

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
WEST VALLEY RED HAWKS LACROSSE CLUB**

THIS AGREEMENT is dated for identification this 1st day of July 2023 and is made by and between TOWN OF LOS GATOS, State of California (“Town”) and WEST VALLEY RED HAWKS LACROSSE CLUB (“Red Hawks”) identified as a California nonprofit corporation and whose address is 18921 Bear Creek Road, Los Gatos, California 95033.

I. RECITALS

- 1.1 Town is the owner of Creekside Sports Park, located at 930 University Avenue, Los Gatos, California.
- 1.2 The Red Hawks is a non-profit, club-sponsored program run by volunteers and parent coaches established in 2004 to bring the sport of lacrosse to the Los Gatos-Saratoga area.
- 1.3 Red Hawks is an affiliate of the South Bay Consortium of teams and as such, its coaches, players, officials, and parents are required to abide by the United States Lacrosse “Code of Conduct” that embodies basic common-sense principles, demonstrates consideration of others, and projects a positive image to the boys and girls that participate in their programs.
- 1.4 The Red Hawks were one of the community partners that supported the acquisition and development of the Creekside Sports Park.
- 1.5 Town and Red Hawks each desire an agreement between them setting forth the specific terms and conditions under which the Red Hawks may use the Creekside Sports Park, including hours of use; responsibility for maintenance of the fields and adjacent grounds; use and maintenance of associated facilities and structures; storage of Red Hawks goods and equipment; and other related items.

II. AGREEMENTS

- 2.1 Subject Premises. The Premises covered by this Agreement is the Creekside Sports Park, located at 930 University Avenue, Los Gatos, California. A drawing depicting the Premises is attached hereto and incorporated by reference (Attachment A).
- 2.2 Use of Premises. Red Hawks shall have exclusive use of the Premises, except bathrooms and parking, which are open to the public at large, only during those times and dates as shown on “Annual Schedules”. The Annual Schedule shall cover camps and classes for the Winter, Spring, Summer, and Fall sessions. No later than October 1st of each year this Agreement is in force, Red Hawks and Town staff shall meet to develop an Annual Schedule for the following calendar year. Town has the final say in establishing the master

schedule. Town will attempt to accommodate user groups at their requested time but reserves the right to propose use hours that balance the needs of all user groups equitably. Town will adjust use hours and payment per calendar year upon agreed schedule between the Town and Red Hawks. Town retains the right to use or authorize the use of the Premises for all dates and times not allocated to Red Hawks in the Annual Schedule.

Saturdays, the Red Hawks have programmed with Los Gatos-Saratoga Community Education Recreation for youth lacrosse programs at Creekside Sports Park. The use hours and Facility Maintenance Fee will be captured under the Red Hawks Use Agreement.

Red Hawks may request changes to the Annual Schedule by written notification to the Department of Parks and Public Works but shall endeavor to minimize changes to the schedule during each calendar year. All changes should be made in writing no less than 30 days prior to the effective date of the change. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

- 2.3 Term of Agreement. Unless terminated sooner pursuant to Section 4.3 of this Agreement, the Use Agreement remains in effect from July 1, 2023 through June 30, 2028. The term of this Agreement may be extended for up to two additional five-year periods upon mutual written consent of the parties.
- 2.4 Annual Use Fee. Beginning July 1, 2023, and every year thereafter, Red Hawks shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be \$5,850. The Annual Use Fee shall be considered full and fair compensation for the exclusive use of the facility for those days and times indicated on the Annual Schedule. On July 1, 2023, and each anniversary thereafter, the Annual Use Fee shall be adjusted according to the percent change in the U. S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Items, All Urban Consumers, San Francisco-Oakland-San Jose, 1982-84-100 Index.
- 2.5 Facility Maintenance Fee. Beginning July 1, 2023, and continuing for the full term of this agreement, including any extensions, each participant in the Red Hawks Lacrosse program using Creekside Sports Park will be charged a \$4.00 Facility Maintenance Fee (FMF) per season. The Facility Maintenance Fee shall be assessed by the Red Hawks at the time of registration or any payment of program fees and shall be retained by the Red Hawks in a separate account and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each distinct season at which registration and fees are typically collected by the Red Hawks.

FMF revenue received by the Town from the Red Hawks shall be used solely to fund the cost of maintenance and operations of the Premises.

- 2.6 Additional Annual Use Fee Adjustment. Should Red Hawks increase or decrease its requested hours of use as set forth in the Annual Schedule, by 5% or more, the Annual Use Fee shall be adjusted proportionally based on the percentage change in hours. In no case shall the Annual Use Fee be decreased by more than 10% below the initial Annual Use Fee set forth in Section 2.4. Town will adjust use hours and Annual Use Fee per calendar year upon agreed schedule between the Town and Red Hawks.
- 2.7 Maintenance. Red Hawks shall be responsible for the maintenance responsibilities set forth in Attachment B, Maintenance Responsibilities.
- 2.8 Facility Use Policies. Red Hawks shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. Red Hawks shall also comply with any park rules and regulations established by the Director of Parks and Public Works pursuant to Section 19.10.025(17) of the Town Code, including those rules set forth in Attachment C, Town of Los Gatos Park Rules and Regulations, and Attachment D, Town of Los Gatos Creekside Sports Park Special Use Policies. The Red Hawks agrees to apply with the current rules and regulations available at www.losgatosca.gov/parkres as well as any future amendments to those rules and regulations. Failure to comply with these policies may result in suspension and/or termination of this Agreement.

Red Hawks agrees to comply with the state "Fair Play in Community Sports Act." Red Hawks will not discriminate on the basis of gender and boys' and girls' teams will have equal access to the facilities.

- 2.9 Payment. Red Hawks shall make all payments, whether or not invoiced by Town, required pursuant to this Agreement no later than February 1 of each year payments are due. All payments shall be mailed by first class mail or delivered in person at the Town office and addressed as follows:

Town of Los Gatos
Attn: Finance Department
P.O. Box 697
Los Gatos, California 95031

- 2.10 Assignment. Red Hawks shall not assign any portion of this Agreement or allow the use of the Premises by any other person or entity contrary to this Agreement's terms, with the out Town's prior written approval. Red Hawks is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with Red Hawks.
- 2.11 Personal Property. Personal property of Red Hawks shall be Red Hawks' sole responsibility to acquire, repair, replace and store. Red Hawks shall remove its personal property at the expiration or termination of this Agreement. Any personal property not so removed shall become the sole property of Town with no compensation.

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. Red Hawks agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring Red Hawks, its elected and appointed officials, employees, and agents to an amount not less than two million dollars (\$2,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage. Insurance is to be placed with insurers with a current Best's rating of no less than B+.
- ii. Red Hawks shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. Red Hawks shall provide all certificates and endorsements before term of Agreement begins.

General Liability:

- i. The Town, its elected and appointed officials, employees, and agents are to be covered as additional insured as respects to liability arising out of activities occurring on or related to the occupancy and use of the Premises by Red Hawks.
- ii. Red Hawks insurance coverage shall be primary insurance as respects the Town, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the Town, its elected and appointed officials, employees, or agents shall be excess of the Red Hawks' insurance and shall not contribute with it.
- iii. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the Town, its elected and appointed officials, employees or volunteers.
- iv. Red Hawks insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.2 All Coverages. Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Town. The Red Hawks shall ensure that current certification of such insurance is on file at all times with the Town Clerk during the term of this agreement.

- 3.3 Workers' Compensation. In addition to these policies, Red Hawks shall have and maintain Workers' Compensation insurance as required by California law. Further, Red Hawks shall ensure that all contractors employed on the Premises by the Red Hawks provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. Town shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. Red Hawks shall be solely responsible for obtaining whatever insurance coverage that Red Hawks believes may be appropriate to protect and indemnify Red Hawks for loss to the Premises or to any personal property that Red Hawks may place on the Premises.
- 3.5 Indemnification. Red Hawks agrees to indemnify, hold harmless, and defend the Town, its elected and appointed officials, employees, and agents, from and against any and all damages, claims or liability, penalties, costs or expenses in law or equity that may at any time arise from any loss, damage, or injury to persons or property occurring in or about the Premises that arises out of or incident to the Red Hawks' use of the Premises, including use by anyone that the Red Hawks has permitted or allowed to use the Premises. This obligation to indemnify, hold harmless, and defend applies whether or not the incident or claim or liability is or may be related negligence on the part of the Town.

IV. GENERAL TERMS

- 4.1 Damage and Destruction. Damage or destruction of any portion of the Premises by any cause shall not terminate this Agreement or otherwise affect the respective obligations of the two parties, any present or future law to the contrary notwithstanding, except pursuant to the provisions of this Section 4.1.

If because of the destruction or damage to the Premises, the Premises is entirely unsuitable or inadequate for the use specified herein, Red Hawks shall be entitled to a pro rata rebate of the fee paid to the Town calculated by dividing the Annual User Fee by the total number of hours of exclusive use as listed in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the date of the damage or destruction of the Premises.

Under no circumstances does the Town have any obligation to provide Red Hawks with an alternative property to conduct its operations, and Red Hawks is solely responsible for obtaining such insurance as Red Hawks deems appropriate to protect its interests should damage or destruction to the Premises occur.

Red Hawks shall be liable for any loss, damage or injury to the field and/or Premises as a result of the direct or indirect use of the Premises by Red Hawks under this agreement.

Compliance with Town Codes. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.

- 4.2 Compliance with Town Codes. Red Hawks shall comply with all provisions of the Town Code, including the provisions of Chapter 19 of the Code concerning Parks and Recreations.
- 4.3 Termination of Agreement. Should Town terminate prior to the end of the term of this Agreement, Red Hawks shall be entitled to a pro rata rebate of the Annual Use Fee calculated by dividing the Annual User Fee by the total number of hours of exclusive use as shown in, Annual Schedule and then multiplying this calculated hourly rate by the number of hours remaining on the Annual Schedule after the effective date of termination.

Red Hawks shall promptly terminate its use of the Premises at the termination of this Agreement, leaving the Premises in the same condition it was received, in good order and repair, reasonable wear and tear and damage by the elements excepted. All improvements and alterations made by Red Hawks shall become the property of the Town upon termination of the Agreement without compensation by Town. Any personal property not removed by Red Hawks within thirty (30) days of the termination of this Use Agreement shall become the property of the Town and may be disposed of as the Town in its sole discretion deems advisable.

This Agreement shall continue in full force and effect unless prior to February 1st of any calendar year, either Party provides written notice to the other Party that it desires to terminate the Agreement for convenience and, upon such notice, the Agreement shall terminate on June 30th of the same calendar year.

If Town in its sole discretion determines that it requires the Premises for any public purpose, Town may terminate this Agreement upon one hundred eighty (180) days written notice. In the event of an emergency, Town may terminate this Agreement upon five (5) days written notice. "Emergency," for the purpose of this paragraph, is defined as when the Town Council declares a State of Emergency. Upon termination of this Agreement in the event of an Emergency, Town and Red Hawks will work cooperatively to develop a written plan for transition of services and vacation of Premises by Red Hawks.

In the event of any material default or breach by Red Hawks, Town may at any time, thereafter, following any notice required by statute, and without limiting Town in the exercise of any right or remedy which may have reason of such default or breach:

Terminate Red Hawks' right to possession of the Premises by any lawful means, in which case this Agreement shall terminate, and Red Hawks shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from Red Hawks any damages incurred by Town by reason of Red Hawks' default including but

not limited to the cost of recovering possession of the Premises and reasonable attorneys' fees.

Pursue any other remedy now or hereafter available to Town under the laws of the State of California. Town shall have all remedies provided in law and equity.

Red Hawks waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure sections 1174 and 1179, and any other present, and future law, in the event Red Hawks is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by Red Hawks.

If Red Hawks fails to remove any personal property belonging to Red Hawks from the Premises after forty-five (45) days of the expiration or termination of this Agreement, such property shall at the option of the Town be deemed to have been transferred to Town. Town shall have the right to remove and dispose of such property without liability to Red Hawks or to any person claiming under Red Hawks, and the Town shall have no need to account of such property.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant to Red Hawks any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by Red Hawks use of the Premises pursuant to the Agreement. Red Hawks hereby acknowledges that it currently has no property interest in the Premises or any improvements thereto or fixture's location thereon, and that any claim it may have to same is hereby and forever waived.

4.5 Disputes. In any dispute over any aspect of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, including costs of appeal.

4.6 Notices. Any written correspondence or Notices given under this Agreement shall be addressed as follows:

To Red Hawks:
President
West Valley Red Hawks Lacrosse Club
18921 Bear Creek Road
Los Gatos, CA 95033

To the Town:
Director
Department of Parks and Public Works
Town of Los Gatos
41 Miles Avenue
Los Gatos, CA 95030

Notices shall be delivered by first class, postage prepaid mail or in person. If mailed, a notice shall be deemed effective on the fifth day following in the U.S. Mail.

4.7 Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder, nor does waiver of a breach or default under this Agreement constitute a continuing waiver of

subsequent breach of the same or any other provision of this License Agreement.

4.8 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and Red Hawks. No terms, conditions, understanding, or agreements purporting to modify or vary this Agreement, unless hereafter made in writing and signed by the party to be bound, shall be binding on either party.

IN WITNESS WHEREOF, the Town and Red Hawks have executed this Use Agreement.

Town of Los Gatos:

West Valley Red Hawks Lacrosse Club:

Laurel Prevetti, Town Manager

Patrick Sweeney, President

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk