



PACIFIC TRAILS MIDDLE SCHOOL JOINT USE AGREEMENT

By and Between

THE CITY OF SAN DIEGO

and

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT

Effective Date

day of **20**

Document No. 00-21310
Filed APR 20 2021
Office of the City Clerk
San Diego, California

JANIGIRO ORIGINAL
COMMUNITY RECREATION JOINT USE AGREEMENT

This Community Recreation Joint Use Agreement (“Agreement”) is made effective as of [Month, day] 2019 (“Effective Date”) by and between the City of San Diego (“City”), a California municipal corporation, and the San Dieguito Union High School District (“District”), a public-school district organized and existing pursuant to California law. The City and the District may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

A. The District owns Canyon Crest Academy located at 5951 Village Center Loop Road and Pacific Trails Middle School located at 5975 Village Center Loop Road within the City’s boundaries (“Schools”). The District presently provides educational, recreational and other programs at the Schools for students in grade 7 through grade 12 levels. Although the specific grade levels served at the Schools may change from time to time depending on demographics and other factors, the District presently anticipates that it will need to maintain operations at the Schools during the term of this Agreement.

B. The City owns the Pacific Highlands Ranch Community Park and Recreation Center, located at 5977 Village Center Loop Road (“Park”), which is adjacent to and contiguous with the property comprising the Schools. The Parties acknowledge and agree that the sites for the Schools and the Park were acquired, and the Schools and the Park were designed and constructed, to function on a joint-use basis, in order to minimize the overall cost to the public of providing those facilities for the public. Thus, the Parties further acknowledge and agree that their mutual intent is that such joint use continue for as long as the District operates the Schools for public educational purposes.

C. The joint use area (“Joint Use Area”), depicted in Exhibit “A” attached hereto, is comprised of the following: (i) parking lots and roadway designated as “Parking Area 1” and “Parking Area 2,” (ii) the athletic/play field and running track designated as “Field Area 1”, and (iii) the area fronting the Park designated as “Frontage Area 1”. The District is fee owner of the Joint Use Area.

D. Because the District will need to have use of the Joint Use Area in order continue to provide educational, recreational and other services at the School, the Parties desire to cooperate with respect to the use, operation and maintenance of the Joint Use Area. Thus, the purpose of this Agreement is to establish the terms and conditions for the use, operation and maintenance of the Joint Use Area by the Parties on and after the Effective Date.

E. Section 10900 *et seq.* of the California Education Code authorizes and empowers cities and public-school districts to cooperate with respect to, and to enter into agreements for purposes of, organizing, promoting and conducting recreational and educational programs. The Parties acknowledge and agree that this Agreement is authorized pursuant to Education Code Section 10900 *et seq.* Each Party further acknowledges that, consistent with Education Code Section 10910, the uses of the School for community recreation purposes, in accordance with this Agreement, will not interfere with use of the buildings, grounds, and equipment for any other purpose of the public-school system.

F. Each Party acknowledges that the benefits to it and the public arising from this Agreement constitute good, valuable and adequate consideration in exchange for the obligations assumed by such Party pursuant to this Agreement.

NOW, THEREFORE, and in consideration of their respective rights and obligations as set forth herein, the Parties agree as follows:

AGREEMENT

PART 1: AUTHORIZED USES

Section 1.1 Scope of Use Generally. Subject to the other provisions herein, the Parties may use the Joint Use Area solely for purposes of constructing, operating, maintaining, and replacing facilities for public educational, recreational and/or similar purposes, and not for any other purpose except as may be required by law or agreed in writing by the Parties.

Section 1.2 District Use. Subject to the other provisions herein, the District may use the Joint Use Area to conduct any educational, recreational or other events or activities as the District is authorized to organize, sponsor or otherwise provide.

Section 1.3 District Use Periods. The District shall have exclusive use of Field Area 1 and Parking Area 2 at the Joint Use Area on each day, Monday through Friday, during the periods that school is in session at Schools, including, without limitation, during periods the District is conducting summer school or similar programs ("District Use Periods"). The District Use Periods shall be limited on each such day to the period that commences 45 minutes prior to the start of the school day and ends 45 minutes after the end of the school day. For purposes of this Agreement, the "start of the school day" is the regular or normal time designated by the District for commencement of the first classes each day at the School, and the "end of the school day" is the regular or normal time designated by the District for dismissal of the last classes each day at the School.

Section 1.4 City Use. Subject to the other provisions herein, the City: (i) may use the Joint Use Area to conduct any community recreation events and/or activities as the City may be authorized to organize, sponsor or otherwise provide; (ii) may permit use of the Joint Use Area, for community recreation and other legally-authorized purposes, by organizations, clubs and similar groups that have been approved by the City; (iii) may issue City permits or licenses to third parties for the use of the Joint Use Area, for community recreation and other legally-authorized purposes, by individuals or groups of individuals without need for specific notice or approval from the District; and (iv) may charge members of the public a participant fee for the use of the Joint Use Area during City Use Periods, as defined in Section 1.5, below.

Section 1.5 City Use Periods. The City shall have use of Parking Area 1 and Frontage Area 1 of the Joint Use Area at all times. The City recognizes that visitors to and staff of Canyon Crest Academy shall have use of Parking Area 1 during the District Use Periods and that Park patrons may have use of Parking Area 1 on a first come first serve basis during the District Use Period. The City shall have use of Parking Area 2 and Field Area 1 of the Joint Use Area at all times, other than during the District Use Periods ("City Use Periods"). Subject to the City's rules and regulations, as those may be promulgated or amended from time to time in the City's discretion, the City shall permit use of the Joint Use Area by the general public during the City Use Periods.

Section 1.6 District Use During City Use Periods. Because the work hours for District and Schools administrators, teachers and maintenance/operations staff typically do not end concurrently with the end of the school day, it shall not be a violation of this Agreement for such personnel to have their personal or work vehicles parked in Parking Area 1 and Parking Area 2 or for such personnel to be present within any of the Joint Use Areas, for purposes associated with their respective work functions, at times other than during the District Use Periods. In addition, nothing in this Agreement shall be

deemed or construed to prohibit District or Schools personnel, as members of the general public, from using the Joint Use Area to the extent permitted pursuant to Sections 1.4 and 1.5 herein.

Section 1.7 District Special Events. The District may schedule use of the Joint Use Area for special events (each a “District Special Event”), which, for purposes of this Agreement, shall mean any event or activity organized, sponsored or otherwise provided by the District and that occurs at any time other than during any District Use Periods, including, without limitation, evening and/or weekend events. District Special Events may include, but are not limited to, back-to-school night events, parent-teacher conferences, District meetings, community meetings, health fairs, Schools competitions, Schools fundraising events, *et cetera*. The Parties shall include all District Special Events on the Joint Use Schedule (defined in Section 2.2 herein). Because of the associated public benefits, the City shall not charge a participant fee in connection with any District Special Event that has public educational or similar purposes as its primary purpose. However, to the extent any District Special Event reasonably does not have a public educational or similar purpose as its primary purpose, the District shall: (i) obtain from the City any required permit for such use; and (ii) pay to the City such applicable use fee as the City has adopted or approved and that is not in excess of what would be payable by any other public or private user of the Joint Use Area. The City shall refrain from scheduling or conducting any significant events in or at any of the Joint Use Area that will conflict with District Special Events.

PART 2: JOINT USE MEETINGS AND JOINT USE SCHEDULE

Section 2.1 Joint Use Meetings. The Parties shall reasonably cooperate with respect to scheduling and conducting an annual meeting for purposes related to this Agreement (each a “Joint Use Meeting”). The Parties shall schedule each annual Joint Use Meeting so that it occurs prior to the then-upcoming school year, on some date during the month of June or as agreed upon by the Parties. Upon request of either Party on an as-needed basis, the Parties also shall reasonably cooperate with respect to scheduling and conducting Joint Use Meetings that are in addition to the annual Joint Use Meetings to be held in June of each year. Each Party shall from time-to-time designate one of its staff with appropriate administrative authority who shall be that Party’s primary contact and representative for purposes of scheduling and conducting the Joint Use Meetings.

Section 2.2 Purposes of Joint Use Meetings. During each Joint Use Meeting, and acting reasonably and in good faith, the Parties shall:

- (i) Establish (or, as applicable, modify) a written schedule of the uses that the Parties anticipate will occur within the Joint Use Area at any time during the upcoming one-year period (“Joint Use Schedule”);
- (ii) Conduct a walk-through review of the Joint Use Area for purposes of reviewing the adequacy of, and the possible need to modify (subject to existing contractual constraints), the procedures for regular and routine maintenance and repair of the Joint Use Area;
- (iii) Establish (or, as applicable, modify) a written schedule of the regular and routine maintenance and repair activities that the Parties anticipate will occur within the Joint Use Area at any time prior to the annual Joint Use Meeting to occur in the next subsequent month of June (“Maintenance Schedule”);
- (iv) Discuss and attempt to amicably agree upon possible amendments to this Agreement, including, without limitation, changes to the permitted uses of the Joint Use Area, responsibility for

performance of maintenance and repairs or the costs thereof, requirements applicable to each Party's insurance coverage, *et cetera*;

- (v) Discuss and attempt to amicably resolve any other concerns or issues that may have arisen in regard to the use, operation, maintenance and/or repair of the Joint Use Area; and
- (vi) Conduct an Annual Budget Development which include review of the immediately previous budget and establish an annual budget for the following budget year. The annual budget will be mutually agreed upon by both parties.

Section 2.3 District Information Required for Joint Use Meetings. Not less than five (5) business days prior to the annual Joint Use Meetings to be held in June of each year, the District shall provide to the City: (i) the School calendar for the upcoming school year, including, without limitation, any summer school or similar programs; (ii) the "bell schedule" indicating the start of the school day and the end of the school day (regular sessions and summer school or similar programs) for the upcoming school year; (iii) a list of the dates and times of any anticipated District Special Events that the District intends to include on the Joint Use Schedule; and (iv) the District's proposed maintenance schedule for any and all portions of the Joint Use Area for which the District is responsible. Not less than five (5) business days prior to each Joint Use Meeting that is not an annual Joint Use Meeting, the District shall provide to the City such information as reasonably relates to and will facilitate discussion of the intended subject matter of that Joint Use Meeting.

Section 2.4 City Information Required for Joint Use Meetings. Not less than five (5) business days prior to the annual Joint Use Meetings to be held in June of each year, the City shall provide to the District: (i) a calendar indicating all anticipated City organized, sponsored, authorized, or otherwise permitted events and activities to occur within the Joint Use Area during the upcoming school year; and (ii) the City's proposed maintenance schedule for any and all portions of the Joint Use Area for which the City is responsible. Not less than five (5) business days prior to each Joint Use Meeting that is not an annual Joint Use Meeting, the City shall provide to the District such information as reasonably relates to and will facilitate discussion of the intended subject matter of that Joint Use Meeting.

Section 2.5 Establishing the Joint Use Schedule. During the annual Joint Use Meetings to be held in June of each year, the Parties shall: (i) compile all of the information that is anticipated on the Joint Use Schedule for the upcoming one-year period; and (ii) prepare a Joint Use Schedule for the upcoming one-year period. Each Joint Use Schedule shall specify the calendar and bell schedule for the School, any anticipated District Special Events, and any other anticipated events and activities as agreed by the Parties. If the time available during any such annual Joint Use Meeting is not sufficient for such purposes, the Parties shall continue to meet and shall complete the Joint Use Schedule within two weeks of the date the annual Joint Use Meeting occurred. Upon completion of the Joint Use Schedule for the upcoming one-year period: (i) the City shall make the Joint Use Schedule available to the public at the Recreation Center; and (ii) the District shall make the Joint Use Schedule available to the public in the administrative offices of the Schools.

Section 2.6 Mid-Year Modifications to Joint Use Schedule. At any time after the Parties have prepared a Joint Use Schedule, if a Party determines that there is any significant change that should be incorporated into the Joint Use Schedule, the Parties may either: (i) schedule and conduct a mid-year Joint Use Meeting for purposes of modifying the Joint Use Schedule; or (ii) if the Parties agree, they may modify the Joint Use Schedule without having a mid-year Joint Use Meeting. The District must give written notice to the City not less than sixty (60) days in advance of any mid-year change in the Schools calendar or bell schedule, so that, if necessary, the City may reschedule its maintenance, repair, and

recreational activities as shown on the Joint Use Schedule. Upon completion, each modified Joint Use Schedule shall be made available to the public as provided in Section 2.5 herein.

PART 3: GENERAL PROVISIONS APPLICABLE TO USE.

Section 3.1 Term. The term of this Agreement (“Initial Term”) shall commence as of the Effective Date, as defined below, and, unless this Agreement is earlier terminated in accordance with the provisions herein, the Term shall be for a period of ten (10) years from the Effective Date, with five (5) options to renew for an additional ten (10) years each option, for a total possible term of sixty (60) years (hereinafter the Initial Term together with each option elected by the City to renew this Agreement shall be referred to as the “Total Term”), at the City’s sole discretion and without further action by the City’s City Council or the District’s Board of Trustees to exercise such renewal. From the date of execution by all the Parties of this Agreement until the Effective Date, the District shall operate and maintain the Joint Use Area (except the Frontage Area 1 which the City will maintain) at its own cost and expense. Because the District’s operation of the Schools relies upon its having use of the Joint Use Area consistent with this Agreement, at least six (6) months prior to the date the Total Term will expire, if the District will continue to operate the School for public purposes after expiration of the Term, the Parties, acting reasonably and in good faith, shall extend the Term or renew this Agreement, or enter into a new agreement with terms and conditions consistent with the terms and conditions of this Agreement or otherwise reasonably satisfactory to both Parties.

Section 3.2 No Charge for Authorized Uses. The Parties’ respective rights and obligations pursuant to this Agreement, and the benefits to the general public accruing therefrom, shall be deemed and construed to constitute adequate consideration for a Party’s use of the other Party’s property pursuant to this Agreement. Therefore, and except as provided in Section 1.7 herein, no fee or other charge shall be required in connection with the uses of the Joint Use Area authorized pursuant to this Agreement.

Section 3.3 Admission and Participation Fees. Subject to Education Code Section 10902, nothing in this Agreement shall be deemed or construed to preclude a Party from charging an otherwise authorized fee for admission to, or participation in, any of the events and activities that have been organized, sponsored or otherwise provided by that Party and that occur on any of the Joint Use Area. Any such fees collected by a Party shall remain the property of such Party.

Section 3.4 Utilities Costs. The District shall pay all costs for water and sewer serving Parking Lot 1, Parking Lot 2, and Field Area 1 of the Joint Use Area. The City will pay all costs for water serving Frontage Area 1. The City shall pay for all costs for electricity associated with Field Area 1 athletic and security lighting of the Joint Use Area. The electricity for Field Area 1 shall be metered separately with direct billing to City.

Section 3.5 Emergency Contact Information. Within five (5) calendar days following the Effective Date, the City shall provide, to the District, the name and telephone number of a City representative with appropriate administrative authority whom the District may call in the event an emergency in connection with this Agreement and/or the Joint Use Area. Likewise, within five (5) calendar days following the Effective Date, the District shall provide, to the City, the name and telephone number of a District representative with appropriate administrative authority whom the City may call in the event an emergency in connection with this Agreement and/or the Joint Use Area. In the event of any change in such contact information, the applicable Party shall promptly provide updated contact information to the other Party. A Party shall not release the contact information for the other Party’s representative to any other entity or person without the other Party’s express written consent.

Section 3.6 Entry and Inspection. Each Party shall have the unqualified right, at any and all times, to enter in and upon any of the Joint Use Area for purposes of inspecting and otherwise reviewing the condition(s) of the Joint Use Area. Except in the event of an emergency, the City shall provide notice to the District as far in advance as reasonably possible prior to (but not in excess of 72 hours prior to) entry in and upon the Joint Use Area for such purposes. Notwithstanding Part 9 herein, such notice may be given by email or telephone to the District representative identified in Section 9.3 herein or to the Principal of the School.

Section 3.7 Civic Center Act Uses. In accordance with the Civic Center Act (Education Code Section 38130 *et seq.*) and Education Code Section 10910, the District may authorize uses, whether during school hours or non-school hours, of any portion of any of the School or the School grounds as may be subject to this Agreement, if the use pursuant to the Civic Center Act does not conflict with any use by a Party pursuant to this Agreement.

PART 4: CLEAN UP, MAINTENANCE, AND REPAIR

Section 4.1 Routine Clean Up. The District shall be responsible for removal and proper disposal of trash, debris and refuse (including, without limitation, cups, bottles, napkins, wrappers, and broken or abandoned toys or equipment) from the Joint Use Area, except Frontage Area 1, as is attributable to uses by the District authorized pursuant to this Agreement. The City shall be responsible for removal and proper disposal of trash, debris and refuse (including, without limitation, cups, bottles, napkins, wrappers, and broken or abandoned toys or equipment) from the Joint Use Area as is attributable to uses by the City or general public authorized pursuant to this Agreement.

Section 4.2 Responsibility for Performance of Maintenance and Repairs. The City shall be responsible for performing all reasonably necessary maintenance and repair of Frontage Area 1. The District shall be responsible for performing all reasonably necessary maintenance and repair of Parking Area 1, Parking Area 2, and Field Area 1. Because, as provided in Section 4.8 herein, both Parties may to some extent be responsible for a portion of all maintenance and repair costs, if there exists doubt by either Party regarding whether any maintenance or repair is reasonably necessary, the Party with responsibility for performing such maintenance or repair must consult with the other Party prior to scheduling the performance of such maintenance or repair. For purposes of this Agreement, maintenance includes work necessary to prevent or arrest any degradation in the condition of improvements located within the Joint Use Area, or necessary to otherwise maintain or restore the condition of any such improvement. For purposes of this Agreement, maintenance and/or repair includes, but is not limited to: (i) trimming of vegetation and mowing of fields; (ii) replanting or replacement of turf, shrubs, and trees; (iii) replacement and adjustment of irrigation system components; (iv) repaving, resurfacing or slurry-coating of asphalt/blacktop play areas; (v) repaving, resurfacing or slurry-coating of, and re-striping of, parking areas; (vi) repair or replacement of field fixtures; (vii) repair or replacement of fencing; (viii) repair or patching of running track surfacing, and (ix) repair or replacement of other improvements within the Joint Use Area, or components thereof. Either Party, to the extent permitted by law and applicable contractual arrangements, may perform its maintenance and/or repair obligations using either its own personnel or contracted forces under the direct control of that Party.

Subsection 4.2.1 Water Quality – Best Management Practices. The City and District are committed to the implementation of controls (best management practices, or BMPs) to manage activities on the Joint Use Facilities in a manner which aids in the protection of the City's precious water resources. It is the District's responsibility to identify and implement an effective

combination of BMPs so as not to cause pollutant discharges to the storm drain system in violation of San Diego Storm Water Management and Discharge Control Ordinance (San Diego Municipal Code sections 43.0301 to 43.0312).

Therefore, the District shall, at a minimum, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a).

It is ultimately the District's responsibility to prevent pollutant discharges to the storm drain system. Therefore, the District will identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

Section 4.3 Maintenance and Repair Standards. To the extent of its obligation to perform maintenance and repair pursuant to Section 4.2 herein, each Party shall perform such maintenance and repair using not less than: (i) the same standards as the Party applies to comparable public property owned or controlled by such Party; and (ii) such standards as generally are appropriate for protecting the general public and other users of public property within the County of San Diego, and minimizing potential liability in connection with the uses of such public property. Without limiting the foregoing: (i) all maintenance and repair shall be performed in a professional manner and be of good quality; and (ii) all maintenance and repair shall be performed promptly after the need for such work has arisen, in order to avoid increased costs and hardships associated with deferred maintenance.

Section 4.4 Notice of Maintenance and Repair Activities. A Party that intends to perform any Major Maintenance and Repairs (as defined in this Section) must provide written notice to the other Party not less than ninety (90) days in advance of when it will perform such Major Maintenance and Repairs. Such written notice must include: (i) a reasonably detailed description of the intended Major Maintenance and Repairs, including, without limitation, any special safety, noise and/or air quality considerations; (ii) a schedule for the intended Major Maintenance and Repairs that includes, among other relevant information, the date(s) such work will occur and the daily start and stop times for such work; and (iii) a reasonable estimate of the cost of the Major Maintenance and Repairs. Each such estimate must be prepared by a qualified and experienced engineer or other appropriate design or construction professional, except that, if the work has been planned, designed and/or specified by, and will be performed by, personnel employed by the Party that intends to perform such work, then the estimate may be prepared by qualified and experienced staff of such Party. For purposes of this Agreement, "Major Maintenance and Repairs" consist of any and all maintenance and/or repairs to be performed within any of the Joint Use Area, or that otherwise adversely affect the ability to use any of the Joint Use Area, excluding "Minor Maintenance and Repairs." For purposes of this Agreement, "Minor Maintenance and Repairs" consist of: (i) maintenance and/or repairs that a Party can fully complete within a few minutes up to a few hours and that will not unreasonably interfere with any of the operations, programs, activities or events of the other Party; and (ii) maintenance and/or repairs that a Party can fully complete within any specific period during which the other Party is not authorized pursuant to this Agreement to use the portion of the Joint Use Area where the maintenance and/or repairs will occur.

Section 4.5 Performance of Major Maintenance and Repairs. Promptly following notice of Major Maintenance and Repairs as provided in Section 4.4, the Parties, acting reasonably and in good faith, shall cooperate in developing a mutually-acceptable schedule for performance of the Major Maintenance and Repairs. If the Parties are unable to agree on a schedule for performance of any Major Maintenance and Repairs, the Party that intends to perform such Major Maintenance and Repairs may commence and perform such work when Schools are not in session. If any Major Maintenance and Repairs will remain unfinished for any period during which work will cease or be suspended, the Party

that intends to perform such Major Maintenance and Repairs may commence and perform such work only when Schools are not in session. If any Major Maintenance and Repairs will cause a temporary inability to use any portion of the Joint Use Area for significant purposes (e.g., inability to park vehicles in the parking lot because of repaving, resurfacing or slurry-coating work), then, in addition to the notice pursuant to Section 4.4 herein, the Party that intends to perform such work must give written notice to the other Party not less than seven (7) calendar days, and not more than fourteen (14) calendar days, in advance of when access to such portion of the Joint Use Area will be closed.

Section 4.6 Emergency Repairs. Consistent with Section 4.2 herein, the City shall be responsible for performing all emergency repairs needed in Frontage Area 1, and the District shall be responsible for performing all emergency repairs needed in Parking Lot Area 1, Parking Lot Area 2, and Field Area 1. Notwithstanding the foregoing provisions of this Part 4, in the event either Party reasonably determines that emergency repairs are required in any portion of the Joint Use Area, that Party shall give notice to the other Party, using the emergency contact information provided pursuant to Section 3.5 herein, and describing the general nature of the emergency situation. Each such notice must be provided as soon as reasonably possible following discovery of the emergency situation. In addition, the Party that discovers the emergency situation must take reasonable action to ensure that safety measures (including, among others, barricades) are implemented in order to protect the health and safety of any persons who might enter into the vicinity of the emergency situation. The Party that is responsible for performing the emergency repairs must promptly thereafter determine and describe to the other Party: (i) the scope of the repairs anticipated to be necessary to correct or otherwise resolve the emergency situation; (ii) any anticipated inability to use any portion(s) of the Joint Use Area as a result of the emergency situation; and (iii) the anticipated timing for commencing and completing the emergency repairs. The Party that is responsible for performing the emergency repairs must commence and complete the emergency repairs as soon as reasonably possible. For purposes of this Agreement, "emergency repairs" are such repairs as reasonably necessary to correct or otherwise resolve a breakage or other failure of an improvement, or any unanticipated situation or incident, that: (i) results in an imminent threat to the health and/or safety of any person; (ii) substantially impairs the ability to use any significant portion of the Joint Use Area; or (iii) might result in significant additional damage, or significant additional costs, unless repairs are made on an urgent basis.

Section 4.7 Additional Improvements and Replacements. City and District agree that it may be necessary from time to time to adjust the boundaries of the Joint Use Area in connection with any expansion, addition, modernization or reconstruction of the Schools, and the District may move, eliminate, reconfigure, replace or reconstruct any improvement(s) located within the Joint Use Area. The Parties agree that any adjustment of the boundaries of the Joint Use Area and necessary modifications to the irrigation system and other improvements installed by or on behalf of the City shall be agreed to in writing by City and District. In each case that a Party intends to add additional improvements to, or replace improvements then-existing within, any of the Joint Use Area ("Project"), that Party shall cause adequate plans and specifications for the Project ("Project Plans") to be prepared by qualified and experienced personnel or consultants. The Parties shall thereafter review the Project Plans and, acting reasonably and in good faith, agree on: (i) any modifications to the Project Plans necessary to make them reasonably acceptable to both Parties; (ii) the portions of the cost of the Project, if any, to be paid by each of the Parties; and (iii) a schedule for completion of the Project.

Section 4.7.1 Field Lighting. To facilitate the City's use of Field Area 1, the District intends to add field lighting improvements to Field Area 1 in in the future. The improvements may include the design and installation of equipment and infrastructure, and four stadium field lights, and will be developed in good faith pursuant to Section 4.7 above. Given the City's required need for field lighting and District ownership of such asset for future program flexibility, the improvement cost shall be shared 50% by

each Party. The current estimated project cost is anticipated to be \$1,000,000. District acknowledges and agrees that City funding will be contingent upon future inclusion in the Pacific Highlands Ranch Public Facilities Financing Plan, in the City's sole discretion.

Section 4.8 Responsibility for Costs. Each Party shall be responsible for its own costs with respect to clean-up for which it is responsible pursuant to Section 4.1 herein. The City shall pay the District fifty percent of the reasonable or actual cost (whichever is less) of any and all maintenance and repairs for Field Area 1, Parking Lot Area 1, Parking Lot Area 2 pursuant to Section 4.2 (regardless of whether Major Maintenance and Repairs or Minor Maintenance and Repairs as depicted in Exhibit "B" attached hereto, but so long as District performs such work), except that: (i) costs of additional or replacement improvements constructed or installed pursuant to Section 4.7 herein shall be paid as agreed by the Parties in accordance with Section 4.7 herein; and (ii) to the extent the need for any maintenance and/or repair is attributable to the negligence or willful misconduct of a Party or its representatives (including, without limitation, deferred maintenance), or is otherwise attributable to any action or inaction of the Party or its representatives contrary to this Agreement, such Party shall to that extent be solely responsible for the costs of such work. A Party that seeks reimbursement of costs of work from the other Party in accordance with this Section must provide to the other Party such documentation (including, but not limited to, contracts, invoices, and time sheets) as reasonably evidence all of the costs of such work. The City will be 100% responsible for all reasonable and actual costs (whichever is less) of any and all maintenance and repairs for Frontage Area 1.

Section 4.9 Dog Signs. Within a reasonable time after the Effective Date, the City shall install signs on or about the Joint Use Area that encourage people with dogs to clean up and properly dispose any feces resulting from defecation by those dogs. Subject to provisions of Section 4.8 herein regarding documentation of costs, the City shall pay 100 percent of the costs incurred to design, create and install such signs.

Section 4.10 Background Checks. The City shall not allow or permit any City maintenance or operations personnel (regardless of whether they are City staff or contracted forces) to enter in or upon any portion of the Joint Use Area during any District Use Period unless such personnel first have checked in at the school office prior to entering school grounds.

Section 4.11 Appropriations. Notwithstanding the provisions of Section 8.6, below, the Parties agree as follows: District and City acknowledge that the Term may extend over multiple fiscal years of City and District, and City and District understand and agree that any financial obligation, in kind obligation and work under this Agreement is contingent on City's City Council and District's Board of Trustees, respectively, appropriating funding for and authorizing such financial amount, in kind and work for those fiscal years. In the event sufficient funds are not duly appropriated and authorized or the budget not approved for any given fiscal year to provide the financial amount, in kind and work, the Party who is unable to provide the funds required under this Agreement will notify the other Party and the notified Party may then terminate this Agreement upon ninety (90) days prior written notice to the notifying Party. Each Party acknowledges and agrees that the other Party is not obligated to provide any financial amount, in kind and work not duly budgeted, appropriated and authorized by its respective governing body.

PART 5: PROPERTY OWNERSHIP

Section 5.1 Real Property. Nothing in this Agreement shall be deemed or construed to constitute, create, cause, or otherwise result in: (i) conveyance of fee title (or any other interest) of the Joint Use Area owned by the District to the City.

Section 5.2 Improvements. Except as otherwise agreed in writing by the Parties, any and all landscaping, irrigation systems, fencing, sports and play equipment, and other improvements existing as of the Effective Date, or constructed or installed after the Effective Date, on any portion of the Joint Use Area shall be owned by the District.

Section 5.3 Encumbrances. The City shall not: (i) encumber, or suffer or permit the encumbrance of, any real property underlying the Joint Use Area owned by the District, or any improvements located thereon; or (ii) record, or authorize or permit the recording of, any lien or encumbrance of any nature (including, without limitation, any mechanics or judgment liens) relating to any real property underlying the Joint Use Area owned by the District, or any improvements located thereon.

PART 6: INSURANCE

Section 6.1 General Insurance Requirements. At all times during the term of this Agreement, the Parties shall have in effect the policies of insurance required pursuant to this Part 6. Such policies shall be issued by an insurer licensed to do business in the State of California and having an A.M. Best Company Rating of not less than an "A-" (A Minus) and Financial Size Category of not less than "IX." Notwithstanding the foregoing or anything to the contrary in this Agreement, either Party may obtain the insurance coverage required pursuant to this Agreement through appropriate self-insurance or a joint-powers insurance cooperative of which the Party is a member.

Section 6.2 Verification of Required Coverage. Within fifteen (15) days after the Effective Date, each Party shall furnish to the other Party a certificate of insurance for each policy of insurance required pursuant to this Part 6 (each a "Certificate of Insurance") stating that the required insurance coverage is in full force and effect. Within sixty (60) days following the Effective Date, each Party shall provide to the other Party copies of all policies of insurance and endorsements required pursuant to this Part 6, which the receiving Party may review for compliance with this Part 6. A Party that determines the other Party's insurance does not satisfy the requirements of this Part 6 shall provide written notice of the deficiency to the other Party, which shall have thirty (30) days to cure the deficiency. No failure by a Party to review, fully review, or adequately review any policy received from the other Party, or to provide any notice of deficiency in regard to any such policy, shall be deemed or construed to constitute acceptance or a waiver of any failure by the other Party to comply with the requirements of this Part 6.

Section 6.3 Continuity of Coverage. Each Party, at all times during the term of this Agreement (including, without limitation, any extensions or renewals of such term), must maintain in full force and effect, without any lapse in coverage, all policies of insurance that the Party is required to maintain pursuant to this Part 6, whether through the original or any renewal or replacement policies. Each policy of insurance maintained by a Party pursuant to this Part 6 and each associated Certificate of Insurance shall provide that the insurer must provide written notice to the other Party at least thirty (30) days prior to any reduction in coverage limits below the limits required by this Agreement, or any cancellation, termination or expiration without renewal, except in the event of cancellation for non-payment, in which case the insurer shall provide such written notice not less than ten (10) days prior to such cancellation. Language in a policy or Certificate of Insurance to the effect that the insurer will "endeavor" to provide such notice shall not be acceptable.

Section 6.4 Primary and Secondary Coverage. Insurance coverage maintained by a Party shall be deemed and construed as primary with respect to matters for which such Party is primarily liable or responsible pursuant to this Agreement, and the insurance coverage maintained by the other Party shall be deemed secondary with respect to such matters. This Section 6.4 shall be interpreted to mean that, with respect to portions of real property owned by a Party, that Party's insurance shall be primary, and the other Party's insurance shall be secondary, if the other Party is not otherwise primarily liable for the damage, injury or other matter at issue. Neither Party shall do, bring, or keep (or permit anything to be done, brought or kept) in, on or about the Joint Use Area that will increase or otherwise adversely affect the existing rate of fire or other insurance maintained by the other Party. For purposes of the foregoing, typical educational and recreational activities shall not be prohibited conduct.

Section 6.5 Waiver and Release of Claims. Upon receipt by a Party of insurance proceeds attributable to any claim or liability for which the other Party is responsible, the receiving Party shall be deemed to have hereby waived and released the other Party from such claim or liability, but only to the extent that such claim or liability is satisfied or paid by the net amount remaining after deducting the receiving Party's reasonable costs of obtaining such proceeds, including, without limitation, any deductibles or reserves expended by the receiving Party.

Section 6.6 Liability Insurance. Each Party shall obtain and maintain in accordance with this Part 6 a policy or policies of commercial general liability insurance ("Liability Policy"), written on an occurrence basis, that provides coverage for damage to property and injury to any person (including death) that arises from or occurs in connection with that Party's activities pursuant to this Agreement, including, without limitation, the presence on or use of any property owned by the other Party. Each Party's Liability Policy shall be endorsed to name the other Party as an additional insured and shall include a cross-liability endorsement and waiver of the insurer's rights of subrogation against the other Party. Each Party's Liability Policy shall include coverage for the contractual liability assumed by such Party pursuant to Part 7 of this Agreement. Unless modified pursuant to Section 6.10 herein, in no event shall a Liability Policy provide coverage in an amount less than two million dollars (\$2,000,000) per occurrence and five million dollars (\$5,000,000) aggregate.

Section 6.7 Motor Vehicle Insurance. Each Party shall obtain and maintain in accordance with this Part 6 a policy or policies of liability insurance, written on an occurrence basis, that provides coverage for all motor vehicles owned, leased, rented, or used by a Party in undertaking any activities pursuant to this Agreement ("Vehicle Policy"). Each Party's Vehicle Policy shall be endorsed to name the other Party as an additional insured and shall include a cross-liability endorsement and a standard waiver of the insurer's rights of subrogation against the other Party. Unless modified pursuant to Section 6.10 herein, in no event shall a Party's Vehicle Policy provide coverage for damage to property and injury to any person (including death) in an amount less than one million dollars (\$1,000,000) and two million dollars (\$2,000,000) aggregate.

Section 6.8 Workers' Compensation Insurance. Each Party shall obtain and maintain in accordance with this Part 6 a policy or policies of workers' compensation insurance in compliance with Section 3700 *et seq.* of the Labor Code and all other applicable requirements, including, without limitation, any laws as may be enacted or amended from time to time. Each Party's workers' compensation insurance policy shall include a standard waiver of the insurer's rights of subrogation against the other Party.

Section 6.9 Minimum Requirements. The requirements for insurance coverage set forth in this Part 6 are to be deemed and construed as the minimum requirements for the insurance to be maintained by a Party in connection with this Agreement. Notwithstanding anything to the contrary,

each Party shall maintain such additional insurance coverage as such Party determines in its reasonable business judgment is required to adequately protect the interests of the Parties in connection with this Agreement.

Section 6.10 Annual Review and Adjustment of Coverage. During the annual Joint Use Meetings to be held in June of each year, and at any other time the Parties deem prudent, the Parties shall confer and agree regarding the adequacy of the insurance coverage required by this Part 6, including, as necessary, obtaining any outside or independent evaluation from an insurance or other professional. The Parties shall determine whether different insurance-coverage limits or other changes to the type and/or scope of the insurance policies required pursuant to this Part 6 are required to adequately protect the interests of the Parties in connection with this Agreement. If the Parties determine that different coverage limits or other changes to the insurance requirements of this Part 6 are required, those requirements shall be set forth in a written amendment to this Agreement, and each Party shall promptly implement any changes affecting such Party. If the Parties are unable to agree on the adequacy of then-existing requirements for insurance coverage, or on any change thereto, the Parties shall resolve such dispute in accordance with the dispute resolution provisions of this Agreement.

Section 6.11 Failure to Obtain or Maintain Required Insurance. Any failure by a Party to have insurance coverage in effect as required by this Part 6 shall be deemed a material breach by such Party of its obligations pursuant to this Agreement. In the event a Party so breaches this Agreement, the other Party, without jeopardizing any other remedy or cause of action it may have pursuant to law or this Agreement, may, but is not required to, obtain and maintain such insurance coverage on behalf of the other Party and shall be entitled to reimbursement from the other Party of all associated direct and consequential costs, expenses and damages, including, without limitation, the cost of obtaining the required insurance coverage. In the event of a dispute between the Parties regarding the requirements of this Part 6 (including, without limitation, any dispute regarding any claimed lack of or deficiency in required coverage or the necessity for any change in the minimum requirements of this Part 6), the Parties shall resolve such dispute in accordance with the dispute resolution provisions of this Agreement.

PART 7: LIABILITY AND INDEMNIFICATION

Section 7.1 Liability of District. The District shall be solely responsible and liable for the welfare and control of all District employees, agents, participants and invitees at all times they are present on any of the Joint Use Area as a result of, or in connection with, this Agreement or otherwise for purposes related to the District's activities pursuant to this Agreement.

Section 7.2 Indemnification by District. The District shall indemnify, defend and hold harmless the City, its City Council and each member thereof, and its other officers, employees and agents, and each of them, from and against any and all claims, demands, actions, damages, losses, costs, expenses (including, without limitation, attorney fees and costs), and other liabilities (each a "Claim" and, if more than one, the "Claims") that arise from the District's acts or omissions pursuant to this Agreement, including, without limitation: (i) the use of any of the Joint Use Area by any third party as a result of the District's rights pursuant to this Agreement; and (ii) the failure by the District to perform its maintenance and/or repair obligations in accordance with this Agreement. However, the District shall not be obligated pursuant to this Section to the extent any Claim is attributable to: (i) the negligence or willful misconduct of the City; or (ii) act or omission for which the City is liable, without fault of the District.

Section 7.3 Liability of City. The City shall be solely responsible and liable for the welfare and control of all City employees, agents, participants and invitees at all times they are present on any of the Joint Use Area as a result of, or in connection with, this Agreement or otherwise for purposes related to the City's activities pursuant to this Agreement.

Section 7.4 Indemnification by City. The City shall indemnify, defend and hold harmless the District, its Board of Trustees and each member thereof, and its other officers, employees and agents, and each of them, from and against any and all Claims that arise from the City's acts or omissions pursuant to this Agreement, including, without limitation: (i) the use of any of the Joint Use Area by any third party as a result of the City's rights pursuant to this Agreement; and (ii) the failure by the City to perform its maintenance and/or repair obligations in accordance with this Agreement. However, the City shall not be obligated pursuant to this Section to the extent any Claim is attributable to: (i) the negligence or willful misconduct of the District; or (ii) act or omission for which the District is liable, without fault of the City.

Section 7.5 Comparative Liability. Notwithstanding anything in this Part 7 to the contrary, in the event a court of competent jurisdiction determines that both Parties are, to some extent, liable for any Claim, the Parties shall request that the court determine the comparative liability of the Parties with respect to that Claim. Thereafter, the Parties shall be responsible for any damages payable on account of such Claim consistent with such comparative liability determination, and a Party shall be entitled to reimbursement from the other Party for damages that it has paid in excess of its share of damages based on such comparative liability determination.

Section 7.6 Statutory Liability. Notwithstanding anything to the contrary, in the event a final judgment issued by a court of competent jurisdiction determines that this Agreement is an agreement within the scope of Government Code Section 895 and, in connection therewith, imposes liability on a Party in connection with a Claim solely by virtue of Government Code Section 895.2, that Party shall be entitled to reimbursement of any and all of the costs and expenses that it reasonably incurred in connection with such Claim (including, without limitation, attorney fees and costs) from the other Party. In the event Government Code Sections 895 and/or 895.2 are amended or repealed, the requirements of this Section 7.6 shall apply with respect to any similar, successor or superseding law that imposes liability on a Party consistent with provisions of Government Code Section 895.2 in effect as of the Effective Date.

Section 7.7 Insurance Not a Limitation on Liability. A Party's liability or responsibility pursuant to this Agreement shall not be deemed or construed to be limited by the insurance coverage maintained by either Party or both Parties (whether pursuant to this Agreement or otherwise) or any proceeds thereof.

Section 7.8 Survival. With respect to acts or incidents that occur prior to expiration of the Term or other termination of this Agreement, each Party's rights and obligations pursuant to this Part 7 shall survive such expiration or termination.

PART 8: DISPUTE RESOLUTION AND TERMINATION

Section 8.1 Events of Default. Each of the following events with respect to a Party shall be deemed a default by such Party of its obligations pursuant to this Agreement (each an "Event of Default"): (i) the Party fails, within the time required, to pay any undisputed or unexcused amount due to the other Party; or (ii) the Party fails to perform or observe any covenant, condition or agreement to be performed or observed by such Party pursuant to this Agreement, and such failure materially and adversely affects the other Party's rights.

Section 8.2 Notice and Opportunity to Cure. If a Party is alleged to be responsible for an Event of Default ("Defaulting Party"), the other Party ("Alleging Party") may provide written notice thereof to the Defaulting Party, specifying in reasonable detail the nature and extent of the alleged Event of Default ("Notice of Default"). If the Defaulting Party has not cured the Event of Default within thirty days after receipt of the Notice of Default or commences to cure said Event of Default within thirty days and diligently has pursued such cure to completion, the Alleging Party in its discretion may initiate the dispute resolution process described in Section 8.3 of this Agreement. The giving of a Notice of Default and allowing the period for cure of the Event of Default in accordance with this Section shall be a condition precedent to the Alleging Party exercising any available remedy in response to the Event of Default. Nothing shall be construed to prohibit the Defaulting Party from disputing that an Event of Default has occurred. Neither the giving of any Notice of Default, nor the initiation by the Alleging Party of any dispute resolution, legal or equitable action, or other proceeding in connection with an Event of Default, shall by itself operate to terminate this Agreement.

Section 8.3 Informal Attempts at Dispute Resolution. If a dispute between the Parties arises out of or relates to this Agreement ("Dispute"), the Parties shall attempt as provided in this Section to informally resolve the Dispute as quickly and as amicably as possible. For purposes of this Agreement, Disputes include, without limitation, disputes regarding the meaning of any provision of this Agreement, the validity of any determination or calculation required pursuant to this Agreement, or the rights or obligations of the Parties pursuant to this Agreement. If a Dispute does not relate to an Event of Default or is not of such nature that a Party may give a Notice of Default, then the Party alleging the Dispute shall give to the other Party a written notice of the Dispute ("Notice of Dispute"). Within a reasonable time, not in excess of fourteen (14) calendar days, after receipt of either a Notice of Default or a Notice of Dispute, the Parties shall commence attempts to informally resolve the Dispute as required pursuant to this Section. Such attempts shall include good-faith, reasonable and diligent efforts by both Parties to communicate and, if possible, to reconcile or compromise their respective positions. The participation by a Party in such attempts to informally resolve a Dispute shall be a condition precedent to such Party exercising any available remedy in response to the Dispute. If, after diligently making the attempts required pursuant to this Section for at least forty-five (45) calendar days, the Parties cannot resolve a Dispute, either Party may give written notice to the other Party that the attempts have been unavailing and, therefore, have been terminated effective upon receipt of that notice by the other Party.

Section 8.4 Exercise of Available Remedies. If attempts to resolve a Dispute pursuant to Section 8.3 herein are terminated without the Dispute having been resolved to the satisfaction of either Party, the Party may initiate any legal or equitable action or other proceeding in response to the Dispute that is available pursuant to applicable law and this Agreement (including, without limitation, as provided in Section 8.6 herein). In addition, however, if a Party fails to respond to, or participate in good faith in, any requests or requirements for resolution of the Dispute pursuant to Section 8.3 herein, the other Party, in its discretion and without needing to further comply with Section 8.3 herein, may initiate any legal or equitable action or other proceeding in response to the Dispute that is available pursuant to

applicable law and this Agreement (including, without limitation, as provided in Section 8.6 herein). However, in any case in which a Notice of Default has been provided pursuant to Section 8.2 herein, no such legal or equitable action may be initiated until the applicable period for cure of the Event of Default specified in Section 8.2 herein has expired without the Event of Default having been cured.

Section 8.5 Performance During Disputes. At all times while any Dispute is pending, each Party shall continue to fully perform its obligations pursuant to this Agreement, except to the extent an Event of Default by the other Party makes such performance impossible, impractical, or unreasonable.

Section 8.6 No Termination for Cause. Except as provided in this Section, and subject to the conditions precedent and other requirements of this Agreement, a Party may take any and all such action to enforce this Agreement as permitted by applicable law and this Agreement, including, without limitation, seeking available equitable remedies. However, because the District feasibly cannot operate the School and the City feasibly cannot operate the Park without having use of the Joint Use Area consistent with this Agreement, in no event shall either Party be entitled to seek or have the remedy of termination of this Agreement, or the other Party's rights pursuant to this Agreement to use of the Joint Use Area, regardless of the circumstances.

Section 8.7 Termination Due to School Closure. The District may terminate this Agreement, by providing written notice of termination to the City, in the event the District determines for any reason to permanently cease using the Schools for public purposes. A termination pursuant to this Section 8.7 shall be effective on the date that is sixty (60) days following receipt of such notice by the City.

PART 9: SERVICE OF NOTICE

Section 9.1 General Requirements. Any and all demands and other notices required or permitted to be given pursuant to this Agreement (each a "Notice") must be in writing and must be given or served in accordance with this Part 9.

Section 9.2 Methods of Delivery. Each Notice must be given or served via: (i) personal delivery (signature of recipient and recipient's name legibly written on delivery receipt required); (ii) registered or certified United States mail (postage paid by sender, and return receipt requested); or (iii) FedEx, U.P.S. or other reliable, private delivery service (delivery costs paid by sender, and signature of recipient required on electronic or other delivery receipt required).

Section 9.3 Persons to Whom Notices Must be Sent. Notices and billing sent to a Party must be addressed and delivered to that Party as specified below in this Section 9.3. A Party may change its address or the person to whom attention should be directed, by giving Notice in accordance with this Part 9. Notices, as applicable, should be addressed as follows:

District
San Dieguito Union High School District
Attention: John Addleman
Interim Director of Maintenance and
Operations
625 No. Vulcan Avenue
Encinitas, CA 92024

City
City of San Diego
Attention: Bruce Martinez
Community Parks I Deputy Director
2125 Park Boulevard, MS 32
San Diego, CA 92101

Section 9.4 Giving or Service of Notice. A Notice shall be deemed given or served only upon actual receipt by the addressee; provided that, if any Notice is delivered on a weekend (Saturday or Sunday), on any federal or State of California holiday, or on any mandated District furlough day, the Notice shall be deemed to have been given or served as of 9:00 a.m. on the next subsequent day that is not a weekend, holiday, or furlough day.

Section 9.5 Applicability of Part. The requirements of this Part 9 shall not be deemed or construed to apply to: (i) communications between the Parties for purposes of day-to-day administration of this Agreement; or (ii) service of process in accordance with any applicable law or rule of court.

PART 10: MISCELLANEOUS PROVISIONS

Section 10.1 Incorporation of Recitals and Exhibit. Each Recital set forth on Page 1 and Page 2 of this Agreement, and Exhibits A and B attached hereto and referenced herein, are hereby incorporated as fully operative and effective provisions of this Agreement.

Section 10.2 Time is of the Essence. Time is of the essence with respect to this Agreement. Subject to the Force Majeure provisions of this Agreement, all obligations hereunder must be performed or otherwise satisfied within the time periods specified, and any failure of a Party to timely perform or satisfy its obligations pursuant to this Agreement shall be deemed to constitute a default by such Party.

Section 10.3 Force Majeure.

Subsection 10.3.1 Suspension of Obligations. To the extent a Party is unable to perform any of its obligations pursuant to this Agreement due to any event not caused by it and otherwise beyond its control (each a "Force Majeure Event"), then, without adversely affecting the validity of this Agreement, the requirement for performance by such Party of those obligations shall be suspended during the period, and only for the period, that the Force Majeure Event reasonably precludes the performance of such obligations. For purposes of this Section, Force Majeure Events shall include, but are not limited to: (i) acts of nature, such as earthquake or flood; (ii) act or restraints by governmental or judicial authority other than the Parties, whether valid or invalid; (iii) acts or failures to act by any such authority that causes the lapse of necessary governmental authorizations, permits, license, certificates or approvals; (iv) war, acts of terrorism or other hostilities; (v) insurrections or riots; and (vi) labor disputes or *bona fide* labor or material shortages.

Subsection 10.3.2 No Default. Neither Party shall be in default of its obligations pursuant to this Agreement to the extent its inability to perform such obligations is a direct result of a Force Majeure Event; provided, however, that the non-performing Party must make reasonable efforts to minimize any and all delays and costs attributable to the Force Majeure Event and the associated failure to perform. The non-performing Party must give written notice to the other Party: (i) within five (5) days following the start of an occurrence giving rise to an applicable Force Majeure Event; and (ii) promptly upon the non-performing Party reasonably being able to re-commence performance of the obligation that was precluded by the Force Majeure Event.

Section 10.4 Entire Agreement. Each Party acknowledges that: (i) neither the other Party, nor its attorneys or agents, has made any promise, representation, or warranty whatsoever that is not set forth herein, whether express or implied, for purposes of inducing the execution of this Agreement; and (ii) this Agreement has not been executed in reliance upon any promise, representation, or warranty not set forth herein. This Agreement sets forth the entire understanding and agreement of the Parties with respect to the matters addressed in this Agreement, and this Agreement supersedes all

prior negotiations, understandings and agreements with respect to such subject matter, whether written or oral.

Subsection 10.4.1 City and District Approval. Whenever an act or approval is required by City pursuant to the terms of this Agreement, that act or approval shall be performed by the Mayor or his/her duly designated representative. Whenever an act or approval is required by District pursuant to the terms of this Agreement, that act or approval shall be performed by the Superintendent or his/her duly designated representative.

Section 10.5 Amendments Must Be In Writing. This Agreement may be amended from time to time, but, in each such case, only by means of a written instrument that has been duly-approved and signed by both Parties.

Section 10.6 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Except as a court of competent jurisdiction determines necessary to ensure fundamental fairness, any and all actions, and other proceedings arising from this Agreement must be initiated and conducted in the County of San Diego, California.

Section 10.7 Severability. If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the remaining provisions shall continue in full force and effect, and this Agreement shall be construed, to the extent legally possible, to implement the intent underlying the invalid, illegal, or unenforceable provision.

Section 10.8 Assignment.

Subsection 10.8.1 Generally. Both Parties acknowledge that they have entered into this Agreement in recognition of their particular roles in serving public needs. Therefore, neither Party may assign this Agreement (in whole or in part), or assign any of its rights pursuant to this Agreement, or delegate any of its obligations pursuant to this Agreement, except in the limited manner provided in this Section.

Subsection 10.8.2 City. The City may not assign any portion of this Agreement other than to a successor public agency, and only to the extent the City's responsibility for providing public recreational programs and activities is assumed by such successor public agency. In the event of any such assumption of the City's responsibility, the successor public agency shall automatically assume all obligations and be entitled to all rights of the City pursuant to this Agreement. Each of the provisions, terms, covenants and conditions herein that are to be performed by the City shall be binding upon each such successor public agency. Under no circumstances shall the City lease, sublease, license, sub-license, mortgage, or otherwise encumber any portion of the Joint Use Area owned by the District. .

Subsection 10.8.3 District. The District may not assign any portion of this Agreement other than to a successor public educational entity in the event of a school district reorganization pursuant to Education Code Sections 35500 *et seq.* and/or 35700 *et seq.*, as those may from time to time be amended or superseded. In the event of any such reorganization, the successor public educational entity shall automatically assume all obligations and be entitled to all rights of the District pursuant to this Agreement. Each of the provisions, terms, covenants and conditions herein that are to be performed by the District shall be binding upon each such successor public educational entity. Under no circumstances shall the District lease, sublease, license, sub-license, mortgage, or otherwise encumber any portion of the Joint Use Area owned by the District if the result would unreasonably interfere with the City's rights pursuant to this Agreement.

Section 10.9 No Third-Party Beneficiaries. Notwithstanding that this Agreement may result in benefits to the public generally, this Agreement shall not be deemed or construed to benefit or provide any right to any third party. The Parties have entered into this Agreement solely for their own benefit, and no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Agreement.

Section 10.10 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in writing and signed by a duly authorized representative of the Party against whom enforcement of the waiver is sought. Absent an applicable written waiver, the forbearance or indulgence by a Party in any regard whatsoever with respect to any particular obligation or right shall not constitute a waiver of such obligation or right. Except as expressly specified in a written waiver, no waiver shall be deemed or construed to be continuing waiver of the same or other obligation or right.

Section 10.11 Drafting of Agreement. Each Party acknowledges that it had the opportunity to consult with independent legal counsel of its own choice throughout all negotiations preceding the execution of this Agreement, and that it has executed this Agreement after receiving, or having had an unqualified opportunity to receive, the advice of its own legal counsel. Therefore, in interpreting this Agreement, no ambiguity shall be resolved against either Party based on the premise that it or its attorneys were responsible for drafting this Agreement or any provision herein.

Section 10.12 Interpretation Guides. The captions and headings set forth herein are for convenience only and in no way establish, define or limit the scope or intent of any Parts, Sections, or other provisions of this Agreement. Unless specified otherwise, any reference herein to a Part, Section, or other provision shall be a reference to a provision of this Agreement. As used in this Agreement, "must" and "shall" shall be interpreted as mandatory, and "may" shall be interpreted as permissive. Where necessary or useful in the context of this Agreement, use of the singular shall be deemed to include the plural, and use of the plural shall be deemed to include the singular. Unless expressly specified otherwise, references in this agreement to periods of days shall mean consecutive calendar days, and references to months or other periods of time shall mean consecutive months or other periods of time.

PART 11: EXECUTION OF AGREEMENT

Section 11.1 Adequate Consideration. Subject to performance by each Party of its obligations pursuant to this Agreement, the respective rights and obligations of the Parties set forth in this Agreement, and the benefits accruing to the public generally, shall be deemed and construed to constitute full and adequate consideration for this Agreement.

Section 11.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies of this Agreement containing the signatures of both Parties.

Section 11.3 Due Authority and Binding Effect. Each Party hereby represents and warrants that it has all power and authority necessary to execute, deliver, and perform this Agreement. Each person that signs this Agreement on behalf of a Party thereby represents and warrants that he or she has been duly authorized by appropriate action of such Party to execute, and thereby bind such Party to, this Agreement.

Section 11.4 Signatures. The Parties have executed this Agreement as evidenced by the following signatures of their duly-authorized representatives:

San Dieguito Union High School District


By: 
Tina M. Douglas, Associate Superintendent,
Business Services

City of San Diego

By: 
Penny Maus, Director, Real Estate Assets
Department

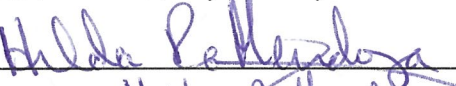
Approved as to form:

By: Laura Romano, District Counsel

By: 
Laura Romano, District Counsel

Approved as to form:

By: Mara W. Elliott, City Attorney

By: 
Print Name: Hilda R. Mendoza
Title: Deputy City Attorney

00- 21310

EXHIBIT "A" DEPICTION OF JOINT USE AREA

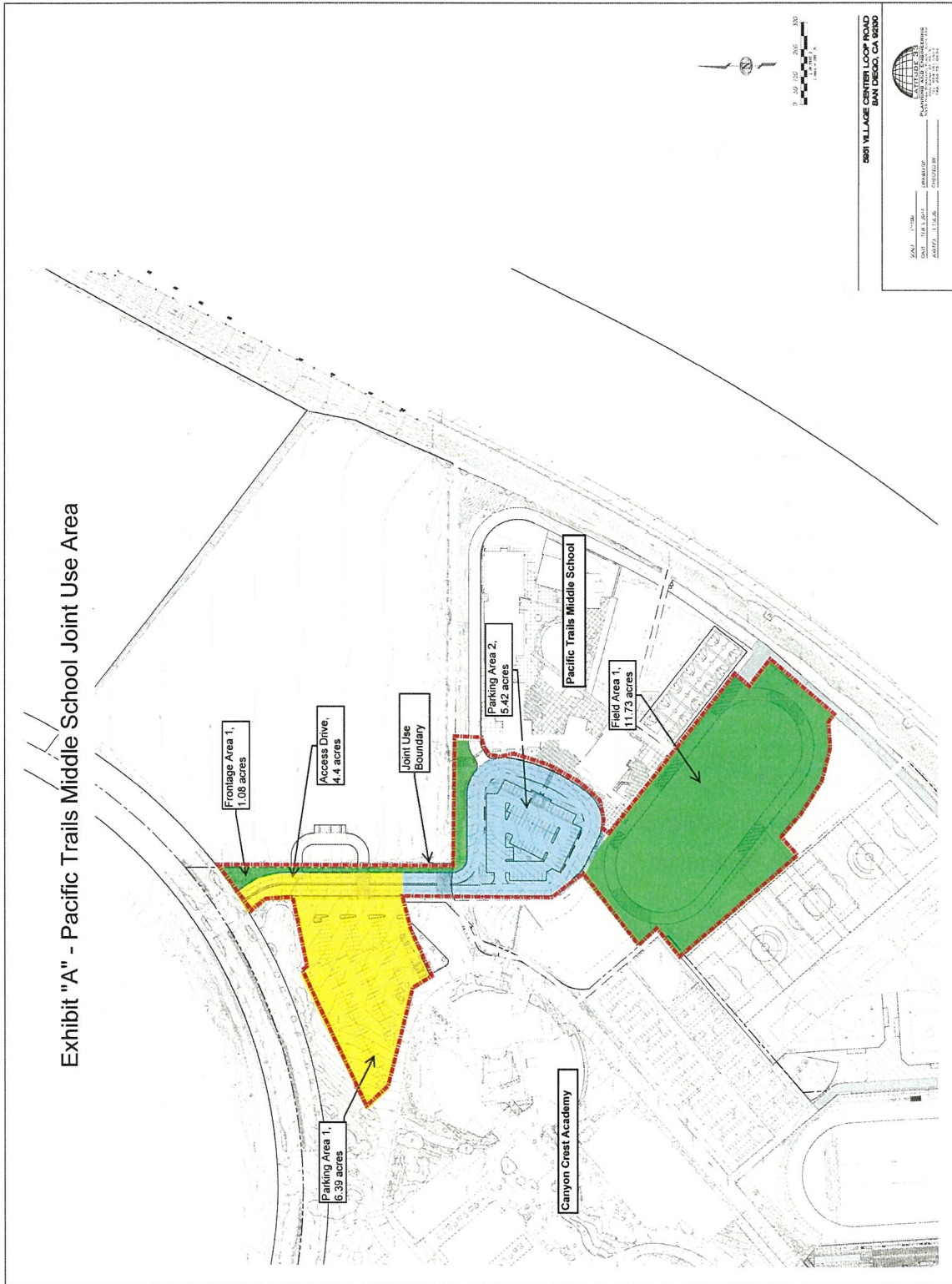


EXHIBIT "B" Estimated Costs and City Share

Illustration of Estimated Costs and City Share
(For Budgeting Purposes Only)
Shared cost will be based on actual amount invoiced

Parking Lot Area 1

Maintenance 2 year:	Est. Cost for City - 50% of:
Slurry	\$83,628.00
Seal Coat	\$20,892.00
Striping 4"	\$2,394.00

Maintenance 5 year:	Est. Cost for City - 50% of:
Overlay 1 ½"	\$180,192.00
Seal Coat	\$20,892.00
Striping 4"	\$2,394.00

Parking Lot Area 2

Maintenance 2 year:	Est. Cost for City - 50% of:
Slurry	\$45,208.00
Seal Coat	\$11,927.00
Striping 4"	\$1,652.00

Maintenance 5 year:	Est. Cost for City - 50% of:
Overlay 1 ½"	\$84,142.00
Seal Coat	\$11,927.00
Striping 4"	\$1,652.00

Field Area 1

Operations:	Est. Cost for City - 50% of:
Weekend: Opening, cleaning, and closing of Field Area 1	\$287.50/day, \$575.00/weekend
Weekdays: Cleaning, and closing of Field Area 1	\$55.20/day (1 hour)

Field Area 1 (Continued)

Grounds Maintenance:	Est. Cost for City - 50% of:
Top dressing	\$2,300.00 per year
Turf fertilizer	\$1,265.00 per year
Turf seed for reconditioning	\$1,380.00 per year
Pesticides	\$9,200.00 per year
Irrigation parts	\$5,750.00 per year
Equipment operator 1x per week mowing	\$23,920.00 per year
Equipment operator tractor work field reconditioning	\$1,380.00 per year
Certifications (Reclaimed)	\$2,300.00 per year

Utilities

Utilities – Water	N/A – District
Utilities – Electric (Field Lights)	Actual

#55
4/20/2021

(O-2021-105)

ORDINANCE NUMBER O- 21310 (NEW SERIES)

DATE OF FINAL PASSAGE APR 22 2021

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO AUTHORIZING THE EXECUTION OF THE
JOINT USE AGREEMENT FOR PACIFIC TRAILS MIDDLE
SCHOOL AND CANYON CREST ACADEMY WITH THE
SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.

WHEREAS, the San Dieguito Union High School District (District) owns Pacific Trails Middle School located at 5975 Village Center Loop Road, and Canyon Crest Academy located 5951 Village Center Loop Road (collectively the “Schools”), within the Pacific Highlands Ranch Community in the City of San Diego (City); and

WHEREAS, the City and the District desire to enter into an agreement that will allow for City operation, maintenance, and use of approximately 29.02 acres of irrigated natural turf field, running track, access drive, parking lots, frontage area and associated infrastructure at the Schools for an initial term of 10 years and five options to renew, with each option having a term of 10 years, at the City’s sole discretion and without further action by the Council of the City of San Diego (Council) or the Board of Trustees of the District to exercise such renewal; and

WHEREAS, the design and construction of the proposed joint use facilities at the Schools will be funded by the District; and

WHEREAS, under San Diego City Charter section 99, no contract, agreement, or obligation extending for a period of more than five years may be authorized except by ordinance approved by a two thirds’ majority vote of the Council; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego (Council), as follows:

Section 1. That the Mayor, or his designee, is hereby authorized and directed to execute the Pacific Trails Middle School Joint Use Agreement, on file in the office of the City Clerk as

Document No. OO- 21310, between the City of San Diego and the San Dieguito Union High School District, for the joint use of a portion of Pacific Trails Middle School and Canyon Crest Academy.

Section 2. That a full reading of this Ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 3. That this Ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By Hilda Mendoza
Hilda R. Mendoza
Deputy City Attorney

HRM:myb
March 4, 2021
Or.Dept: Parks & Recreation
Doc. No.: 2603939

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 04/20/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Stacy D. Ready
Deputy City Clerk

Approved: 4/22/21
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on APR 20 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 22 2021.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Beach*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 06 2021, and on APR 22 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Beach*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21310</u>

Passed by the Council of The City of San Diego on April 20, 2021, by the following vote:

YEAS: LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT, CATE, CAMPILLO, MORENO & ELO-RIVERA.

NAYS: NONE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: Stacy D. Ready, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. **O-21310** (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **April 6, 2021**, and on **April 20, 2021**.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By: , Deputy

00000000

0000

00

000000

000000