

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Steven Kueny, City Manager



**DATE:** June 23, 2016 (CC Meeting of 07/6/16)

**SUBJECT:** Consider License Agreement between City of Moorpark and Moorpark Unified School District for the Arroyo Vista Community Park Access Road

**BACKGROUND**

On March 21, 1997, the City of Moorpark (City) and Moorpark Unified School District (MUSD) entered into a License Agreement for MUSD to use the real property commonly known as the Arroyo Vista Community Park Access Road (Access Road) for a period of twenty years beginning September 1, 1996, to August 31, 2016. In 2001, City and MUSD approved Amendment No. 1 to the License Agreement. On March 10, 2010, City issued Encroachment Permit No. 10-3599 to allow MUSD to construct a bus turnout on the south side of the Access Road, and MUSD constructed the bus turnout consistent with said Permit. MUSD also constructed certain drainage improvements consistent with Section 5. of the March 21, 1997, License Agreement; and MUSD will maintain the drainage improvements.

**DISCUSSION**

Since the License Agreement will expire on August 31, 2016, an updated License Agreement with Exhibit "1" is attached for your consideration, and the location of MUSD's drainage improvements are shown on Exhibit "1". This License Agreement is for another twenty years beginning September 1, 2016, and ending August 31, 2036, and is attached in legislative format showing proposed changes. The MUSD Board approved the License Agreement at its June 21, 2016 meeting.

**STAFF RECOMMENDATION**

Authorize Mayor Parvin to execute the License Agreement between the City of Moorpark and Moorpark Unified School District for a term of twenty years beginning September 1, 2016, to August 31, 2036, subject to final language approval by the City Manager.

Attachment: 1) License Agreement with Exhibit "1" in legislative format

LICENSE AGREEMENT

This Agreement is made this \_\_\_\_ day of March \_\_\_\_\_, ~~1997~~2016, by and between the City of Moorpark, a municipal corporation, as Licensor ("City") and the Moorpark Unified School District, as Licensee ("MUSD").

WHEREAS, City is the owner of certain real property commonly known as the Arroyo Vista Community Park Access Road, including curbs, gutters, sidewalk and overhead lighting, which extends from approximately 325 feet from Tierra Rejada Road to Arroyo Vista Community Park (AVCP) in the City of Moorpark, County of Ventura, more particularly described in the Grant Deed recorded as Document 92-160359 in the office of the Recorder of Ventura County ("Access Road"); and

~~WHEREAS, MUSD desires to obtain permission to perform certain acts upon the Access Road~~

WHEREAS, on March 21, 1997, City and MUSD entered into a License Agreement for MUSD to use the Access Road consistent with the terms and conditions of said Agreement for the period of twenty (20) years beginning September 1, 1996, and ending on August 31, 2016; and

WHEREAS, in 2001, City and MUSD approved Amendment No. 1 to the License Agreement revising Sections 1., 3., and 5.A.; revisions 1. and 3. are incorporated in the License Agreement, and Section 5.A. is no longer applicable because the work contemplated by 5.A. has been completed; and

WHEREAS, on March 10, 2010, City issued Encroachment Permit No. 10-3599 (Permit) to allow MUSD to construct a bus turn out on the south side of the Access Road, and MUSD constructed the bus turn out consistent with said Permit; and

WHEREAS, MUSD, consistent with Section 5. of the March 21, 1997, License Agreement, constructed certain drainage improvements, and location of said improvements are described on the plan attached as Exhibit "1"; and

WHEREAS, MUSD desires to obtain permission to perform certain acts upon the Access Road and to maintain a storm drain pipe on a portion of AVCP.

NOW, THEREFORE, it is agreed as follows:

1. City hereby grants to MUSD a license to maintain a storm drain located on a portion of AVCP at a location as depicted on attached Exhibit "1" and to use the Access Road for ingress to, and egress from, the Moorpark High School, including the stadium, south of the Access Road ("MHS" "Stadium"), and any parking lots north of the Access Road ("Parking Lots"). Not more than a total of ~~two~~ three (3) parking lot driveways shall be permitted regardless of the total number of Parking Lots;

the location of the driveways shall be mutually agreed upon by the parties. This license is limited to the days and operating hours that ~~Arroyo Vista Community Park (Park AVCP)~~ is open to the public, except as otherwise provided herein. City shall allow MUSD to place a lock on any City maintained gate (Gate) on Access Road that if locked would preclude MUSD access to ~~Stadium MHS or Parking Lots, any parking lots north of the Access Road.~~ MUSD lock shall be placed on Gate in such a manner to allow City lock and MUSD lock to be used exclusive of each other. MUSD shall provide City with a duplicate key for any MUSD lock placed on said Gate. MUSD shall inform City in writing of any days that it requires the Gate to be open after operating hours of ~~Park AVCP~~ or on days ~~Park AVCP~~ is not open to the public. On said days, MUSD shall be responsible to lock the Gate (and open Gate if ~~Park AVCP~~ is not open to the public). MUSD shall provide City a 24 hour emergency phone number and pager number of MUSD personnel responsible for MUSD implementation of this license.

2. All repairs to, and maintenance of, the Access Road shall be done at City's sole discretion and shall be performed by City force account or by City's authorized contractor. Repairs and maintenance shall include, but not be limited to, concrete repair, asphalt patching and crack sealing, slurry sealing, asphalt concrete overlay, energy for the overhead lighting, bulb replacement, and replacement of damaged light standards. MUSD shall reimburse City for one-third (1/3) of the costs of said repairs and maintenance. Repair and maintenance costs are the direct costs for plans and specifications, labor and materials and the actual fees for plan checks, permits, and inspections plus administrative overhead in an amount not to exceed twenty percent (20%) of the total amount of said costs and fees. No more frequently than once every twelve (12) months, City shall deliver to MUSD an itemized statement of the total repair and maintenance costs incurred subsequent to the last statement. MUSD shall make payment in full to City of its share of said repair and maintenance costs within the thirty (30) days after delivery of the itemized statement.

MUSD at its sole cost shall be responsible to replace, maintain and repair (Maintain) the swale, catch basin, manhole pipe to pipe, storm drain pipe related appurtenances, and National Pollutant Discharge Elimination System (NPDES) devices including but not limited to a bioswale (collectively MUSD Storm Drainage System) on its property as depicted on Exhibit "1".

MUSD at its sole cost shall be responsible to Maintain approximately one hundred fifteen (115) feet of storm drain pipe, manhole pipe to pipe mainline and related appurtenances (collectively Storm Drain Facilities) on AVCP property as depicted on Exhibit "1". MUSD shall obtain prior written approval from the City Manager or his/her designee prior to performing any maintenance work on AVCP property. MUSD shall reimburse City for any third party out-of-pocket costs (out-of-pocket costs) plus administrative overhead in an amount not to exceed twenty percent (20%) of the total amount of said out-of-pocket costs related to MUSD work to Maintain

Storm Drain Facilities. MUSD shall make payment in full to City within thirty (30) days after delivery of an itemized statement of costs.

3. City shall hold harmless, indemnify and defend MUSD and its officers, employees, servants and agents from any claim, demand, action, liability, loss, cost or expense for and damage whatsoever, including but not limited to death or injury to any person and injury to any property, arising from the use of the Access Road, except damage for which MUSD is obligated to hold harmless, indemnify and defend City and its officers, employees, servants and agents pursuant to the next succeeding paragraph.

MUSD shall hold harmless, indemnify and defend City and its officers, employees, servants and agents from any claim, demand, action, liability, loss, cost or expense for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, arising in whole or in part from (i) the use of the Access Road by any person whomsoever in connection with any event held at MHS the Stadium, except an event that is sponsored by City or in connection with the use of any of the Parking Lots, except when there is a City sponsored event at MHS or the Parking Lots are being used in conjunction with a City sponsored event at the Stadium; (ii) the use of the Access Road by any person whomsoever in connection with any event held in the Arroyo Vista Community Park under the sponsorship of MUSD; and (iii) maintenance of Storm Drain Facilities at AVCP and maintenance of MUSD Storm Drainage System as depicted on attached Exhibit "1", or (iii) the design, construction, repair or maintenance of the swale described in Section 5 below.

~~33. Concurrently with the execution of this Agreement, MUSD shall deliver to City an Easement Deed, in the form attached hereto as Exhibit "1", fully executed by MUSD.~~

4. MUSD shall be responsible to inform third party users of MHS facilities of the parking regulations on the Access Road including but not limited to oversized vehicle parking (as defined in the California Vehicle Code) inclusive of school and charter buses, use of bus turn out, and time restrictions.

5. ~~Prior to August 31, 1997, District shall, at its sole cost, construct certain drainage improvements to remedy certain drainage problems on the Access Road. Those drainage improvements shall include: a) storm drain lateral extending from an existing City storm drain located near the northwest corner of Arroyo Vista Community Park westerly approximately eighty feet (80') to the District's property; b) a storm drain inlet structure to be located at the westerly end of said storm drain lateral, on District property; and, c) an unpaved surface swale extending from said inlet southerly to the Access Road. The locations of these proposed storm drain improvements are generally described on the diagram attached as Exhibit "2". Said~~

improvements shall be constructed in accordance with plans and specifications prepared by the District and approved by the City. The engineering costs to be borne by the District shall include design, City costs for plan checking and construction inspection and preparation of a legal description for a storm drain easement, to be granted to the City, for that portion of the storm drain lateral and inlet located upon District property. When constructed and accepted by the City, City shall permanently maintain said storm drain and inlet structure, and District shall permanently maintain the unpaved swale. At District's sole cost including City's costs for plan checking and construction inspection (and if necessary, preparation of a legal description), District shall construct a paved swale to replace the unpaved swale, or as mutually agreed upon, an alternative to the paved swale when District constructs paved Parking Lots or other improvements north of the Access Road. The District shall permanently maintain the paved swale or if mutually agreed upon as provided for above, an alternative to the paved swale.

56. Either party may give notice to the other party of any default under this Agreement. In the event that the party in default fails to cure the default within ten (10) days after delivery of the notice, this Agreement shall terminate at the option of the non-defaulting party.

67. The license granted herein is personal to MUSD and shall not be assigned. Any attempt to assign the license or allow use of the Access Road for other than ingress to, and egress from, the Stadium MHS and Parking Lots shall automatically terminate the license. No legal title or leasehold interest in the Access Road is created or vested in MUSD by the grant of the license.

78. This Agreement shall be in effect for twenty (20) years beginning on September 1, 1996~~2016~~, and ending on August 31, 2036~~46~~, unless sooner terminated. MUSD shall not terminate this Agreement except as provided in paragraph 6.

89. Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

TO: City of Moorpark  
799 Moorpark Avenue  
Moorpark, CA 93021  
Attn: City Manager

TO: Moorpark Unified School District  
30 Flory Avenue 5297 Maureen Lane  
Moorpark, CA 93021  
Attn: District Superintendent

Either party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified. Notices and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

910. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and all prior agreements or understandings, oral or written, are hereby merged herein superseded. This Agreement shall not be amended in any way except by a writing expressly purporting to be such an amendment, signed and acknowledged by both of the parties hereto.

104. Should interpretation of this Agreement, or any portion thereof, be necessary, it is deemed that this Agreement was prepared by the parties jointly and equally, and shall not be interpreted against either party on the ground that the party prepared the Agreement or caused it to be prepared.

112. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless executed in writing by the party making the waiver.

123. In the event any action, suit or proceeding is brought for the enforcement of, or the declaration of, any right or obligation pursuant to this Agreement or as a result of any alleged breach of any provision of this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees, from the losing party, and any judgment or decree rendered in such a proceeding shall include an award thereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

**LICENSOR**

**LICENSEE**

\_\_\_\_\_  
Mayor  
City of Moorpark

\_\_\_\_\_  
President  
Moorpark Unified School District

Attest:

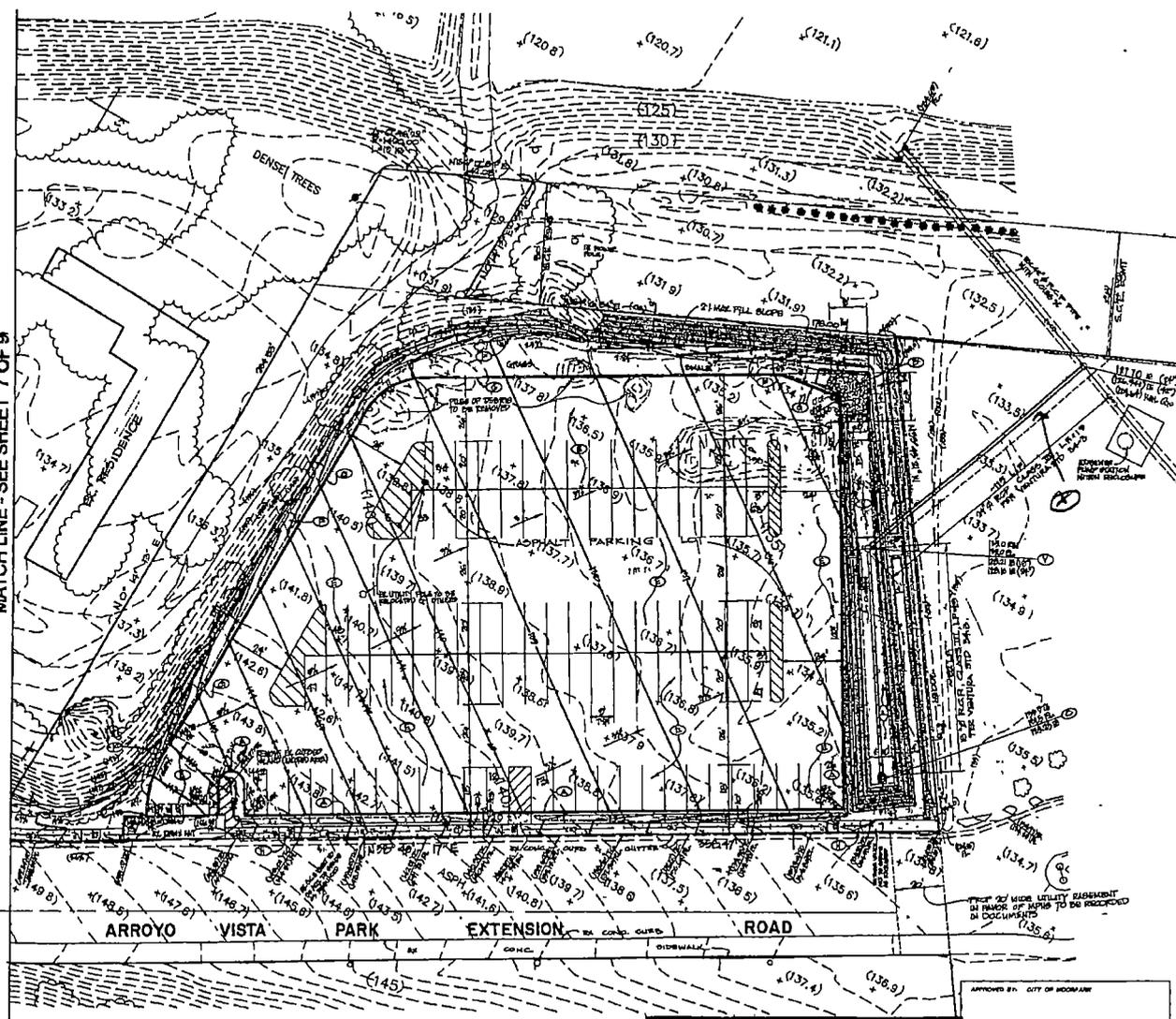
Attest:

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City Clerk

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Secretary

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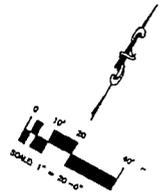
MATCH LINE - SEE SHEET 7 OF 9



This plan has been reviewed by Gordon and Associates, Inc. and appears to be in general conformity with the geotechnical recommendations in our report(s) dated 4/20/88, 5/2/88.

Gordon and Associates, Inc. makes no representation as to the accuracy of dimensions, measurements, calculations or any portion of the design other than geotechnical.

Geotechnical Engineer:  
*Paul J. H. Smith*  
 No. 31,000 Date: 7/25/88



**CONSTRUCTION ITEMS**

1. 6" CONCRETE CURB PER DETAIL SHOWN ON SHEET 7
2. 1/2" RAMP PAVEMENT WITH 1/2" SLOPED ENCLOSED WALKWAY (NO. 1) CONC. CURB
3. 2" WIDE CONC. CURB FROM BELOW WALKWAY (SPACE BETWEEN CONC. CURB)
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APPROVED BY: CITY OF MOORPARK  
 D. G. ...  
 DIRECTOR OF COMMUNITY DEVELOPMENT

APPROVED FOR STORM DRAIN ONLY

<p>PREPARED BY: STEVE HARRASSER &amp; ASSOCIATES          401 MOORE AVENUE, SUITE B          GARDEN GROVE, CA 92640          (949) 483-8477, FAX (949) 483-8487</p>	<p>DESIGNED BY: ...</p>	<p>REVIEWED BY: ...</p>	<p>CITY OF MOORPARK          PUBLIC WORKS AGENCY</p>	<p>MOORPARK HIGH SCHOOL SITE IMPROVEMENT PLAN          (LOWER PARKING LOT)          MOORPARK UNIFIED SCHOOL DISTRICT</p>
<p>REVISION DESCRIPTION</p>	<p>DATE</p>	<p>DATE</p>	<p>DATE</p>	<p>SHEET: 8 OF 9</p>