

# RESOLUTION NO. 2010-416

Adopted by the Sacramento City Council

July 20, 2010

## SACRAMENTO SPORTS COMMISSION FINANCING

### BACKGROUND

- A. In 1988, Sacramento Sports Commission was established by the City and the County to attract major professional and amateur sporting events and professional sports franchises to the Sacramento region.
- B. In 1998, the Sports Commission formed a non-profit organization – the Sacramento Region Sports Education Foundation (SRSEF) – to administer Sports Commission events.
- C. The City and County contribute annual funding to the Sacramento Sports Commission.
- D. The City's and County's contribution to the Sacramento Sports Commission is paid to SRSEF for Sports Commission expenses.

### BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The Memorandum of Understanding with the Sacramento Region Sports Education Foundation regarding the annual City and County funding to the Sacramento Sports Commission is approved, and the City Manager, or his designee, is authorized to execute the MOU.
- Section 2. Exhibit A is part of this Resolution.

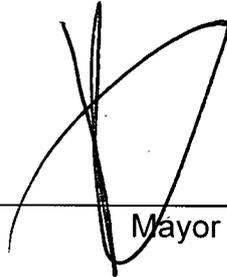
Adopted by the City of Sacramento City Council on July 20, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy, Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



\_\_\_\_\_  
Mayor Kevin Johnson

Attest:

  
\_\_\_\_\_  
Shirley Concolino, City Clerk

**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF SACRAMENTO AND THE  
SACRAMENTO REGION SPORTS EDUCATION FOUNDATION**

This Memorandum of Understanding ("MOU") between the City of Sacramento ("City") and the Sacramento Region Sports Education Foundation ("SRSEF"), a nonprofit organization, is made as of \_\_\_\_\_, 2010. SRSEF and City may be referred to in the singular as "Party" or collectively as "Parties", as the context requires.

**RECITALS**

- A. In 1988, Sacramento Sports Commission ("Sports Commission") was established by the City and the County of Sacramento ("County") to attract major professional and amateur sporting events and professional sports franchises to the Sacramento region.
- B. In 1998, the Sports Commission formed the SRSEF to administer Sports Commission events.
- C. The City and County annually budget funding for the activities of the Sports Commission.
- D. The City's and County's funding of Sports Commission activities have been paid directly to SRSEF, which incurs expenses on behalf of the Sports Commission in the performance and administration of Sports Commission activities and events.
- E. City and SRSEF would like to memorialize the procedures through which City will reimburse SRSEF for expenses it incurs in the performance and administration of proper Sports Commission activities and events.

**NOW, THEREFORE**, based on the facts set forth in the foregoing recitals, City and SRSEF agree as follows:

1. **TERM OF MOU, TERMINATION**

This MOU shall be effective when it is signed by both Parties. Either Party may terminate this MOU upon the giving of thirty (30) days written notice to the other Party in the manner specified in Section 3.

2. **PROCEDURES FOR REIMBURSEMENT OF SPORTS COMMISSION RELATED EXPENSES**

A. SRSEF may invoice City for the expenses it has incurred in the administration of Sports Commission activities and events. The City will reimburse SRSEF for these expenses within a reasonable period of time after receipt of SRSEF's invoice, not to exceed the total amount allocated to the Sports Commission in the City and County's annual budgets. The City shall have the sole discretion to deny reimbursement of any expenses that are not incurred in connection with the proper administration of activities or duties of the

Sports Commission or which are otherwise contrary to any applicable law, City regulation or provision of the City Code. The City will not reimburse SRSEF for any expenses incurred in connection with SRSEF's presentation of the 2011 World Masters Athletics Championships event. Nothing in this MOU shall be construed as a transfer or delegation of powers or duties given to the Sports Commission under Chapter 2.88 of the City Code to SRSEF.

B. Invoices shall include the following information:

- (1) Event and activity descriptions
- (2) Itemized expenses
- (3) Invoice date
- (4) Sequential invoice number
- (5) Invoice amount
- (6) All documentation necessary to substantiate expenses to the satisfaction of City.

The City will not reimburse SRSEF where information required under this subsection is not provided to City.

C. Accounting Records of SRSEF. During performance of this MOU and for a period of three (3) years following the termination of this MOU, SRSEF shall maintain accurate books and records and all accounting and financial records related to this MOU in accordance with generally accepted accounting principles, and shall keep and make such records available for inspection and audit by representatives of the City upon reasonable written notice.

### 3. NOTICES

Any communication required during the term of this MOU, including, without limitation, notice of termination, shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

Notice to the City:            Barbara Bonebrake, Director (or designee)  
   City of Sacramento  
   Convention, Culture and Leisure Department  
   1030 15<sup>th</sup> Street, Suite 250  
   Sacramento, CA 95814  
   916-808-7733

Notice to the SRSEF: John McCasey, Executive Director (or designee)  
Sacramento Region Sports Education Foundation  
1030 15<sup>th</sup> Street, Suite 200  
Sacramento, CA 95814  
916-808-2400

Any Party who desires to change its address for notice may do so by giving notice as described above.

#### 4. INDEMNITY.

SRSEF shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with the performance of or failure to perform this MOU by SRSEF, any sub-consultant, subcontractor or agent, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of City, its agents, servants, or independent contractors who are directly responsible to City, except when such agents, servants, or independent contractors are under the direct supervision and control of SRSEF.

#### 5. OBLIGATION TO DEFEND.

SRSEF shall, upon City's request, defend at SRSEF's sole cost, any action, claim, suit, cause of action or portion thereof which asserts or alleges Liabilities to the extent such Liabilities are caused by or result from any negligent act or omission or willful misconduct of SRSEF, its sub-consultants, subcontractors or agents, or their respective officers and employees, in connection with the Event, whether such action, claim, suit, cause of action or portion thereof is well founded or not.

#### 6. INSURANCE REQUIREMENTS.

During the entire term of this MOU, SRSEF shall maintain the insurance coverage described in this Section 6. It is understood and agreed by the SRSEF that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the SRSEF in connection with this MOU.

A. Minimum Scope & Limits of Insurance Coverage. SRSEF shall maintain commercial general liability insurance, providing coverage at least as broad as ISO CGL Form 0001 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

B. City as Additional Insured. The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of SRSEF, products and completed operations of SRSEF, and premises owned, leased or used by SRSEF.

C. Acceptability of Insurance. Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 6 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

D. Other Insurance Provisions. The policy is to contain, or be endorsed to contain, the following provisions:

(1) SRSEF's insurance coverage shall be primary insurance as respects City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees or volunteers shall be in excess of SRSEF's insurance and shall not contribute with it.

(2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, its officials, employees or volunteers.

(3) Coverage shall state that SRSEF's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) City will be provided with ten (10) days written notice of cancellation or material change in the policy language or terms.

E. Verification of Coverage.

(1) SRSEF shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the City representative named in Section 3. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.

(2) The City may withdraw its offer of contract or cancel this MOU if the certificates of insurance and endorsements required have not been provided prior to execution of this MOU. The City may cancel the MOU if the insurance is canceled or SRSEF otherwise ceases to be insured as required herein.

## 7. NO JOINT VENTURE

This MOU shall not create between the Parties a joint venture, partnership, or any other relationship of association.

#### 8. NO GRANT OF AGENCY

Except as the Parties may specify in writing, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent. Neither Party shall have any authority, express or implied, pursuant to this MOU, to bind the other Party to any obligation whatsoever.

#### 9. NON-WAIVER

Waiver of any breach of, or default under, this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU.

#### 10. ENTIRE AGREEMENT; MODIFICATION

This MOU contains all of the terms and conditions as agreed upon by the Parties, and supersedes any and all oral or written communications by and between the Parties.

No waiver, alteration, modification, or termination of this MOU shall be valid unless made in writing and signed by the Parties. In the event of a conflict between this MOU and any other agreement or understanding executed by the Parties subsequent to the commencement of this MOU, the terms of this MOU shall prevail and be controlling unless such other agreement expressly provides to the contrary.

#### 11. ASSIGNMENT PROHIBITED

Neither the City nor SRSEF may assign any right or obligation pursuant to this MOU. Any attempt or purported assignment of any right or obligation pursuant to this MOU shall be void and of no effect.

#### 12. SEVERABILITY

If any term, covenant, or condition of this MOU is held to by a court of competent jurisdiction to be invalid, the remainder of this MOU shall remain in full force and effect.

### 13. GOVERNING LAW

The interpretation and enforcement of this MOU shall be governed by the laws of the State of California, the state in which the Agreement is signed.

### 14. COUNTERPARTS

This MOU may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

### 15. CAPTIONS

The headings or captions contained in this MOU are for identification purposes only and shall have no effect upon the construction or interpretation of this MOU.

### 16. AMBIGUITIES

The Parties have each carefully reviewed this MOU and have agreed to each term of this MOU. No ambiguity shall be presumed to be construed against either Party.

### 17. INTEGRATION

This MOU embodies the entire agreement of the Parties in relation to the scope of matters covered by this MOU, and no other agreement or understanding verbal or otherwise, exists between the Parties.

### 18. AUTHORITY

The people executing this MOU have the capacity and are authorized to execute this MOU as the representatives of their respective Party, and to bind their respective Party to the terms of this MOU.

**CITY OF SACRAMENTO**

**SACRAMENTO REGION SPORTS  
EDUCATION FOUNDATION**

By \_\_\_\_\_  
Gustavo Vina, Interim City Manager

By \_\_\_\_\_  
John McCasey, Executive Director

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney