

## TOWN OF APPLE VALLEY

### TOWN COUNCIL STAFF REPORT

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**To:** Honorable Mayor and Town Council **Date:** November 13, 2018

**From:** Ralph Wright **Item No:** 8  
Parks and Recreation Manager  
Parks and Recreation Department

**Subject:** AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND THE  
APPLE VALLEY UNIFIED SCHOOL DISTRICT FOR USE OF THE  
SWIMMING POOL

**T.M. Approval:** \_\_\_\_\_ **Budgeted Item:**  Yes  No  N/A

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#### RECOMMENDED ACTION:

Approve the updated Swimming Pool Use Agreement between the Town and the Apple Valley Unified School District (AVUSD).

#### SUMMARY:

AVUSD has requested that the agreement for use of the Civic Center Park Aquatic Center once again be renewed. The five-year agreement will cover use of the facility by AVUSD from August 2018 through May 2023. The agreement, including a tentative use calendar, is included in the staff report.

After discussions between staff and AVUSD, changes to the term of the agreement and the yearly cost are included in the updated agreement. The AVUSD Board approved the agreement on November 1, 2018.

**Term:** The term of the agreement has been changed to a five-year agreement. This allows both AVUSD and the Town to better plan their programs and budget for the operational costs of the program. The agreement includes an early termination clause with a 90-day notice by either party prior to each subsequent school year, if program changes or budgetary issues arise.

**Cost:** The yearly cost paid by AVUSD, per this agreement, represents a 50% initial increase as well as a yearly escalation clause tied to the Los Angeles-Long Beach-Anaheim, CA Consumer Price Index. Both the base rate increase and the CPI will allow the Town to more effectively offset the non-seasonal pool operational costs associated with AVUSD's use during this time period.

**BACKGROUND:**

The Apple Valley Unified School District (AVUSD) has used the Civic Center Park Aquatic Center for sports programming since the 2006-2007 school year. In June 2007, the Town and AVUSD entered into a Swimming Pool Use Agreement for the period of the School's use from September through May, each year. As the school sports seasons have expanded, the agreement has begun in August each year. AVUSD agreed to pay for use of the pool to offset the operational costs of the Aquatic Center during the period of reduced Town use. Both parties have subsequently renewed the agreement each year since.

The Pool use calendar is a color coded, evolving calendar that is updated throughout the year based on Town programming needs as well as game and practice schedules. These changes are made throughout the year through discussions between AVUSD and the Town.

**FISCAL IMPACT:**

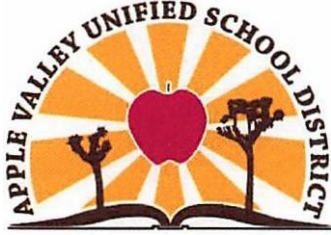
AVUSD will pay \$75,000 for use of the Aquatic Center this year to help offset the operational costs including chemical and electrical consumption. This revenue amount was partially included in the Parks and Recreation Fund as part of the Town's adopted FY 18/19 Budget.

**ATTACHMENTS:**

1. Pool Use Agreement
2. Exhibit A – Pool Use Calendar

**THE TOWN OF APPLE VALLEY AND APPLE VALLEY UNIFIED SCHOOL DISTRICT**

**AQUATIC CENTER USE AGREEMENT**



THIS USE AGREEMENT (hereinafter "Agreement") by and between the TOWN OF APPLE VALLEY (hereinafter "Town"), and APPLE VALLEY UNIFIED SCHOOL DISTRICT (hereinafter "School District"), for the use of the Aquatic Center located at 14999 Dale Evans Parkway, Apple Valley, CA 92307.

1. Use: The Town agrees to allow the School District to use of the Town's Aquatic Center for the term of this agreement during the school year on Monday through Friday from 2:30 p.m. until 7:00 p.m. for aquatic athletic programs organized and supervised by the School District, with the exception of those dates and times agreed upon and listed on the Pool Use Calendar attached as Exhibit A.

Coordination of the Pool Use Calendar - Exhibit A: Each year, the Town shall create a Pool use calendar (Exhibit A) that will list exclusive Aquatic Center dates for the School District, exclusive Town use dates as well as joint use dates or sessions throughout the year. All specific use and joint use dates or sessions will be coordinated by the Town's and School District's representatives as identified in this Agreement, or their designees. The Pool Use Calendar shall be updated throughout the year as game and meet schedules become available.

2. Pool Closure due to Unexpected Maintenance: The Town shall attempt to conduct all pool maintenance during timeframes that do not negatively impact the School District's use. However, if pool maintenance issues arise during the school year that inhibit the School District's use of the Aquatic Center, the Town shall give reasonable notice to the School District.
3. Term: The term of this agreement will be for five (5) school years commencing on August 8, 2018 and ending on May 12, 2023 unless otherwise terminated, extended or modified in accordance with the terms of this Agreement.
4. Compensation: The School District shall provide payment to the Town in the amount of \$75,000 for the initial school year (18/19) of the Agreement. Each subsequent school year the payment shall be automatically adjusted by a percentage amount equal to or less than the change in the cost of living index. For purposes of this agreement, the Los Angeles-Long Beach-Anaheim, CA Consumer Price Index for Urban Wage Earners and Clerical Workers shall be used each April to determine the cost of living percentage for the previous twelve months. This compensation amount reflects all costs associated with the School District's use of the pool facility. This amount will be divided into three equal

payments, to be paid by the School District. The Town will invoice the School District on or about October 1<sup>st</sup>, December 1<sup>st</sup>, and February 1<sup>st</sup> of each year of the agreement.

5. Maintaining the cleanliness of the Aquatic Center: During times of exclusive school use, the School District shall ensure that the restroom facility, entrance area and pool deck are free from trash and debris after their use.
6. Damages to Town Property: The School District shall reimburse the Town for the reasonable cost to repair any damage to the Aquatic Center caused by the School District's use of the facility.
7. Issuance of Keys: The Town shall issue keys to the Aquatic Center for use by the coaches during their use each season. Keys shall only be issued to School District approved coaching staff. The list of the approved coaches must be provided by the respective athletic directors of each participating school each season.
8. Compliance with all Safety Procedures: The School District shall be responsible to ensure that it follows all applicable safety procedures during its use of the Aquatic Center. This shall include supplying certified coaches, lifeguards, safety equipment and training during their use of the Aquatic Center as necessary. The School District shall provide at least one School District Personnel on the swimming pool deck at all times during their use of the facility. In addition, the School District will provide one School District Personnel to supervise the inside of the Pool Office/Restroom Facility during all competitions and meets. School District Personnel shall cover the pool at the end of its use of the pool each day with the Town provided blanket and secure the blanket according to established procedures.

During all scheduled joint use dates or sessions, the Town shall ensure that they comply with all applicable safety procedures including but limited to supplying certified coaches, lifeguards, supervision, safety equipment and training.

9. Indemnification and Hold Harmless:
  - A. The School District hereby covenants to indemnify, defend, and hold harmless the Town and its officers, members, employees and agents from and against any and all actions, suits, liabilities, debts, claims, demands, costs, expenses, losses, death, or damage of every kind, nature and description to any person or property occurring in, on or about the Aquatic Center, or arising from the School District's use of the Aquatic Center or from any activity, work, or other things done, permitted, or suffered by the School District in or about the Aquatics Center except to the extent such liability, expenses, losses, and damages are caused by the negligence or willful misconduct of the Town or its employees, agents, or officers.
10. Insurance: The School District shall maintain a policy of general liability insurance to insure against all claims for injuries to persons attending or participating in School District sponsored aquatic programs occurring in or around the Aquatic Center located at 14999 Dale Evans Parkway. Said liability policy shall have limits of not less than One Million Dollars (\$1,000,000) for injuries per person and Five Million Dollars (\$5,000,000) per occurrence.

11. Notices: All notices under this Agreement shall be in writing and shall be delivered by personal service, or by certified or registered mail, postage prepaid, return receipt requested, to the parties. Any written notice to any of the parties required or permitted hereunder shall be deemed to have been duly given seventy-two (72) hours after mailing. Rejection or other refusal to accept, or the inability to deliver because of a changed address, of which no notice was given as provided hereunder shall be deemed to be receipt of the notice, demand or request sent. Notices to the parties shall be addressed as follows:

Town of Apple Valley:

Town of Apple Valley  
Attn: Doug Robertson, Town Manager  
14955 Dale Evans Parkway  
Apple Valley, CA 92307

Apple Valley Unified School District:

Apple Valley Unified School District  
Attn: Tom Hoegerman, Superintendent  
12555 Navajo Rd  
Apple Valley, CA 92307

12. Representatives: Town hereby appoints Town Manager or his or her designee and School District appoints Superintendent or his or her designee as authorized agents with whom the other party may confer regarding the terms of this Agreement.
13. Termination Agreement: This Agreement may be terminated with cause by either party during the Term hereof by giving the other party not less than ninety (90) days written notice. Furthermore, this Agreement may be terminated without cause by either party by giving the other party not less than ninety (90) days written notice prior to each school year.
14. Applicable Law: This Agreement shall be governed by the laws of the State of California, and any questions arising hereunder shall be construed and determined according to such laws.
15. Entire Agreement: This Agreement is the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to the matter contained in this Agreement. Any waiver, modification, consent or acquiescence with respect to any provision of the Agreement shall be set forth in writing and duly executed by both parties. No waiver by any party or any breach hereunder shall be deemed a waiver of any other subsequent breach.
16. Successors: This Agreement shall be binding upon the assignees, transferees, and successors in interest of each of the parties hereto.
17. Effective Date: This Aquatic Center Agreement will become effective upon the latter date of approval by the Apple Valley Unified School District Board of Trustees and the Town Council for the Town of Apple Valley.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.
19. Severability. In the event that any one or more of the articles, phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable, such invalidity or unenforceability shall not affect any of the remaining articles, phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives any Party of the basic benefit of their bargain or renders this Agreement meaningless.
20. No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.
21. Privileges and Immunities. All privileges and immunities of Parties provided by state or federal law shall remain in full force and effect.

IN WITNESS WHEREOF. The parties hereto have executed this agreement as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

Town of Apple Valley

Apple Valley Unified School District

\_\_\_\_\_  
Doug Robertson, Town Manager

\_\_\_\_\_  
Tom Hoegerman, Superintendent

**ATTEST:**

Date of AVUSD Board Approval

\_\_\_\_\_  
La Vonda M. Pearson, Town Clerk

\_\_\_\_\_, 2018

**APPROVED AS TO FORM-**

BEST BEST & KRIEGER LLC

\_\_\_\_\_  
Thomas Rice, Town Attorney

Town of Apple Valley  
 Apple Valley Unified School District  
 Pool Use Calendar  
 Exhibit A - Pool Use Calendar

July 2018

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
|-----|-----|-----|-----|-----|-----|-----|
|     |     |     |     |     |     |     |
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August 2018

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| 12  | 13  | 14  | 15  | 16  | 17  | 18  |
| 19  | 20  | 21  | 22  | 23  | 24  | 25  |
| 26  | 27  | 28  | 29  | 30  | 31  |     |

September 2018

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
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| 16  | 17  | 18  | 19  | 20  | 21  | 22  |
| 23  | 24  | 25  | 26  | 27  | 28  | 29  |
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October 2018

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| 14  | 15  | 16  | 17  | 18  | 19  | 20  |
| 21  | 22  | 23  | 24  | 25  | 26  | 27  |
| 28  | 29  | 30  | 31  |     |     |     |

November 2018

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| 18  | 19  | 20  | 21  | 22  | 23  | 24  |
| 25  | 26  | 27  | 28  | 29  | 30  |     |

December 2018

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
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| 16  | 17  | 18  | 19  | 20  | 21  | 22  |
| 23  | 24  | 25  | 26  | 27  | 28  | 29  |

January 2019

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
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February 2019

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| 17  | 18  | 19  | 20  | 21  | 22  | 23  |
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March 2019

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| 17  | 18  | 19  | 20  | 21  | 22  | 23  |
| 24  | 25  | 26  | 27  | 28  | 29  | 30  |

April 2019

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
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| 14  | 15  | 16  | 17  | 18  | 19  | 20  |
| 21  | 22  | 23  | 24  | 25  | 26  | 27  |
| 28  | 29  | 30  |     |     |     |     |

May 2019

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
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| 12  | 13  | 14  | 15  | 16  | 17  | 18  |
| 19  | 20  | 21  | 22  | 23  | 24  | 25  |
| 26  | 27  | 28  | 29  | 30  | 31  | 32  |
| 33  |     |     |     |     |     |     |

June 2019

| Sun | Mon | Tue | Wed | Thu | Fri | Sat |
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- Closed for Holiday (No use of the pool by AVUSD)
- Away Games/ In between seasons/Other (No use of the pool by AVUSD)
- Possible use by AVUSD for practice and for CIF
- Possible home game
- Tentative DSL
- GHHS Alumni Game 2:00 - 5:00pm
- Pool Reserved for Town Use During Spring Break
- Home Games AVUSD Use begins at 1:30 pm
- Tentative Home Tournament Dates
- District will use pool from 2:30 pm - 5:30 pm
- District will use the pool from 2:30 pm until 7:00 pm (Will be joint use with Town)
- Pool Closed for Maintenance
- Dates Not Included In Contract

Updated 08/28/2018