

TENNIS COURT FACILITIES JOINT USE AGREEMENT

This Tennis Court Facilities Joint Use Agreement (“Agreement”) is hereby made and entered into this 27th day of June, 2007, by and between the CITY OF AGOURA HILLS, a California municipal corporation (“City”), THE AGOURA HILLS REDEVELOPMENT AGENCY (“Agency”) and the LAS VIRGENES UNIFIED SCHOOL DISTRICT, a California public school district (“District”). City, Agency and District are from time to time throughout this Agreement referred to as “Party” or “Parties”.

WHEREAS:

- A. City, Agency, 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 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, Agency, and District desire to jointly undertake the development, operation, use and maintenance of recreational facilities in order to reduce capital and operational costs to both governmental jurisdictions; and
- E. City, Agency, 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
- F. Concurrently with this Agreement, City and District have entered into a Memorandum of Understanding for school technology upgrades whereby City grants to District a one-time financial contribution to support a technology upgrade for education purposes for the benefit of students who attend schools in the City of Agoura Hills.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, and pursuant to the provisions of the Community Recreation Act hereinabove referenced, the Parties agree 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 June 27, 2007 (“Commencement Date”) and expiring on June 30, 2017, provided that the Joint Facilities open not later than November 1, 2007 (“Opening Date”). In the event the Joint Facilities do not open by November 1, 2007 and the parties have not renegotiated the Opening Date, this Agreement shall be deemed null and void and the parties shall have no further obligations to each other under this Agreement.

3. AGENCY OBLIGATIONS.

A. Authorization of Waiver. Agency hereby authorizes District to waive its right to redevelopment funds in the amount of two hundred seventy thousand dollars and zero cents (\$270,000) obtained by District pursuant to the pass through agreement for the upcoming 2007/08 fiscal year and to allow City to use those waived redevelopment funds to pay for the Tennis Court Project at Agoura High School. Any redevelopment funds due to District in excess of two hundred seventy thousand dollars and zero cents (\$270,000) shall be paid as usual under the terms of the Agreement.

4. DISTRICT OBLIGATIONS.

A. Waiver of Redevelopment Funds. District hereby waives District’s right to redevelopment funds in the amount of two hundred seventy thousand dollars and zero cents (\$270,000) obtained by District pursuant to the pass through agreement for the upcoming 2007/08 fiscal year to allow City to use such waived redevelopment funds to pay for the Tennis Court Project at Agoura High School. Any redevelopment funds due to District in excess of this amount shall be paid as usual under the terms of the Agreement.

B. 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.

C. Division of the State Architect Inspector. District shall provide and pay for a Division of the State Architect inspector for the Tennis Court Project.

D. Parking. District shall allow City and its designees to park at Agoura High School in designated spaces, to be determined by Agoura High School and approved by District, for use of the Joint Facilities.

5. CITY OBLIGATIONS.

A. Tennis Court Project. City shall perform and pay for, in an amount not to exceed two hundred ninety thousand dollars and zero cents (\$290,000), the following tasks (hereinafter collectively referred to as “Tennis Court Project”):

- i. Resurface all nine (9) tennis courts;
- ii. Install new tennis nets on all nine (9) tennis courts;
- iii. Install new windscreens on all nine (9) tennis courts;
- iv. Upgrade existing lighting in six (6) of the tennis courts and install new lighting in three (3) of the tennis courts using energy efficient lighting designed to minimize glare onto adjacent land uses;
- v. Renovate the access for the disabled to the tennis courts; and
- vi. Such other additive bid alternates as the City, in its sole discretion, may determine to include in the Tennis Court Project within in the allotted budget.

In the event that the lowest responsible bid for the Tennis Court Project exceeds two hundred ninety thousand dollars and zero cents (\$290,000), and the parties have not renegotiated the Tennis Court Project tasks, listed in subsection A of this Section 5, by August 1, 2007, this Agreement shall be deemed null and void and City shall have no further obligation to proceed under this Agreement.

B. City as Principal Project Agency. City shall serve as Principal Project Agency and shall initially design, in accordance with Division of the State Architect requirements, bid for, construct, landscape, oversee and manage the Tennis Court Project. District shall have the opportunity to review the bid package, including possible bid alternates, if any, and request reasonable changes to City prior to putting the Tennis Court Project out to bid. City shall incorporate District’s proposed changes into its Tennis Court Project bid package to the greatest extent feasible, provided that District’s proposed changes: (i) do not increase the City’s costs; (ii) do not delay or interfere with education programs intended or occurring at Agoura High School, or (iii) otherwise work a hardship against City.

C. Annual Facility Fee. City shall pay an annual facility fee in the amount of five thousand dollars and zero cents (\$5,000) per year for the entire term of this Agreement.

D. Annual Utility Costs. City shall pay an annual utility costs fee in the amount of two thousand dollars and zero cents (\$2,000) per year for the entire term of this Agreement.

E. City Maintenance Obligations. City shall, at its sole cost and expense, keep the Joint Facilities clear of debris and dirt.

F. City Sign. City shall post a sign at the Joint Facilities containing language, mutually agreeable to City and District, specifying: (i) City's responsibility for maintaining and scheduling the use of the Joint Facilities; and (ii) emergency contact information.

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, but not limited to, weekends and holidays)

B. Additional Times of Use. If Agoura High School or 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 Agoura High School's or District's activities at the Joint Facilities. In addition, City shall have the exclusive right to schedule and charge fees for tennis clinics, tennis instruction sessions, or organized recreation times during the school day, provided that the Joint Facilities are not needed for Agoura High School use or Agoura High School instruction.

C. Exclusive Use. The parties acknowledge that City's right to use the Joint Facilities is exclusive and that this exclusive right includes City's right to charge fees to collect revenue for the benefit of City. Except as otherwise provided in this Agreement, District shall not grant a right to use the Joint Facilities to any other person or entity, other than Agoura High School, 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 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 1, 2007 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. Agoura High School or District provides City with written notice of the schedule amendment not later than forty-eight (48) hours prior to (a) the time the Agoura High School or District event was originally scheduled or (b) the rescheduled time for the Agoura High School or District event, whichever is earlier; and

- ii. The rescheduled event time does not conflict with a previously scheduled City event scheduled to occur during City's times of exclusive use pursuant to subsection A of this Section 6.

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 Agoura High School or District, provided that:

- i. Agoura High School or 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 requested by Agoura High School or District does not conflict with a previously scheduled City event.

F. City Scheduling of Events – City 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 (“City 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 City Monthly Calendar not later than ten (10) days prior to the beginning of each upcoming month. However, City reserves the right to amend the scheduled time of an event from that set forth in the City 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 scheduled to occur during Agoura High School hours before 3:00 p.m.

G. 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 Agoura High School staff in conducting an event.

7. 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.

8. 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.

9. 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 9 shall survive the termination of this Agreement.

10. 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 and non-Parties who conduct events at the Joint Facilities to carry liability insurance in the same amounts and on the same terms as the policies described in subsections A and B of this Section 10, above, and provide an additional insured endorsement naming the following as additional named insured: (i) City and its officers, officials, agents, employees and volunteers; and (ii) District and its officers, officials, agents, employees and volunteers. Prior to allowing use of the Joint Facilities by the contractor or non-Party, the contractor or non-Party shall provide certificates of insurance or other proof of insurance satisfactory to City and District demonstrating that the contractor or non-Party carries liability insurance in accordance with this Agreement.

11. 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.

12. AMENDMENT/MODIFICATION.

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

13. 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.

14. 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.

15. 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 and Agency: 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: Sandra B. Smyser, District Superintendent

16. 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.

17. 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.

18. 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.

19. 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.

20. 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 20 shall survive any termination of this Agreement.

21. NONLIABILITY OF OFFICIALS AND EMPLOYEES.

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

22. INTEGRATION.

This Agreement represents the entire integrated agreement between City, Agency 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, Agency and District.

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

CITY OF AGOURA HILLS, CALIFORNIA

Date: _____, 2007

By: _____
Dan Kuperberg, Mayor

ATTEST:

By: _____
Clerk, City of Agoura Hills

APPROVED AS TO FORM AND CONTENT:

By: _____
Craig A. Steele, City Attorney

AGOURA HILLS REDEVELOPMENT AGENCY, CALIFORNIA

Date: _____, 2007

By: _____
John Edelston, Agency Chairperson

ATTEST:

By: _____
Clerk, Agoura Hills Redevelopment Agency

APPROVED AS TO FORM AND CONTENT:

By: _____
Craig A. Steele, Agency Counsel

LAS VIRGENES UNIFIED SCHOOL DISTRICT

Date: _____, 2007

By: _____
Superintendent, Las Virgenes
Unified School District

ATTEST:

By: _____
Secretary, Las Virgenes
Unified School District

APPROVED AS TO FORM AND CONTENT:

By: _____
District Counsel