to the Premises. MSC agrees to take preventative action to eliminate such dust, odor, noise or any other nuisance which may disturb the adjacent or nearby community and agrees to be responsible for and to assume all liability for such dust, odor, noise or other nuisance disturbances. MSC also agrees that it shall not use amplified sound or field lighting on Premises for any reason, without the prior written consent of City.

Notwithstanding the above, MSC shall not install, operate or maintain, or cause, or permit to be installed, operated or maintained any electrically charged fence on the Premises.

Section 12. PESTICIDES AND HERBICIDES

MSC agrees that prior to any application of either pesticides or herbicides, it shall receive written consent from City, and further any pesticide or herbicide applications on the Premises shall be made in accordance with all Federal, State, County and local laws. MSC further agrees to dispose of any pesticides, herbicides or any other toxic substances, which are declared to be either a health or environmental hazard in such a manner as prescribed by law. This shall include, but shall not be limited to, contaminated containers, clothing, equipment or any other contaminated material.

Section 13. STORAGE TANKS

Notwithstanding anything to the contrary set forth in this Agreement, MSC shall not have the right to install underground or above ground storage tanks, as defined by any and all applicable laws or regulations, without the prior written consent of the City.

Section 14. HAZARDOUS MATERIALS INDEMNITY

MSC hereby agrees to indemnify and hold harmless City, and its respective officers, employees, and agents, from and against any and all claims, actions, losses, liabilities, costs and expenses: (a) including, without limitation, all foreseeable and all unforeseeable consequential damages, directly or indirectly arising out of the use, generation, storage or disposal of Hazardous Material on the Premises by MSC; and (b) including, without limitation, the cost of any required or necessary repair, cleanup, or detoxification and the preparation of any closure or other required plans, to the full extent that such action is attributable, directly or indirectly, to the presence, or use, generation, storage, release, threatened release, or disposal of Hazardous Materials on the Premises by MSC. As used in this Section, Hazardous Materials means any flammable explosives, radioactive materials, asbestos, PCBs, hazardous water, toxic substances or related materials, including, without limitation, substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 USC, Section 9601, et seq.; the Resource Conservation and Recovery Act, 42 USC, Section 6901, et seq.; the Toxic Substances Control Act, 15 USC, Section 2601, et seq., any other Federal, State or local law applicable to the Premises; and in the rules and regulations adopted or promulgated under or pursuant to any of said laws. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

Section 15. MAINTENANCE

Except as specifically provided for in the Agreement, all maintenance of, and repairs to Premises shall be done at City's sole discretion and shall be performed by City force account or by City's authorized agent unless approved by City in writing. All maintenance and repair authorized to be performed by MSC shall adhere to City specifications and standards. All improvements shall meet City and other applicable codes, regulations, and standards including but not limited to building and zoning codes.

During the period of August 1 through November 30 MSC shall be responsible to perform the following maintenance on Premises:

1. Mark the soccer field lines using a water base paint, or other method acceptable and approved by City in advance.
2. Pick up trash on and around Premises and provide for additional trash containers if needed and so directed by City. On each day of use following the last scheduled game or practice, empty contents of trash containers into trash dumpster.
3. In the event MSC desires additional field maintenance, such as, but not limited to, weeding, aeration, mowing, and fertilization, above and beyond that which is routinely provided for by the City, it shall first seek the written

approval of the City. Any such additional maintenance work approved by the City in writing shall be provided and paid for solely by MSC and any such approved work shall comply with City standards.

City shall not be obligated to repair, replace or maintain the Premises in any manner throughout the term of this Agreement. City shall not be obligated to perform any precautionary or preventative measures with respect to the Premises, including, but not limited to drainage and flood control measures. Should City perform any of the foregoing, such services shall be at the sole discretion of City, and the performance of such services shall not be construed as an obligation or warranty by City of the future or ongoing performance of such services.

4. MSC agrees not store any equipment, including, but not limited to soccer goals, field grooming and field line equipment on premises without first obtaining written approval from City.

Section 16. ENTRY BY CITY

City may enter upon the Premises at all reasonable times to examine the condition thereof, and for the purpose of providing maintenance and making such repairs as City desires to make.

Section 17. GOVERNING LAW

MSC agrees that in the exercise of its rights under this Agreement, MSC shall comply with all applicable Federal, State, County and City laws and regulations in connection with its use of the Premises. The existence, validity, construction, operation and effect of this Agreement and all of its terms and provisions shall be determined in accordance with the laws of the State of California.

Section 18. DISCRIMINATION

MSC agrees not to discriminate against any person or class of persons by reason of race, color, creed, or national origin in the use of the Premises.

Section 19. ASSIGNMENT AND SUBLETTING

MSC shall not assign this Agreement, or any interest therein, and shall not assign use of the Premises or any part thereof, or any right or privilege appurtenant thereto, or suffer any other person (the agents and servants of MSC excepted) to occupy or use the Premises, or any portion thereof, without the prior written consent of City. A consent to one assignment, subletting, occupation, or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation, or use by another person. This Agreement shall not, nor shall any interest therein, be assignable, as to the interest of MSC,

by operation of law, without the written consent of City. Any assignment or subletting without such consent shall be void, and shall, at the option of the City, terminate this Agreement. No legal title or interest in Premises is created or vested in MSC by this Agreement.

Section 20. INSOLVENCY OR BANKRUPTCY

If MSC shall be adjudged bankrupt or insolvent, this Agreement shall thereupon immediately terminate and the same shall not be assignable by any process of law, or be treated as an asset of the MSC under such adjudication, nor shall it pass under the control of any trustee or assignee by virtue of any process in bankruptcy or insolvency, or by execution or assignment for the benefit of creditors. If any such event occurs, this Agreement shall immediately become null and void and of no effect, and City may thereupon repossess said Premises and all rights of the MSC thereupon shall cease and terminate.

Section 21. DEFAULT OR BREACH

Except as otherwise provided, at any time one party to this Agreement is in default or breach in the performance of any of the terms and conditions of this Agreement, the other party shall give written notice to remedy such default or breach. If default or breach is remedied within 30 days following such notice, then this Agreement shall continue in full force and effect. If such default or breach is not remedied within 30 days following such notice or if the nature of the default is such that it cannot reasonably be cured within 30 days, if MSC fails to commence to cure within the 30 day period the other party may, at its option, terminate this Agreement. Such termination shall not be considered a waiver of damages or other remedies available to either party because of such default or breach. Each term and condition of this Agreement shall be deemed to be both a covenant and a condition.

Section 22. INTERPRETATION

Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

Section 23. WAIVER

A waiver by either party or any default or breach by the other party in the performance of any of the covenants, terms or conditions of this Agreement shall not constitute or be deemed a waiver of any subsequent or other default or breach.

Section 24. ACQUIESCENCE

No acquiescence, failure or neglect of any party hereto to insist on strict performance of any or all of the terms hereof in one instance shall be considered or constitute a waiver of the rights to insist upon strict performance of the terms hereof in any subsequent instance.

Section 25. PARTIES BOUND AND BENEFITED

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

Section 26. CONDEMNATION

If the whole of the Premises should be taken by a public authority under the power of eminent domain, then the term of this Agreement shall cease on the day of possession by the public authority. If a part only of the Premises should be taken under eminent domain, MSC shall have the right to either terminate this Agreement or to continue in possession of the remainder of the Premises. If MSC remains in possession, all of the terms hereof shall continue in effect with the fees payable being reduced proportionately for the balance of the Agreement term.

Section 27. TIME

Time is of the essence of this Agreement.

Section 28. REMEDIES

In case of the failure or refusal of MSC to comply with and perform each and all of the terms and covenants on its part herein contained, this Agreement and all rights hereby given shall, at the option of City, cease and terminate, and City shall have the right forthwith to remove MSC's personal property from the Premises at the sole cost, expense and risk of MSC, which cost and expense MSC agrees to pay to City upon demand, together with interest thereon at the maximum rate allowed by law from the date of expenditure by City.

Section 29. ATTORNEY'S FEES

In case City shall bring suit to compel performance of or to recover for breach of any covenant, agreement or condition herein contained and such suit results in a judgment for City, League will pay to City reasonable attorney's fees in addition to the amount of judgment and costs.

Section 30. NOTICES AND PAYMENTS

All notices required under this Agreement including change of address shall be in writing, and all notices and payments shall be made as follows:

- A. All payments and notices to MSC shall be given or mailed to the current MSC President/Commissioner. It is the responsibility of MSC to notify City when there has been a change with regard to the individual serving as President/ Commissioner and to provide the City with name, address, and 24-hour contact phone number of the new President/Commissioner:

Moorpark Soccer Club
PO Box 373
Moorpark CA 93020
24-Hour Emergency Contact Person: Phil Walters
Phone Number: (805) 208-6607

- B. All payments and notices to City shall be given or mailed to:

City of Moorpark
Director of Parks, Recreation & Community Services
799 Moorpark Avenue
Moorpark, CA 93021
Phone Number: 529-6864

Section 31. PARTIAL INVALIDITY

If any term, covenant, condition or provision of this Agreement is found by a Court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

Section 32. GENDER AND NUMBER

For the purpose of this Agreement wherever the masculine or neuter form is used, the same shall include the masculine or feminine, and the singular number shall include the plural and the plural number shall include the singular, wherever the context so requires.

Section 33. PARAGRAPH HEADINGS

Paragraph headings in this Agreement are for convenience only and are not intended to be used in interpreting or construing the terms, covenants and conditions of this Agreement.

Section 34. MODIFICATION

This Agreement may be terminated, extended or amended in writing by the mutual written consent of the parties hereto. Such amendments may be executed by the City Manager on behalf of the City.

Section 35. VENUE

This Agreement is made, entered into, executed in Ventura County, California, and any action filed in any court for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California.

Section 36. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties, and supersedes all previous negotiations and understandings between the parties. There are no representations, warranties or commitments, oral or written, other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as of the date first written above.

City of Moorpark

Moorpark Soccer Club

By: _____
Steven Kueny, City Manager

By: _____
Phil Walters, President

Attest:

By: _____
Deborah S. Traffenstedt, City Clerk