

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL
FROM: KATHY PETKER, PARKS AND RECREATION PROGRAM DIRECTOR
SUBJECT: CHANGE TO THE LEASE AGREEMENT BETWEEN THE CITY OF GROVER BEACH AND THE SAN LUIS OBISPO COUNTY YMCA FOR THE OPERATION OF THE SOUTH COUNTY SKATE PARK

BACKGROUND

At its July 16, 2012 City Council meeting, the Council approved a Lease Agreement between the City of Grover Beach and the YMCA to operate the Skate Park for a period of one year. The City Council approved the Agreement and authorized its execution. The YMCA Executive Board, however, did not approve the Agreement based on operation costs.

DISCUSSION

In the original Agreement, the City requested the YMCA to be responsible for absorbing all operation and maintenance costs. However, after review, the costs were higher than anticipated by the YMCA. It is staff's opinion that by reimbursing the YMCA for costs up to \$3,789 during the term of the one year contract, this would allow the YMCA to successfully operate and maintain the Skate Park. Reimbursement would include general maintenance such as the landscaping, staff kiosk, irrigation, etc.

If approved, the YMCA has proposed an opening date of March 1, 2013, with a Grand Re-Opening Celebration scheduled for March 23, 2013.

ALTERNATIVES

The City Council has the following alternatives:

1. The City Council may choose to approve the changes to the Lease Agreement for San Luis Obispo County YMCA to operate the South County Skate Park; or
2. The City Council may choose to provide staff with further direction.

RECOMMENDED ACTION

Approve the changes to the Lease Agreement for San Luis Obispo County YMCA to operate the South County Skate Park and authorize the Mayor to execute the Agreement on behalf of the City.

APPROVED FOR FORWARDING



**ROBERT PERRAULT
CITY MANAGER**

Please Review for the Possibility of a Potential Conflict of Interest:

- | | |
|--|-----------------------------------|
| <input checked="" type="checkbox"/> None Identified by Staff | <input type="checkbox"/> Bright |
| <input type="checkbox"/> Shoals | <input type="checkbox"/> Molnar |
| <input type="checkbox"/> Nicolls | <input type="checkbox"/> Peterson |

FISCAL IMPACT

The YMCA would pay an annual rent to the City of one dollar (\$1.00).

The City would reimburse the YMCA up to \$3,789 for maintenance costs for the one-year term of the contract.

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act. A copy of this Staff Report and the agenda were sent to the YMCA.

ATTACHMENTS

- Attachment 1 Proposed Lease Agreement Authorizing the YMCA to Operate the South County Skate Park

- Attachment 2 Staff Report, July 16

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this ____ day of November, 2012, by and between the CITY OF GROVER BEACH, a Municipal Corporation in the State of California, hereinafter referred to as the "Landlord", and SAN LUIS OBISPO COUNTY YMCA, hereinafter referred to as "Tenant",

WITNESSETH:

For and in consideration of the premises, and the covenants and agreements hereinafter contained it is mutually agreed by and between the parties hereto as follows:

1. **LEASED PREMISES AND PROPERTY.**

For and in consideration of the rental hereinafter provided to be paid by the Tenant, and for and in consideration of the covenants and agreements hereinafter contained on the part of the Tenant to be kept and performed, the Landlord has let and demised, and by these presents does hereby let and demise unto the Tenant, and the Tenant has leased and taken from, and by these presents does hereby lease and take from the Landlord, all that certain real property situated in the City of Grover Beach, County of San Luis Obispo, State of California, commonly known as South County Skate Park, with the address of 1750 Ramona Ave., Grover Beach, CA 93433 (the "Premises").

2. **TERM.**

The Lease shall commence on the 1st day of March, 2013 (the "Commencement Date") and shall expire one (1) year after the Commencement Date. Parties may renegotiate or negotiate an extension of the Lease under the same or varied terms, or terminate this Lease for any reason, with thirty (30) days written notice to the other party.

3. **LEASE PAYMENTS AND OTHER CONSIDERATION.**

In consideration of said agreement to lease, the Tenant agrees to pay to the Landlord and the Landlord agrees to accept rental in the sum of One Dollar (\$1.00) per year in advance (the "Rental Fee"), payable on the FIRST day of each and every year during and throughout the term of this Lease subject to any adjustments described in this paragraph. Tenant shall operate the Premises as a supervised Skate Park, during hours determined by Tenant, for the benefit and enjoyment of the residents of the City of Grover Beach, as well as members of the surrounding communities and other visitors to the City of Grover Beach. The operation may include special events, competition and other promotional events. At no time during the Term of this Lease shall the Skate Park be open to public access without sufficient trained and qualified supervision on site by Tenant's staff. Staff will include certification in first aid, CPR and AED and knowledge of the sport of skateboarding. All staff must pass Department of Justice background screening via Live Scan.

4. REPAIRS, MAINTENANCE, ALTERATIONS AND SURRENDER.

Throughout the term thereof, the Tenant shall, at Tenant's sole cost, be responsible for operational daily and monthly janitorial and landscape services including cleaning, mowing, blowing, weeding, sweeping and watering in accordance with all applicable laws, rules, ordinances, orders and regulations of all governmental authorities having jurisdiction over the Premises. As a one-time reimbursement, the Landlord will pay the Tenant the sum of \$3789.00 at the end of the term, or at such time during the term that Tenant produces proof of expenditures in that amount for maintenance related costs. The Landlord will continue to keep the major assets of the Premises including buildings, fencing, plumbing, water and sewer pipes maintained and in good repair in accordance with all applicable laws, rules, ordinances, orders and regulations of all governmental authorities having jurisdiction over the Premises

Any alterations, additions, improvements or changes by the Tenant to the on-site improvements installed by the Landlord or Tenant shall be made at Tenant's sole cost and expense and only after first submitting plans and specifications therefor to the Landlord and obtaining consent of the Landlord thereto in writing, which consent will not be unreasonably withheld. Tenant shall notify Landlord in writing at least ten (10) days prior to the commencement by Tenant of any work of alteration or repair.

Any alterations or improvements shall at once become a part of the Premises and upon the termination of this Lease, including any extension or renewal hereof, the Tenant shall peaceably surrender possession of the demised premises and all buildings or other improvements installed on the demised premises by the Tenant.

5. SECURITY/TRESPASS

Tenant will ensure that Premises are locked, secured and not accessible to the public while the Skate Park is not in operation. Hours of operation are to be set and controlled by the Tenant. Tenant shall post appropriate "No-Trespassing" signs on the Premises and shall authorize Grover Beach Police Department to initiate citations, arrest and prosecution of anyone who, without authority, enters the Premises while the Premises are locked and secured.

6. COMPLIANCE WITH LAW

Tenant shall, at no cost to the Landlord, at all times during the term hereof, comply with all of the requirements, ordinances, regulations and statutes of all municipal, state and federal authorities currently in or which thereafter be in force, pertaining to the Premises which materially affect the use and occupancy thereof, including Grover Beach Municipal Code Section 2516.

7. INDEMNITY, TENANT'S LIABILITY AND LIABILITY INSURANCE

This Lease is made upon the express condition that Tenant shall not hold Landlord liable for any loss, damage or injury of any kind whatsoever to the person or property of Tenant or any of Tenant's employees, guests or invitees or of any person whomsoever caused by any use of the demised premise or by any defect in any buildings, structure or other improvement constructed thereon or arising from any accident on said premises or any fire or other casualty thereon or occasioned by the failure on the part of Tenant to maintain said premises in a safe condition or of any nuisance made or suffered on said premises or by any act or omission of Tenant or Tenant's employees, guest, invitees or arising from any cause whatsoever except that Landlord shall be liable for all damages or liability resulting from the negligence or willful misconduct of Landlord or its agents, contractors, officers or employees.

Tenant hereby waives on its behalf all claims and demands against Landlord for any such loss, damage or injury to Tenant and hereby agrees to indemnify and save Landlord free and harmless from liability for any such loss, damage or injury of other persons and from all costs, expenses and other charges arising therefrom and in connection therewith except that Landlord shall be liable for all damages or liability resulting from the negligence or willful misconduct of Landlord or its agents, contractors, officers or employees.

Tenant agrees to maintain in force throughout the term hereof, at tenants sole cost and expense, comprehensive liability policies, including its excess liability policy, endorsed to include the City of Grover Beach as an additional insured or to secure, maintain and pay the necessary premiums upon, (i) a policy of liability insurance which shall apply to the demised premises, in a company satisfactory to the Landlord, which shall name the Landlord, and the officers and employees of the Landlord as co-insureds, with limits not less than TWO MILLION DOLLARS (\$2,000,000.00) aggregate per accident, bodily injury and (ii) Worker's Compensation and Employers Liability insurance as required by the Labor Code of the State of California. The Tenant shall cause the Landlord to be furnished with a certificate(s) of such insurance. Tenant agrees to obtain a written obligation on the part of the insurance carriers to notify Landlord in writing at least sixty (60) days prior to any cancellation or non-renewal of any policy required of Tenant hereunder and Tenant further agrees that if Tenant does not keep said insurance in full force and effect, Landlord may obtain the necessary insurance and pay the premium such payment shall be deemed to be rent and shall be paid upon Landlord's demand.

8. UTILITIES.

The Tenant shall provide, at his own expense, all electricity, water, gas and other utilities or services as the Tenant may require on the Premises.

Landlord shall not be liable to Tenant for any failure, interruption, rationing or other willful curtailment of any utilities from whatever cause (other than Landlord's negligence or willful misconduct) and Tenant shall not be entitled to terminate this Lease or to any reduction or abatement of rent by reason of any of the foregoing.

9. ASSIGNMENT OR SUBLETTING OF LEASE.

The Tenant shall not assign this Lease, or any interest therein, or in the property herein demised, and shall not sublet said premises or any part thereof to any person, firm or corporation during the term of this Lease, without the written consent of Landlord first had and obtained. It is expressly understood and agreed that any assignment or sublease as aforesaid shall be subject to all of the covenants and provisions of this Lease agreement. In the event of the insolvency or bankruptcy of the Tenant, either voluntary or involuntary, this Lease shall not become a part of the assets of said insolvent or bankrupt estate and shall thereupon terminate and be of no further force or binding effect upon the parties hereto.

10. RIGHT TO QUIET ENJOYMENT.

The Landlord does hereby covenant and agree that upon the payment of the rent and the performance of all covenants by said Tenant to be paid and performed as herein provided, said Tenant shall peaceably and quietly hold and enjoy the said premises during the term herein demised and any extension thereof.

Tenant shall not commit, or cause to be committed, any waste on said premises, or any nuisance or other act or thing which may affect Landlord's interest in the Premises.

11. TAXES.

The Tenant is hereby notified pursuant to Section 106.6(b) of the revenue and taxation code when a public entity, such as the City of Grover Beach, enters into a written contract with a private party, the possessory interest subject to property taxation may be created and that the property tax levied on the possessory interest shall be the responsibility of the Tenant.

12. DEFAULT

It is further agreed that if default be made in those covenants and agreements by said Tenant herein agreed to be kept and performed, then it shall be lawful for said Landlord at its option to terminate this Lease and re-enter upon said premises, take possession thereof, and remove all persons therefrom.

13. WAIVER OF BREACH.

Any waiver, express or implied, by any party hereto, of any breach by any party of any covenant or provision of this Lease, shall not be, nor be construed to be, a waiver of any subsequent breach of any term or provision hereof.

14. ENTRY BY LANDLORD.

Tenant shall permit Landlord or Landlord's agents to enter into and upon said Premises at all reasonable times with not less than twenty-four (24) hours prior written notice to Tenant (except in the case of emergency which shall not require any notice) for the purpose of inspecting the same, or for any other lawful purpose contemplated by the provisions of this Lease. Landlord shall conduct any such allowed entry of the Premises in a manner that will cause the least possible inconvenience, annoyance or disturbance to Tenant.

15. NOTICES.

It is further agreed that all notices required to be given under this agreement shall be in writing, shall be sent by registered mail, postage prepaid, to the parties at their respective addresses below, or at such other address as the parties may from time to time notify each other in writing.

If to Landlord, c/o City Manager at:

154 S. Eighth Street
Grover Beach, CA 93433

If to Tenant, at:

Linda Winget, South County Regional Director
San Luis Obispo County YMCA
1020 Southwood Drive
San Luis Obispo, CA 93401

16. BINDER ON SUCCESSORS.

The Landlord and Tenant agree that the provisions of this Lease agreement shall extend to and bind, or inure to the benefit of (as the case may require), not only the parties thereto, but to each and every one of the heirs, executors, administrators, representatives, successors and assigns of the Landlord and Tenant. The obligation of Tenant is joint and several.

17. CONFLICT RESOLUTION.

Any controversy or claim arising out of, or relating to, this Lease between the Landlord and the Tenant, other than Landlord's unlawful detainer claim shall be mediated prior to initiation of any legal proceeding. Cost of such mediation shall be equally shared by the parties.

18. ATTORNEY'S FEES.

Notwithstanding provisions of paragraph 17, in the event that any legal action is instituted by either of the parties hereto to enforce or construe the terms, conditions, and covenants of this Lease, or the validity thereof, the party prevailing in any such action shall be entitled to recover from the other party all court costs and reasonable attorney fees.

19. PARTIAL INVALIDITY.

If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law

20. GOVERNING LAW

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California (without giving effect to its choice of law provisions) as the same from time to time exist.

21. COMPLETE AGREEMENT.

This Lease constitutes the entire agreement between the parties and may not be altered, amended, modified or extended except by instrument in writing signed by the parties hereto.

22. AUTHORITY TO EXECUTE.

Each party executing this Lease on behalf of an entity represents and warrants that the party has authority to execute this Lease individually and on behalf of the entity represented and that such entity has entered into the appropriate resolution or authorization for granting such authority and that said signature is for and on behalf of the named entity.

IN WITNESS WHEREOF, the parties hereto have affixed their hands on the day and year set forth above.

CITY OF GROVER BEACH, "LANDLORD"

By: _____
John P. Shoals, Mayor

SAN LUIS OBISPO COUNTY YMCA, "TENANT"

By: _____
Jenifer Rhynes, General Director

ATTEST:

Donna L. McMahon, City Clerk

APPROVED AS TO FORM

Martin D. Koczanowicz, City Attorney

EXHIBIT A TO LEASE AGREEMENT

Description of Lease Property:

That portion of the Southwest quarter of the Southwest quarter of Section 25, Township 20 South, Range 24 East, Mount Diablo Base and Meridian, in the City of Tulare, County of Tulare, State of California, described as follows:

Beginning at the East quarter corner of the Southwest quarter of said Section 25; thence South $89^{\circ} 41' 39''$ West along the North line of the South half of said Southwest quarter, 1,891.45 feet; thence South $22^{\circ} 43' 13''$ East, 42.23 feet to the True Point of Beginning; thence North $67^{\circ} 16' 47''$ East, 100.00 feet; thence South $22^{\circ} 43' 13''$ East, 120.00 feet; thence South $67^{\circ} 16' 47''$ West, 100.00 feet; thence North $22^{\circ} 43' 13''$ West, 120.00 feet to the True Point of Beginning.

STAFF REPORT

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: KATHY PETKER, ^{KP} PARKS AND RECREATION PROGRAMS DIRECTOR

SUBJECT: CONSIDERATION OF APPROVAL OF THE LEASE AGREEMENT BETWEEN THE CITY OF GROVER BEACH AND THE SAN LUIS OBISPO COUNTY YMCA FOR THE OPERATION OF THE SOUTH COUNTY SKATE PARK

BACKGROUND

The South County Skate Park (Park), located at 1750 Ramona Avenue, APN 060-253-016, has been closed to the public since April 9, 2012 in an effort to save costs for the remainder of the FY12 budget. Consequently, three part-time employees that were staffing the Park were laid off as well. The Skate Park has been closed since April. In order to make the Skate Park available to the youth of the community for the remainder of the summer, this item was routed directly to the Council for consideration.

The term of the proposed Lease Agreement between the City of Grover Beach and the YMCA to the Skate Park is for a period of one year, beginning August 1, 2012.

DISCUSSION

The Skate Park was built in 1999 and is an impressive 13,000+ square foot concrete park where skateboarders and in-line skaters of all skill levels practice their sport. After having the Park open for a year, the City experienced numerous issues related to the operation of the Park, bullying, loitering, vandalism, and delinquent behavior. In order to address some of those issues, by direction of the City Council, the City installed an 8' fence, hired staff to enforce the rules and began charging an entrance fee. Virtually overnight, the Park became a safe place for youth. At its height of attendance, the Park attracted nearly 40-50 skaters a day during summer months over the years. Over time the general use of the Park declined as there was limited funding for training, programming and special events.

It should be noted that Department staff and the Police Department do not recommend the Park be left open and unmonitored. Across the country, this approach to operations of Skate Parks has not proved to be successful. In unmonitored parks, usage by youth declines and non-skating parties regularly occupy the facilities and discourage skating use.

The Park is a very significant Grover Beach asset and in an effort to re-open the Park, staff approached two local non-profits (the San Luis Obispo County YMCA and the Boys and Girls Club) to determine their interest in operating the Park. The Boys and Girls Club reviewed the opportunity to operate the Park with their Board but declined to provide an offer of operation. The City received one written proposal from the San Luis Obispo County YMCA that could be a win for all stakeholders as it

APPROVED FOR FORWARDING



ROBERT PÉRRULT
 CITY MANAGER

Please Review for the Possibility of a Potential Conflict of Interest:

- None Identified by Staff Bright
 Shoals Molnar
 Nicolls Peterson

Meeting Date: July 16, 2012

Agenda Item No. 17/1

relieves the City of operational expenses and oversight, while providing a monitored environment for added safety. The YMCA would also be able to offer patrons extended hours and enhanced programming (See Attachment 1).

Lease Highlights

The YMCA proposes to lease the Skate Park for a period of one year for an annual lease cost of \$1.00 per year. The YMCA would also be responsible for day-to-day operations and maintenance of facility. The City would continue to complete major asset repairs on an as-needed basis (See Appendix A of Attachment 2, Lease Agreement).

ALTERNATIVES

The City Council has the following alternatives:

1. The City Council may choose to approve the Lease Agreement for San Luis Obispo County YMCA to operate the South County Skate Park; or
2. The City Council may choose to provide staff with further direction.

RECOMMENDED ACTION

Approve the Lease Agreement for San Luis Obispo County YMCA to operate the South County Skate Park and authorize the Mayor to execute the Agreement on behalf of the City.

FISCAL IMPACT

The YMCA would pay an annual rent to the City of one dollar (\$1.00).

PUBLIC NOTIFICATION

The agenda was posted in accordance with the Brown Act.

ATTACHMENTS

- | | |
|--------------|--|
| Attachment 1 | YMCA Proposal |
| Attachment 2 | Proposed Lease Agreement Authorizing the YMCA to Operate the South County YMCA |