

HEBER PUBLIC UTILITY DISTRICT

REPORT TO BOARD OF DIRECTORS

MEETING DATE: May 15, 2025

FROM: Madeline Dessert, General Manager

SUBJECT: Authorize and Sign Children's Park Parking Lot use agreement with Our Lady of the Valley Catholic Parish, Real Property Support Corporation ("OLVRPSC")

ISSUE:

Shall the Board of Directors authorize and sign Children's Park Parking Lot use agreement with Our Lady of the Valley Catholic Parish, Real Property Support Corporation ("OLVRPSC")?

GENERAL MANAGERS RECOMMENDATION:

It is recommended that the Board of directors authorize and sign Children's Park Parking Lot use agreement with Our Lady of the Valley Catholic Parish, Real Property Support Corporation ("OLVRPSC"). ADA parking at the Children's Park is required in order to pass County of Imperial inspection. Moving forward with the agreement from OLVRPSC is the most cost-effective option to satisfy the parks ADA requirement. This agreement will allow ROVE Engineering to construct the ADA walkway/parking requirements set forth by the County of Imperial.

BACKGROUND:

This item came before you and was approved at the September 19, 2024 BOD meeting. The County of Imperial Planning Department requested several changes be made to the agreement to satisfy ADA regulations. Changes are highlighted in attached agreement for your attention.

FISCAL IMPACT:

The cost of this agreement is \$600/year for the next 5 years and \$720/year thereafter. The cost will be added to our Parks budget for the 2025-2026 and subsequent fiscal years.

CONCLUSION:

It is recommended the HPUD BOD authorize and sign Children's Park Parking Lot use agreement with Our Lady of the Valley Catholic Parish, Real Property Support Corporation ("OLVRPSC")

ALTERNATIVES:

1. Do not authorize and sign agreement
2. Provide alternative direction to staff

Attached: Parking Lot Agreement with "OLVRPSC"

PARKING LOT USE AGREEMENT

This Parking Lot Use Agreement (the “Agreement”) is effective as **May 1, 2025**, (“Effective Date”), and is entered into by and between Our Lady of the Valley Catholic Parish in El Centro, California, Real Property Support Corporation (“OLVRPSC”) and the Heber Public Utility District (“HPUD”) regarding certain parking areas on the premises located at 46 E. Main Street, Heber, California 92249 (the “Parking Lot”).

RECITALS

WHEREAS, OLVRPSD is the owner of the Parking Lot, which is identified in Exhibit A.

WHEREAS, OLVRPSD agrees to provide five (5) parking spaces in the Parking Lot as described on Attachment available at the request of HPUD for use by the general public, for parking of vehicles only, under the terms and conditions set forth below.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein as though set forth in full, and in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

1. Grant of Use. OLVRPSD hereby grants a non-exclusive right, privilege and permission, subject to the terms and provisions of this Agreement, to HPUD to allow access to certain parking spaces for community use to help fulfill the Heber Children’s Park need for two (2) ADA parking space and four (4) regular parking spaces in the Parking Lot for use during regular park hours.

The general public will be entitled to use the following **designated** parking spaces in the Parking Lot during specific times, as set forth in Exhibit A:

- **Two (2) ADA parking spaces in the Parking Lot, with one being van accessible.**
- **Four (4) Regular parking spaces in the Parking Lot.**

2. Term of Agreement. The Term of this Agreement shall be for five (5) years commencing on **May 1, 2025, and ending on April 30, 2030** (“Term”), unless terminated sooner in accordance with paragraph 4 of this Agreement.

3. Option to Extend Initial Term. The HPUD shall have the option to renew this Agreement for one (1) additional five (5) year term by providing OLVRPSD with written notice of its intent to exercise its next option no less than two (2) weeks prior to the expiration of the prior term.

4. Early Termination. OLVRPSD or the HPUD shall have the right to terminate this Agreement at any time, with or without cause, upon one hundred and eighty days (180) days **written notice to the other party as provided in paragraph 14 herein. Except that HPUD is granted such**

additional reasonable time to secure parking to comply with the parking requirements of County of Imperial to ensure adequate parking for the operational life of the park.

5. Agreement Fee. The fee for HPUD's use of the Parking Lot ("Agreement Fee") for years 1-5 of the Agreement shall be \$600 per year, due in full on the 1st day of May annually. If the HPUD exercises their option to extend the Term for an additional five (5) years, the Agreement Fee shall be \$720 per year, due in full annually on May 1st. The initial Agreement Fee will be due on May 1, 2025. All subsequent Agreement Fees must be postmarked to OLVRPDS by the 1st day of May during the Term.

6. Compliance with Laws. The HPUD shall, for the operational life of the park, comply (and shall cause its members, employees, agents, visitors, and licensees, to comply) with all applicable laws, codes, statutes, ordinances and regulations with regards to HPUD's non-exclusive use of the Parking Lot.

7. Maintenance and Notice of Necessary Repairs. OLVRPDS shall be responsible for Parking Lot maintenance as it relates to surface care, trash clean-up, weed abatement, parking enforcement, parking violators/violations, fencing, and signage, as applicable. HPUD shall have no maintenance obligations. However, the HPUD agrees to contribute funds to cover a portion of the repair and repaving costs for the designated spaces, not to exceed 50%. If OLVRPDS determines that repair or repaving is needed in the Parking Lot, it shall contact HPUD to discuss specifics before the maintenance begins. OLVRPDS will not perform repairs or repaving that it expects the HPUD to contribute to without written agreement between the Parties as to cost and the amount of HPUD's contribution.

8. Signage, Alterations and Modifications. The HPUD shall not, without prior written consent from OLVRPDS which shall not be unreasonably withheld, place any signage on, or otherwise alter, modify, improve or change the Parking Lot. Any request from the HPUD to place signage on, or otherwise alter, modify, improve or change the Parking Lot must include drawings or a detailed written proposal of any such requested changes. Any and all such OLVRPDS approved signage, alterations, modifications, improvements or changes shall be at the sole cost and expense of the HPUD.

9. HPUD Indemnification of OLVRPDS. As to the specific designated parking spots referenced herein, the HPUD agrees to defend, indemnify and hold harmless OLVRPDS, its members, employees, agents, and officers from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of the HPUD, its members, employees, agents, officers and subcontractors in the performance of this Agreement. The HPUD shall, at its sole cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against OLVRPDS in any such action, the HPUD shall, at its sole cost and expense, satisfy and discharge such obligation of OLVRPDS. OLVRPDS shall have the right, at its own expense, to participate in the defense of any suit, without relieving the HPUD of any of its obligations hereunder. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

10. OLVRPSD Indemnification of the HPUD. OLVRPSD agrees to defend, indemnify and hold harmless the HPUD, its members, employees, agents, and officers from and against liabilities, losses, penalties, damages and expenses, including costs and attorney fees, arising out of all claims, liens, damages, obligations, actions, suits, judgments or settlements, or causes of action, of every kind, nature and character arising or alleged to arise out of the negligent or willful acts or omissions of OLVRPSD, its members, employees, agents, officers and subcontractors in the performance of this Agreement. OLVRPSD shall, at its sole cost and expense, appear, defend and pay all attorney fees and, other costs and expenses arising hereunder. In addition, if any judgment shall be rendered against the HPUD in any such action, OLVRPSD shall, at its sole cost and expense, satisfy and discharge such obligation of the HPUD. The HPUD shall have the right, at its own expense, to participate in the defense of any suit, without relieving OLVRPSD of any of its obligations hereunder. The indemnities set forth herein shall survive the expiration or termination of this Agreement.

11. Assumption of Risk. The HPUD acknowledges and agrees that by **its use as it relates to five spaces and park users** of the Parking Lot, the HPUD assumes all risk of loss or damage to property, including, without limitation, property damage, and all risk of personal injury, including but not limited to death, attributable to any cause other than the negligence or misconduct of OLVRPSD. OLVRPSD, its members, employees, agents, and officers shall not be responsible or liable for loss or damages by reason of fire, theft, collision or any other cause to parked vehicles or their contents, provided no unlawful act of OLVRPSD or its employees resulted in or caused the loss or damages.

12. Insurance Requirements. The HPUD shall purchase, maintain and keep in force during the term of this Agreement, and at the HPUD's cost and expense general liability insurance, and will name OLVRPSD as an additional insured on the policy. **HPUD** will provide Landlord with a copy of the certificate of insurance within five (5) days of execution of the lease.

13. Assignment and Successor and Assigns. The HPUD's interests under this Agreement may not be assigned or transferred to any other individual or entity without OLVRPSD prior written consent.

14. Notices. All notices required in this Agreement shall be in writing and shall be deemed properly served if delivered in person or if sent by registered or certified mail, with postage prepaid and return receipt requested, to the following addresses (or to such other address as either party may subsequently designate):

If to OLVRPSD:

Our Lady of the Valley
795 South La Brucherie Road
El Centro, CA 92243

If to HPUD:
Heber Public Utility District:
1078 Dogwood Rd. Ste. 103
Heber, CA 92249

All notices required hereunder shall be deemed received on the date of delivery if sent by registered or certified mail, or attempted delivery if delivered in person, or if mail, on the date which is two (2) days after the date such notice is deposited in the U.S. mail.

15. Severability. In the event that any provision(s) of this Agreement is (are) determined to be legally invalid, the parties hereto agree that that particular provision shall be null and void, but that the remainder of this Agreement shall remain in full force and effect.

16. No Third-Party Beneficiary. This Agreement is not intended and shall not be construed so as to grant, provide or confer any benefits, rights, privileges, claims, causes of action or remedies to any person or entity as a third-party beneficiary under any statutes, laws, codes, ordinances or otherwise.

17. No Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof.

18. Entire Agreement and Amendment. The Agreement constitutes the entire Agreement of the parties with respect to the matters contained herein. No modification or amendment to the Agreement shall be effective unless such modification or amendment is in writing and signed by both parties hereto. Any prior agreements or representations, either written or oral, relating to the subject matter of the Agreement, are of no force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

Our Lady of the Valley Catholic Parish in El
Centro, California, Real Property Support
Corporation
795 South La Brucherie Road
El Centro, CA 92243

Heber Public Utility District
1078 Dogwood Rd., Ste 103
Heber, CA 92249
760-482-2440 Office

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT “A”

PARKING SPACES FOR HEBER CHILDREN’S PARK



PARK HOURS OF OPERATION ARE AS FOLLOWS:

The Children’s Park and the designated parking spaces within the OLVRPD Parking Lot are available for use from dawn to dusk, Monday through Sunday.

No overnight parking is permitted. Any vehicle left in the Parking Lot overnight may be towed at the request of OLVRPD.