



Council Agenda Report

To: Mayor Farrer and the Honorable Members of the City Council

Prepared by: Katie Gallo, Recreation Supervisor

Reviewed by: Jesse Bobbett, Community Services Director

Approved by: Reva Feldman, City Manager

Date prepared: June 1, 2020 Meeting date: June 22, 2020

Subject: Amendment to Master Facility Use Agreement with the Santa Monica-Malibu Unified School District

RECOMMENDED ACTION: Authorize the City Manager to execute Amendment No. 3 to the Master Use Agreement with the Santa Monica-Malibu Unified School District, extending the Agreement through September 30, 2020.

FISCAL IMPACT: Funding for this Amendment is included in the Proposed Budget for Fiscal Year 2020-2021 in Account No. 100-7059-5921 (Non-Departmental Services).

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal year 2019-2020. It is part of normal staff operations.

DISCUSSION: The City has maintained a Master Use Agreement (Agreement) with Santa Monica-Malibu Unified School District (SMMUSD) for over 25 years. The Agreement outlines the terms of use and associated fees for City-sponsored programs, local youth sports organizations, and general recreational use during non-school hours at Malibu High School and Malibu Elementary Schools.

On July 1, 2013, the City entered into the current Agreement with SMMUSD (Attachment 1). The Council authorized Amendments to the Agreement in 2016 and 2019, extending the expiration date each time. The Amendment approved by the Council in 2019 is set to expire on June 30, 2020.

The City and SMMUSD have agreed to amend the terms of the Agreement (Attachment 2), to provide additional time to finalize the details of a new two-year Agreement

beginning October 1, 2020. The Amendment will extend the expiration date of the Agreement three additional months from June 30, 2020, to September 30, 2020.

Additionally, the City will pay a higher “Direct Rate,” for City-sponsored youth and local youth sports organization programs. The City has been paying a lower “Basic Rate” for youth programs and the “Direct Rate” for adult and weekend community use programs as shown (Attachment 2 – Exhibit A). Due to facility closures and program cancellations related to the COVID-19 pandemic, the increased rates are not expected to significantly impact the proposed budget for Fiscal Year 2020-2021.

Staff recommends the Council authorize the City Manager to execute Amendment No. 3 to the Master Use Agreement with SMMUSD. Once approved by the Council, the Amendment will go to the SMMUSD Board of Education in late June 2020 for approval.

ATTACHMENTS:

1. 2013 Master Use Agreement with SMMUSD
2. Amendment No. 3 to Master Use Agreement with SMMUSD

**MASTER AGREEMENT BETWEEN SANTA MONICA-MALIBU UNIFIED SCHOOL
DISTRICT AND THE CITY OF MALIBU REGARDING JOINT USE OF SCHOOL
DISTRICT FACILITIES**

This Agreement is made and entered into as of this 29 day of August, 2013, by and between the City of Malibu, a municipal corporation, hereinafter referred to as the "City" and Santa Monica-Malibu Unified School District, a unified school district, hereafter known as the "District," each duly organized and existing under the constitution and laws of the State of California (collectively, the "Parties"); and

WITNESSETH

WHEREAS, the District desires to promote the health and welfare of the students and staff of the District and the City desires to promote the health and welfare of the residents of the City and enhance recreational opportunities. The Parties also desire to cultivate and develop community education, health, fitness and good citizenship by providing for a program of City and District education, recreation, and athletics and to conduct such programs of community education, recreation and athletics as will contribute to the attainment of objectives of said District and City; and

WHEREAS, the District and City have previously maintained a cooperative working arrangement, which has shown that the joint use of the grounds and facilities can afford the community increased educational, recreational, and athletic opportunities at a cost that would otherwise be required of our comparable programs; and

WHEREAS, the development of an educational, recreational and athletic programs to meet the needs of the District and City and community requires optimum use of all publicly owned facilities which are adaptable to use for educational, recreational, physical education and athletic purposes; and

WHEREAS, this agreement is entered into under authority granted under the Government Code (Section 6500 et seq.) and by one or more of Education Code Sections 17051 (re joint use of parks and recreation), 17060 (re joint ventures) and 10900 et seq. (re joint use of property and facilities) of the State of California, which authorize and empower school districts and municipalities to enter into agreements with each other for the purpose of organizing, promoting and conducting joint use programs for the provision of school facilities and community recreational and educational opportunities for the citizens and residents of City and District; and

WHEREAS, City and District desire to enter into this Agreement pursuant to said statutory authorization; and

WHEREAS, this Agreement governs joint use of facilities at Malibu High School, Juan Cabrillo Elementary School, Point Dume Marine Science School and Webster Elementary School; and

WHEREAS, the Parties desire to establish general guidelines for joint use of existing facilities

NOW, THEREFORE, City and District hereby mutually covenant and agree with each other as follows:

1.0 GENERAL PROVISIONS OF JOINT USE OF FACILITIES

That the District shall make available to the City the use of certain outdoor facilities, buildings or portions thereof as specifically requested and for the time requested, subject to the following conditions:

- 1.1 That the “Basic Costs” of District’s operation of said facilities, buildings or portions thereof, as indicated on Exhibit A (Facility Use Schedule), shall be the basis upon which a annual contribution shall be made by the City to the District for use of said facilities, buildings or portions thereof for the 2013-14 fiscal year; and that “Basic – Rate D” indicated in Exhibit D shall be the basis for each year thereafter for the term of his agreement. Any costs incurred related to City use of District facilities outside those costs identified in Exhibits A and D shall be subject to negotiation by the two agencies.
- 1.2 The party having responsibility for supervision of a class, athletic program or recreational activity may charge a permit fee no greater than the “Basic Cost” as listed on the District fee schedule or an amount equal to 100% of the recovery of City’s direct costs of supervision, instruction, or materials used (so called “program costs”) whichever is greater. Such fees may be retained by the supervising authority as part of its budget for providing leadership and supervision of the education, recreation or athletic program. Such fee schedule must be reviewed by the appropriate District and City governing agency, board or commission, whichever is applicable. No fee shall be charged in violation of Education Code Sections 10902 or 10912.
- 1.3 The City shall provide, pay for and supervise the City sponsored or permitted educational, recreational or athletic programs at District facilities at Malibu High School, Juan Cabrillo Elementary School, Point Dume Marine Science School, and Webster Elementary School. District and City will agree to a Facility Use Schedule (Exhibit A) prior to the issuance of any permit to use certain facilities. Once the District has allocated certain dates and hours to City use of facilities the City shall be responsible for programming or permitting of those facilities.
 - 1.3.1 Any City or community person or group desiring use of District facilities on those dates and during those times allocated to the City under this Agreement, must make application, subject to the policies and regulations set forth by the District and City, through the central Permit Office of the City. This Office will coordinate such use through the City Park and Recreation Department, the District Facility Permit Office and the school site administrator.
 - 1.3.2 City shall provide District permit office and school site administrators in advance with quarterly or seasonal calendars identifying all permits issued to use District facilities. District facilities must not be used until such time as notification of the

granting of a permit is received and the District Facility Permit Office and school site administrator have been notified of said permit schedule.

- 1.3.3 The District will charge an additional fee for staffing Sports Facility Attendants during City use, including City permits issued for community recreational and athletic groups.
- 1.4 Facility use outside the scope of this Agreement shall be subject to a separate agreement between the parties.
- 1.5 No use of the buildings, grounds, or equipment of the District for community educational, recreational or athletic purposes pursuant to this agreement shall interfere with the use of the buildings, grounds and equipment for its primary day to day educational mission, extracurricular programs primarily supported or sponsored by the District or special or emergency maintenance or custodial services, District sponsored activities, programs and events shall always have first priority. Therefore, if a need arises after the establishment of any schedule, the City shall relinquish its permit to use District facilities for such educational need. The District shall make every effort to provide two weeks written notice to the City should such cancellation become necessary.
- 1.6 The advance schedule may be altered at the request of the either of the parties with concurrence of the other party.
- 1.7 The Administrative authority for any City recreational or educational programming shall be vested in the City Manager and /or his/her assignee(s).
- 1.8 The City educational, recreational or athletic program shall provide the materials, supplies and equipment necessary to conduct its educational, recreational or athletic programs. Use of that equipment shall not be denied to District if approved by the City for use for educational, athletic and recreational programs made available by the District.
- 1.9 The District's educational, recreational or athletic program shall provide the materials, supplies and equipment necessary to conduct its educational, recreational or athletic programs. Use of that equipment shall not be denied to the City if approved by the District for use for educational, athletic and recreational programs made available by the City to the community.
- 1.10 As set forth in section 1.14 below, City agrees to accept facilities AS-IS. The District shall maintain all facilities which are a part of this agreement in a safe and clean condition, normal wear and tear excepted, and furnish them to the City in such condition at the time it is permitted to use them. City shall return the building, facilities and grounds used in as good condition as they were received, normal wear and tear excepted, and shall repair and/or replace or pay for repair and/or replacement of buildings, facilities, equipment which are proven to be damaged by the City sponsored users within 10 working days of filing and receipt of a site damage report by the City Park and Recreation Supervisor.

- 1.11 The City shall provide certain funding for the District to employ, hire or assign District employees, agents or other representatives to (i) prepare or otherwise setup said facilities, buildings or portions thereof for City's use, (ii) serve as security at said facilities, buildings or portions thereof or the District property in general, or (iii) provide other services in connection with City's use of said facilities, buildings or portions thereof, as shown on the Facilities Use Agreement (Exhibit A). The City shall provide certain funding for certain custodial, security, permit monitoring and /or maintenance/grounds services upon request of the District if any special educational, recreational or athletic event(s) should cause need for additional custodial, security, permit monitoring and /or maintenance/grounds services.
- 1.12 The City agrees to make an annual total contribution in an amount at least equal to the District's Basic Costs for management, supervision, operation, and maintenance and renovation associated with specific community educational, recreational, sports programs operating in District facilities, as shown on the Facilities Use Agreement (Exhibit A).
- 1.13 This agreement shall become effective on July 1, 2013. This agreement shall be in full force and effect for three (3) years. This agreement shall expire on June 30, 2016 unless duly terminated in accordance with section 6.3 of this agreement.
- 1.14 As-Is: City hereby represents, covenants and warrants that neither the District nor anyone acting on the District's behalf has made any representation, warranty or other guarantee regarding the fitness of the facilities, buildings, or portions thereof to be used under this Agreement for the particular use desired by City. Furthermore, City hereby represents, covenants and warrants that, as a material inducement to the execution and delivery of this Agreement by the District, City acknowledges and agrees that it accepts such facilities, buildings, or portions thereof in their "AS-IS", "WHERE-IS", "WITH ALL FAULTS" physical condition and in an "AS-IS", "WHERE-IS", "WITH ALL FAULTS" state of repair, and District has no obligation to repair or improve such facilities, buildings or portions thereof in anticipation of or in connection with City's exercise of its rights under this Agreement, nor shall City or anyone claiming by, through or under City have any right or remedy against District as a result of any physical condition of such facilities, buildings, or portions thereof (including, without limitation, any defect in or to the facilities, buildings or portions thereof). CITY HEREBY GENERALLY, FULLY AND IRREVOCABLY RELEASES DISTRICT, ITS EMPLOYEES, AGENTS OR OTHER REPRESENTATIVE FROM ANY AND ALL CLAIMS THAT CITY MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST DISTRICT, ITS AGENTS, EMPLOYEES, INDEPENDENT CONTACTORS OR OTHER REPRESENTATIVES FOR AND FROM ANY COST, LOSS, LIABILITY, UNFORSEEN, KNOWN OR UNKNOWN, ARISING OUT OF OR RELATED TO THE FACILITIES, BUILDINGS, OR PORTIONS THEREOF TO BE USED UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ANY PATENT, LATENT OR OTHER DEFECTS IN THE PROPERTY OR THE PHYSICAL OR ENVIRONMENTAL CONDITION OF THE PROPERTY. WITH RESPECT TO THE RELEASES AND WAIVERS SET FORTH IN THIS SECTION 1.14, CITY EXPRESSLY WAIVES THE

BENEFITS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE, WHICH PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR”.

CITY HAS BEEN ADVISED BY ITS LEGAL COUNSEL AND UNDERSTANDS THE SIGNIFIGANCE OF THIS WAIVER OF SECTION 1542 RELATING TO UNKNOWN, UNSUSPECTED AND CONCEALED CLAIMS. BY ITS INITIALS BELOW, CITY ACKNOWLEDGES THAT IT FULLY UNDERSTANDS, APPRECIATES AND ACCEPTS ALL OF THE TERMS OF THIS SECTION 1.14.

THIS RELEASE SHALL NOT APPLY TO ANY CLAIMS THAT HAVE ACCRUED PRIOR TO THE EFFECTIVE DATE OF THIS AGREEMENT OR TO ANY CLAIMS OCCASIONED BY THE DISTRICT'S FAILURE TO MEET ITS OBLIGATIONS SET FORTH IN PARAGRAPH 1.11.

2.0 GENERAL OPERATING PRINCIPLES

- 2.1 Facilities to be jointly used under this Agreement shall be identified and defined in Exhibit A, attached and made part of this Agreement. Whenever a facility is proposed for joint use within a larger site or project, the joint-use and non-joint use facilities (if any) shall be clearly separated, identified and defined.
- 2.2 The term “facilities” may include school and recreation buildings (including restrooms, storage facilities and offices), multipurpose rooms, shade facilities (including both natural trees and artificial structures), drainage systems, auditoriums, gymnasiums, art rooms, kitchens, meeting rooms, computer rooms, athletic areas, playgrounds, parks, exercise paths, playfields, school grounds, parking and utility facilities incidental to the foregoing, and other recreational areas presently operated or that may hereafter be operated by either Party, and any ancillary facilities, at Malibu High School, Juan Cabrillo Elementary School, Point Dume Marine Science School and Webster Elementary School.
- 2.3 This Agreement shall be a Master Agreement that covers general requirements needed to effectively implement an overall cooperative program between City and District. In addition, the Parties may desire to expand such cooperative program to include one or more sites, facilities and/or projects under a separate agreement.
- 2.4 From time to time, the Parties to this Agreement may adopt and/or execute additional or supplemental agreements and/or policies governing the use of each joint use facility, and attach each such agreement or policy (each, an “Use, Operation, Maintenance, Repair and Renovation of Joint Use Facilities Policy”, or as referred to in this Agreement, a “Policy”) as part of Exhibit A, attached to this Agreement. Each such Use, Operation, Maintenance, Repair and Renovation of Joint Use Facilities Policy shall cover the matters set forth in Article 5 hereof, shall become a part of this Agreement and shall be consistent with the general requirements specified herein. Any and all additions or modifications to

this Agreement require the written consent of both Parties as set forth in Section 6.11 of this Agreement.

- 2.5 Proposals for specific facilities to be covered by this Agreement shall be reviewed annually by appropriate District and City staff as outlined in Section 2.7 below. The appropriate forums shall include a jointly convened meeting of appropriate District advisory committee, department, and school site management – site governance council and/or program representatives and a designated City agency or department.
- 2.6 A joint meeting of the District and City staffs shall be held as necessary (but no less than annually) during the term of this agreement to consider matters of mutual concern and to develop or amend a “Joint Use Schedule” identifying the type of uses and times available for a particular facility. Each such schedule shall become a part of this Agreement (as Exhibit A hereto) and shall be subject to the general requirements specified herein. The Joint Use Schedule shall identify the responsible party for maintenance and supervision, whether by incorporation of the applicable Policy or otherwise. Any and all additions or modifications to the Joint Use Schedule require the written consent of both Parties as set forth in Section 6.11 of this Agreement.
- 2.7 Per District Policy, the Board of Education shall review, update and establish a “Facility Fee Schedule” that sets out the Basic, Direct and Fair Market costs, if any, of operating facilities covered under this Agreement and which will serve as the basis for calculating facility rental charges for each Party and the general public. For the purpose of this agreement and any contribution calculated based upon the District Facility Fee Schedule, the Facility Fee Schedule annual increases will not exceed the percent change in the local Consumer Price Index (CPI) through the term of this Agreement. Such costs include wear and tear attributable to additional use, custodial and clean-up costs, supervision and extraordinary costs of any kind, including all costs associated with the respective Party’s use of the other Party’s facility that are above those costs normal to the operation and maintenance of a specific building or facility in the absence of the specific use. Each such schedule shall become a part of this Agreement and shall be consistent with the general requirements specified herein. If a Facility Fee Schedule is not established, any facility rent charged to a Party shall not exceed the cost as defined herein.

3.0 GOVERNANCE

- 3.1 The City and the District shall routinely advise and consult the other regarding significant changes in land use planning and facility development plans to assess impacts and opportunities for joint use. Each Party, however, shall maintain the primary planning and decision-making role on each facility or property that it owns.
- 3.2 Facilities subject to this Agreement shall be designed to enhance the surrounding environment, with a strong awareness for efficiency of operation, maintenance and aesthetics.

4.0 JOINT USE: SCHEDULING AND OPERATION

- 4.1 The Facility Use Schedule shall be publicly disseminated for each facility to be covered by this Agreement. The Parties shall, as resources become available implement a computerized uniform data-sharing system accessible by the appropriate staff of each Party to schedule activities and the use of the shared-use facilities. Specific attention shall be paid to identifying supervision, security and maintenance responsibilities for each and every facility use. Parties shall jointly set appropriate hours of operation for each such facility while maintaining a sense of flexibility and cooperation for each organization's changing or special program needs. Appropriate fees will be agreed upon prior to approval of use and shall reflect the "Basic Cost" of the accommodation and operation of the facility for the educational, recreational and athletic programming and permit use of the community and City as set forth in Section 1.1 of this Agreement.
- 4.2 Parties shall continuously review and examine their current practices and provision of services and shall work both independently and together to make all necessary changes in such practices in order to reduce costs, avoid duplication, achieve economy of scale, increase efficiency, and enhance provision of services.
- 4.3 Subject to specific agreement otherwise in a Facility Use Schedule (Exhibit A), District shall have the right to the exclusive use of the shared-use facilities during all "school days" during "school hours" and "school use" as hereinafter defined. Use of the shared-use facilities by the City at times during the District's exclusive use period shall be permitted only by mutual agreement of the Parties or pursuant to the applicable Joint Use Schedule.
- 4.4 "School days" are defined collectively as (i) those days on which school is held in regular session as established in the school calendar from time to time and adopted by the Board of Education for each school year, and (ii) those other days on which District-sponsored programs are scheduled. The "school hours" and "school use" of such school days shall be collectively (i) those regular school hours as established by the administration of each school in accordance with rules and regulations of the Board of Education, and (ii) those additional hours during which District-sponsored activities are scheduled to occur.
- 4.5 All joint use facilities and equipment shall be used for their intended purposes. The Facilities Use Schedule shall be subject to an annual review and modification by the Parties, in order to ensure that all normal facility and equipment uses are accommodated if reasonably possible and to avoid potential conflicts between facility uses and users. Any and all additions or modifications to the Facilities Use Schedule require the written consent of both Parties as set forth in Section 6.11 of this Agreement. With respect to District-owned facilities, each Facility Use Schedule shall assign a priority of use for covered facilities and equipment during nonexclusive use hours in the following order:

- 4.5.1 Activities and programs of the District that are directly related to the District's school programs;
 - 4.5.2 Events or activities that are designed to serve organizations directly sponsored by or associated with the District, such as Parent Teacher Associations, Education Foundation, etc;
 - 4.5.3 Events or activities connected with the City's or District's general programs in the order of priority reasonably established between the Parties;
 - 4.5.4 All other organizations and individuals.
- 4.6 Each Party shall be responsible for the proper conduct, supervision and security of any activity or use conducted or sponsored by or through such Party at any joint use facility as required in the Rules of Use for Facilities (Exhibit C).
- 5.0 OPERATION, MAINTENANCE, REPAIR, AND RENOVATION OF JOINT USE FACILITIES**
- 5.1 The Parties shall work together to insure that all joint use facilities are adequately maintained to allow proper and safe use, appearance and longevity. Each Facility Use Schedule shall be covered by District Policy, Rules and Regulations and the terms thereof shall be enforced in a fair and non-discriminatory manner.
 - 5.2 The cost of operation, maintenance and repair of joint use facilities shall be identified in the Facility Fee Schedule, as appropriate. Factors for allocation of such costs between District and City shall include proportionate use, type and intensity of use, value of joint use benefit received, and other pertinent factors. Payment from the City to the District for operations, maintenance, repairs and renovation are part and parcel to the fees paid in accordance with the fee schedule attached as Exhibits A and C respectively.
 - 5.3 District Policy (Exhibit B) shall include rules and regulations governing operational issues (such as determination of costs, hours, scheduling, staffing, maintenance and repair), utilities, security supervision, materials, equipment, and supplies. Each Policy shall be designed and implemented with due regard for benefits to the community, operational efficiencies, and cost effectiveness.
 - 5.4 General Security issues regarding facilities shall be addressed in regular meetings with District staff. City staff will be provided with phones during City use or when City permits facilities for use, so that its staff can communicate immediately with City and/or District supervisory staff or, if necessary, the Los Angeles County Sheriff's Department. City staff will immediately report and/or document an event, incident or activity on District property that violates the District Rules of Use for Facilities (see Exhibit B), this agreement or is prohibited by local Board rules or State Education Code. City and District shall share the costs of manufacture and installation of a new signage displaying the District Rules of Use for Facilities at the entrance to each school site covered under this agreement.

6.0 MISCELLANEOUS PROVISIONS

6.1 Indemnification and Hold Harmless

6.1.1 District Hold Harmless: District shall indemnify, defend and hold harmless, to the maximum extent permitted by law, City and its officers, council members, agents, employees and representatives (“related parties”), from and against any and all liability, suits, actions, proceedings, judgments, claims, losses, costs (including attorneys fees), liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless of whether the allegations are false, fraudulent or groundless), relating to District’s or its representatives’ or invitees’ use of a facility (including, without limitation, any personal injury or property damage resulting from or occurring during the District’s use of a facility and whether or not such an injury or damage resulted from any existing conditions at the facility) or breach of this Agreement, with the exception of those injuries, losses damages occasioned by the negligence or willful misconduct of City or its related parties.

6.1.2 City Hold Harmless: The City shall indemnify, defend and hold harmless, to the maximum extent permitted by law, District and its officers, Board members, agents, employees and representatives (“related parties”), from and against any and all liability, suits, actions, proceedings, judgments, claims, losses, costs (including attorneys fees), liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death or property damage, and regardless of whether the allegations are false, fraudulent or groundless), relating to City’s or its representatives’ or invitees’ use of a facility (including without limitation, any personal injury or property damage resulting or occurring during the City’s use of a facility and whether or not such an injury or damage resulted from any existing conditions at the facility) or breach of this Agreement, with the exception of those injuries, losses or damages occasioned by the negligence or willful misconduct of District or its related parties.

6.2 Insurance. District and City are currently self-insured for property and liability insurance. Notwithstanding the foregoing, the Parties may elect to insure one or more facilities separately, or to require non-party users to obtain appropriate insurance for the use of a facility. Such special insurance requirements shall be specified where appropriate or applicable in a Facility Fee Schedule.

6.3 Termination. The term of this agreement is (3) three years. Except as otherwise provided herein, or as required by law, either Party may terminate this Agreement in whole or in part (with respect to a specific joint use facility) upon sixty (60) days written notification. Termination of all or a portion of this Agreement shall effectively terminate each applicable implementing agreement attached in each Exhibit, subject to any specific requirements of cost allocations, reimbursements and/or supplemental termination procedures set forth therein.

- 6.4 Attorneys Fees and Costs. Each party shall bear its own attorneys fees and cost in connection with this agreement, except as provided herein or otherwise provided by law. If either party commences an action against the other party to enforce any of the terms of this Agreement or otherwise with respect to the facilities, the prevailing party, in addition to any other relief to which such party may be entitled, shall be entitled to recover from the other party its reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action. The term "attorneys' fees" and "attorneys' fees, costs and expenses" shall mean the fees, costs and expenses of counsel to the parties hereto, which may include printing, photostatting, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals and other persons not admitted to the bar but performing services under the supervision of an attorney, and the costs and fees incurred in connection with the enforcement or collection of any judgment obtained in any such proceeding, and shall include, specifically, all fees, costs and expenses of expert witnesses. For purposes of this Agreement, the term "prevailing party" shall include a "prevailing party" as defined in California Code of Civil Procedure Section 998.
- 6.5 Entire Agreement. This Agreement, together with Exhibits A, B, C and D attached hereto, represents the entire and integrated Agreement between District and City for the facilities at Malibu High School, Juan Cabrillo Elementary School, Point Dume Marine Science School and Webster Elementary School. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written including all prior joint use agreements between the City and District pertaining to these school sites. Any modifications to the terms and conditions of this Agreement shall be effective only when agreed to in writing by both the District and City.
- 6.6 Relationship of the Parties. The Parties hereby agree that their relationship shall be that of joint users of the property identified for such use, and in no event shall this Agreement be construed as creating a legal partnership, employment or agency/principal relationship.
- 6.7 Notices. Notices hereunder shall be sufficient if delivered to:
- | | |
|----------------|--|
| If to City: | City of Malibu City Manager
23825 Stuart Ranch Road
Malibu, CA 90265 |
| If to District | Santa Monica-Malibu Unified School District
Superintendent of Schools
1651 Sixteenth Street
Santa Monica, CA 90404-3891 |
- 6.8 Section Heading. All section headings in this Agreement are for convenience of reference only and are not construed as modifying or governing the language in the section referred to or to define or limit the scope of any provision of this Agreement.

- 6.9 Consent. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld or delayed. Where circumstances or applicable law requires, consent may be subject to School Board and City Council approval.
- 6.10 Governing Law. This Agreement is made under the Constitution and laws of the State of California and is to be so construed.
- 6.11 Amendment. This Agreement may be amended at any time, or from time to time, by one or more supplemental written agreements executed by all of the Parties to this Agreement either as required in order to carry out any of the provisions of this Agreement or for any other purpose, including without limitation addition of new parties (including any legal entities or taxing entities heretofore or hereafter created) in pursuance of the purposes of this Agreement.
- 6.12 Disputes. In the event of disputes related to this agreement, the Parties shall first attempt to resolve the matter informally by mutual agreement of the Superintendent and the City Manager.
- 6.13 Severability. Should any part, term or provision of this Agreement be decided by any court of competent jurisdiction to be illegal or in conflict with any law of the State, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.
- 6.14 Successors and Assignment of Interests. This Agreement shall be binding upon and shall inure to the benefit of the successors of the respective Parties. Neither Party may assign any right or obligation hereunder without the written consent of the other Party, which may be denied in such Party's non-arbitrary but otherwise sole discretion.
- Nothing under this Agreement shall be construed to give any rights or benefits to any party other than City and District. All duties and responsibilities under this Agreement shall be the sole and exclusive benefit and burden of City and District, and not for the benefit of any other party unless agreed to by both Parties in a Policy or other applicable written agreement entered into under the authority of this Agreement.
- 6.15 Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 6.16 Employees and Public Benefit. This Agreement is intended to promote a public benefit. Persons employed at a facility shall be public employees of either City or District as the case may be. This Agreement shall not be construed as a private contract for a public service. Notwithstanding the foregoing, this Agreement shall not limit either Party's legal right to contract for services, goods or construction of facilities pursuant to applicable law and regulation.

7.0 AUTHORITY

- 7.1 This Agreement may be subject to approval and/or ratification of the governing board of each party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers there unto duly authorized, on the day and year first set forth above.

CITY OF MALIBU

Approved as to form by legal counsel:

By: _____

Date: _____

CITY OF MALIBU

Executed this day: _____

By: _____

City Manager

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT

Executed this day: _____

By: _____

Superintendent

**AMENDMENT NO. 3 TO MASTER USE AGREEMENT
BETWEEN THE CITY OF MALIBU AND SANTA MONICA-MALIBU UNIFIED SCHOOL
DISTRICT REGARDING JOINT USE OF SCHOOL DISTRICT FACILITIES**

THIS AMENDMENT NO. 3 TO AGREEMENT ("Amendment 3") is made and entered in the City of Malibu on June 22, 2020, by and between the CITY OF MALIBU, herein after referred to as "City," and Santa Monica-Malibu Unified School District, hereinafter referred to as "District."

The City and the District agree as follows:

RECITALS

- A. On July 13, 2013, the City entered into an Agreement with the District to use school facilities for recreational programs and community use during non-school hours ("Agreement").
- B. On July 11, 2016, the City entered into Amendment No. 1 to the Agreement ("Amendment 1") with the District to increase facility fees and extend the expiration date of the Agreement to June 30, 2019.
- C. On June 24, 2019, the City entered into Amendment No. 2 to the Agreement ("Amendment 2") with the District to increase facility use fees and extend the expiration date of the Agreement to June 30, 2020.
- D. The City and the District desire to amend the Agreement to extend the expiration date of the Agreement from June 30, 2020, as set forth in Amendment 2, to October 1, 2020 ("Term").
- E. The City and the District desire to amend the Agreement to increase facility use fees from the "Basic Rate" to the "Direct Rate" for City-sponsored programs and local youth sports organizations.

NOW THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

- 1. The above recitals are true and correct and incorporated into Amendment 3 as essential terms.
- 2. All initially capitalized terms which are used in Amendment 3, but not otherwise defined herein, shall have the same meanings as ascribed thereto in the Agreement and Amendment Nos. 1 and 2.
- 3. Section 1.1 is hereby amended to read as follows:
The "Direct Rate" of the District's operation of said facilities, building or portions thereof for the purposes outlined in the Agreement, as indicated on Exhibit A (Facility Use Schedule), shall be the hourly basis upon which the contribution shall be made by the City to the District for actual use of said facilities, buildings or portions thereof, from July 1, 2020 through October 1, 2020; and that "Direct Rate" indicated in Exhibit A shall be the basis for the Term. Any cost incurred related to City use of District facilities outside those costs identified in Exhibit A shall be subject to negotiation and mutual agreement by the two agencies.
- 4. Section 1.13 is hereby amended to expire on October 1, 2020.
- 5. All terms and conditions of the Agreement and prior Amendment Nos. 1 and 2 not amended by this Amendment No. 3 remain in full force and effect.

This Agreement is executed on _____, 2020 at Malibu, California, and effective as of July 1, 2020.

CITY OF MALIBU:

REVA FELDMAN, City Manager

ATTEST:

HEATHER GLASER, City Clerk
(seal)

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED
BY THE CITY ATTORNEY'S OFFICE

CHRISTI HOGIN, City Attorney

SCHOOL DISTRICT REPRESENTATIVE:

By: DR. BEN DRATI
Title: Santa Monica-Malibu Unified School
District Superintendent