

**CONCESSION AGREEMENT
BETWEEN THE CITY OF SAN MARINO AND
THE SAN MARINO TENNIS FOUNDATION**

THIS CONCESSION AGREEMENT (the “Agreement”) is dated January 11, 2017 and is entered into by and between the CITY OF SAN MARINO, a municipal corporation (the “City”) and the SAN MARINO TENNIS FOUNDATION, a California non-profit corporation, created by Articles of Incorporation dated December 27, 1967 (the “Foundation”).

WITNESSETH

WHEREAS, the City is the owner of certain property in the City of San Marino known as Lacy Park; and

WHEREAS, the Foundation is a non-profit corporation whose primary purpose is the construction, operation and maintenance of tennis courts for the residents of San Marino; and

WHEREAS, the Foundation has constructed and operated six (6) tennis courts, a club house and related improvements in the Northwest corner of Lacy Park (the “Tennis Facilities”) pursuant to an agreement dated August 13, 1997 as amended October 13, 2010 ; and

WHEREAS, the City desires that the Foundation continue to operate and maintain the Tennis Facilities; and

WHEREAS, the Foundation desires to operate and maintain the Tennis Facilities;

NOW THEREFORE, in consideration of the mutual covenants herein contained, the parties do hereby promise and agree as follows:

1. The City hereby grants to the Foundation a concession for the limited purpose of maintaining and operating the Tennis Facilities
2. The term of this Agreement shall extend from the date hereof until December 31, 2024; the existing Agreement is hereby terminated. Should the Foundation desire to renew the Agreement, the Foundation shall submit in writing their intent to renew one (1) year prior to the Agreement’s expiration date. This Agreement may be amended by the City Council for just cause or other necessities, but any such amendment will take into account the best interests of the City as well as the views of the Tennis Foundation and neighbors close to Lacy Park.
3. The Foundation shall maintain and operate the Tennis Facilities constructed by the Foundation, consisting of:
 - a. Six (6) tennis courts.
 - b. Fencing and landscaping.

- c. Pro shop
 - d. Restrooms
 - e. Lights and associated timers
 - f. Pathway lighting
 - g. Presentation of the American Flag
4. The Foundation shall install security lighting in pathway between Tennis Facilities and the parking lot pursuant to City Council resolution.
 5. The Foundation shall not make any improvements or alterations to the Tennis Facilities without the prior written consent of the City Manager. Any additions, repairs, replacements, or improvements made by the Foundation shall not be removed by the Foundation (except for the purpose of repair and replacement) without the written approval of the City Manager. The Tennis Facilities shall at all times be the property of the City.
 6. The Foundation shall have two classes of members: Regular Members and Associate Members:

Regular Members:

Regular members shall be restricted to individuals who are residents within the boundaries of the San Marino Unified School District (the "District") and employees in the District and City.

Associate Members:

Members who were Regular Members but are no longer residents of the District may continue membership as an Associate Member. Also, with the approval of the Foundation board, nonresidents may be admitted as Associate Members. The Foundation Board will establish guidelines for admission of such Associate Members. The number of Associate members shall not exceed ten percent (10%) of the total members at time of admittance.

7. The Foundation shall keep full, complete and accurate books of account and records which will reflect all business and monetary transactions of the Foundation. The Foundation shall submit annual balance sheets and Profit and Loss Statements to the City showing all income to the Foundation and all costs of operation and maintenance of the Tennis Facilities as separate line items on or before February 15th of the following calendar year.
8. The Foundation may collect fees for the use of the Tennis Facilities from any person including any tennis professional the Foundation shall retain; offer tennis lessons; sell tennis related items; and raise funds in other ways consistent with the Agreement. The fees for use of the Tennis Facilities shall be set by the Foundation Board and approved by

of the Foundation's use or occupancy thereof, as a proximate result of the actions or omissions of the Foundation, its employees and agents, or its contractor, licensees, invites, their successors and assigns or arising out of the condition of the property. City shall, by appropriate written notice to the Foundation, advise Foundation as soon as practicable regarding any potential liability of the Foundation under this Section.

14. Insurance.

- a. Foundation shall maintain commercial general liability insurance with coverage at least as broad as Insurances Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. The City, its officers, agents, and employees shall be included as additional insureds on the policy
- b. Before commencement of any work by Foundation on any portion of the premises, Foundation shall obtain and maintain in force until completion of such work "all risk " builder's risk insurance with a combined single limit of at least equal to the cost of the work, including coverage for vandalism and malicious mischief. Such builder's risk insurance shall cover improvements in place and all material and equipment at the job furnished under contract, but shall exclude contractors', subcontractors', and construction managers' tools and equipment and property owned by contractors' and subcontractors' employees.
- c. Foundation shall keep all buildings, improvements and other structure on the Premises, as well as any and all additions thereto, insured for their full replacement value against loss or destruction by fire and the perils commonly covered under the standard extended coverage endorsement to fire insurance policies in the geographic area in which the Tennis Facilities are located, including vandalism and malicious mischief. The insurance policy shall provide that any loss payable under such insurance shall be payable in trust to City as loss payee. Any proceeds received because of a loss covered by such insurance shall be used and applied to repair and restore the improvements, but disbursement by City to Foundation shall be subject to customary and reasonable construction loan disbursement conditions.
- d. If the Foundation should hire employees to operate the tennis facilities, the Foundation shall obtain Worker's Compensation Insurance (Statutory Limits) for its employees and Employer's Liability Insurance (with limits of at least \$1,000,000). Without employees, the City will require a Declaration of Sole Proprietor.

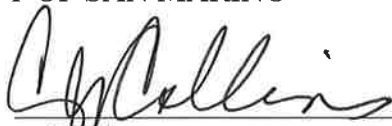
The Foundation shall submit to the City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of the City, its officers, agents, employees, and volunteers.

- e. With respect to each policy of insurance required above, Foundation shall furnish to the City an insurance certificate on the insurance carrier's form setting forth the general provisions of the insurance coverage (as well as a copy of each insurance policy promptly after written request by City). The required certificates shall also be furnished by Foundation promptly after the date of this Agreement.
 - f. All policies required by this Section shall be issued by responsible insurance companies licensed to do business in California with an A.M. Best's rating of no less than A-VIII, be primary and noncontributing, shall be non-assessable and shall contain language to the effect that the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to the City by certified mail. All such insurance shall have deductible amounts which shall be commercially reasonable.
 - g. Each policy of property/casualty insurance required above shall include a waiver by the insurer of all rights it may have to be subrogated to rights against City (or its elected officials, council members, board members, officers, employees, agents and representatives) in connection with any insured loss, and the Foundation hereby waives any rights it may have against such persons or entities in connection with matters covered by insurance.
15. The Foundation shall not assign or hypothecate all or a portion of this Agreement, nor shall the Foundation, without the written consent of the City Council, enter into any agreement allowing the operation by another person of the concession granted by this Agreement. Any attempt to take any such action shall be void and confer no rights on any other party and shall be cause for immediate termination of this Agreement by the City Council in its sole discretion..
16. The relationship of the parties hereto is solely that of owner and concessionaire, and nothing in this Agreement contained effect or create a partnership between the parties. The Foundation is an independent contractor, and the tennis professional and/or other persons retained by the Foundation shall at all times be the Foundation's independent contractors and not employees or contractors of the City. The Foundation shall have no power to incur any debt, obligation, or liability on behalf of the City. The City shall not have control over the conduct of the Foundation, except as set forth in this Agreement. The Foundation shall not, at any time, or in any manner, represent that it or any of its officers, agents, or contractors are in any manner employees or contractors of the City.
17. Should the Foundation be dissolved; or if a petition in bankruptcy or insolvency be filed by or against the Foundation, voluntary or involuntary; or if the Tennis Facilities shall become inoperative for a period of ninety (90) days; or if the facilities are conducted so as to constitute a public nuisance; or if any of the other provisions of this Agreement or the rules attached as Exhibit "A" as amended or supplemented by the City, are breached and the breach is not corrected within ten (10) business days after written notice from the City to the Foundation, then in any such event the City immediately may terminate this Agreement by written notice to Foundation and recover and resume possession of the Tennis Facilities.

18. The Foundation may terminate this Agreement with or without cause by providing ninety (90) days prior notice to the City. The City May terminate this Agreement with or without cause by providing ninety (90) days prior notice to the Foundation.
19. Foundation will, upon the expiration or earlier termination of the term of this Agreement, immediately surrender and deliver the premises to the City in good condition and repair, together with all improvements and alterations made by Foundation, and all furniture, furnishings, equipment, and other personal property then located on the premises.
20. The Foundation will pay to the City all costs and reasonable attorneys' fees which the City may be required to incur in enforcing any of the rights or remedies under this Agreement.
21. Any notice that the City may wish to give to the Foundation hereunder will be deemed received by the Foundation one (1) business day after being mailed by certified mail to: 1196 St. Albans Road, San Marino, CA 91108 (or to such other address as the Foundation shall designate in a written notice given under this Section). Notices to City shall be deemed given one (1) business day after sending by certified mail to City at City of San Marino, 2200 Huntington Drive, San Marino, California 91108, Attn: City Clerk (or to such other address as the City may designate in a written notice given under this Section).
22. City shall, at the Foundation's expense, provide forty-five (45) days advance written notice to all owners and occupants of property located within five hundred (500) feet of Lacy Park before the City Council will consider any amendment to this Agreement or any of the Rules.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures this 18th day of January, 2017.

CITY OF SAN MARINO

By: 
Cindy Collins, Interim City Manager

Attest:


Veronica Ruiz, City Clerk

SAN MARINO TENNIS FOUNDATION
A California Non-Profit Corporation

By: 
Print Name: Charles Perry 1-18-17
President

By: 
Print Name: Ruth Roberts 1-18-17
Secretary

EXHIBIT "A"

RULES GOVERNING USE OF TENNIS FACILITIES AND SUPERVISION BY THE SAN MARINO TENNIS FOUNDATION

The City of San Marino ("City"), hereby establishes the following rules for the operation and supervision of the Tennis Facilities. The Foundation shall comply with each, every, and all of the rules. Violation of the rules shall constitute breach of the Agreement.

1. The Foundation shall contract at its cost a tennis professional to supervise the use of the Tennis Facilities.
2. During all hours that the Tennis Facilities are open and the tennis professional is not present, the Foundation shall have an independent contractor supervise the use of the tennis facilities, so that there is a supervisor at all times the pro shop and courts 3 and 4 are in use. During the evening when lights are on and the courts are in use, the Foundation shall also provide supervision of the facilities.
3. The Foundation may establish hours of operation of the Tennis Facilities; however, the opening time cannot be before 7:00 a.m. and the closing time cannot be later than 8:45 p.m. seven days a week.
4. All gates to the tennis courts shall be locked during non-operating hours.
5. Only the three most easterly courts may be illuminated; such illumination shall be installed in compliance with the specifications contained in City Council Resolution No. R-11-03. Any deviation from such specifications, which would have to be minor, must be approved by the city Council in advance of installation of the lights. The court shall be illuminated only during play. Court illumination lights must be turned off no later than 8:30 p.m.
6. During the period in which courts will be illuminated, only one (1) court may be used for clinics, lessons, or instruction. Clinics, lessons and instruction during such hours may not exceed eight (8) students and one (1) instructor at a time on the single court on which such uses are permitted. . The remaining two (2) courts may be used only for singles and doubles play.
7. Except for persons engaged in clinics, lessons or instruction on the single court as discussed in Section 6, tennis play during the evening hours when lights are on is limited to members and associate members only. Exceptions may be granted by written approval of the City Manager.
8. Master lighting controls or timers shall be locked and secured when not in use. Courts will be lit only as necessary for tennis play.
9. The Foundation shall install and maintain pathway lights in accordance with City-specified requirements.

10. The pro shop may carry on the sale of tennis items, food, beverages, and repair activities as are normally allowed in pro shops in other facilities. No alcoholic beverages may be sold or consumed at the Tennis Facilities.

11. The Foundation, in cooperation with the tennis professional, and subject to approval by the City Manager, shall establish rules to control overcrowding of the Tennis facilities.

12. Club tournaments shall not exceed six (6) calendar days per calendar quarter. School, civic and charitable tournaments shall not exceed twelve (12) calendar days per calendar year. Additional tournaments may be held only after approval by the City Manager. Of the thirty-six (36) tournaments days allowed, not more than eighteen (18) shall be held on Saturday or Sunday without the consent of the City Manager.

13. The City reserves the right to use the facility for tennis classes conducted by the City's Recreation Department. Such use shall be free of charge to the City and subject to a schedule and arrangements mutually agreed upon by the Foundation and the City.

14. The Foundation shall prevent persons making undue noise, abusing court privileges, or conducting themselves in any other inappropriate manner from using the Tennis Facilities. If any person using or visiting the Tennis Facilities conducts themselves in an inappropriate manner, such person shall be asked immediately to cease such inappropriate activities. If such activities continue, the person will be asked to leave the Facility and not be allowed to return for a period determined by the tennis professional or, in egregious cases, by the Foundation. Such inappropriate activities can lead to termination of membership, without refund, and/or denial of use of the facilities.

15. Dress and equipment regulations shall be established by the tennis professional and prominently posted at the entrance to the courts.