



REPORT TO CITY COUNCIL

DATE: SEPTEMBER 12, 2017

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: AMY BRINK, DIRECTOR OF COMMUNITY SERVICES 

SUBJECT: APPROVAL OF JOINT USE AGREEMENT WITH LAS VIRGENES UNIFIED SCHOOL DISTRICT FOR AGOURA HIGH SCHOOL TENNIS COURTS

In June 2007, the City of Agoura Hills ("City") entered into a Facility Use Agreement with the Las Virgenes Unified School District ("District") for the shared use of the Agoura High School Tennis Courts. The City agreed to use residual funds from the Morrison Park project to renovate the courts at Agoura High School, in exchange for the courts being available for public use. This ten-year agreement is ready for renewal and, while most of the agreement with the District remains the same, there are some additional points that are noteworthy. Those points are: (1) the term will be set in place for another ten years; (2) the City will not be paying a facility use fee of \$ 5,000 each year; (3) the City will continue to pay a utility fee of \$ 2,000 for the tennis lights, which staff confirmed, directly covers the cost of the electrical costs; (4) the City will be solely responsible for maintaining the lights; (5) the City will continue the monthly maintenance of the tennis courts, which includes sweeping/blowing the courts every other week, and power washing them once a month; (6) the City and District will equally share the cost of equipment, including tennis nets, windscreens, and resurfacing the courts when necessary; (7) the City will continue to have exclusive use of the tennis courts, with the exception of defined use by the District; and, (8) the City will also continue to be responsible for all outside use of tennis courts.

Now that the City is not being required to pay a yearly facility use fee, those funds will go towards sharing the cost of replacing the equipment on the courts. The responsibility of the lights on the tennis courts has always been with the City, as the City installed the lights several years ago. The agreement will be presented to the LVUSD School Board at the September 2017 monthly meeting.

RECOMMENDATION

Staff is respectfully requesting that the City Council approve the Facility Use Agreement with the Las Virgenes Unified School District.

Attachment: Facility Use Agreement – Las Virgenes Unified School District

TENNIS COURT FACILITIES JOINT USE AGREEMENT

This Tennis Court Facilities Joint Use Agreement (“Agreement”) is hereby made and entered into this 1st day of September 1, 2017, by and between the CITY OF AGOURA HILLS, a California municipal corporation (“City”) and the LAS VIRGENES UNIFIED SCHOOL DISTRICT, a California public school district (“District”). City and District are from time to time throughout this Agreement referred to as “Party” or “Parties”.

WHEREAS:

- A. City and District desire to enter into a joint use agreement for the tennis courts located at Agoura High School; and
- B. Section 10900 et seq. of the California Education Code (“Community Recreation Act”) authorizes cities and school districts to organize, promote, and conduct programs of community recreation for the promotion and attainment of general educational and recreational objectives and to construct, maintain, and operate recreation centers, including playgrounds and outdoor playing fields; and
- C. Section 10910 of the Community Recreation Act provides that the governing body of any school district may use or grant the use of grounds of the school district to any other public authority for the purposes of the Community Recreation Act, whenever such use does not interfere with school uses; and
- D. As part of a broader effort to cooperatively address the need for recreational facilities, such as tennis courts, within the City of Agoura Hills, City and District desire to continue to jointly undertake the operation, use, and maintenance of recreational facilities in order to reduce capital and operational costs to both governmental jurisdictions; and
- E. City and District desire to contract for City’s use and maintenance of the tennis courts at Agoura High School for community recreation activities, and for use by District for education and recreation purposes pursuant to said Community Recreation Act, as the provisions thereof exist, or hereafter may be amended; and

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, and pursuant to the provisions of the Community Recreation Act hereinabove referenced, it is agreed by the Parties as follows:

1. THE JOINT FACILITIES.

The property subject to this Agreement is located entirely at Agoura High School. The Joint Facilities are more commonly known as the eight (8) tennis courts located at Agoura High School.

2. TERM.

Except as provided herein, the term of this Agreement (“Term”) shall be for a period of ten (10) years, commencing on September 1, 2017, (“Commencement Date”) and expiring on August 31, 2027.

3. PERFORMANCE SCHEDULE.

Parties shall perform and complete their respective obligations, services, and tasks described and set forth in Exhibit A, attached hereto and incorporated herein, as though set forth in full, according to the schedule of performance which is also set forth in Exhibit A.

4. DISTRICT OBLIGATIONS.

A. License. District hereby grants to City a license to access the Agoura High School property in accordance with the terms and restrictions set forth in this Agreement.

B. Parking. District shall allow City and its designees to park at Agoura High School for use of the Joint Facilities.

5. CITY OBLIGATIONS.

A. Annual Facility Use Fee. In lieu of a Facility Fee, City shall directly cover the cost of bimonthly cleaning (blow down) of the courts and monthly power cleaning.

B. Annual Utility Costs. City shall pay an annual utility costs fee in the amount of two thousand dollars and no cents (\$2,000.00) per year for the entire term of this Agreement.

C. City Maintenance Obligations. City shall be solely responsible for costs and expenses of light fixture maintenance and necessary replacements.

D. City Equipment Obligations. City will equally share the costs for repairs and equipment to be used on the tennis courts, including wind screens, nets, and resurfacing the courts. District and City Staff will communicate in a timely manner, not less than twice a year, to review costs incurred. Final invoicing will occur annually by June 30th.

6. CITY USE OF THE JOINT FACILITIES.

A. Times of Exclusive Use. Except as otherwise provided in this Agreement, City and its designees shall have the exclusive right to use the Joint Facilities, or any portion thereof, for public park and recreational purposes during the following non-school hours:

- i. School days: 3:00 p.m. to 10:00 p.m.
- ii. Non-School days: 6:00 a.m. to 10:00 p.m. (including weekends and holidays)

B. Additional Times of Use. Notwithstanding Subsection A of this Section 7, City shall have the right to use two (2) of the tennis courts in the Joint Facilities, twenty-four (24) hours a day, seven (7) days a week. In addition, City shall have the right to schedule tennis clinics, tennis instruction sessions, or organized recreation times during the school day, provided that the Joint Facilities are not needed for school use or school instruction. If District reserves only a portion of the Joint Facilities for Agoura High School or District activities, and the remaining portion of the Joint Facilities remains available for City use, City shall have the right to use the remaining non-reserved portion of the Joint Facilities for the purposes set forth in this Agreement, provided that City's use will not conflict or unreasonably interfere with District's activities at the Joint Facilities.

C. Exclusive Use. The parties acknowledge that City's right to use the Joint Facilities is exclusive and, except as otherwise provided in this Agreement, District shall not grant a right to use the Joint Facilities to any other person or entity without first obtaining the written consent of City.

D. District Master Schedule. District shall provide to City a tentative master schedule ("District Master Schedule") for use of the Tennis Courts by Agoura Hills High School or District for any type of school championship playoff or other school activities that will be conducted at the Joint Facilities, or any portion thereof. District shall provide a tentative District Master Schedule to City not later than September 15, 2017, and September 15th of each subsequent year during the Term. District shall make best good faith efforts to ensure that actual scheduled District events conform as closely as possible to the tentative District Master Schedule. However, District reserves the right to amend the scheduled time of an event from that set forth in District Master Schedule provided that:

(i) District provides City with written notice of the schedule amendment not later than forty-eight (48) hours prior to: (a) the time the District event was originally scheduled; or (b) the rescheduled time for the District event, whichever is earlier; and

(ii) The rescheduled event time does not conflict with a previously scheduled City event.

E. Exceptions for Times Reserved by District for School Activities. Notwithstanding the above, City shall not use any portion of the Joint Facilities that has been reserved by District, provided that:

(i) District provides City with written notice of the reservation not later than forty-eight (48) hours prior to the reservation time for the Agoura High School or District event; and

(ii) The reservation time does not conflict with a previously scheduled City event.

F. City Scheduling of Events - Monthly Calendar. City shall be responsible for scheduling all City use of the Joint Facilities during the Term. City shall provide to District, or its designated representative, a monthly calendar of all City-programmed events

intended to be conducted at the Joint Facilities, including a list of City employees or contractors who will be conducting each event. City shall submit said calendar not later than ten (10) days prior to the beginning of each upcoming month.

G. Amendments to Monthly Calendar. City reserves the right to amend the scheduled time of an event from that set forth in the monthly calendar provided that:

(i) City provides District with written notice of the schedule amendment not later than forty-eight (48) hours prior to: (a) the time the City event was originally scheduled; or (b) the rescheduled time for the City event, whichever is earlier; and

(ii) The rescheduled event time does not conflict with a previously scheduled Agoura High School or District event.

H. Compliance with Law and Regulations. City shall use the Joint Facilities in accordance with all applicable laws, policies, and District regulations, as they may be amended from time to time. Participants at City sponsored events shall follow verbal and written instructions from District or school staff in conducting an event.

8. EMERGENCIES AND HAZARDOUS CONDITIONS.

City or District shall have the right to initiate immediate action to resolve an emergency or hazardous condition on any portion of the Joint Facilities in the most effective and efficient means possible with the least disruption to City or District use. The party taking the emergency action shall notify the other party of the action taken within forty-eight (48) hours following the time the action was taken.

9. SALE OR RESTRICTION OF JOINT FACILITIES.

Should District determine, in its sole and absolute discretion, that it must utilize the Joint Facilities for the construction of a performing arts education center or other educational facility purpose that will restrict or prevent future use of the Joint Facilities by City, District shall provide City with no less than one hundred eighty (180) days notice prior to District taking such action. Upon City's receipt of the notice, City may: (i) negotiate reimbursement payments due to City to reflect the reduced use of the Joint Facilities; or (ii) City may terminate this Agreement by providing not less than ninety (90) days written notice to District.

10. INDEMNIFICATION.

Each party agrees to indemnify, defend and hold harmless the other party, its officers, officials, agents, employees and volunteers from any and all claims, losses, penalties and liabilities of any nature, at law or equity, including attorneys' fees, to the extent caused by, arising out of, or in connection with, the indemnifying party's actual or alleged negligent acts or omissions pursuant to this Agreement. An indemnifying party's indemnification obligation shall not be limited to insurance proceeds, if any, received by

the indemnifying party, its officers, officials, agents, employees or volunteers. This Section 10 shall survive the termination of this Agreement.

11. INSURANCE.

A. City and District shall each maintain comprehensive public liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence, combined single limit, to protect City and District, their officers, officials, agents, employees, and volunteers against claims for bodily injury, wrongful death, and property damage arising from City's or District's participation in the activities described herein.

B. The form of insurance shall be satisfactory to City and District and may include self-insurance at levels acceptable to both parties. Each policy shall be primary coverage and non-contributory to any coverage the other party may obtain. Each party's policy or policies shall name the other party as an additional insured. Each policy shall contain a full waiver of subrogation rights.

C. City shall require all contractors who conduct events at the Joint Facilities to carry liability insurance in the same amounts and on the same terms as the policies described above. Prior to allowing use of the Joint Facilities by the contractor, the contractor shall provide certificates of insurance or other proof of insurance satisfactory to City and District demonstrating that the contractor carries liability insurance in accordance with this Agreement.

12. TERMINATION.

In the event that any of the parties fails to observe any provision of this Agreement, the non-defaulting party shall send written notice to the defaulting party explaining the default ("Notice of Default") and the defaulting party shall have thirty (30) days from the date of receipt of the Notice of Default to cure said default or, if the default cannot be cured within said thirty (30) day period, to commence to cure said default and diligently pursue to completion a cure within a reasonable time (not to exceed ninety (90) days, unless extended by mutual agreement of the parties). If the defaulting party fails to cure the default within the times set forth above, the non-defaulting party may immediately terminate this Agreement by sending written notice of termination to the defaulting party.

13. AMENDMENT/MODIFICATION.

This Agreement may be amended only in writing signed by City and District. The City Council and District Board must approve this Agreement and any amendments or modifications thereto before any changes and/or modifications become effective.

14. REVIEW.

City and District agree to meet not less than quarterly to review the use of the Joint Facilities and any changes in use, to discuss problems and concerns about use, to review schedules and needs, and to determine whether amendments or modifications to this Agreement are needed due to changed circumstances.

15. INTERPRETATION.

The provisions hereof shall be interpreted to give effect to their simple and fair meaning and shall be construed as though prepared by both parties. The entire agreement of the parties is set forth herein, and all prior negotiations, documents, and discussions are superceded. The parties acknowledge there are no applicable representations, warranties, or terms that are not stated herein. The invalidity of any provision shall not affect the validity of any other provision. Section headings are for convenience only and may not be used in interpretations.

16. NOTICES.

All notices and consents required or allowed shall be in writing and shall be sent to the addressed shown below. A party may change its address for notices and consents by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices and consents are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the parties may designate by written notice:

To City: City of Agoura Hills
30001 Ladyface Court
Agoura Hills, CA 91301
Attention: Greg Ramirez, City Manager

To District: Las Virgenes Unified School District
4111 N. Las Virgenes Road
Calabasas, CA 91302
Attention: Dr. Dan Stepenosky, District Superintendent

17. NO AGENCY.

Nothing herein: (i) creates any right or remedy for the benefit of any person not a party hereto; nor (ii) creates a fiduciary relationship, an agency, or partnership.

18. ASSIGNMENT.

This Agreement may not be assigned by any party without the express written consent of each party to this Agreement. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective heirs, legal representatives, successors and assigns.

19. AUTHORITY.

The persons signing below represent and warrant that all hearings have been conducted and findings made to enter into this Agreement and that they have authority to

enter into this Agreement on behalf of the entities for which they are signing this Agreement.

20. GOVERNING LAW/VENUE.

This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of California. Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate California state court in the County of Los Angeles. Each Party hereto irrevocably consents to the personal jurisdiction of that court.

21. ATTORNEY'S FEES.

In the event of the bringing of an arbitration, action or suit by a Party hereto against another Party hereunder by reason of any breach of any of the covenants or agreements arising out of this Agreement or any other dispute between the Parties concerning this Agreement, then, in that event, the prevailing Party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party all costs and expenses of suit or claim, including actual attorneys' fees. This Section 21 shall survive any termination of this Agreement.

22. NONLIABILITY OF OFFICIALS AND EMPLOYEES.

No elected or appointed officer, official, contractor, consultant, attorney or employee of City shall be personally liable to District or any voluntary or involuntary successors or assignees, in the event of any default or breach by City of any obligations arising under this Agreement. No elected or appointed officer, official, contractor, consultant, attorney, or employee of District shall be personally liable to City or any voluntary or involuntary successors or assignees, in the event of any default or breach by District of any obligations arising under this Agreement.

23. INTEGRATION.

This Agreement represents the entire integrated agreement between City and District, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by City and District.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

CITY OF AGOURA HILLS, CALIFORNIA

Denis Weber,
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

Date Approved by City Council: _____

APPROVED AS TO FORM AND CONTENT:

Candice K. Lee,
City Attorney

LAS VIRGENES UNIFIED SCHOOL DISTRICT

Angela Cutbill,
President

ATTEST:

Dan Stepenosky,
Secretary

Date Approved by District Board: _____

EXHIBIT "A"
Performance Schedule

City contractor to perform bimonthly cleaning (blow down) of the courts and monthly power cleaning. Day and time during the week to be determined by the Agoura High School staff, District Maintenance staff, and City staff. Day and time subject to change based on Agoura High School calendar and Recreation program availability.

It is anticipated that during the term of this agreement, the tennis courts will require some level of larger repairs in the form of resurfacing and thus, the parties will discuss the appropriate timing and budgeting of this.