

**USE AGREEMENT
BETWEEN THE TOWN OF LOS GATOS
AND
LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION**

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 LOS GATOS-SARATOGA COMMUNITY EDUCATION AND RECREATION (“LGSR”) identified as a California nonprofit corporation and whose address is 123 E. Main Street, Los Gatos, CA 95030.

I. RECITALS

- 1.1 Los Gatos-Saratoga Community Education and Recreation (“LGSR”), a joint powers agency of the Los Gatos Union School District, Saratoga Union School District, and Los Gatos-Saratoga Union High School District was established to ensure the effective and efficient provision of community education and recreation services to the communities of Los Gatos, Saratoga, Monte Sereno, and Santa Cruz Mountains communities.
- 1.2 LGSR provides fee-based public recreation, supplemental education, and childcare programs for Los Gatos, Monte Sereno, Saratoga, and the Santa Cruz Mountains communities. LGSR and the Town have been under contract since 2014 for programs within certain parks that are owned and operated by the Town.
- 1.3 In order to provide convenient and effective programs to its constituent communities, LGSR desires to use various parks and open spaces owned and maintained by the Town of Los Gatos (“Town”).
- 1.4 The Town requested and LGSR has agreed to provide recreational programming for adults aged 55 years and older for the Town of Los Gatos.

II. AGREEMENTS

- 2.1 Subject Premises. The premises covered by this agreement are the portions of Blossom Hill Park, Creekside Sports Park, La Rinconada Park, and Oak Meadow Park (collectively, the “Premises”) denoted in Attachment 1. LGSR may request the use of additional premises which shall be considered by the Town and authorized for use as more fully described in Section 2.7.
- 2.2 Use of Premises. LGSR shall be allowed the use of the Premises for approved Programs during those times and dates as shown on the “Annual Schedule”. The Annual Schedule shall cover camps and classes and shall identify what portion or portions of the Premises shall be designated for each approved Program. Each year this Agreement is in force, LGSR shall submit a schedule no later than June 30th for the upcoming Fall session, no later than

ATTACHMENT 2

September 30th for the upcoming Winter and Spring session, and no later than February 28th for the upcoming Summer session.

LGSR 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. All changes should be made in writing no less than 30 days prior to the effective date of the change. 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. The Town of Los Gatos shall have sole authority to approve the Annual Schedule and any requested changes to the Annual Schedule.

LGSR may partner with third party providers that have executed Use Agreements with the Town. In the case of such partnerships the Use Hours and Facility Maintenance Fee payments will be paid by the third party and not by LGSR.

- 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, 2024. The term of this Agreement may be extended for up to nine additional one-year periods.
- 2.4 Annual Use Fee. Beginning July 1, 2023, and every year thereafter, LGSR shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The initial Annual Use Fee shall be \$15,500, which represents 4,607 hours of Premises Use. The Annual Use Fee shall be considered full and fair compensation for use of the Premises for those days and times on the approved Annual Schedule, and in conjunction with the Facility Maintenance Fee described in Section 2.5, shall be used by the Town to help fund the cost of the maintenance of the Premises.

ALTERNATIVE LANGUAGE. TO BE USED IF COUNCIL ACCEPTS THAT PICKLEBALL IS A SENIOR PROGRAM

Annual Use Fee. Beginning July 1, 2023, and every year thereafter, LGSR shall pay the Town of Los Gatos an Annual Use Fee for the use of the Premises. The based initial Annual Use Fee shall be \$13,245.22, which represents 3,936 hours of Premises Use. The parties recognize that 671 hours of pickleball programming at LaRinconada Park is not included in this calculation in consideration of pickleball as a senior program serving people aged 55 years and older. The Annual Use Fee shall be considered full and fair compensation for use of the Premises for those days and times on the approved Annual Schedule, and in conjunction with the Facility Maintenance Fee described in Section 2.5, shall be used by the Town to help fund the cost of the maintenance of the Premises.

- 2.5 Facility Maintenance Fee. Beginning July 1, 2023, and continuing for the full term of this agreement, including any extensions, each participant in programs or classes offered by LGSR on Town premises will be charged a four (\$4.00) Facility Maintenance Fee (FMF) per

ATTACHMENT 2

session . The Facility Maintenance Fee shall be assessed by LGSR at the time of registration or payment of program fees and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each separate registration in a program or class offered by LGSR offered on the Premises covered by this agreement.

ALTERNATIVE LANGUAGE: TO BE USED IF COUNCIL ACCEPTS THE REDUCED FACILITY USE FEE FOR LGSR

Facility Maintenance Fee. Beginning July 1, 2023, and continuing for the full term of this agreement, including any extensions, each participant in programs or classes offered by LGSR on Town premises will be charged a two (\$2.00) Facility Maintenance Fee (FMF) per session. The Facility Maintenance Fee shall be assessed by LGSR at the time of registration or payment of program fees and shall be remitted to the Town quarterly. Participants shall be charged an FMF for each separate registration in a program or class offered by LGSR offered on the Premises covered by this agreement.

- 2.6 Annual Use Fee Adjustment-Change in CPI. On July 1, 2024, and each anniversary thereafter, the Annual User 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*.
- 2.7 Annual Use Fee Adjustment-Change in Programming or Facilities. On July 1, 2024, and each anniversary thereafter, the Annual User Fee shall also be adjusted based on programming changes resulting in a material increase or decrease in the use of the Premises. In addition, the Annual User Fee shall be adjusted to reflect the addition of any new facilities or cessation of use at any of the facilities that comprise the Premises. Should LGSR 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. Any fee adjustment under this section will be negotiated in good faith between the Town and LGSR as part of the development of the Annual Schedule. Programming that is specifically marketed to and participation is limited to senior participants aged 55 years and older shall not be included in the calculated increase of hours.
- 2.8 Maintenance. LGSR shall be responsible for general site clean-up including pick up and disposal of trash that may result from the approved use of the Premises.
- 2.9 Facility Use Policies. LGSR shall comply, without limitation, with all applicable provisions of the Los Gatos Town Code, with special attention to Chapter 19, Parks and Recreation provisions. LGSR 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 A, Town of Los Gatos Park Rules and Regulations. LGSR agrees to comply with the current rules and regulations available at www.losgatosca.gov/parkres as well as any future amendments to those rules and

ATTACHMENT 2

regulations. Failure to comply with these policies may result in suspension and/or termination of this agreement.

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

- 2.10 Payment. LGSR shall make all payments, whether or not invoiced by Town, required pursuant to this Agreement no later than November 1 and April 1 of each year that such payments are due. All payments shall be mailed by first class mail or delivered in person at Town offices and addressed as follows:

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

- 2.11 Assignment. LGSR shall not assign any portion of this Agreement or allow any use of the Premises by any other person or entity contrary to this Agreement's terms, without the Town's prior written approval. LGSR is expressly prohibited from use of the Premises for any activity other than activities sanctioned and associated with LGSR.

- 2.12 Personal Property. Personal property of LGSR shall be LGSR's sole responsibility to acquire, repair, replace and store. Any storage of personal property on the Premises shall require prior approval by the Town. LGSR shall remove all personal property at the expiration or termination of this Agreement, or sooner, as directed by the Town in its sole discretion. Any personal property not so removed with 30 days of notification by the Town shall become the sole property of Town with no compensation.

- 2.13 Temporary Signage. LGSR shall be permitted to install temporary event signage on the Premises upon approval of an application to the Town of Los Gatos Planning Department pursuant to the provisions of Section 29.10.120 (4) Event Signs of the Town Code. Each LGSR Activity Quarter (summer, fall spring, winter) shall be eligible for temporary event signage. All temporary event signage must include the LGSR logo of such size and placement that it is clear that the signage is for a program or activity sponsored by LGSR. The Town shall charge a single Temporary Signage fee for each year.

- 2.14 New Program Vendors Referral. The Town and LGSR shall meet and negotiate in good faith a New Program Vendor Referral procedure, wherein the Town directs prospective new program vendors to LGSR for initial consideration prior to any issuance of permits or negotiation of use agreements directly between the Town and the prospective vendor.

ATTACHMENT 2

III. INSURANCE AND INDEMNIFICATION

3.1 Minimum Scope of Insurance:

- i. LGSR agrees to have and maintain for the duration of this Agreement, General Liability insurance policies insuring LGSR, 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. LGSR agrees to have and maintain, for the duration of this Agreement, an Automobile Liability insurance policy insuring the LGSR, its elected and appointed officials, employees, and agents to an amount not less than one million (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. LGSR shall provide to the Town all certificates of insurance, with original endorsements effecting coverage. LGSR 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 LGSR.
- ii. The LGSR's 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 LGSR's insurance and shall not contribute with it.
- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Town, its officers, officials, employees or volunteers.
- iv. The LGSR's 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.

ATTACHMENT 2

- 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 LGSR 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, LGSR shall have and maintain Workers' Compensation insurance as required by California law. Further, LGSR shall ensure that all contractors employed on the Premises by the LGSR provide the required Workers' Compensation insurance for their respective employees.
- 3.4 Property Insurance. LGSR shall have no obligation to maintain any insurance of the Premises or any personal property placed on the Premises. LGSR shall be solely responsible for obtaining whatever insurance coverage that the LGSR believes may be appropriate to protect and indemnify the LGSR for loss to the Premises or to any personal property that the LGSR may place on the Premises.
- 3.4 Indemnification. LGSR 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 LGSR's use of the Premises, including use by anyone that the LGSR 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 destruction or damage, a portion of the Premises becomes unsuitable or inadequate for use as specified in the Annual Schedule the Town and LGSR shall meet and work cooperatively to identify an alternative location for the use. If the alternative location can be found on Town-owned property, then no modification of the Annual Use Fee shall be made. If no alternative location can be found, or if an alternative location is found that is not on Town-owned property, then LGSR shall be entitled to a prorated refund of the Annual Use Fee, calculated by determining that fee that would have been assessed for the displaced program or activity is if it had been issued a Facility Use Fee Permit. Any such calculation will be based on the Town's approved schedule of Annual Fees and Charges in effect at the time of the program displacement.

ATTACHMENT 2

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

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

- 4.2 Compliance with Town Codes. LGSR shall comply with all Town Code provisions, including Chapter 19 of the Code concerning Parks and Recreation.
- 4.3 Termination of Agreement. LGSR shall promptly terminate its use of the Premises at the expiration 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. Any personal property not removed by LGSR within thirty (30) days of the termination of this 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 LGSR will work cooperatively to secure alternative facilities for LGSR programs.

In the event of any material default or breach by LGSR, 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 LGSR's right to possession of the Premises by any lawful means, in which case this Agreement shall terminate and LGSR shall immediately surrender possession of the Premises to Town. In such event, Town shall be entitled to recover from LGSR any damages incurred by Town by reason of LGSR's default including but not limited to the cost of recovering possession of the Premises and reasonable attorneys' fees.

ATTACHMENT 2

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.

LGSR 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 LGSR is evicted or Town otherwise lawfully takes possession of the Premises by reason of any default or breach of this Agreement by LGSR.

4.4 No Property Rights. Nothing in this Agreement is in any way intended to establish, convey, create or otherwise grant LGSR any form of property rights in the Premises, nor shall such rights be established, conveyed, created or otherwise granted by LGSR's use of the Premises pursuant to this Agreement. LGSR 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 Notices. Any written correspondence of Notices given under this Agreement shall be addressed as follows:

To the LGSR:
Executive Director
Los Gatos-Saratoga Recreation
123 E. Main Street
Los Gatos, CA 95030

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.

4.6 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.

4.7 Entire Agreement. This Agreement constitutes the complete and exclusive statement of the Agreement between Town and LGSR. 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.

ATTACHMENT 2

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

Town of Los Gatos:

Los Gatos-Saratoga Recreation:

Laurel Prevetti, Town Manager

Nancy Rollett, Executive Director

Recommended by:

Nicolle Burnham
Director of Parks and Public Works

Approved as to Form:

Gabrielle Whelan, Town Attorney

Attest:

Wendy Wood, CMC, Town Clerk

ATTACHMENT 2

ATTACHMENT 1
Areas Included in this Agreement



LA RINCONADA PARK
LGSR RESERVED AREA



NOT TO SCALE

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ATTACHMENT 2

ATTACHMENT 1
Areas Included in this Agreement



S:\COUNCIL REPORTS\2023\06-06-23\Use Agreement - Los Gatos Saratoga Recreation\LGSR Reserved Area Maps.dwg

ATTACHMENT 2

ATTACHMENT 1
Areas Included in this Agreement



ATTACHMENT 2