

**SPORTING CLUB NETWORK AND
CITY OF OVERLAND PARK, KS
Affiliate Agreement**

This Affiliate Agreement (“Agreement”) is entered into this ____ day of _____, 20__ by and between OnGoal, LLC, a Kansas limited liability company d/b/a Sporting Club (“OnGoal” or “Sporting Club”) and the City of Overland Park, KS (the “City”). Throughout this Agreement, Sporting Club and the City may be referred to collectively as “the Parties.”

WHEREAS OnGoal, LLC and its related entities own and operate Sporting Kansas City (“SKC”), the first-division Major League Soccer club, as well as the \$180 million state-of-the-art soccer stadium and outdoor events center (“Sporting Park”) in Kansas City, Kansas; and

WHEREAS OnGoal also owns and operates the Sporting Club, which is a membership of athletes and athletic organizations created to affiliate all interested soccer and other athletic organizations in the Midwest with Sporting Club and Sporting Kansas City, as well as provide member benefits and access opportunities to Sporting Club’s facilities, content, and events; and

WHEREAS, the City owns and operates certain real property and facilities known as the Overland Park Soccer Complex (the “OP Soccer Complex”), located at 13700 Switzer Road, Overland Park, KS 66221; and

WHEREAS, the OP Soccer Complex consists of, in part, 12 tournament-quality synthetic turf fields, lighted fields for night use, a multipurpose building (field house), concession areas (cafés), scoreboards, signage and other amenities; and

WHEREAS, Sporting Club and the City wish to set out their agreement regarding their respective rights and responsibilities for this affiliate arrangement.

NOW, THEREFORE, in consideration of the above, the Parties intend and agree to be bound by the terms of this Agreement as follows:

1. **Term.** The “Term” of this Agreement shall commence upon the date first above written and shall, unless terminated earlier pursuant to this Agreement, continue until December 31, 20__.
2. **Membership.** The City agrees that the OP Soccer Complex shall become a member of the Sporting Club Network (“SCN Member”).
3. **Marks and Designation.**
 - a. The City is the rightful owner of the OP Soccer Complex and has taken all steps reasonably necessary to file a trade name or trademark and otherwise protect the OP Soccer Complex and its name. The City hereby grants to Sporting Club, during the Term, for no additional consideration, the limited, non-exclusive right and license to use the OP Soccer Complex’s logos and trademarks (“the OP Soccer Complex Marks”) in conjunction with advertising, marketing, promotion, and exploitation of the Sporting Club, Sporting Park, or Sporting Kansas City in any and all forms of media whether now or hereafter developed. Except for

non-commercial uses of the OP Soccer Complex Marks that identify or associate the OP Soccer Complex as a member of the Sporting Club Network, the City shall have the right to approve in advance any materials to be used by Sporting Club displaying the OP Soccer Complex Marks, such approval not to be unreasonably withheld. Sporting Club shall not acquire any proprietary or other right, title or interest in or to the OP Soccer Complex Marks or any goodwill associated with the OP Soccer Complex Marks.

- b. Sporting Club hereby grants to the City, during the Term, for no additional consideration, the limited, non-exclusive right and license to use Sporting Club's logos and trademarks ("Sporting Club Marks") in conjunction with advertising, marketing, promotion, and exploitation of the City's business in any and all forms of media whether now or hereafter developed. Except for the display of the Sporting Club Marks per Section 3(c) below, Sporting Club shall have the right to approve in advance all materials used by the City displaying Sporting Club's Marks, such approval not to be unreasonably withheld. The City shall not acquire any proprietary or other right, title or interest in or to the Sporting Club Marks or any goodwill associated with Sporting Club's Marks. For avoidance of doubt, unless this Agreement specifically states otherwise, the City shall not receive any rights to use or display Sporting Kansas City, Sporting Park, Fields Complex, OnGoal or any other marks other than those of Sporting Club.
- c. To the extent reasonably practicable, the City agrees to clearly and conspicuously display the below-referenced Designation and the Sporting Club Marks on marketing and collateral materials associated with the OP Soccer Complex as reasonably likely to be seen by members of the local, regional, or national youth soccer community. Sporting Club agrees to designate the City as:

"Affiliate of the Sporting Club Network" with all the benefits, rights and privileges that are further detailed herein.

4. **Benefits.** Sporting Club Network benefits include:

- a. Team autographed ball. The City will receive one (1) Sporting Kansas City autographed ball.

5. **Hospitality and SKC Assets.** For the Term of this Agreement, the City agrees to the following purchases at the Affiliate discount:

- a. Group Tickets: Affiliate will be given a pool of 20 group tickets to be used at any one (1) Sporting KC regular season home MLS game. Tickets will be based on availability. Games may be sold out.

6. **Co-operative Marketing.** Both entities will work together on cross-promotional opportunities

- a. Sporting Club will receive the right to:
 - i. Signage. Sporting Club will be given the rights to specific, mutually agreed upon signage opportunities within the City's facilities. Sporting Club will be responsible for the cost of fulfillment and activation.

- ii. Test branding. To help facilitate future sponsorship opportunities, Sporting Club will have the right to test brand mutually agreed upon sponsorship assets. Sporting Club will be responsible for the cost of fulfillment and activation.
 - iii. Activation. Sporting Club will be granted complimentary access to activate at the City's facilities.
 - b. The City will receive the ability to:
 - i. IPTV Network. The OP Soccer Complex will be included in Sporting Club Network IPTV banner advertisements, shown at Sporting KC events.
 - ii. Plaza Activation. The City will receive complimentary booth space to activate in the Sporting Park plaza area. Promotions are open to any City hosted event.
 - iii. Video feature. Once per contract year, Sporting Club will produce a video featuring the OP Soccer Complex and topic of choice.
- 7. **Commercial Rights.** For the Term of this Agreement, Sporting Club agrees to serve as an agent of the City to sell the OP Soccer Complex's sponsorship inventory (i.e. its marketing and media properties and assets) and retain as a commission a percentage of the gross revenue derived therefrom. Sporting Club shall be afforded the exclusive (subject to the provisions of 7(c) below) agency right, but not the obligation, to sell the City's sponsorship inventory. This Agreement shall not, however, limit the City's ability to sell its own sponsorship inventory. The City retains the right to deny any sponsorship request for any reason.
 - a. Inventory. The City will deliver to Sporting Club a list of sponsorship inventory, and the City shall maintain sole discretion on whether to approve OnGoal's sale of the sponsorship inventory.
 - b. Commission. For the first \$10,000 (gross) of sponsorship inventory sold, OnGoal shall retain 65% of the gross revenue and remit the balance to the City. For all sponsorship inventory sold in excess of \$10,000, OnGoal shall retain 50% of the gross revenue and remit the balance to the City. Sporting Club shall work in good faith from the City's sponsorship inventory rate card to attempt to achieve rate card rates, but for the purposes of calculating these percentages, the calculations will be based upon the final value of the sponsorship inventory as approved by the City.
 - c. Exclusivity. As long as Heartland Soccer Association remains a Sporting Club Network member, it shall not be a breach of this agreement if Heartland Soccer Association continues to sell the City's sponsorship inventory.

Separate from the sale of the City's sponsorship inventory, the parties acknowledge that Sporting Club may also bring opportunities to the City for the sale of particular products (i.e. the sale of a certain brand of pizza, soft drink or chips). The parties shall determine the appropriate commission for said opportunities on a case by case basis.

- 8. **Representations and Warranties.** Each party hereto represents and warrants to the other as follows:
 - a. It has the full power and authority to enter into this Agreement and to perform its obligations hereunder; and
 - b. Its execution and delivery of and its performance under this Agreement have been duly authorized by all necessary corporate, not-for-profit, limited liability company or other

action (as applicable), and, to its knowledge, have not, do not and will not materially conflict with, violate, result in a breach or default of or otherwise materially adversely affect any rights of any third person or entity, whether now existing or hereafter arising or occurring; and

- c. This Agreement is a legal, valid and binding obligation of it, enforceable against it in accordance with its terms; and
- d. No litigation or pending or, to its knowledge, threatened claims exist which do or would reasonably be expected to materially adversely affect its ability to fully perform its obligations hereunder.
- e. The exercise of the rights and benefits pursuant to this Agreement shall be subject to all applicable laws, regulations and decrees in the countries within which such rights are to be exercised (including, without limitation, all applicable local, state, regional and national laws).
- f. The other party's use of the granting party's Marks, as approved by the granting party, will not infringe or violate the rights of any third-party and will not give rise to any payment obligation on the part of the using party to any third-party.

9. **Termination.**

- a. If either party or any officer, employee, agent, representative, sublicensee or manufacturer of either party materially breaches any of its obligations under this Agreement and if such breach is not cured by the breaching party within thirty (30) days after the non-breaching party sends written notice of such breach to the breaching party, then the non-breaching party shall have the right to terminate this Agreement effective immediately. Additionally, either party may terminate this Agreement effective immediately upon the occurrence of one or more of the following events with respect to the other: (i) there is a cessation of operations; (ii) or the institution against such party of a bankruptcy proceeding, dissolution, liquidation or the appointment of a trustee or a receiver; or (iii) such party makes an assignment for the benefit of creditors or admits in writing that it is unable to pay its debts as they become due. Termination of this Agreement by either party as provided herein shall be without prejudice to any other rights or remedies which either party may have.
- b. Either Party may without reason or without cause terminate this Agreement at any time. The terminating party shall notify the other party 60 days prior to the termination date if it decides to terminate the Agreement pursuant to this Paragraph. If the City terminates the Agreement prior to completion of services or the expiration of the Term, the City shall compensate Sporting Club for all services satisfactorily completed as of the date of Sporting Club's receipt of the termination notice. Compensation shall not include consequential damages. Upon the effective date of a termination notice pursuant to this Paragraph, Sporting Club shall remove its property from the Overland Park Soccer Complex site, if any, but any sponsorship inventory sold by Sporting Club as agent for City shall remain for the term of the sponsorship agreement.

10. **Dispute Resolution.** The parties agree that any dispute under this Agreement shall be subject to the following procedure:

- a. First, the parties agree to meet in good faith and amicably resolve the dispute;
- b. If the parties are unable to agree on a resolution to the dispute, the parties may agree to mediate the dispute through a mutually-agreeable third-party mediator.

11. **Non-Discrimination.**

Sporting Club agrees that:

- a. During the performance of this Agreement or any subcontract resulting thereof, Sporting Club, all subcontractors and vendors shall observe the provisions of the Kansas Acts Against Discrimination (K.S.A. 44-1001, et seq.) and Title VII of the Civil Rights Act of 1964 as amended and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, age, disability, ancestry, veteran status, or low income;
- b. In all solicitations or advertisements for employees Sporting Club, all subcontractors and vendors shall include the phrase “equal opportunity employer” or a similar phrase to be approved by the Kansas Human Rights Commission;
- c. If Sporting Club, a subcontractor or vendor fails to comply with the manner in which Sporting Club, subcontractor or vendor reports to the Kansas Human Rights Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, Sporting Club, subcontractor or vendor shall be deemed to have breached this Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City;
- d. If Sporting Club, a subcontractor or vendor is found guilty of a violation of the Kansas Acts Against Discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Sporting Club, subcontractor or vendor shall be deemed to have breached this Agreement, and this Agreement may be cancelled, terminated or suspended in whole or in part by the City;
- e. Sporting Club shall include the provisions of subparagraphs a through d above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

For the purposes of this Section 11, the terms “subcontractors and vendors” apply only to any subcontractor or vendor (if any) that Sporting Club utilizes to perform its responsibilities and duties under this Agreement.

Sporting Club further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this Project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

12. **Miscellaneous.**

- a. No joint venture or partnership. This Agreement shall not create a joint venture, partnership, principal-agent, employer-employee or similar relationship between Sporting Club and the City.
- b. Assignment/Subcontract. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, successors and permitted assigns. This Agreement shall not be assigned by either Party without the prior written consent of the other. Further, Sporting Club shall not subcontract or delegate all or substantially all of its responsibilities hereunder without the prior written consent of the City.

- c. Notices. Any notice required to be given hereunder shall be sufficient and deemed given when in writing, and hand-delivered or sent by certified or registered mail, return receipt requested, first class postage prepaid, or by courier service, addressed as follows:

If to the City:
 City Overland Park
 City Hall
 8500 Santa Fe Drive
 Overland Park, KS 66212
 Attn: Director of Recreation Services

If to Sporting Club:

 Attn: _____

Notice will be deemed to have been given when delivered by hand or delivery service, or when received as evidenced by the return receipt or the date such notice is first refused, if that be the case.

- d. Severability; Waiver. If any provisions of this Agreement or any portions thereof are invalid, illegal or unenforceable, the other provisions of this Agreement or portions thereof shall remain in full force and effect. Any failure of Sporting Club or the City to comply with any provision of this Agreement may only be waived expressly in a written instrument duly executed by each of Sporting Club and the City.
- e. Choice of law. The parties agree that this Agreement and all matters or issues collateral hereto shall be governed by the laws of the State of Kansas without respect to conflicts of law principles.
- f. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original instrument and all of which together shall constitute the same instrument.
- g. Entire agreement. This Agreement constitutes the entire agreement of the parties hereto and the provisions hereof supersede, and may not be contradicted, modified or supplemented by, evidence of any prior or contemporaneous agreements or understandings relating to the same subject matter, whether written or oral.

This Agreement has been executed by Sporting Club and the City as of the date first written above.

ONGOAL, LLC
D/B/A SPORTING CLUB

CITY OF OVERLAND PARK, KS

By: _____
 Name: _____
 Title: _____

By: _____
 Carl Gerlach, Mayor

ATTEST:

 Marian Cook, City Clerk

APPROVED AS TO FORM:

 Stephen B. Horner, Sr. Assistant City Attorney