

**LODI CITY COUNCIL
SHIRTSLEEVE SESSION
CARNEGIE FORUM, 305 WEST PINE STREET
TUESDAY, AUGUST 10, 2010**

A. Roll Call by City Clerk

An Informal Informational Meeting ("Shirtsleeve" Session) of the Lodi City Council was held Tuesday, August 10, 2010, commencing at 7:00 a.m.

Present: Council Member Hansen, Council Member Johnson, Council Member Mounce, Mayor Pro Tempore Hitchcock, and Mayor Katzakian

Absent: None

Also Present: Interim City Manager Bartlam, City Attorney Schwabauer, and City Clerk Johl

B. Topic(s)

B-1 Lodi Unified School District/City of Lodi Parks and Recreation Ten-Year Joint Use Agreement (PR)

Interim City Manager Rad Bartlam briefly introduced the subject matter of the draft joint use agreement between the City of Lodi and Lodi Unified School District (LUSD).

Interim Parks and Recreation Director Jim Rodems provided a brief presentation regarding the draft joint use agreement between the City of Lodi and LUSD. Specific topics of discussion included the term of the agreement, changes in the current draft agreement, mutual credit increases from \$20,000 to \$30,000, processing of use requests, Grape Bowl and Tokay Pool usage, indemnification language, and additional venues.

Mayor Pro Tempore Hitchcock requested that a red-lined version of the proposed draft agreement be provided to the City Council illustrating the changes from the original agreement.

In response to Council Member Mounce, Mr. Rodems stated the Grape Bowl and Tokay Pool remain in the proposed joint use agreement for number balance purposes.

In response to Council Member Hansen, Mr. Rodems stated the proposed agreement is designed to be revenue neutral for both sides.

In response to Council Member Hansen, Mr. Rodems stated the amount went up from \$20,000 to \$30,000 because the rates and costs went up for both sides.

In response to Council Member Hansen, Mr. Rodems stated both entities will receive a credit of \$30,000, each use will be charged against that amount, and at the end of the year if one or both sides goes over that amount they will write a check for the difference.

In response to Mayor Pro Tempore Hitchcock, Mr. Rodems stated the estimated City usage for last year was \$16,000.

In response to Council Member Mounce, Mr. Rodems stated there is no balance that carries over from year to year for either side.

In response to Mayor Pro Tempore Hitchcock, Mr. Rodems stated the accounting of usage has been fairly loose over the years and neither side has firmly adhered to the agreement.

In response to Council Member Mounce, Mr. Bartlam stated the Tokay Pool being included in the agreement is now making it more fair on usage for the City since the Grape Bowl is also in the agreement.

In response to Council Member Johnson, Mr. Rodems stated staff would like to be able to use the Tokay Pool for public use over the summer and possibly generate revenue for recreation.

In response to Mayor Pro Tempore Hitchcock, Mr. Rodems stated another proposed change in the agreement is the maintenance costs associated with the Tokay Pool.

In response to Council Member Johnson, Mr. Rodems stated the bouncing of City usage for other usage and the facility not being open in a timely manner have been fairly common problems although it is getting better.

In response to Council Member Johnson, Mr. Rodems stated maintenance was left in the agreement as a chargeable cost and what is assigned to the facility is what is charged out accordingly.

In response to Mayor Katzakian, Mr. Rodems stated there have been quite a few times when City usage has been rescheduled and rooms have been reassigned.

In response to Council Member Johnson, Mr. Rodems stated the net result of inaction on either side should be addressed by the like facilities provision and the central point of contact being the LUSD Facilities Department with the final say. Mr. Bartlam stated penalty provisions other than credit and a unilateral cancellation provision could be included in the agreement as well.

In response to Council Member Mounce, Mr. Schwabauer stated other entities that use the facilities include the Boys and Girls Club, YMCA, and other similar non-profit organizations running similar programs.

In response to Council Member Mounce, Mr. Rodems stated there is no cap for Grape Bowl usage other than the \$30,000 and the day use for the facility is approximately \$1,200 per day.

In response to Council Member Mounce, Mr. Rodems stated staff has gone through a tabletop exercise for Tokay Pool use by the community and would need to evaluate the proper program fee for operating and maintenance purposes.

In response to Council Member Johnson, Mr. Rodems stated the LUSD is continuing to use Zupo Field at an increasing rate, the issue is the main cap, the field is not a practice facility, and there is talk about using Kofu Park as well.

Mayor Pro Tempore Hitchcock requested the usage costs for the City and the School District from last year.

In response to Council Member Hansen, Mr. Rodems stated where the City has really dropped the ball with respect to the current agreement is in accounting for and tracking usage.

In response to Mayor Pro Tempore Hitchcock, Mr. Schwabauer stated the City cannot indemnify against an intentional tort but can transfer risk for negligence. Mr. Schwabauer also provided an overview of the different indemnification clauses, defect scenarios, and liability transfers for users and owners of facilities.

In response to Mayor Katzakian, Mr. Rodems stated the Grape Bowl now has an hourly use fee including staffing for an hour before and after the use.

In response to Mayor Katzakian, Mr. Rodems stated the accounting was previously known annually and the new contract requires a quarterly accounting with monthly reports.

In response to Council Member Johnson, Mr. Rodems stated the School District bills by minimums depending upon the use for two and three hour increments.

In response to Council Member Hansen, Mr. Bartlam stated the item is tentatively scheduled to be brought back to Council at the August 18 Council meeting although it may be pulled if it is not ready at that time.

Myrna Wetzel spoke in support of having an enforcement mechanism in the agreement so that the children can rely on the adults to produce the facility use needed.

C. Comments by Public on Non-Agenda Items

None.

D. Adjournment

No action was taken by the City Council. The meeting was adjourned at 8:00 a.m.

ATTEST:

Randi Johl
City Clerk

AGENDA ITEM



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Receive a Presentation Regarding the Lodi Unified School District/City of Lodi Parks and Recreation 10-Year Joint Use Agreement

MEETING DATE: August 10, 2010 - Shirtsleeve Meeting

PREPARED BY: Interim Parks and Recreation Director

RECOMMENDED ACTION: Receive a presentation regarding the Lodi Unified School District/City of Lodi Parks and Recreation 10-Year Joint Use Agreement

BACKGROUND INFORMATION: The City and Lodi Unified School District have a long history of using each other's recreational facilities to benefit the community's recreational needs, from exercise programs to competitive athletics. This relationship was first formalized with a Joint Use Agreement adopted on April 19, 1969.

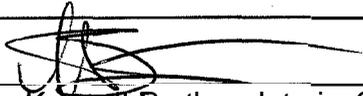
The current Joint Use Agreement between LUSD and the City of Lodi expired June 30, 2009. Both entities continue to operate under the former agreement until a new agreement is approved. Attached for Council review and comment is the new proposed agreement which would be in effect until July 1, 2020. The new agreement differs from past agreements in the following key areas:

- The total amount of mutual credit increases from \$20,000 to \$30,000 annually.
- All City requests for use of LUSD facilities will be processed by the LUSD Facilities Department. All LUSD requests will continue to be processed by the Parks and Recreation Department.
- Operational agreements to manage the Tokay Pool during spring and summer break will be included and counted towards the credit total.
- Updated language on indemnification has been added.
- Additional venues have been added.

Upon completion of negotiations staff will be bringing the agreement to Council for approval.


James M. Rodems
Interim Parks and Recreation Director

APPROVED: _____


Konradt Bartlam, Interim City Manager

AGREEMENT FOR RECIPROCAL USE OF PUBLIC FACILITIES

LODI UNIFIED SCHOOL DISTRICT AND CITY OF LODI

THIS AGREEMENT ("Agreement"), is entered into this _____ day of _____, _____, by and between the City of Lodi ("City"), and LODI UNIFIED SCHOOL DSITRICT OF SAN JOAQUIN COUNTY ("District").

WITNESSETH:

WHEREAS, District and City have a mutual interest in the provision of adequate and attractive public facilities for education and recreation for the residents of Lodi and its environs; and

WHEREAS, both District and City have certain physical facilities, including pools, parks, stadiums, gymnasiums, indoor meeting rooms, play areas, and athletic fields which may be beneficially used by the other in a comprehensive program of serving the community; and

WHERAS, District and City have in the past, executed a series of agreements for the mutual benefit and use of facilities and services; and

WHERAS, District and City desire to consolidate and incorporate into a Master Agreement, provisions of joint use of facilities.

NOW, THEREFORE, BE IT AGREED between District and City as follows:

I. PREVIOUS AGREEMENTS SUPERSEDED

Those agreements between District and City, identified below in this section are superseded in their entirety.

1. Agreement for Reciprocal Use of Recreational Facilities, executed April 19, 1969.
2. Agreement for Reciprocal Use of Lodi Grape Bowl, effective September 1, 1988.
3. Agreement for Mowing Services at District Athletic Fields, effective October 15, 1984.
4. Agreement for Reciprocal Use of Tokay High School Pool, dated December 21, 1977.
5. Agreement for Reciprocal Use and Maintenance of Public Facilities, City of Lodi and Lodi Unified School District, dated July 1, 1990.
6. Agreement for Reciprocal Use and Maintenance of Public Facilities, City of Lodi and Lodi Unified School District, dated January, XX 2000
7. All other written agreements not noted herein between District and City for reciprocal use of facilities are declared void except those pertaining to specific individual facilities.

II. FACILITIES INCLUDED IN THIS AGREEMENT

A. Unless otherwise specified, this Agreement covers the following City facilities:

Zupo field; Kofu Park; Softball Complex, Chapman Field; Blakely Park; ; Blakely Field/Enze Swim Complex; Lodi Lake Park; Salas Park; Peterson Park; DeBenedetti Park.

B. Unless otherwise specified, this Agreement covers the following District facilities:

Tokay High School Pool; (except for the Summer Community Pool Program which is covered under the separate agreement entitled "Tokay High School Pool Use Agreement" of July __ 2010.) Lodi High School Pool; all school athletic fields and school indoor facilities within the City of Lodi area and surrounding rural areas (Woodbridge, Lockeford, Houston, Victor, Henderson, and Tokay Colony).

C. Facilities not covered by this Agreement:

1. District-owned facilities not specifically covered by this agreement may be scheduled for use under the use of facilities provisions of District policy, and must be requested using the District's "Request for Use of Facilities" form. Provisions of this Agreement do not extend to those facilities.
2. City-owned facilities, not specifically covered by this agreement, are subject to use pursuant to the applicable provisions of City Ordinance, and/or policy, and the terms of the "Application for Use of City of Lodi Parks and Recreation Facilities". Provisions of this Agreement do not extend to those facilities. However, to the extent a district use would not conflict with a City use or undermine the City's budgeted revenue projection for the facility, and to the extent that the facility is not subject to a separate fee for services agreement, the City may authorize, in its sole discretion, the occasional use of uncovered facilities under this agreement.

III. SCHEDULING

A. Scheduling Authorization

1. All scheduling for facilities under the provisions of this agreement, must be done by, and with the approval of, the authorized entity.
 - a. The authorized entities for the City of Lodi are the Parks and Recreation Director or their designee and the Office of the City Manager.

- b. The authorized entity for school-related activities and school sites (including field use) is the Facilities and Planning Department and the Office of the Superintendent.

2. All requests for facilities are to be submitted on the appropriate form(s) and must be signed by the designated representative of the authorized entity.

B. Advanced Scheduling

1. Events which require advanced scheduling, such as meets or tournaments, may be scheduled up to one (1) year in advance.
2. Requests for advance reservations by the City or District will be confirmed or denied by the authorizing entity within 15 working days of submittal.
 - a. All denials must include the reason(s) for denial.
 - b. If disagreements over proposed fees or charges, or use provisions, are not resolved within the 15 day period, the use shall be deemed denied, unless the period is extended by mutual consent.

C. Scheduling During the Regular School Year

1. Swimming Pools (Blakely/Enze, Tokay High, Lodi High)
 - a. District and City representatives shall meet in January of each year to coordinate and confirm the year's schedule of uses, the appropriate reservation forms, the designated contact persons, location/procedure for filing the reservation forms, and to establish procedures for notifying users of emergency closure(s).
 - b. District pools are available when they are not being used for District purposes.
 - i) The Tokay High Pool and Lodi High Pool may be closed at District discretion following the schools' last scheduled use (usually in November). The District will make every effort to close the pools for winter maintenance on a rotating basis.
 - ii) Ninety days (90) prior to the anticipated closure, the City of Lodi Parks and Recreation Department will be notified to allow for coordination with the City's aquatics program. Except for extraordinary circumstances, the District shall close only one pool at a time.

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- c. City pools are not available for scheduled District use during June, July and August, except for single events upon request, as approved by the Parks and Recreation Department.
 - d. The Tokay High School pool will be made available to the City for community swimming during the months of June, July and August, all as outlined under the "Tokay High School Pool Use Agreement" of July __ 2010.
 - d. City or District pools will be closed immediately by authorized staff if there is any health or safety concern, or if the water quality falls below acceptable minimum standards as defined by San Joaquin Public Health Services, and/or any regulating state agency, and shall remain closed until use is authorized.
 - e. In the event of a closure of a District or City pool, designated staff of both entities will be notified of the closure immediately. Every attempt shall be made to accommodate alternative scheduling of events, or a rescheduling of canceled events.

2. Lodi Grape Bowl

- a. The Lodi Grape Bowl is not subject to the provisions of this agreement and will be the subject of a separate fee for use contract to be agreed between the parties.

3. Athletic Fields, Complexes, Indoor Facilities

- a. All fields, both City and District, that are to be used for seasonal play, must be scheduled 60 days prior to the start of the season, using the appropriate forms of each jurisdiction.
- b. All requests are to be confirmed or denied within 15 working days of the submittal of the request.
- c. All requests for District fields shall be submitted to the designated District representative in the Facilities and Planning Department. The Department shall coordinate such use requests with the subject school sites.
- d. City fields shall be reserved and scheduled for use by City-sponsored teams and groups prior to reservation of District fields.
- e. District fields shall be reserved and scheduled for District events prior to reservation of City fields.
- f. All other school or District facilities to be used by the City shall be scheduled directly with the site administrator, using the appropriate facilities use form.
- g. All other City facilities to be used by the District shall be scheduled directly with the appropriate site administrator, using the appropriate facilities use form.
- h. All athletic fields (both City and District) are subject to closure when the fields are wet to the extent that team use could result in significant damage.
 - i) This is to be determined by the City's designated representative for City fields, and the District's designated representative for District fields.
 - ii) Rain call procedures for fields are to be mutually agreed upon at the start of each season, or when the use agreement is approved if it is for singular events.
- i. In the event that an extraordinary circumstance necessitates the closure of a City or District field, complex, or indoor facility, the using agency's representative shall be notified as soon as possible. It is that person's responsibility to notify all other affected parties.
 - i) Whenever possible, disrupted events shall be relocated to other facilities in-lieu of cancellation.

- ii) Every attempt shall be made to accommodate a rescheduling of cancelled activities.
4. If disagreements over proposed fees or charges, or use provisions, are not resolved within the designated period for approval or denial of the request for use, the use shall be deemed denied unless the time period is extended by mutual consent.

IV. OPERATIONS

- A. If either party requires the other to debit their fee and charge account for the facility owner to have staff onsite as a condition of using any facility, the assigned personnel shall be readily available at all times they are on-duty, to provide operational, maintenance and emergency assistance to the using party..
- B. Food and Beverage Concessions
1. User and/or associated organizations, may operate food and/or beverage concessions during scheduled events under the following criteria.
 - a. If food and beverages are permitted in the facility.
 - b. When there are no other proprietary or exclusionary agreements for concessions at the facility.
 2. If food concessions are to be a part of the event, it should be so noted on the use of facilities form and must be approved by the owner.
 3. During such events, user and/or associated organizations, shall have an exclusive right to the operation of the concession stands and the proceeds of sale.
 4. User may assign the right to operation of the concession stand(s) only as agreed to by the owner of the facility.
 5. Exclusive Product Contracts
 - a. If a facility is covered under an exclusive product contract, the user shall abide by the provisions of the contract.
 - b. It is the responsibility of the using agency to obtain a copy of any pertinent contract provisions from the owner. Signature on the facility use agreement shall constitute understanding and acceptance of the provisions.

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- c. It is the responsibility of the using agency to inform all affiliated users of the contract provisions and to monitor compliance.
 6. All concession stands or areas used for concession, are to be completely vacated at the conclusion of the event, and are to be left in a clean and usable condition.
 7. All concessions must meet Department of Health Services standards and requirements.
 8. Concessions may remain for the duration of the event unless other arrangements are agreed upon at the time that the use agreement is approved; however, they are the sole responsibility of the user.
- C. Security
1. Either Party may require the other to provide security for events at a facility. Security costs shall be paid by the using party and not debited against the Fees And Charges account set forth in Sect.V Item B-1.
- E. Athletic Fields, Complexes, and Indoor Facilities
1. Owners will staff the facility with the appropriate maintenance/standby personnel to coordinate and operate the facility, with all costs to be born by the user pursuant to the provisions of the facility use agreement and the applicable fee schedule.
 2. User shall furnish all security and event personnel as required by the owner.
 3. All personnel requirements, including applicable costs, fees, or charges, are to be included on the appropriate use form at the time the application for use is approved.
- F. Users will monitor facilities during use, and maintain all facilities in a safe and clean condition.

V. FEES AND CHARGES

- A. Charges for facility use are intended to reflect actual costs for use of the facility, above and beyond the cost for operation and maintenance that would otherwise be incurred by the owner.

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- B. The initial schedule of charges pertinent to this agreement is to be established by mutual agreement of both agencies.
1. All potential fees, charges, or costs, except security as set for in Sect. IV Item C-1, are to be included in the schedule.
 2. At the time a facility is scheduled, the user is to be advised of all applicable and potential fees or costs.
 - a. These are to be noted on the use agreement form.
 - b. All cost notations on the use form(s) are to be initialed by the user's authorized representative.
 - c. Disagreement with proposed charge items must be resolved between the agencies prior to final approval of the use agreement. Final authority for charge items rests with the owner.
 3. The District's fees to be included in the schedule will be established by the District pursuant to statute and applicable Board policy.

4. The City's fees to be included in the schedule will be established by the City pursuant to statute and applicable City ordinances and/or policies.

5. Facility use charges may be adjusted annually by either, or both, agencies, based on actual and/or projected costs.

6. Adjustments to facility use charges shall be effective at the beginning of each fiscal year (July 1).

C. All services or requirements beyond the scope of this agreement, are to be assessed and billed pursuant to the provisions of District and/or City policy and/or ordinance. To the maximum extent possible, these shall be mutually agreed-upon prior to the costs being incurred.

D. Damage to Facilities

1. When damage to a facility or field does occur, the owner will notify the user agency immediately.

2. Representatives of both agencies, and insurance agency representatives if appropriate, will evaluate and review the damages, preferably together, to assess necessary mitigation, appropriate cost, scheduled repair, and final work product.

3. The user agency will be immediately responsible for costs incurred to repair the damaged property. Such damages will not be accounted for in Section E of this paragraph.

E. Billing and Payment

1. Prior to the start of each fiscal year, representatives from both agencies shall establish an "in-kind" match of funds. No dollars shall be exchanged until such time as the match has been exceeded by either agency, at which time the amount exceeded shall be billed and paid based on the charge items on the approved use agreement, and at the rates in effect at the time.

2. Each agency will exchange reports on a quarterly basis, or as agreed upon by the finance agents of both agencies, which detail facility usage including dates of use, names of users, facilities used, and fees associated with the usage. The reports, to be done by the 15th of the month following the end of the quarter, will include total fees for the year-to-date.

3. The "in-kind" match of funds amount shall be established for purposes of this agreement at an annual rate of \$30,000 for each agency. This amount will be revised on a bi-annual basis by both parties to insure that expected balance of expenditures between organizations is being met.

VI. AMENDMENT TO AGREEMENT

- A. This agreement may be amended at any time by agreement of both parties.
- B. This agreement shall be amended if it is determined that there is an ongoing use of one or more facilities not covered by this agreement or there are use or fee provisions which can best be addressed through mutual agreement.

VII. HOLD HARMLESS

- A. The user of the facility hereunder agrees to defend, indemnify and hold harmless the owner of any facility for any and all damages arising from such reciprocal use by District or City, except for 1) those damages or portion of damages directly attributable to the owner's negligence; or 2) as set forth in subparagraph b, below.
- B. Each party hereto is charged with the duty to inspect for apparent defects prior to the use of any facilities demised hereunder, and to provide appropriate notification to the owner. Each party agrees to defend, indemnify and hold the facility owner for any liabilities arising out of or related to known defects and dangerous conditions on the property of the facility owner.
- C. During any use of any facility demised hereunder, the user shall be liable to the owner for any damage to such property caused by the user, or third parties at the invitation or suffrage of the party using the property.
- D. The prevailing party in any dispute arising under this agreement shall be entitled to reasonable attorney's fees incurred in the litigation or adjudication of such disputes.

VIII. INSURANCE

Public Liability and Property Damage Insurance. Each party shall annually provide the other a policy of comprehensive general liability insurance covering all uses with a per-occurrence combined single limit of not less than _____ million (\$_____) dollars and a deductible of not more than five hundred thousand (\$500,000) dollars per claim. The policies so maintained shall name the other party as a primary additional insured. As used herein, the term "Insurance" includes A Memorandum of Coverage from a Joint Powers Risk Pool.

IX. TERMS OF AGREEMENT

- A. The term of this agreement shall be for a period of 10 years, ending June 30, 2020, with an annual review by the City Council and the Board of Education.

- B. All fees, charges, or other specifics requiring periodic review and/or modification, are to be considered within the herein described timeframes.
- C. This agreement may be canceled at any time by either party, by giving to the other party six (6) months written notice, or by mutual consent. In the event of cancellation, all approved use of facilities shall continue uninterrupted to the end of the term approved on the facilities use agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first hereinabove mentioned.

CITY OF LODI,
a municipal corporation

LODI UNIFIED SCHOOL DISTRICT
OF SAN JOAQUIN COUNTY

By _____
Rad Bartlam
Interim City Manager

By _____
ART HAND JR.
Assistant Superintendent

Attest:

Attest:

RANDI JOHL
City Clerk

Clerk of the Board of Education

Approved as to Form:

Approved as to Form:

D. STEPHEN SCHWABAUER
City Attorney

Counsel to the District