

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
LOS GATOS UNITED SOCCER CLUB**

THIS AGREEMENT is dated for identification this 1st day of July 2023 and is made by and between TOWN OF LOS GATOS, State of California ("Town") and LOS GATOS UNITED SOCCER CLUB ("LGUSC") identified as a California nonprofit corporation and whose address is 15466 Los Gatos Boulevard, Suite 109 Los Gatos, California 95032.

I. RECITALS

- 1.1 Town is the owner of Creekside Sports Park, located at 930 University Avenue, Los Gatos, California.
- 1.2 LGUSC is an affiliate of the California Youth Soccer Association (CYSA) and as such, its teams and players are governed by the rules, regulations, and bylaws of the California Youth Soccer Association.
- 1.3 With over 1700 participants, LGUSC provides high quality youth soccer programs for youth from Los Gatos and the surrounding communities which emphasize the development of soccer skills, promote self-esteem, encourage good sportsmanship, and enhance other development assets.
- 1.4 LGUSC was a major partner with the Town in marshaling community support for the acquisition and development of the Creekside Sports Park.
- 1.5 Town and LGUSC each desire an agreement between them setting forth the specific terms and conditions under which the LGUSC may use the Creekside Sports Park, including hours of use; responsibility for maintenance of the fields and adjacent grounds; use and maintenance of associated facilities and structures; including but not limited to the "snack shack" portion of the restroom facility; storage of LGUSC goods and equipment; and other related items.

II. AGREEMENTS

- 2.1 Subject Premises. The Premises covered by this Agreement is the Creekside Sports Park, located at 930 University Avenue, Los Gatos, California. A drawing depicting the Premises is attached hereto and incorporated by reference (Attachment A).
- 2.2 Use of Premises. LGUSC shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, only during those times and dates as shown on "Annual Schedules". LGUSC shall also have exclusive use of the kitchen/snack shack portion of the restroom/kitchen building during exclusive and non-exclusive use times and dates. The Annual Schedule shall cover camps and classes for the Winter, Spring, Summer, and Fall sessions. No later than October 1st of each year this Agreement is in force, LGUSC

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and Town staff shall meet to develop an Annual Schedule for the following calendar year. Town has the final say in establishing the master schedule. Town will attempt to accommodate user groups at their requested time but reserves the right to propose use hours that balance the needs of all user groups equitably. Town retains the right to use or authorize the use of the Premises for all dates and times not allocated to LGUSC in the Annual Schedule.

LGUSC may request changes to the Annual Schedule by written notification to the Department of Parks and Public Works but shall endeavor to minimize changes to the schedule during each calendar year. All changes should be made in writing no less than 30 days prior to the effective date of the change. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

- 2.3 Term of Agreement. Unless terminated sooner pursuant to Section 4.3 of this Agreement, the Use Agreement remains in effect from July 1, 2023 through June 30, 2028. The term of this Agreement may be extended for up to two additional five-year periods upon mutual written consent of the parties.
- 2.4 Annual Use Fee. Beginning July 1, 2023, and every year thereafter, LGUSC shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be \$21,590. The Annual Use Fee shall be considered full and fair compensation for the exclusive use of the facility for those days and times indicated on the Annual Schedule and shall be deemed adequate and fair compensation to the Town for its maintenance responsibilities and contribution toward future life-cycle replacement expenses. On July 1, 2024, and each anniversary thereafter, the Annual User Fee shall be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index.
- 2.5 Facility Maintenance Fee. Beginning July 1, 2023, and continuing for the full term of this agreement, including any extensions, each participant in the LGUSC using Creekside Sports Park will be charged a \$4.00 Facility Maintenance Fee (FMF) per participant per season. The Facility Maintenance Fee shall be assessed by LGUSC at the time of registration or any payment of program fees and shall be retained by LGUSC in a separate account and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each distinct season at which registration and fees are typically collected by LGUSC.
- FMF revenue received by the Town from LGUSC shall be used solely to fund the cost of maintenance and operations of the Premises.
- 2.6 Additional Annual Use Fee Adjustment. Should LGUSC increase or decrease its requested hours of use as set forth in the Annual Schedule, by 5% or more, the Annual Use Fee shall be adjusted proportionally based on the percentage change in hours. In no case shall the Annual Use Fee be decreased by more than 10% below the initial Annual Use Fee set forth in Section 2.4.

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- 2.7 Maintenance. LGUSC shall be responsible for the maintenance responsibilities set forth in Attachment B, Maintenance Responsibilities.
- 2.8 Facility Use Policies. LGUSC shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. LGUSC shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment C, Town of Los Gatos Park Rules and Regulations, and Attachment D, Town of Los Gatos Creekside Sports Park Special Use Policies. LGUSC agrees to apply with the current rules and regulations available at www.losgatosca.gov/parkres as well as any future amendments to those rules and regulations. Failure to comply with these policies may result in suspension and/or termination of this Agreement.

LGUSC agrees to comply with the state "Fair Play in Community Sports Act." LGUSC will not discriminate on the basis of gender and boys' and girls' teams will have equal access to the facilities.

- 2.9 Utility Costs. In addition to the Annual Use Fee, LGUSC shall be obligated to pay its proportional share of utility costs. The Town shall invoice LGUSC annually, no later than March 1 of each calendar year, for a proportional share of utility costs (water, power, and sewer services) for the prior calendar year, calculated by dividing the total hours of exclusive LGUSC field use by the total hours of field use allocated to all permitted users plus any hours the facility is open to the general public.
- 2.10 Payment. LGUSC shall make all payments, whether or not invoiced by Town, required pursuant to this Agreement no later than February 1 of each year payments are due. All payments shall be mailed by first class mail or delivered in person at the Town office and addressed as follows:

Town of Los Gatos
Attn: Finance Department
P.O. Box 697
Los Gatos, California 95031

- 2.11 Assignment. LGUSC shall not assign any portion of this Agreement or allow the use of the Premises by any other person or entity contrary to this Agreement's terms, with the out Town's prior written approval. LGUSC is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with LGUSC.
- 2.12 Personal Property. Personal property of LGUSC shall be LGUSC's sole responsibility to acquire, repair, replace and store. LGUSC shall remove its personal property at the expiration or termination of this Agreement. Any personal property not so removed shall become the sole property of Town with no compensation

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. LGUSC agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring LGUSC, its elected and appointed officials, employees, and agents to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
- ii. LGUSC agrees to have and maintain for the duration of this Agreement, an Automobile Liability insurance policy insuring the LGUSC, its elected and appointed officials, employees, and agents to an amount not less than one million (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. LGUSC shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. LGUSC shall provide all certificates and endorsements before term of Agreement begins.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by LGUSC.
- ii. LGUSC insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees, or agents shall be excess of the LGUSC's insurance and shall not contribute with it.
- iii. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Town, its elected and appointed officials, employees or volunteers.
- iv. LGUSC insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

- 3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has

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been given to the Town. LGUSC shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.

- 3.3 Workers' Compensation. In addition to these policies, LGUSC shall have and maintain Workers' Compensation insurance as required by California law. Further, LGUSC shall ensure that all contractors employed on the Premises by the LGUSC provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. LGUSC shall be solely responsible for obtaining whatever insurance coverage that LGUSC believes may be appropriate to protect and indemnify LGUSC for loss to the Premises or to any personal property that LGUSC may place on the Premises.
- 3.5 Indemnification. LGUSC agrees to indemnify, hold harmless, and defend the Town, its elected and appointed officials, employees, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the LGUSC's use of the Premises, including use by anyone that the LGUSC has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related negligence on the part of the Town.

IV. GENERAL TERMS

- 4.1 Damage and Destruction. Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 4.1.

If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, LGUSC shall be entitled to a pro rata rebate of the fee paid to the Town calculated by dividing the Annual User Fee by the total number of hours of exclusive use as listed in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the date of the damage or destruction of the Premises.

Under no circumstances does the Town have any obligation to provide LGUSC with an alternative property to conduct its operations, and LGUSC is solely responsible for obtaining such insurance as LGUSC deems appropriate to protect its interests should damage or destruction to the Premises occur.

LGUSC shall be liable for any loss, damage or injury to the field and/or Premises as a result of the direct or indirect use of the Premises by LGUSC under this agreement.

Compliance with Town Codes. LGUSC shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.

4.2 Compliance with Town Codes. LGUSC shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.

4.3 Termination of Agreement. Should Town terminate prior to the end of the term of this Agreement, LGUSC shall be entitled to a pro rata rebate of the Annual Use Fee calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the effective date of termination.

LGUSC shall promptly terminate its use of the Premises at the termination of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. All improvements and alterations made by LGUSC shall become the property of the Town upon termination of the Agreement without compensation by Town. Any personal property not removed by LGUSC within thirty (30) days of the termination of this Use Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.

This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.

If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purpose of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and LGUSC will work cooperatively to develop a written plan for transition of services and vacation of Premises by LGUSC.

In the event of any material default or breach by LGUSC, Town may at any time, thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:

Terminate LGUSC's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate, and LGUSC shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from LGUSC any damages incurred by Town by reason of LGUSC's default including but not limited to the cost of recovering possession of the Premises and reasonable attorneys' fees.

Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.

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LGUSC waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present, and future law, in the event LGUSC is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by LGUSC.

If LGUSC fails to remove any personal property belonging to LGUSC from the Premises after forty-five (45) days of the expiration or termination of this Agreement, such property shall at the option of the Town be deemed to have been transferred to Town. Town shall have the right to remove and dispose of such property without liability to LGUSC or to any person claiming under LGUSC, and the Town shall have no need to account of such property.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to LGUSC any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by LGUSC use of the Premises pursuant to the Agreement. LGUSC hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixture's location thereon, and that any claim it may have to same is hereby and forever waived.

4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:

To LGUSC:
President
Los Gatos United Soccer Club
15466 Los Gatos Blvd
Suite 109, Box 168
Los Gatos, CA 95032

To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following in the U.S. Mail.

4.7 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of subsequent breach of the same or any other provision of this License Agreement.

4.8 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and LGUSC. No terms, conditions, understanding, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

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IN WITNESS WHEREOF, the Town and LGUSC have executed this Use Agreement.

Town of Los Gatos:

Los Gatos United Soccer Club:

Laurel Prevetti, Town Manager

Shawn Blakeman, Sporting Director

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk