

## REPORT TO CITY COUNCIL

**DATE: JULY 12, 2023**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: NATHAN HAMBURGER, CITY MANAGER**

**BY: AMY BRINK, DIRECTOR OF COMMUNITY SERVICES**

**SUBJECT: APPROVAL OF THE TERMINATION OF THE JOINT USE AGREEMENT BETWEEN THE CITY OF AGOURA HILLS AND THE LAS VIRGENES UNIFIED SCHOOL DISTRICT FOR USE OF THE TENNIS COURTS AT AGOURA HIGH SCHOOL**

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The City of Agoura Hills (City) has had an arrangement with the Las Virgenes Unified School District (District) for the use of tennis courts at Agoura High School (AHS) that started back in 1990. With the installation of lights on the tennis courts, the City and the District began a long-term relationship that provided nine tennis courts to the community for recreation classes, programs, leagues, and open play. The community has been enjoying recreational tennis activities and access to these courts for more than thirty years. Over the years, the City has also been very involved in the maintenance and equipment provided for these courts by funding both. From windscreens to tennis nets, and resurfacing all nine courts, the City has collaborated with AHS and the District on this vital recreation facility in the community.

In 2007, the City prepared to develop four tennis courts at Morrison Park, the last recreation component in the Parks Master Plan. With the AHS tennis courts in need of repair, and the community's desire for no lights at Morrison Park, the City decided to reallocate its resources to renovating the AHS tennis courts. The result was that the community and the recreation program would now have access to nine, not just four, tennis courts that had lights and minor impacts on the neighborhood. The City served as the lead agency on the renovation project, which resulted in a ten year facility use agreement with the District.

In 2017, the City and the District agreed to renew the ten-year agreement, which included new terms intended to equally benefit the agencies and simplify the arrangement. The City agreed to take on cleaning and maintaining the courts, while sharing equally the cost of equipment for the courts. In addition, the City agreed to share the cost of larger expenses, such as resurfacing the courts, in exchange for two courts that the City could have access to every day, all day. This new approach was effective in the beginning, although, a change to the AHS schedule in the 2020-21 school year resulted in the courts being used longer during the day and less available to the City. Furthermore, over the last year, with the increase in school campus security

nationwide, the District decided that all-access to the tennis courts would no longer be feasible. These two factors have greatly impacted the time available for the City to conduct recreation tennis programs, classes, and leagues. With little to no court availability, sharing equally the cost of larger expenses was difficult to justify. The City continues to pay for the cost of maintaining and servicing the tennis courts even with a reduction in court availability. Therefore, the District has agreed to compensate the City with a \$25,000 credit towards facility use fees incurred from recreation programs held on school campuses. The City will have up to one year to utilize the credit.

The City and District have jointly agreed to terminate the existing Tennis Court Facilities Joint Use Agreement. This termination agreement has been discussed and reviewed with the Community Services Subcommittee.

The Termination Agreement has been reviewed by the City Attorney and approved to as form.

### **RECOMMENDATION**

Staff respectfully recommends the City Council approve the termination of the Tennis Court Facilities Joint Use Agreement with the Las Virgenes Unified School District.

Attachment: Tennis Court Facilities Joint Use Termination Agreement with Exhibit A

## TENNIS COURT FACILITIES JOINT USE TERMINATION AGREEMENT

This Tennis Court Facilities Joint Use Termination Agreement (“Agreement”) is hereby made and entered into this 12th day of July, 2023, 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. On or about September 1, 2017, the District and the City entered into a Tennis Court Facilities Joint Use Agreement pursuant to Education Code section 10900 et seq. and Education Code section 17527 et seq. providing for the joint use of tennis court facilities (the "Joint Use Facilities") located at Agoura High School (the “School”) by the District and the City (the “2017 Agreement,” a copy of which is attached as Exhibit “A” hereto); and
- B. The 2017 Agreement provided for the City's use and maintenance of the Joint Use Facilities for community recreation activities, and for use by District for education and recreation purposes; and
- C. Pursuant to the terms of the 2017 Agreement, the City performed certain maintenance functions at the School for the benefit of the Joint Use Facilities (the “Improvements”); and
- D. The Parties desire to terminate the 2017 Agreement upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the covenants and conditions hereinafter set forth, it is agreed by the Parties as follows:

### 1. TERMINATION OF THE 2017 AGREEMENT

The 2017 Agreement shall be terminated as of July 12, 2023 (the “Termination Date”) and shall be of no further force or effect except as provided herein.

### 2. CITY FACILITIES USE CREDIT.

In consideration for early termination of the 2017 Agreement, District shall provide to City a credit of \$25,000 which may be utilized by the City in lieu of the otherwise applicable facilities use fee for the City’s use of District facilities pursuant to the California Civic Center Act (Education Code section 38130 et seq.) and the District’s facilities use policy (the “Credit”).

**3. RESTRICTIONS ON USE OF THE CREDIT.**

- A. The City may only utilize the Credit for the use of District facilities between and including the dates of July 12, 2023 and July 12, 2024. Any portion of the Credit remaining unused after July 12, 2024 shall expire and no refund or further consideration shall be paid to the City.
- B. The applicable facilities use fee to be charged against the Credit shall be calculated at the rate in effect at the time of booking pursuant to the District's facilities use policy.
- C. The Credit may be utilized for no more than one event involving use of the School Performing Arts Education Center.
- D. The Parties agree that the Credit represents full compensation for any claim the City may assert in relation to the 2017 Agreement, including any expenditures made by the City for maintenance, repairs, or improvements to the Joint Use Facilities.

**4. REMOVAL OF THE CITY'S SIGNAGE AND EQUIPMENT.**

- A. The City shall be solely responsible for removing any and all City-owned property, including equipment and supplies, from the Agoura High School premises no later than July 19, 2023. The City shall provide to the District a list of all equipment that will be removed from the School prior to any removal of equipment. Any City property remaining on the premises after July 19, 2023 shall become property of the District. The City will be liable for any clean-up or property removal expenses incurred by the District due to the City's violation of this Section.
- B. The City shall remove all signage and promotional material placed at the School related to the 2017 Agreement no later than July 19, 2023.
- C. The City shall remove from its public communications, publications, website and social media accounts any and all references to access to the Joint Use Facilities no later than July 19, 2023.

**5. 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 superseded by this Agreement. This Agreement may be amended only by a written instrument signed by City and District. 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.

**6. NOTICES.**

All notices and consents required or allowed shall be in writing and shall be sent to the address 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: \_\_\_\_\_

To District: Las Virgenes Unified School District  
4111 N. Las Virgenes Road  
Calabasas, CA 91302  
Attention: Dr. Ryan Gleason

**7. 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.

**8. 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 and their respective heirs, legal representatives, successors and assigns.

**9. 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.

**10. GOVERNING LAW AND 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.

**11. ATTORNEY'S FEES.**

In the event of the bringing of an 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 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 12 shall survive any termination of this Agreement.

**12. 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, employee or volunteer 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.

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

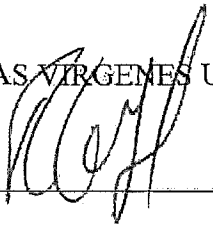
CITY OF AGOURA HILLS

\_\_\_\_\_  
Nathan Hamburger, City Manager

ATTEST:

\_\_\_\_\_  
Kimberly M. Rodrigues, MMC

LAS VIRGENES UNIFIED SCHOOL DISTRICT

  
\_\_\_\_\_  
Ryan Gleason, Assistant Superintendent/Chief Business Officer

**EXHIBIT "A"**  
**2017 AGREEMENT**

## TENNIS COURT FACILITIES JOINT USE AGREEMENT

This Tennis Court Facilities Joint Use Agreement ("Agreement") is hereby made and entered into this 1<sup>st</sup> 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 nine (9) 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 30<sup>th</sup>.

**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 15<sup>th</sup> 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.**



**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.**

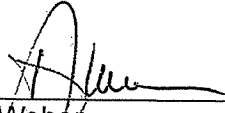
No elected or appointed officer, official, contractor, consultant, attorney or employee of City shall be personally liable to District or any voluntary or involuntary successors or assignees, in the event of any default or breach by City of any obligations arising under this Agreement. No elected or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

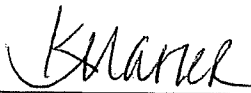
IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

**CITY OF AGOURA HILLS, CALIFORNIA**

  
\_\_\_\_\_  
Denis Weber,  
Mayor

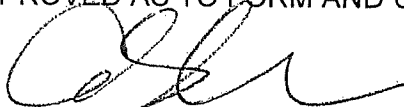


ATTEST:

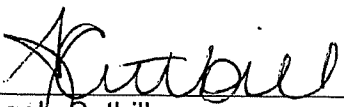
  
\_\_\_\_\_  
Kimberly M. Rodrigues, MMC  
City Clerk

Date Approved by City Council: 9/12/2017

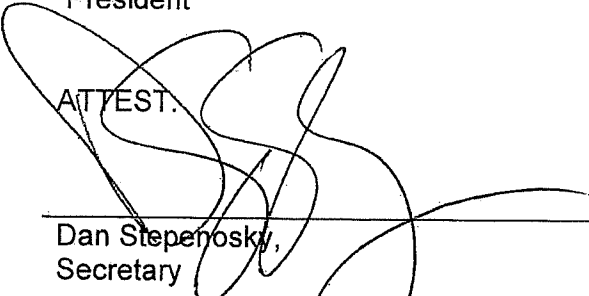
APPROVED AS TO FORM AND CONTENT:

  
\_\_\_\_\_  
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.