

Reviewed Date:	Approved: Bryan Whitemyer, City Manager	Meeting Date: February 28, 2011	Agenda Item: 4
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## Executive Summary

**Presented By:** Bryan Whitemyer, City Manager  
**Meeting Date:** February 28, 2011  
**Subject:** Lebright Property Lease  
**Budget Action:** None at this time. Funds will need to be budgeted for costs associated with this item when the FY 2011-2012 Budget is developed.  
**Desired Action:** Consideration of Resolution 2011-017, approving a Lease Agreement, Between the City of Hughson and the Hughson Unified School District for the Lebright Property, Authorizing the Mayor to Execute the Agreement on the City's Behalf.

**Background:** Over the last several years the City of Hughson (City) and the Hughson Unified School District (District) have partnered to maintain the Lebright Property as a beneficial recreation area for the community. The District currently owns the 8.5 acre property that is identified as APN 018-029-006 and APN 018-029-007. The City via a lease agreement with the District has taken over the maintenance and use of the property and the baseball playing field. This field receives a tremendous amount of use throughout the year and is an excellent recreational asset for the community. The proposed lease will be for a three-year term that will commence on April 1, 2011 and end on April 1, 2014.

**Cost:** The District does not charge the City to use the property. However, the City is responsible to maintain the property in good repair and in a clean and orderly manner. Additionally, the City takes care of the general upkeep and maintenance of the property on a regularly scheduled basis. The anticipated labor costs to maintain the property is approximately \$20,000 with supplies and other materials estimated to be about \$3,500.

The City also covers the utility costs of the facility. Water and sewer costs for the property are anticipated to be around \$7,500. The total anticipated annual cost to the City is anticipated to be approximately \$31,000. The cost to maintain and operate the facility was accounted for in the FY 2010-2011 budget, but will need to be included again when the FY 2011-2012 budget is developed.

**Recommendation:**

Due to the large amount of use this property receives for recreation activities for members of the community, staff recommends that the Council Adopt Resolution 2011-017, approving the Lease Agreement with Hughson Unified School District and authorize the Mayor to execute a 3-year lease agreement for the Lebright Property.

**CITY OF HUGHSON  
CITY COUNCIL  
RESOLUTION NUMBER 2010-017**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUGHSON APPROVING A LEASE AGREEMENT BETWEEN THE HUGHSON UNIFIED SCHOOL DISTRICT AND THE CITY OF HUGHSON FOR THE LEBRIGHT PROPERTY FOR A 3-YEAR TERM, EXPIRING ON APRIL 1, 2014; AND AUTHORIZES THE MAYOR TO EXECUTE SAID AGREEMENT ON BEHALF OF THE CITY (APN 018-029-006 and APN 108-029-007)**

**Whereas**, over the last several years the City of Hughson (City) and the Hughson Unified School District (District) have partnered to maintain the Lebright Property as a beneficial recreation area for the community and the City of Hughson and the Hughson Unified School District wishes to continue in the partnership by entering into a Lease Agreement; and

**Whereas**, the City and the District both recognize the public interests and common benefit to the community of Hughson, which will be promoted by the approval of the Lease Agreement that will allow for use by the public for community recreation; and

**Whereas**, the City and the District desires to enter into a Lease Agreement for the Lebright Property for a three-year term, commencing April 1, 2011 and expiring on April 1, 2014, in recognition of the public benefit provided to the residents of the city of Hughson.

**NOW THEREFORE BE IT RESOLVED**, the City Council of the City of Hughson does hereby approve a Lease Agreement as attached hereto and incorporated herein as Attachment "A" to this resolution, by and between the Hughson Unified School District, and the City of Hughson for a period of three-years, commencing on April 1, 2011 and expiring on April 1, 2014, and hereby authorizes the Mayor to sign on behalf of the City.

It is hereby certified that the foregoing Resolution No 2011-017 was duly introduced and adopted by the City Council of the City of Hughson at its regular meeting held on this 28<sup>th</sup> day of February 2011 by the following roll call votes: ( )

Ayes in favor: Council Members:

Noes:

Absent:

Abstain:

Approved

Attested

\_\_\_\_\_  
Ramon Bawanana, Mayor

\_\_\_\_\_  
Michele P Winterbottom, MMC, City Clerk



**LEASE AGREEMENT BETWEEN  
THE HUGHSON UNIFIED SCHOOL DISTRICT AND  
THE CITY OF HUGHSON FOR THE LEBRIGHT PROPERTY**

This Lease Agreement ("Agreement") Renewal is made and entered into this 8<sup>th</sup> day of February, 2011, by and between the Hughson Unified School District, a political subdivision of the State of California ("District") and the City of Hughson, a municipal corporation, ("City").

**Recitals**

**WHEREAS**, the District owns that certain real property and all structures and improvements thereon, commonly referred to as the Lebright Property, located at the southwest corner of Fox Road and Charles Street in the City of Hughson, which is approximately 8.5 acres in size and further identified by APN 018-029-006 and APN 018-029-007, hereinafter referred to as the "Property"; and

**WHEREAS**, the City desires to lease the Property, subject to the terms and conditions of this Agreement, for recreational use, including use as a baseball playing field; and

**WHEREAS**, the District desires to assist the City in providing for the recreational needs of the community on a temporary basis; and

**WHEREAS**, the District and the City are attempting to negotiate a purchase and sale agreement during the period of the Agreement.

**NOW, THEREFORE**, the District agrees to lease to the City the Property under the following terms and conditions:

**Agreement**

1. **Term of Lease**

This lease ("Lease") shall be for a period of three (3) years, commencing on April 1, 2011 and ending on April 1, 2014.

2. **Rental Fee**

In recognition of the public benefit provided to the residents of the City of Hughson, District agrees that no rental fees shall be charged for the lease of the Property.

3. **Leased Property Description**

City shall be allowed access and use of those areas of the Property depicted in Exhibit "A", attached hereto and incorporated herein by reference. The approximately 0.55 acre portion of the Property in use as an adult educational facility is expressly excluded from this Agreement.

4. **Use of the Property**

City will have the right to use the property for park purposes, such as outdoor recreation, including but not limited to, a baseball playing field. City shall not make any other use of the Property, unless it first requests and receives the District's written consent. City shall not commit, or allow to be committed, any waste on the premises, or any nuisance, nor shall City use or allow the Property to be used for unlawful purposes.

5. **Maintenance and Repairs**

Lessee shall maintain the Property in good repair and in a clean and orderly manner, and shall be responsible for general upkeep and maintenance of the Property on a regularly scheduled basis.

6. **Alterations and Repairs**

No alterations, additions or improvements may be made to the Property without the express written consent of the District. Removal of dead trees, branches, and other immediate hazardous conditions shall not constitute alterations, additions or improvements that require express written consent of the District. All such alterations, additions, and/or improvements shall become part of the Property and shall become property of the District upon termination of this Agreement regardless of the cause of termination.

7. **Utilities**

City shall be responsible for paying for all utilities furnished or used on the Property, including water, electricity, and sewer services, during the term of this Agreement.

8. **Right of Entry**

District shall retain the right to enter Property without the prior written consent of City, at any time, for any purpose and in any manner. Should the District exercise its right of entry it shall to the fullest extent allowed by law, agree to save, indemnify, and hold harmless the City, its officers, employees, agents, volunteers, and elected and appointed officials from and against any and all claims, demands, damages, liabilities, costs, attorney fees, and all other damage and detriment whatsoever to any person or entity whatsoever, arising out of or related to this Right of Entry. Such indemnity shall include, without limitation, the obligation to provide all costs of defense against any such claims, provided that such indemnity shall not extend to any loss arising from City's negligence or willful misconduct.

9. **Insurance**

City shall maintain at all times during the term of this Agreement a policy of liability insurance, with a carrier and in a form satisfactory to District, to cover both the City as the primary insured party and District as an additional insured party by endorsement, insured against bodily injury, including death, and property damage for which the City or District may be liable, with "occurrence" coverage of no less than \$1,000,000 per occurrence for bodily injury, personal injury or property damage, and \$2,000,000 in the aggregate. The policy shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to District at the address provided below. City shall furnish the District with original certificates and amendatory

endorsements affecting coverage required herein. The District reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required herein.

10. **Indemnification**

To the fullest extent allowed by law, City agrees to save, indemnify, and hold harmless District, its officers, employees, agents, volunteers, and elected and appointed officials from and against any and all claims, demands, damages, liabilities, costs, attorney fees, and all other damage and detriment whatsoever to any person or entity whatsoever, arising out of or related to this Agreement or from City's use of the Property. Such indemnity shall include, without limitation, the obligation to provide all costs of defense against any such claims, provided that such indemnity shall not extend to any loss arising from District's negligence or willful misconduct.

11. **Assignment or Sublease**

This Agreement shall not be assigned to any other party. Any attempted assignment shall be null and void and of no effect. Any attempted assignment shall be sufficient grounds for immediate termination of this Agreement.

12. **Termination**

This Agreement may be terminated without liability, by the mutual written consent of the parties at any time, or by thirty (30) day notice by one party to the other of its intent to terminate, provided such notice shall be in writing.

13. **No Waiver Of Covenants Or Conditions**

The failure of either District or City to insist on strict performance of any covenant or condition hereof, or to exercise any right herein contained, shall not be construed as a waiver of such covenant, condition or right in any other instance. Notwithstanding the foregoing, City expressly waives all claims against the District for damage or injury to person or property from any cause whatsoever occurring on, or in relation to the City's use of the Property. District shall not be liable for any claims for injury to person or property damage from any cause related to City's use of the Property.

14. **Severability.**

If any provision of this Agreement, or its application, is held invalid, it will not affect other provisions or application herein which can be given effect without the invalid provision or application. To this end, all provisions of this Agreement are severable.

15. **No Waiver Of Successive Breach**

The waiver by either City or District of any breach of this Agreement shall not be deemed a waiver of any subsequent breach or of the enforcement of any other provision hereof.

16. **Remedies Are Cumulative**

The rights of City and District hereto and remedies hereunder are cumulative, and in addition to any other and all legal rights which either party may have in the event of any default or breach on the part of the other.

17. **Attorney Fees And Costs**

In the event that District or City shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any term, covenant or condition of this Agreement, the party prevailing in said action or proceeding shall be entitled to recover, in addition to its court costs, reasonable attorney's fees to be fixed by the court, and such recovery shall include court costs and attorney's fees on appeal, if any. The Court will determine who is the "Prevailing Party," whether or not the suit proceeds to final judgment. However, if an action is voluntarily dismissed, or dismissed pursuant to a settlement of the case, neither party will be entitled to recover its attorney's fees.

18. **Governing Law And Venue**

The laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement. Any action and/or proceeding that is initiated or undertaken to enforce or interpret any provision, performance, obligation or covenant set forth in this Lease shall be brought in a California state court in the County of Stanislaus.

19. **Notices**

Notices to City and District shall be given at the following addresses:

"CITY"  
7018 Pine Street  
P.O. Box 9  
Hughson, CA 95326  
Attention: City Manager

"DISTRICT"  
6815 Hughson Avenue  
Hughson, CA 95326  
Attention: Superintendent

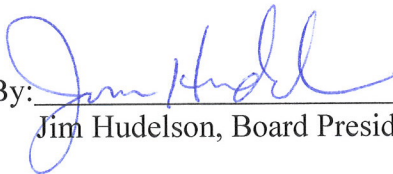
20. **Complete Agreement**

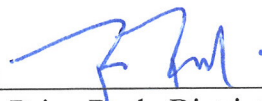
District and City agree that this Agreement contains the entire, sole, and only agreement between them concerning the Property and correctly sets forth their rights and obligations to each other concerning the Property. Any agreement or representations respecting the Property or the duties of either City or District in relation thereto not expressly set forth in this Agreement, or the attachments thereto, are null and void. This Agreement may only be modified by a written notice.

SIGNATURE PAGE FOLLOWS.

Executed at Hughson, California, by the HUSD Governing Board on February 8, 2011.

HUGHSON UNIFIED SCHOOL DISTRICT

By:   
Jim Hudelson, Board President

Attest:   
Brian Beck, District Superintendent

Executed at Hughson, California, by the Hughson City Council on \_\_\_\_\_.

CITY OF HUGHSON

By: \_\_\_\_\_  
Ramon Bawanan, Mayor

Attest: \_\_\_\_\_  
Michele Winterbottom, City Clerk

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