

# COPY

**AGREEMENT FOR THE CONSTRUCTION, OPERATION, MAINTENANCE  
AND USE OF TURFED FIELDS AND RECREATIONAL FACILITIES AT  
CARMEL VALLEY COMMUNITY PARK SOUTH AND  
ELEMENTARY SCHOOL NUMBER 8**

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THIS AGREEMENT [Agreement] for Construction, Operation, Maintenance and Use of Turfed Fields and Recreational Facilities at Carmel Valley Community Park South and Elementary School Number 8 [Elementary School] is entered into this 20<sup>th</sup> day of October, 2006 between the CITY OF SAN DIEGO, a municipal corporation [CITY], and the DEL MAR UNION SCHOOL DISTRICT, a public school district of the State of California [DISTRICT], [collectively, the Parties] based on the following facts:

## RECITALS

- A. CITY and DISTRICT have found that it is to their mutual benefit to contribute jointly and equitably to the establishment of recreational facilities adjacent to the Elementary School, previously known as the Carmel Valley Neighborhood 8A Elementary School.
- B. CITY and DISTRICT enter into the Joint Use Agreement, based upon, among other things, the following provisions: (1) a 6.25 acre Joint Use Site of CITY owned property, jointly used by the CITY and DISTRICT; (2) the CITY shall provide the design and construct the improvements within the Joint Use Site and the DISTRICT shall reimburse the CITY for the cost of those improvements within the Joint Use Site that are associated with the recreational and educational needs of the DISTRICT; (3) the CITY shall maintain the improvements within the Joint Use Site and the DISTRICT shall reimburse the CITY for such maintenance costs until financial contribution parity is obtained.
- C. City and District shall calculate the financial contributions of each Party for this Agreement pursuant to Exhibit B of this agreement.
- D. CITY and DISTRICT desire to establish this mutually beneficial arrangement by entering into this Agreement for a twenty-five (25) year period to provide for both Parties' recreational and/or educational programs.
- E. The estimated average life-span of all improvements constructed within the Joint Use Site is no greater than the term of this Agreement.

DOCUMENT NO. 00-19554  
FILED NOV 28 2006  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

NOW, THEREFORE, the Parties agree as follows:

## A G R E E M E N T

### 1. Property

The real property addressed by this Joint Use Agreement consists of 6.25 acres of CITY-owned land adjacent to the Elementary School, hereinafter referred to as the "JUA Site" which is more particularly described in Exhibit "A", the Carmel Valley Community Park South General Development Plan, which is attached hereto and incorporated herein by this reference. Amenities include two (2) backstops with associated fencing, infields, concrete and decomposed granite walkways and irrigated turf areas.

### 2. Term.

This Agreement shall be for a term of twenty-five (25) years, commencing on the date of its execution by both the City Manager, as authorized by ordinance adopted by the San Diego City Council, and by the authorized representative of the DISTRICT's Board of Education.

This Joint Use Agreement shall expire either twenty-five (25) years after the Effective Date, or when the adjacent Elementary School is no longer operated by the DISTRICT, whichever event occurs first. A copy of the approving ordinance is attached hereto and incorporated herein as Exhibit "C". The Parties intend to renew this Joint Use Agreement if the Elementary School is still being operated by the DISTRICT twenty-five (25) years after commencement of the Joint Use Agreement. The purpose of this renewal provision is for the Parties to meet prior to the beginning of the 23<sup>rd</sup> year of this Joint Use Agreement to re-evaluate respective needs, rights and obligations of the Parties under this Agreement, and to address issues regarding replacement of any improvements which may have served their useful life.

### 3. Consideration.

- 3.1 **Mutual Benefit.** The Parties acknowledge that good, valuable, and adequate consideration exists in the mutual benefits enjoyed and the legal detriments incurred by the Parties in the use and maintenance of the JUA Site, as set forth in this Agreement.
- 3.2 **Calculation of Financial Contributions.** CITY and DISTRICT shall calculate the financial contributions of each Party in accordance with Exhibit B of this agreement. The Parties agree that the values stated in Exhibit B will be based on the actual appraisal value of the land as agreed to by the CITY and DISTRICT and the actual contract amount for the JUA site improvements and that these values are accurate for the purpose of calculating financial contributions.
- 3.3 **Parity of Contributions.** The Parties agree that when CITY and DISTRICT have contributed equally to the costs of the JUA Site in terms of land value, design, construction and maintenance, thereafter, CITY and DISTRICT agree to share maintenance of the JUA Site as established by this Agreement.

#### 4. Use of Property.

The JUA Site shall be used exclusively for the purpose of constructing, maintaining, and operating facilities for public education and recreation programs which shall include turf recreation facilities in accordance with this Joint Use Agreement.

- 4.1 CITY's Use of Property.** CITY shall have exclusive use of the JUA Site for its recreation programs from thirty (30) minutes after the end of the school day until thirty (30) minutes before the beginning of the school day, Monday through Friday, on each and every day that school is in session during the traditional or single-track school year CITY shall also have exclusive use of the JUA Site at all times on holidays, weekends, and other days when school is not in session. CITY agrees to coordinate and schedule community use of the recreational facilities during non-school hours. For any additional use, CITY shall make prior arrangements and coordinate scheduling with the DISTRICT. City intends to coordinate any organized league events at the JUA Site with any CITY recognized recreation council in existence during the term of this Agreement. Turfed fields and infields shall not be used after substantial rain, or if irrigation has created excessively wet conditions, to avoid severe damage to turf and infields. Use during excessively wet conditions by CITY shall be considered as creating damage to the JUA Site and shall be repaired at CITY'S sole expense in a manner acceptable to DISTRICT.
- 4.2 DISTRICT's Use of Property.** DISTRICT shall have exclusive use of the JUA Site for its public education programs from thirty (30) minutes before the beginning of the school day until thirty (30) minutes after the end of the school day, Monday through Friday, on each and every day that school is in session during the traditional or single-track school year. If the DISTRICT determines to modify its school calendar by adding instructional days, summer school , or by operating a single track or multi-track year round or other alternative school year, then the CITY shall be provided written notice by April 15 prior to the following July 1 to June 30 school year. For any additional use, including use for summer session, DISTRICT shall make prior arrangements and coordinate scheduling with the CITY. The CITY agrees to use best efforts to accommodate requests by the DISTRICT for use of the JUA Site during summer vacation periods for summer session or other requirements of the DISTRICT. Turfed fields and infields shall not be used after substantial rain, or if irrigation has created excessively wet conditions, to avoid severe damage to turf and infields. District shall notify the CITY if irrigation is creating excessively wet playing conditions. Use during excessively wet conditions by DISTRICT shall be considered as creating damage to the JUA Site and shall be repaired at DISTRICT'S sole expense in a manner acceptable to the City, pursuant to Section 5.2 of this Agreement.
- 4.3 Additional Hours of Use.** CITY and DISTRICT may negotiate additional hours as necessary, when use by one Party is desired during a time when the other Party has exclusive use of the JUA Site. The Parties must give five (5) working days

notice to the other of additional needed hours of use, pursuant to Section 10 of this Agreement.

- 4.4 Scheduling Maintenance and Renovations.** CITY shall have the right of entry for maintenance purposes during school hours upon such terms as are agreed upon by the Parties such that the need for staff overtime is not required. The agreed upon time of maintenance shall be sensitive to the community's scheduled recreation programs, the school's instructional and athletic programs, and the availability of maintenance staff. Major maintenance or renovation of the JUA Site shall be scheduled to occur at times of the year when the impact can be shared equally by both Parties and is estimated to total approximately (12) twelve weeks between the months of March and September each year, or other periods as mutually agreed to by both the CITY and DISTRICT.
- 4.5 Portable Restrooms.** The siting, installation and removal of portable restrooms shall be mutually agreed upon by the CITY and DISTRICT.
- 4.6 Maintenance Standards.** CITY and DISTRICT shall maintain the improvements in the JUA Site, as required in a manner consistent with the CITY-wide standards of the Park and Recreation Department. Should these City-wide maintenance standards fall below an acceptable level to the DISTRICT, the DISTRICT and the CITY shall develop a procedure to augment the maintenance of the JUA site to a level acceptable to the DISTRICT at the sole cost to the DISTRICT. This may include, but not be limited to, the DISTRICT funding maintenance above the CITY-wide standard or the DISTRICT performing certain maintenance tasks, with CITY approval, to enhance the level of maintenance. Both Parties acknowledge that failure to maintain the JUA Site in a timely and workmanlike manner consistent with the CITY-wide standards creates an unacceptable hardship for both Parties.
- 4.7 Programs, Services, and Activities.** No qualified individual with a disability, as defined by federal and state law, shall by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of CITY or DISTRICT which are offered or occur in the JUA Site, or be subjected to discrimination by CITY or DISTRICT in the use of the JUA Site.

## **5. DISTRICT Responsibilities.**

DISTRICT shall be responsible for the following:

- 5.1 Litter Removal.** DISTRICT shall be responsible for collection and removal of litter in the JUA Site during DISTRICT's use of the JUA Site as described in Section 4.2.
- 5.2 Damage and Repairs.** If the JUA Site is damaged by either CITY or DISTRICT during the term of the Joint Use Agreement, the CITY will repair the damage. If DISTRICT is responsible for the damage, CITY shall invoice DISTRICT and DISTRICT shall reimburse CITY within (60) sixty days as required. DISTRICT

may, with approval by the CITY, repair and/or replace or cause to be repaired and/or replaced any damaged improvements caused by the DISTRICT'S sole use of the improvements. All such repairs and/or replacements shall meet with the approval of the CITY.

**5.3 DISTRICT'S Sole Maintenance Obligation.** DISTRICT shall be solely responsible for maintenance and replacement of any improvements installed upon the JUA Site at the request of the DISTRICT and solely serving to satisfy the educational program of the DISTRICT.

**5.4 Graffiti Removal.** DISTRICT shall reimburse the CITY within (60) sixty days for removal of graffiti and/or repainting of surfaces within the JUA Site that have been defaced during the DISTRICT's use of the JUA Site as described in Section 4.2.

**5.5 Construction of Improvements.**

DISTRICT agrees to reimburse CITY for the construction of the improvements within the JUA Site pursuant to Section 3.2 of this Agreement. Reimbursement shall be for the construction of facilities required by DISTRICT for its proposed educational and/or recreational programs and shall include, but not necessarily be limited to, construction of improvements, inspection fees, construction administration fees incurred by CITY, permit costs and utility company fees. DISTRICT shall not be responsible to reimburse CITY for the construction of improvements, inspection costs, construction administration costs or permit fees associated with those improvements intended for the sole use of CITY, including, but not necessarily limited to, JUA Site perimeter fencing, field lighting systems, security lighting systems, and any other operational systems associated with the CITY's recreational programs and as agreed between CITY and DISTRICT. Reimbursement shall be made by DISTRICT to CITY upon completion and acceptance of said improvements by both DISTRICT and CITY. Neither CITY nor DISTRICT shall use said improvements until final acceptance is made by both CITY and DISTRICT.

All such construction work on CITY property shall be accomplished by CITY employees or by CITY'S contracting agents directly under control of CITY. All construction shall meet the requirements and standards of CITY and DISTRICT and all applicable provisions of the California Education Code and Administrative Code.

**5.6 JUA Site Maintenance..** Should the DISTRICT'S initial contribution not equal the CITY'S initial contribution, in accordance with Exhibit B of this Agreement, upon final acceptance of the JUA Site improvements and the beginning of regular CITY maintenance, DISTRICT shall reimburse CITY for all maintenance costs associated with the JUA Site by making quarterly reimbursement payments to CITY until parity is reached as set forth in Section 3 of this Agreement. This reimbursement shall exclude the costs associated with CITY'S sole recreational facilities, including, but not necessarily limited to, field lighting system

components, security lighting components and electrical usage for lighting systems within the JUA Site and other costs as agreed between CITY and DISTRICT

After the Parties reach parity, DISTRICT and CITY shall share equally in the maintenance costs associated with the JUA Site, including, but not limited to, utilities and water. Utility and maintenance costs associated with the field lighting system and security lighting system shall be borne entirely by the CITY.

## **6. CITY Responsibilities.**

CITY shall be responsible for the following:

- 6.1 Litter Removal.** CITY shall be responsible for collection and removal of litter in the JUA Site during CITY'S use of the JUA Site as described in Section 4.1.
- 6.2 Damage and Repairs.** CITY shall repair or cause to be repaired, damage caused by CITY at its sole cost. DISTRICT reserves the right to review and approve any such repairs proposed by CITY to confirm repairs are made to CITY and DISTRICT standards.
- 6.3 CITY'S Sole Maintenance Obligation.** CITY shall be solely responsible for maintenance and replacement of any improvements installed upon the JUA Site solely serving to satisfy the recreational programs of the CITY.
- 6.4 Graffiti Removal.** CITY, subject to the reimbursement provisions as set forth in Section 5.4 of this Agreement, shall be responsible for removal of graffiti and/or repainting of surfaces within the JUA Site that have been defaced.
- 6.5 Construction of Improvements.** CITY agrees to construct or cause to be constructed upon the JUA Site, subject to the reimbursement provisions as set forth in Section 5.5 of this Agreement, recreational facilities which may include, but not necessarily be limited to, irrigated turf areas, backstops and associated fencing, infields, concrete and decomposed granite walkways and all associated appurtenances associated with the constructed improvements in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction. Construction of improvements may be done in phases. CITY agrees to use its best efforts to obtain funding for these improvements. If funding is not identified for any or all of these improvements during the term of this Agreement, DISTRICT shall not be liable to CITY for any phase of improvements not constructed or undertaken.

### **6.6 JUA Site Maintenance.**

Should the DISTRICT'S initial contribution be greater than the CITY'S initial contribution, in accordance with Exhibit B of this Agreement, upon final acceptance of the JUA Site improvements and the beginning of regular CITY maintenance, the CITY shall assume all maintenance costs until parity is reached.

After the Parties reach parity, DISTRICT and CITY shall share equally in the maintenance costs associated with the JUA Site, including, but not limited to, utilities and water. Utility and maintenance costs associated with the field lighting system and security lighting system shall be borne entirely by the CITY.

- 6.7 Healthy Schools Act.** CITY shall be responsible for compliance with all requirements of the Healthy Schools Act of 2000 (AB 2260.) Whenever any pesticide use is intended on, or around the JUA Site (whether school is in session or not), CITY shall notify the DISTRICT, pursuant to Section 10 of this Agreement, at least fourteen (14) days prior to any such application, disclosing the specific type of pesticide that will be used (DISTRICT approved pesticides only). CITY shall also post warning signs as required by AB 2260, twenty-four (24) hours prior to any pesticide application and leave warning signs posted for seventy-two (72) hours after the application. The CITY shall be responsible for removing the posted signs in a timely manner after the posting period. CITY will notify parents/guardians/staff who have requested in writing to be notified seventy-two (72) hours prior to a pesticide application. The DISTRICT'S Integrated Pest Management office will supply a list of those individuals who wish to be notified to the CITY designee in charge of the pesticide application. Notice shall include product name, the active ingredient(s) in the product, and the intended area and date of application. CITY shall maintain pesticide records for four (4) years following application of any pesticides. For additional requirements or information, CITY may contact the California Department of Pesticide Regulation, at (916) 445-4300.
- 6.8 Water Quality - Best Management Practices and Storm Water Pollution Prevention Plan.** CITY and DISTRICT are committed to the implementation of programs to manage activities on the JUA Site in a manner which aids in the protection of San Diego's water quality. All construction and maintenance activities associated with the JUA Site shall comply with the Park and Recreation Department's Best Management Practices (BMP) to prevent storm water pollution, including a Storm Water Pollution Prevention Plan (SWPPP) approved by the CITY'S Storm Water Pollution Prevention Program, if applicable.
- 6.9 Portable Restrooms.** CITY shall be responsible for maintenance of portable restrooms if placed within the JUA Site for CITY activities.
- 6.10 Disabled Access.** As required, CITY shall construct all CITY funded improvements, paths of travel to improvements and accessible routes from the adjacent public right-of-way or public transportation stop to the improvements consistent with the requirements of state and federal law for disabled access, including the California Government Code section 4450, et. seq., the California Building Code in the California Code of Regulations at Title 24, the Americans with Disabilities Act, and the Americans with Disabilities Act Accessibility Guidelines. When a conflict exists amongst requirements, the most restrictive requirement shall be followed, i.e., that which provides for the greater access.

**7. Review and Amendment of Joint Use Agreement.**

- 7.1 **Periodic Joint Review.** CITY and DISTRICT shall meet prior to January 1 of each year to review the use of the JUA Site. As a result of this review, the use schedule, including major maintenance or renovation efforts identified in this Agreement, may be revised upon the mutual written consent of both CITY and DISTRICT. Said changes, when made, shall then become a part of this Agreement.
- 7.2 **Amendment.** This Agreement may be amended or renewed in writing by mutual consent of DISTRICT and CITY as permitted by law.

## 8. Improvements.

- 8.1 Improvements as identified in this Section of the Agreement shall mean improvements made to the JUA Site after completion and acceptance by CITY and DISTRICT of the initial phase of development of the JUA Site.

No improvements shall be installed, nor shall construction of improvements begin, until plans and specifications for the improvements are reviewed, approved, and signed by both Parties. All DISTRICT-financed improvements installed in the JUA Site shall remain the property of DISTRICT during the term of this Agreement and will be removed from the JUA Site by DISTRICT upon request by CITY at termination or expiration of this Agreement. JUA Site shall be returned to CITY free of all legal encumbrances and in the condition existing at the commencement of this Agreement. In the event DISTRICT does not so remove its improvements upon expiration or termination of this Agreement, as requested in writing by CITY, CITY may remove, sell, or destroy the same and restore the JUA Site to the condition existing at the commencement of this Agreement at DISTRICT's expense. No new construction or alteration shall occur that reduces or negatively affects disabled access to the improvements, including any negative impact to paths of travel or accessible routes.

- 8.2 **Reimbursement for Improvements.** Whenever the CITY and DISTRICT have mutually approved improvements to the JUA Site, the costs of those improvements shall be shared equally by both parties.

## 9. Insurance and Indemnification.

- 9.1 **Indemnity.** DISTRICT agrees to defend, indemnify, protect and hold CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to DISTRICT's employees, invitees, guests, agents, or officers, caused by the independent acts of DISTRICT, its agents or employees in connection with the performance of this Agreement and/or the use of the JUA Site or the School. CITY agrees to defend, indemnify, protect and hold DISTRICT, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY's employees, invitees, guests, agents, or officers, caused by the independent acts of CITY, its agents or employees in connection with the performance of this Agreement and/or the use of the JUA Site or the School.
- 9.2 **Insurance.** CITY and DISTRICT acknowledge and warrant that they are self-insured in compliance with the laws of the State of California, that their self-



insurance covers persons acting on their behalf or under their control, and that their self-insurance covers their use of the Joint Use Area as contemplated by this Agreement. The Parties further warrant that they will notify the other Party of any insurance coverage change at least thirty (30) days prior to the change in accordance with the notice provisions of this Joint Use Agreement. Any coverage change must be approved by the other Party, which approval shall not be unreasonably withheld.

- 9.3 Workers' Compensation Insurance.** CITY and DISTRICT acknowledge and warrant that they maintain, and shall maintain for the term of this Agreement, Workers' Compensation coverage as required by law.

## **10. Notices.**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be effective (a) when delivered to the recipient by personal delivery or facsimile transmission, (b) on the second business day after mailing by certified or registered United States mail, or (c) on the succeeding business day after mailing by Express Mail or after deposit with a private delivery service of general use (e.g., Federal Express) postage or fee prepaid as appropriate, addressed to the Party at the address shown below:

If to CITY:           City Manager  
                          City of San Diego  
                          202 'C' Street, M.S. 9A  
                          San Diego, California 92101  
                          Attention: Park and Recreation Director

If to DISTRICT: Del Mar Union School District  
                          225 Ninth Ave.  
                          Del Mar, California 92014  
                          Attention: Superintendent

## **11. General Provisions.**

- 11.1 Quiet Possession.** DISTRICT and CITY, subject to performing the covenants and agreements herein, shall at all times during the term of the Agreement peaceably and quietly have, hold, and enjoy the JUA Site.
- 11.2 Entry, Maintenance and Inspection.** CITY reserves and shall always have the right to enter upon the JUA Site for the purpose of viewing and ascertaining the condition thereof, and for the purpose of maintenance of recreational facilities that cannot be accommodated during non-school hours. The time of maintenance shall be agreed upon by DISTRICT's Site Administrator and CITY's maintenance supervisor and shall be sensitive to the community's scheduled recreation programs, the school's instructional and athletic programs, and the availability of maintenance staff.
- 11.3 Assignment.** CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT. Any such assignment without such consent shall be void. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and any successors thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations,

and agreements in the Agreement shall extend to and bind any successor(s) of the Parties. CITY reserves the right to enter into a partial assignment agreement with a third party to fulfill its maintenance responsibility.

- 11.4 Compliance with Law.** CITY and DISTRICT shall comply, and shall secure compliance by persons within their control and authority, with all the requirements of state and federal authorities now in force, or which may hereafter be in force, pertaining to the JUA Site, and shall faithfully observe and secure observance of all state and federal statutes now in force or which may hereafter be in force, in the use of JUA Site by persons within their respective control and authority.
- 11.5 Time is of the Essence.** Time is of the essence of each and all of the terms and provisions of this Agreement.
- 11.6 Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.
- 11.7 Remedies.** In the event that either Party shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that Party and shall fail to cure the default within one hundred twenty (120) days following the service on the defaulting Party of a written notice, pursuant to Section 10 of this Agreement, from the second Party specifying the default complained of, then the second Party may, at its option, without further notice or demand upon the defaulting Party or upon any person claiming through the defaulting Party, immediately terminate this Agreement and all rights of the defaulting Party, and of all persons claiming rights through the defaulting Party. Notwithstanding the above provisions, in the event that any default cannot be cured within one hundred twenty (120) days after the service of written notice upon the defaulting Party, the second Party shall not terminate the Agreement pursuant to the default if the defaulting Party immediately commences to cure the default and diligently pursues such cure to completion.
- 11.8 Legal Proceedings.** The Parties agree that the laws of the State of California shall be used in interpreting this Agreement and shall govern all disputes and determine all rights under this Agreement.
- 11.9 Entire Agreement.** This Agreement contains the complete expression of the whole Agreement between the Parties hereto and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein.
- 11.10 Severance.** If any part of this Agreement is found by a court of competent jurisdiction to be void or voidable, that portion which is so held to be defective shall be severed from the remainder hereof, the latter to remain in full force and effect.
- 11.11 Nondiscrimination.** DISTRICT and CITY shall not discriminate in any manner against any person or persons on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, marital status, or disability in the providing of goods, services, facilities, advantages, and the holding and obtaining of employment. DISTRICT and CITY shall not allow such discrimination by

others who are within their respective control and who from time to time may use the Joint Use Area with the permission and on the terms and conditions specified by either Party.

**11.12 Fingerprinting Requirements.** Unless exempted, CITY shall comply with the requirements of the Education Code Section 45125.1 with respect to fingerprinting of maintenance employees who may have contact with the DISTRICT's pupils. The CITY shall also ensure that its contractors on the Project also comply with the requirements of Section 45125.1. To this end, the CITY and its contractors must provide for the completion of the certification form attached hereto as Exhibit "D" and incorporated herein by reference prior to any of the CITY's maintenance employees, or those of any other consultants, coming into contact with the DISTRICT's pupils.

**11.13 San Diego's Strong Mayor Form Of Governance.** All references to "City Manager" in this agreement and all subsequent amendments thereto shall be deemed to refer to "Mayor." This section becomes effective on January 1, 2006 and shall remain in effect for the duration the CITY operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego Charter.

[Remainder of this page intentionally left blank]

**12. 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.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its Mayor pursuant to Ordinance No. 0-19554 authorizing such execution, and by the Del Mar Union School District of San Diego County, California, acting by and through its Superintendent pursuant to a Resolution of its Board of Education.

THE CITY OF SAN DIEGO,  
a Municipal Corporation

Del Mar Union School District  
DISTRICT  
a political subdivision in the State of California

By:   
Ted Martínez Jr.

By:   
Thomas Bishop

Title: Deputy Chief of Neighborhood  
and Customer Services

Title: Superintendent

Date: 10/9/06

Date: 6-28-06

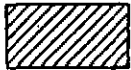
APPROVED AS TO FORM AND LEGALITY BY  
MICHAEL J. AGUIRRE, CITY ATTORNEY

By: 

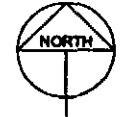
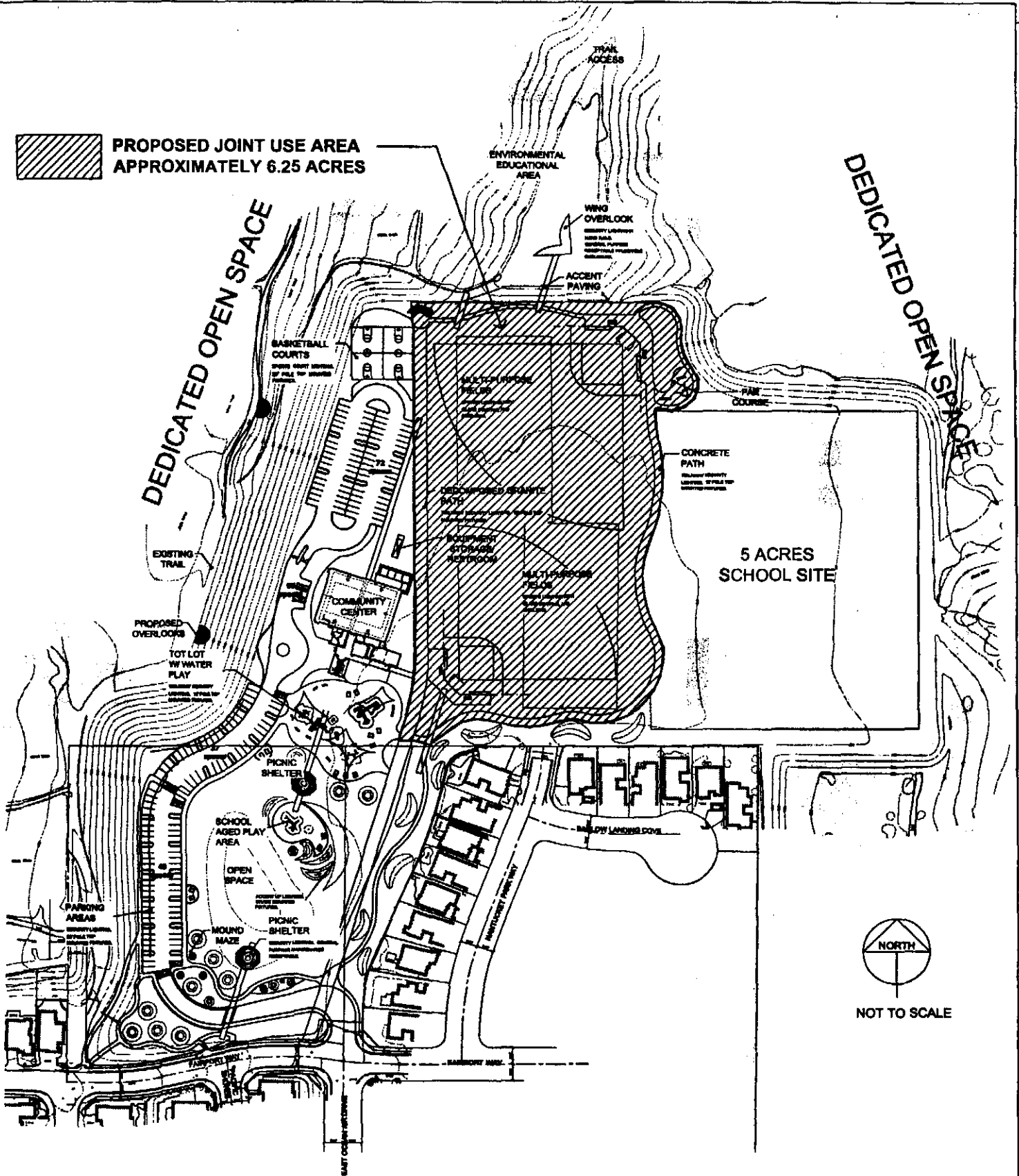
Title: Deputy City Attorney

Date: 10/20/06

- Exhibit A: Depiction of the Joint Use Site
- Exhibit B: Calculation of Financial Contributions
- Exhibit C: San Diego City Council Ordinance
- Exhibit D: Fingerprinting Requirements



**PROPOSED JOINT USE AREA  
APPROXIMATELY 6.25 ACRES**



NOT TO SCALE

# EXHIBIT A

**NEIGHBORHOOD 8A ELEMENTARY SCHOOL  
PROPOSED JOINT USE AREA  
CITY OF SAN DIEGO / DEL MAR UNION SCHOOL DISTRICT**

**CARMEL VALLEY COMMUNITY PARK SOUTH - City of San Diego  
GENERAL DEVELOPMENT PLAN**

**EXHIBIT "B"**

**CALCULATION OF FINANCIAL CONTRIBUTIONS  
Pursuant to Section 3 of this Agreement**

Value of CITY'S land contribution (\$500,000/ac x 6.25 ac) / 2	\$1,562,500.00
Value of DISTRICT'S construction contribution (\$250,000/ac x 6.25 ac)	\$1,562,500.00

Parties' Financial Contributions

Value of CITY'S contribution (land value)	\$1,562,500.00
<u>Value of DISTRICT'S contributions (100% of improvement costs)</u>	<u>\$1,562,500.00</u>
Difference	\$0.00

Annual Maintenance Estimate: \$8,500 per acre x 6.25 acres = \$53,125 per year

*Based on this example, parity would be reached upon completion of the JUA Site improvements. Maintenance costs would be shared equally upon acceptance of the improvements by the City and the District.*

*Should the value of the construction contribution be less than the land value, the District would be responsible for 100% of the annual maintenance until parity is reached. Should the value of the construction contribution be more than the value of the land, the City will be responsible for 100% of the annual maintenance until parity is reached.*

*The value of the land and the value of the improvements will be more accurately defined upon completion of the land assessment and the park's construction documents. The numbers shown above in this parity example are for illustration purposes only. The \$8,500 per acre per year for maintenance is based on 2005 costs and may increase over the life of the agreement.*

ORDINANCE NUMBER O- **19554** (NEW SERIES)

DATE OF FINAL PASSAGE **DEC 06 2006**

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A 25 YEAR JOINT USE AGREEMENT WITH DEL MAR UNION SCHOOL DISTRICT FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE OF TURFED FIELDS AND RECREATIONAL FACILITIES AT THE CARMEL VALLEY COMMUNITY PARK SOUTH.

WHEREAS, the City of San Diego shall provide the design and construct the improvements and the Del Mar Union School District [District] shall reimburse City for the cost of those improvements that are associated with the recreational and educational needs of District; and

WHEREAS, City and District shall calculate the financial contributions of each Party for this Agreement pursuant to "Exhibit B" of Agreement; and

WHEREAS, City and District desire to establish this mutually beneficial arrangement by entering into this Agreement for a twenty-five (25) year period to provide for both parties' recreational and/or educational programs; NOW, THEREFORE,

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

Section 1. That the Mayor or his designee is authorized to execute, for and on behalf of City, the lease and Agreement between City and District for the construction, operation and maintenance of turfed fields and recreational facilities at the Carmel Valley Community Park South (Ocean Air Community Park) in the Carmel Valley Community Plan Area, on file in the office of the City Clerk as Document Number OO- **19554**

Section 2. That this activity is not a "project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

Section 3. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

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

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Peter A. Mesich  
Peter A. Mesich  
Deputy City Attorney

PAM:cfq  
10/10/06  
Or.Dept:P&R  
O-2007-43  
MMS#3956

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 28 2006.

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 12-6-06  
(date)

[Signature]  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

19554



Passed by the Council of The City of San Diego on NOV 28 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Scott Peters	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 06 2006

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By

Mary Cepeda

Deputy

Office of the City Clerk, San Diego, California

Resolution Number

0-19554

## EXHIBIT D

### CALIFORNIA EDUCATION CODE (2006)

#### SECTION 45125.1

45125.1. (a) Except as provided in subdivisions (b) and (c), if the employees of any entity that has a contract with a school district, as defined in Section 41302.5, to provide any of the following services may have any contact with pupils, those employees shall submit or have submitted their fingerprints in a manner authorized by the Department of Justice together with a fee determined by the Department of Justice to be sufficient to reimburse the department for its costs incurred in processing the application:

- (1) School and classroom janitorial.
- (2) Schoolsite administrative.
- (3) Schoolsite grounds and landscape maintenance.
- (4) Pupil transportation.
- (5) Schoolsite food-related.

(b) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district in an emergency or exceptional situation, such as when pupil health or safety is endangered or when repairs are needed to make school facilities safe and habitable.

(c) This section shall not apply to an entity providing any of the services listed in subdivision (a) to a school district when the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee has limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district has made this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees.

(d) A school district may determine, on a case-by-case basis, to require an entity providing schoolsite services other than those listed in subdivision (a) or those described in Section 45125.2 and the entity's employees to comply with the requirements of this section, unless the school district determines that the employees of the entity will have limited contact with pupils. In determining whether a contract employee will have limited contact with pupils, the school district shall consider the totality of the circumstances, including factors such as the length of time the contractors will be on school grounds, whether pupils will be in proximity with the site where the contractors will be working, and whether the contractors will be working by themselves or with others. If a school district makes this determination, the school district shall take appropriate steps to protect the safety of any pupils that may come in contact with these employees. If a school district requires an entity providing services other than those listed in subdivision (a) and its

employees to comply with the requirements of this section, the Department of Justice shall comply with subdivision.

(e) (1) The Department of Justice shall ascertain whether the individual whose fingerprints were submitted to it pursuant to subdivision (a) has been arrested or convicted of any crime insofar as that fact can be ascertained from information available to the department. Upon implementation of an electronic fingerprinting system with terminals located statewide and managed by the Department of Justice, the department shall ascertain the information required pursuant to this section within three working days. When the Department of Justice ascertains that an individual whose fingerprints were submitted to it pursuant to subdivision (a) has a pending criminal proceeding for a felony as defined in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1, the department shall notify the employer designated by the individual of that fact. The notification shall be delivered by telephone or electronic mail to the employer.

(2) The Department of Justice, at its discretion, may notify the school district in instances when the employee is defined as having a pending criminal proceeding described in Section 45122.1 or has been convicted of a felony as defined in Section 45122.1.

(3) The Department of Justice may forward one copy of the fingerprints to the Federal Bureau of Investigation to verify any record of previous arrests or convictions of the applicant. The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation and shall notify the employer only as to whether or not an applicant has any convictions or arrests pending adjudication for offenses which, if committed in California, would have been punishable as a violent or serious felony. The Department of Justice shall not provide any specific offense information received from the Federal Bureau of Investigation. The Department of Justice shall provide written notification to the contract employer only concerning whether an applicant for employment has any conviction or arrest pending final adjudication for any of those crimes, as specified in Section 45122.1, but shall not provide any information identifying any offense for which an existing employee was convicted or has an arrest pending final adjudication.

(f) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall not permit an employee to come in contact with pupils until the Department of Justice has ascertained that the employee has not been convicted of a felony as defined in Section 45122.1.

(1) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a felony if the employee has obtained a certificate of rehabilitation and pardon pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(2) This prohibition does not apply to an employee solely on the basis that the employee has been convicted of a serious felony that is not also a violent felony if that employee can prove to the sentencing court of the offense in question, by clear and convincing evidence, that he or she has been rehabilitated for the purposes of schoolsite employment for at least one year. If the offense in

question occurred outside this state, then the person may seek a finding of rehabilitation from the court in the school district in which he or she is resident.

(g) An entity having a contract as specified in subdivision (a) and an entity required to comply with this section pursuant to subdivision (d) shall certify in writing to the school district that neither the employer nor any of its employees who are required by this section to submit or have their fingerprints submitted to the Department of Justice and who may come in contact with pupils have been convicted of a felony as defined in Section 45122.1.

(h) An entity having a contract as specified in subdivision (a) on the effective date of this section and an entity required to comply with this section pursuant to subdivision (d) by a school district with which it has a contract on the effective date of the amendments made to this section during the 1997-98 Regular Session shall complete the requirements of this section within 90 days of that date.

(i) For purposes of this section, a charter school shall be deemed to be a school district.

(j) Where reasonable access to the statewide electronic fingerprinting network is available, the Department of Justice may mandate electronic submission of the fingerprint cards and other information required by this section.

RESOLUTION NUMBER R- 302900

DATE OF FINAL PASSAGE AUG 03 2007

WHEREAS, the Park and Recreation Department requested approval of the funding and construction of the Carmel Valley Community Park South- Recreation Building; and

WHEREAS, the matter was set for a public hearing to be conducted by the Council of the City of San Diego; and

WHEREAS, the issue was heard by the City Council on JUL 31 2007; and

WHEREAS, the City Council by Resolution No. R-290604, adopted on August 4, 1998, certified Environmental Impact Reports [EIR] for Carmel Valley and Sorrento Valley LDR Nos. 91-0899, 95-0381, 96-7573, 96-7929, and 96-7996, copies of which are on file in the Development Services Department; and

WHEREAS, in connection with the consideration of Carmel Valley Community Park, the City Council considered the issues discussed in Addendum to EIRs, LDR Nos. 91-0899, 95-0381, 96-7573, 96-7929, and 96-7996; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it is certified that the information contained in Addendum to EIRs LDR Nos. 91-0899, 95-0381, 96-7573, 96-7929, and 96-7996, on file in the office of the City Clerk, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.), as amended, and the State guidelines thereto (California Code of Regulations section 15000 et. seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments

received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Carmel Valley Community Park South- Recreation Building.

BE IT FURTHER RESOLVED; that pursuant to California Public Resources Code section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference.

BE IT FURTHER RESOLVED, that the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon M. Thomas  
Shannon M. Thomas  
Deputy City Attorney

SMT:sc  
07/05/07  
Or.Dept: Park & Rec.  
R-2008-20

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 31 2007.

ELIZABETH S. MALAND  
City Clerk

By Elizabeth S. Maland  
Deputy City Clerk

Approved: 8-3-01  
(date)

Jerry Sanders  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor