

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AGREEMENT BETWEEN THE TOWN OF APPLE VALLEY AND THE APPLE VALLEY UNIFIED SCHOOL DISTRICT FOR THE JOINT USE OF FACILITIES

Summary Statement:

To facilitate the communication between the Apple Valley Unified School District (AVUSD) and the Town, Mayor Pro Tem Sagona and members of the Town Staff have been meeting with representatives of the AVUSD Board of Directors and AVUSD Staff periodically over the past year. One of the goals of these meetings was to negotiate a Joint Use Agreement for the use of facilities to replace outdated agreements between AVUSD and the prior Recreation and Park District which the Town assumed in 2001.

The attached agreement will replace the agreement dated May 24, 1983 regarding Yucca Loma School, the agreement dated July 19, 1989 regarding Thunderbird Park and the agreement dated March 1, 1995 regarding Sycamore Rocks Elementary School/Park. This Agreement provides for the reciprocal use of Town facilities by AVUSD and the use of AVUSD facilities by the Town at no cost. This Agreement was reviewed by Best, Best and Krieger and their comments have been incorporated into this Agreement for the Council's Consideration.

Recommended Action:

Approve the Joint Use Agreement for facilities and Authorize the Town Manager to Execute the Agreement

Proposed by Patty Saady, Deputy Town Manager

Item Number _____

T. M. Approval: _____

Budgeted Item Yes No N/A



JOINT USE AGREEMENT

THE TOWN OF APPLE VALLEY

AND

APPLE VALLEY UNIFIED SCHOOL DISTRICT



THIS JOINT USE AGREEMENT ("AGREEMENT") is entered by and between The Town of Apple Valley, hereinafter called TOWN, and the Apple Valley Unified School District, hereinafter called SCHOOL.

IT IS HEREBY AGREED AS FOLLOWS:

R E C I T A L S

WHEREAS, SCHOOL is the owner of real property and improvements thereon in the Town of Apple Valley, including facilities and active use areas ("SCHOOL FACILITIES"), which are capable of being used by TOWN for community recreational and educational purposes; and

WHEREAS, TOWN is the owner of public parks and recreational facilities in the TOWN of Apple Valley ("TOWN FACILITIES") which are capable of being used by SCHOOL for educational and recreational purposes; and

WHEREAS, TOWN and SCHOOL desire to use and improve SCHOOL FACILITIES and TOWN FACILITIES (together, "FACILITIES") for community recreational and educational purposes; and

WHEREAS, this AGREEMENT is entered into pursuant to the provisions of Education Code Section 10900, et seq.

NOW, THEREFORE, for and in consideration of the collaborative agreements herein contained, the parties hereto agree as follows:

1. TERM AND COMMENCEMENT

This AGREEMENT shall commence as of the date on which the latter of TOWN and SCHOOL approve and execute this AGREEMENT, and shall continue for a period of one (1) year, unless sooner terminated as provided for hereinafter in Section 13. This AGREEMENT may be renewed for successive one (1) year terms. Such renewal shall be deemed automatic unless AGREEMENT is terminated sooner as provided for hereinafter in Section 13 or upon written notice of intent not to renew given to the other party at least ninety (90) days prior to the expiration of AGREEMENT.

2. FACILITIES COVERED

The term "FACILITIES" shall be used for the purposes of this AGREEMENT to mean any buildings, multi-use rooms, or auditoriums. The term "ACTIVE USE AREAS" shall be used for the purposes of this AGREEMENT to mean any fields, playgrounds, restrooms, tennis courts, gymnasiums, pools, parking lots, or other active use and recreational areas.

Terms of this AGREEMENT shall apply to all FACILITIES and ACTIVE USE AREAS in the Town of Apple Valley owned by TOWN with the exception of Town Hall, the Police Building, Public Works Yard, Aquatics Center and Animal Shelter.

Terms of this AGREEMENT shall apply to all FACILITIES and ACTIVE USE AREAS owned by SCHOOL with the exception of classrooms, kitchens, performing arts centers, the District Office facility, administrative areas, and Newton T. Bass Stadium.

3. PERMITTED USES OF FACILITIES

A. SCHOOL shall be entitled to exclusive use of SCHOOL FACILITIES for public school and school-related educational and recreational activities, from thirty (30) minutes before the beginning of the school day until thirty (30) minutes after the end of the school day Monday through Friday, on each and every day school is in session during the school year, including summer school, and during SCHOOL sponsored events on weekends and holidays. At all other times, SCHOOL shall permit TOWN to use SCHOOL FACILITIES and ACTIVE USE AREAS, without charge, for TOWN recreational and educational purposes pursuant to this AGREEMENT, provided such use does not conflict with previously scheduled activities, and wear and tear resulting from use by TOWN shall not hinder the educational, athletic, or recreational programs of SCHOOL. For any use of SCHOOL FACILITIES by TOWN while SCHOOL FACILITIES are being used by SCHOOL, TOWN shall obtain prior written permission from SCHOOL.

B. TOWN shall permit SCHOOL to use TOWN FACILITIES and ACTIVE USE AREAS, without charge, for SCHOOL educational and recreational activities, as long as such use does not conflict with the regular conduct of park, recreation, and community service activities sponsored by TOWN.

4. SCHEDULING USE OF FACILITIES

A. SCHOOL and TOWN shall schedule quarterly meetings unless alternate meeting times are mutually agreed upon. At these meetings both parties shall review and evaluate the status and condition of jointly used FACILITIES and ACTIVE USE AREAS, and modify or confirm the upcoming quarter's schedule. TOWN and/or SCHOOL shall provide summary minutes of these quarterly meetings.

B. TOWN shall have the responsibility for scheduling all use of TOWN FACILITIES.

C. SCHOOL shall have the responsibility for scheduling all use of SCHOOL FACILITIES.

D. All use of facilities requests and agreements shall be coordinated, scheduled, and approved exclusively by Superintendent or his or her designee for SCHOOL and Town Manager or his or her designee for TOWN.

E. Scheduling requests for TOWN and SCHOOL FACILITIES and ACTIVE USE AREAS shall be submitted on the applicable facility use form and submitted a minimum of two (2) weeks in advance of requested use. TOWN and SCHOOL shall provide the other with a minimum of fifteen (15) calendar days notice when canceling approved FACILITIES use dates. If either TOWN or SCHOOL cancels any approved reservation, the canceling party shall make a reasonable effort to provide an appropriate alternative reservation site.

F. Unless otherwise agreed to by site-specific agreement, TOWN shall maintain TOWN FACILITIES and SCHOOL shall maintain SCHOOL FACILITIES in a state of good repair, by providing day-to-day maintenance, janitorial services including clean, fully-stocked restrooms, structural repair, and replacement or repair of any major equipment. TOWN reserves, and shall always have, the right to enter TOWN FACILITIES, and SCHOOL reserves, and shall always have, the right to enter SCHOOL FACILITIES, for the purpose of viewing and ascertaining the condition thereof.

5. OBLIGATIONS OF TOWN

During the term of this AGREEMENT, TOWN hereby covenants and agrees to the following:

A. Leave SCHOOL FACILITIES or ACTIVE USE AREAS in as good order and condition as SCHOOL FACILITIES or ACTIVE USE AREAS were at the beginning of TOWN's use, normal wear and tear excepted.

B. Be responsible for any obligation to provide custodial services necessary to keep TOWN FACILITIES and ACTIVE USE AREAS in a neat, orderly, and sanitary condition at all times during its use thereof under this AGREEMENT.

C. Allow no vehicles to enter upon SCHOOL FACILITIES or ACTIVE USE AREAS except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services or in designated public parking lots. Vehicles may only travel on designated surfaces.

D. Enforce all SCHOOL rules, regulations, and policies provided by SCHOOL while directing TOWN recreational and educational activities on SCHOOL FACILITIES or ACTIVE USE AREAS. SCHOOL shall provide TOWN with rules, regulations, and policies for each SCHOOL FACILITY and ACTIVE USE AREA.

E. Provide personnel necessary for the direction or supervision of activities sponsored by the TOWN at SCHOOL FACILITIES or ACTIVE USE AREAS.

F. Perform the normal maintenance of its own TOWN FACILITIES and ACTIVE USE AREAS as required under normal working conditions and fair wear and tear, unless otherwise addressed in a site specific agreement.

G. Permit SCHOOL to use TOWN-owned televisions, DVD players and VCR's at no cost. SCHOOL's request to use other specialized TOWN equipment must be submitted on the approved standard form fifteen (15) days prior to event date.

H. Upon SCHOOL's approval, TOWN may provide and maintain additional toilet facilities at SCHOOL FACILITIES and ACTIVE USE AREAS in conjunction with TOWN activities, including, as may be permitted by SCHOOL, portable, mobile, temporary or fixed facilities ("Toilet Facilities") at no cost to SCHOOL. If TOWN desires to provide such Toilet Facilities, TOWN shall submit a site map to SCHOOL depicting the proposed location(s) and type(s) of Toilet Facilities and the duration of time TOWN is requesting to maintain the Toilet Facilities at the identified locations. SCHOOL may approve, conditionally approve or deny such request in its reasonable discretion.

6. OBLIGATIONS OF SCHOOL

During the term of this AGREEMENT, SCHOOL hereby covenants and agrees to the following:

A. Leave TOWN FACILITIES or ACTIVE USE AREAS in as good order and condition as TOWN FACILITIES or ACTIVE USE AREAS were at the beginning of SCHOOL's use, normal wear and tear excepted.

B. Be responsible for any obligation to provide custodial services necessary to keep SCHOOL FACILITIES and ACTIVE USE AREAS in a neat, orderly, and sanitary condition at all times during its use thereof under this AGREEMENT.

C. Allow no vehicles to enter upon TOWN FACILITIES or ACTIVE USE AREAS except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services or in designated public parking lots. Vehicles may only travel on designated surfaces.

D. Enforce all TOWN rules, regulations, and policies provided by TOWN while directing community educational and recreational activities on TOWN FACILITIES and ACTIVE USE AREAS. TOWN shall provide the SCHOOL with rules, regulations, and policies for each TOWN FACILITY.

E. Provide personnel necessary for the direction or supervision of activities sponsored by SCHOOL at TOWN FACILITIES and ACTIVE USE AREAS.

F. Perform normal maintenance on SCHOOL FACILITIES and ACTIVE USE AREAS as required under normal working conditions and fair wear and tear.

G. Permit TOWN to use SCHOOL-owned televisions, DVD players and VCR's at no cost. TOWN's request to use other specialized SCHOOL equipment must be submitted on the approved standard form fifteen (15) days prior to event date.

H. Upon TOWN's approval, SCHOOL may provide and maintain additional toilet facilities at TOWN FACILITIES and ACTIVE USE AREAS in conjunction with SCHOOL activities, including, as may be permitted by TOWN, portable, mobile, temporary or fixed facilities ("Toilet Facilities") at no cost to TOWN. If SCHOOL desires to provide such Toilet Facilities, SCHOOL shall submit a site map to TOWN depicting the proposed location(s) and type(s) of Toilet Facilities and the duration of time SCHOOL is requesting to maintain the Toilet Facilities at the identified locations, TOWN may approve, conditionally approve or deny such request in its reasonable discretion.

7. ADDITIONAL IMPROVEMENTS

A. TOWN and SCHOOL shall obtain prior written consent of the other party to make any alterations, additions, or improvements to FACILITIES or ACTIVE USE AREAS owned by the other party. TOWN and SCHOOL understand that any such alterations, additions, or improvements must comply with all state and local standards.

B. Any such alterations, additions, or improvements shall be at the expense of the requesting party, unless otherwise agreed upon between the requesting and permitting party. Expenses to be paid by requesting party shall include all costs, fees, permits, approvals, etc., involved in the project.

C. Each party may, for good cause, require the demolition or removal of any alterations, additions, or improvements made by the requesting party upon issuing a ninety (90) day notice. "Good cause" includes reasons of health, safety, or the permitting party's need for the FACILITY or ACTIVE USE AREA.

D. If emergency repairs are required on any improvements made by TOWN or SCHOOL on the other party's FACILITY or ACTIVE USE AREA, the other party shall be contacted by phone for authorization to proceed, in the indicated order, as follows:

For SCHOOL:

4362	Tim Schaaf – Director, Maintenance & Operations	760	403
4503	Lynette Kachelmeyer – Director, Facilities & Planning	760	403
4357	Tom Hoegerman – Deputy Superintendent	760	403

For TOWN:

7884	Ralph Wright – Community Services Manager	760	240
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7520

Responsibility for cost shall be determined on a case-by-case basis. The exception to this shall be improvements made to Thunderbird Park, Yucca Loma Park, and Sycamore Rocks Park by TOWN. If TOWN undertakes improvements to these locations, TOWN shall take full responsibility for repairs to said improvements, and bear all costs.

F. If any alterations, additions, or improvements are destroyed by fire, war, earthquake, flood, storm, or other casualty beyond the control of the parties hereto, parties shall immediately undertake such measures as necessary to make the affected area safe. Parties will meet and mutually agree as to the restoration process and timeline. Should the parties be unable to reach an agreement as to the restoration process and timeline, the owner of the alterations, additions, or improvements shall remove all structures, improvements, and personal property from the site and return the site to its original condition, insofar as practical, unless otherwise mutually agreed.

8. TOWN OPERATION OF PARKS ON SCHOOL DISTRICT PROPERTY

TOWN operates and maintains a separately fenced public park on SCHOOL property adjacent to Yucca Loma School, Sycamore Rocks School and Vista Campana Middle School. Upon termination of the use of SCHOOL property for a public park, all property and equipment owned by TOWN shall remain the property of TOWN. TOWN shall be given ninety (90) days to remove its property from SCHOOL and shall leave SCHOOL property in serviceable condition.

9. LIABILITIES, INDEMNIFICATION AND INSURANCE

A. TOWN shall be financially responsible for property damage and personal injury caused by TOWN's use of SCHOOL FACILITIES or ACTIVE USE AREAS; SCHOOL shall be financially responsible for property damage and personal injury caused by SCHOOL's use of TOWN FACILITIES or ACTIVE USE AREAS.

B. TOWN shall indemnify, defend, and hold harmless SCHOOL, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by TOWN at SCHOOL FACILITIES and ACTIVE USE AREAS in connection with TOWN's performance of this AGREEMENT, except those which arise out of the sole negligence of SCHOOL.

C. SCHOOL shall indemnify, defend, and hold harmless TOWN, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by SCHOOL at TOWN FACILITIES and ACTIVE USE AREAS in connection

with SCHOOL's performance of this AGREEMENT, except those which arise out of the sole negligence of TOWN.

D. TOWN and SCHOOL acknowledge and warrant that they are self-insured in compliance with the laws of the State of California, that their self-insurance covers persons acting on their behalf or under their control, and that their self-insurance covers their use of TOWN FACILITIES and ACTIVE USE AREAS and SCHOOL FACILITIES and ACTIVE USE AREAS as contemplated by this AGREEMENT. The parties further warrant that they will notify the other party of any insurance coverage change at least thirty (30) days prior to the change in accordance with the notice provisions of this AGREEMENT. Any coverage change must be approved by the other party, which approval shall not be unreasonably held.

E. TOWN and SCHOOL acknowledge and warrant that they maintain, and shall maintain for the term of this AGREEMENT, Worker's Compensation coverage as required by law.

10. ASSIGNMENTS AND SUBLEASE

Neither TOWN nor SCHOOL shall assign or transfer this AGREEMENT, or any part thereof, without the written consent of the other party. Any such assignment without such consent shall be void.

11. REPRESENTATIVES

TOWN hereby appoints Town Manager or his or her designee and SCHOOL appoints Superintendent or his or her designee as authorized agents with whom the other party may confer regarding the terms of this AGREEMENT.

12. NOTICES

All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other shall be in writing and shall be deemed given and served upon the other party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

If to TOWN:

Town of Apple Valley
Attn: Frank Robinson, Town Manager
14955 Dale Evans Parkway
Apple Valley, CA 92307

If to SCHOOL:

Apple Valley Unified School District
Attn: Bob Seevers, Superintendent
22974 Bear Valley Road
Apple Valley, CA 92307

13. TERMINATION

This AGREEMENT may be terminated at any time by either party upon issuing a ninety (90) day written notice.

14. SEVERABILITY AND APPLICABLE LAW

Whenever possible, each provision of this AGREEMENT shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT shall be invalid under the applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this AGREEMENT. This AGREEMENT has been made and entered into in the State of California and the laws of

said State will govern the validity and interpretation hereof and the performance hereunder by the parties herein.

15. AGREEMENT

This AGREEMENT sets forth the entire AGREEMENT between the parties. Both parties must in the form of a written amendment agree to any modifications. This AGREEMENT amends, replaces and supersedes the agreement dated May 24, 1983 regarding Yucca Loma School, the agreement dated July 19, 1989 regarding Thunderbird Park and the agreement dated March 1, 1995 regarding Sycamore Rocks Elementary School/Park.

16. WAIVER

The failure of TOWN or SCHOOL to insist upon strict performance of any of the terms, conditions, or covenants in this AGREEMENT shall not be deemed a waiver of any right or remedy which TOWN or SCHOOL may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, or covenants herein contained.

17. BINDING EFFECT

This AGREEMENT and all the terms, covenants, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first hereinabove written.

TOWN OF APPLE VALLEY

APPLE VALLEY UNIFIED SCHOOL DISTRICT

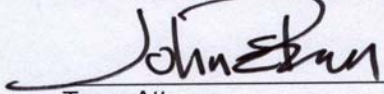
Frank W. Robinson, Town Manager

Robert Seevers, Superintendent

Dated: _____

Dated: _____

APPROVED AS TO FORM



Town Attorney

ATTEST

Town Clerk

Council Meeting Date: 10/14/2008