

COPY

**AGREEMENT FOR THE
CONSTRUCTION, OPERATION, MAINTENANCE, AND USE
OF TURF FIELDS, RADIAL DRIVE, SCHOOL PARKING, AND ACCESSIBLE
ROUTES AT OCEAN VIEW HILLS MIDDLE SCHOOL**

THIS AGREEMENT [Agreement] for the Construction, Operation, Maintenance, And Use of Turf Fields, Radial Drive, School Parking, and Accessible Routes at Ocean View Hills Middle School [School] is entered into this JUL 18 2005 day of _____, 2005 between THE CITY OF SAN DIEGO, a municipal corporation [CITY], and the SAN YSIDRO SCHOOL DISTRICT of San Diego County, a public school district of the State of California [DISTRICT], [collectively, the Parties] based on the following facts:

RECITALS

- A. Ocean View Hills Middle School, owned by DISTRICT, is being designed to contain 5.0 acres of turf fields, a radial drive, school parking and accessible routes, as shown on Exhibit "A" of this Agreement and incorporated herein by reference [Joint Use Area]. DISTRICT desires the opportunity to construct and use these improvements on its fields. CITY desires to supplement park acreage to meet community recreational needs by utilizing the improvements at the School for recreational purposes. It is to the mutual benefit of CITY and DISTRICT to contribute jointly to the establishment of recreational facilities that can serve the needs of both the general public and DISTRICT students and faculty.
- B. CITY and DISTRICT desire to establish this mutually beneficial arrangement by entering into this Agreement for a term not less than twenty-five (25) years to provide for recreational programs.
- C. The estimated average life-span of all improvements to be constructed on the Joint Use Area is no greater than the term of this Agreement, excluding the use of the radial drive as depicted on Exhibit "A" of this Agreement.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. Property.

DISTRICT hereby agrees that CITY may use a portion of that certain DISTRICT-owned real property located at Del Sol Boulevard and Surfcrest Drive, San Diego, California, 92154, in the Otay Mesa Community, as depicted on Exhibit "A" of this Agreement and as defined as Joint Use Area.

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 an ordinance adopted by the San

DOCUMENT NO. 00-19394
FILED JUL 18 2005

OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Diego City Council, and by the DISTRICT's representative as authorized by a resolution adopted by the DISTRICT's Board of Education.

If at any time during the twenty-five (25) year period DISTRICT should propose to sell, lease or otherwise cease to operate the School, DISTRICT shall so notify the CITY in writing, as described in Section 10 of this Agreement, and grant to CITY a two (2) year option, commencing on the date of said notification, to purchase all or part of the Joint Use Area at its fair market value, not including the value of improvements constructed by or on behalf of CITY. In the event of such notification, the Agreement shall terminate at the end of the two (2) year period or upon written notification by CITY that CITY does not intend to exercise its option.

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 Joint Use Area, as set forth in this Agreement.

3.2 Calculation of Financial Contributions. CITY and DISTRICT shall calculate the financial contributions of each Party as depicted in Exhibit "B", and incorporated herein by this reference. The Parties agree that the values stated in Exhibit "B" are fair and accurate for the purpose of calculating financial contributions.

3.2.1 Land Contribution. The value of the land contribution is defined as the actual purchase price of the land.

3.2.2 Development Contribution. The value of the development contribution is the actual cost of construction of the Joint Use Area.

3.2.3 Maintenance Contribution. The value of the maintenance contribution is calculated in accordance with the Consumer Price Index for the San Diego Area, as published by the Bureau of Labor Statistics and will be re-evaluated and adjusted, if necessary, by the Parties, bi-annually through the term of the Agreement.

3.3 Parity of Contributions. The Parties agree that when CITY and DISTRICT have contributed equally to the costs of the Joint Use Area in terms of land value, construction, and maintenance, thereafter, CITY and DISTRICT agree to share maintenance costs equally as conceptually shown for explanation purposes in Exhibit "B".

4. Use of Property.

The Joint Use Area 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 Joint Use Area 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 according to the school calendar as reasonably determined by the Board of DISTRICT (Non-School Hours). CITY shall also have exclusive use of the Joint Use Area at all times on holidays, weekends, and other days when the 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. Turf field shall not be used after substantial rain, or if irrigation has created excessively wet conditions, to avoid severe damage to turf field.
- 4.2 DISTRICT's Use of Property.** DISTRICT shall have exclusive use of the JOINT USE AREA 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. For any additional use, including use for summer session, DISTRICT shall make prior arrangements and coordinate scheduling with the CITY. Turf field shall not be used after substantial rain, or if irrigation has created excessively wet conditions, to avoid severe damage. District shall notify the CITY if irrigation is creating excessively wet playing conditions.
- 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 Joint Use Area. The Parties must give forty-eight (48) hours notice to the other, of additional needed hours of use, as described in 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 joint use facilities 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 six weeks between the months of April and June each year, or other periods as mutually agreed to by both the CITY and DISTRICT.
- 4.5 Conversion of Joint Use Area to Other Use.** CITY and DISTRICT agree that it may be necessary from time to time to adjust the boundaries of the Joint Use Area to accommodate the addition of portable classrooms or other non-recreational equipment or facilities to the School. The Parties agree that any adjustment of the boundaries of the Joint Use Area shall be

agreed to in writing by CITY and DISTRICT and that DISTRICT shall: (1) obtain the CITY's approval of DISTRICT's plans; (2) provide CITY thirty (30) calendar days written notice prior to placement of any such buildings, structures, equipment, or apparatus on the Joint Use Area; (3) at DISTRICT's sole expense, make any necessary modifications to the irrigation system and other improvements installed by or on behalf of CITY; and (4) at the end of such use, restore the improvements installed by or on behalf of CITY to their original condition or to a condition satisfactory to CITY within one hundred twenty (120) calendar (not including plant maintenance and establishment period). In addition, within thirty (30) calendar days of the changed use, the Parties shall recalculate the financial contributions of the Parties to this Agreement and adjust the Parties' maintenance obligations accordingly. DISTRICT shall reimburse CITY its pro rata share for the cost of improvements on the area of changed use for that period of time that CITY is deprived of use. Reimbursement shall be made within ninety (90) days of the deprived use. The amount of reimbursement shall be based upon a straight-line depreciation.

- 4.6 Portable Restrooms.** The siting, installation and removal of portable restrooms, if installed, shall be mutually agreed upon by the CITY and DISTRICT.
- 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 Joint Use Area, or be subjected to discrimination by CITY or DISTRICT in the use of the Joint Use Area.
- 4.8 Storm Drain Facilities.** CITY accepts the location and the width of the 42-inch and 36-inch storm drain easements across the community park site as shown in DISTRICT'S Construction Documents and Exhibit "A" hereto. CITY agrees to enter into a mutually acceptable storm drain maintenance agreement that requires CITY, DISTRICT and Pardee Homes or its successors or assigns as owners of property served by the 42-inch storm drain facilities, to contribute to the cost of maintaining said storm drain facilities and easement area. Such contributions shall be based on the percentage of drainage flowing from each property into the 42-inch storm drain as established by a mutually acceptable engineering drainage report for the properties. CITY hereby grants DISTRICT a license to enter upon the Ocean View Hills Community Park to maintain the proposed 36-inch storm drain from the Ocean View Hills School Site to the point of connection to the 42-inch storm drain shown on Exhibit "A" of this Agreement.

5. District Responsibilities.

DISTRICT shall, at District's sole cost and expense, be responsible for the following:

- 5.1 Construction of Improvements.** DISTRICT agrees to construct or cause to be constructed, at the DISTRICT's expense, upon the Joint Use Area as delineated in Exhibit "A" of this Agreement, which shall include, but shall not be limited to, turf multi-purpose fields, the irrigation system and associated underground electrical system, drainage as required, landscaping, and amenities as defined as Joint Use Area of this agreement and in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction.

The DISTRICT has budgeted \$400,000 for the labor and materials associated with constructing the top soil for the joint use fields, to CITY standards. Should labor and material costs for the top soil installation exceed \$400,000, the CITY shall reimburse the DISTRICT for the labor and materials above and beyond \$400,000 and reimbursement shall be made within ninety (90) calendar days of written notification from the DISTRICT. The CITY will reimburse the DISTRICT based upon actual receipts for construction labor and materials, with breakdown of quantities, for said work.

DISTRICT, agrees to construct or cause to be constructed the Radial Drive shown on Exhibit "A" of this Agreement, located on the site of the CITY's future Ocean View Hills Community Park, to the specifications, on file at the "District Office" and herein incorporated ("DISTRICT'S Construction Documents"). CITY, at its cost may reasonably inspect such construction.

All such construction work shall be accomplished by DISTRICT employees or by the DISTRICT'S contracting agents directly under control of DISTRICT. All construction shall meet the requirements and standards of DISTRICT and all applicable provisions of the California Education Code and California Code of Regulations, except as otherwise set forth.

- 5.2 Maintenance.** DISTRICT shall be responsible for maintenance and repair of all perimeter fencing, including associated mow curbs, around the perimeter of the Joint Use Area. Fencing must accommodate access for City maintenance vehicles and the public to Joint Use Area, as approved by the CITY.

Until the Parties reach parity as set forth in Section 3.3 of this Agreement, CITY shall be responsible for 100 percent (100%) of the maintenance of the Turf fields, landscaping, irrigation system and its associated electrical system within the Joint Use Area, in accordance with standards mutually acceptable to the CITY and DISTRICT. After the Parties reach parity, DISTRICT shall be responsible for fifty percent (50%) of the cost of maintenance of the turf fields, landscaping, the irrigation system and its associated electrical system, within the Joint Use Area, including the cost of water, in accordance with standards mutually acceptable to the CITY

and DISTRICT. CITY shall invoice DISTRICT and DISTRICT shall reimburse CITY within ninety (90) calendar days.

- 5.3. Litter Removal.** DISTRICT shall be responsible for collection and removal of litter in the Joint Use Area during DISTRICT's use of the Joint Use Area as described in Section 4.2 of this Agreement.
- 5.4. Graffiti Removal.** DISTRICT shall be responsible for removal of graffiti and/or repainting of surfaces within the Joint Use Area that have been defaced during DISTRICT's use of the Joint Use Area as described in Section 4.2 of this Agreement,
- 5.5 Installation of Water Meter.** In order to accommodate irrigation for the new turf multi-purpose fields within the Joint Use Area, DISTRICT shall have new water meter(s) and backflow preventer(s) installed. All improvements shall meet the requirements of the CITY and DISTRICT. The timing of installation of the water meter(s) and backflow preventer(s) shall be completed so as not to hinder the construction of the joint use facilities for the Joint Use Area.
- 5.6 Disabled Parking and Access.** All improvements constructed by the DISTRICT shall include all paths of travel to improvements and shall be 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.
- DISTRICT shall construct or cause to be constructed the School Parking/Access Route from the School Parking to the improvement(s) on the Joint Use Area, and Access Route from the adjacent public right of way or public transportation stop to the Joint Use Area.
- 5.7 Slopes and Sidewalks.** DISTRICT shall be solely responsible for maintaining the manufactured slope areas adjacent to the Joint Use Area.
- 5.8 Maintenance of DISTRICT's School Parking and Accessible Route.** Subject to the reimbursement provisions set forth below in Section 6.6 of this Agreement, DISTRICT shall be responsible for maintenance of the DISTRICT's parking lot and an accessible path of travel from the parking lot to the improvement(s), including pavement re-stripping and re-surfacing, and maintenance of the landscaping and irrigation.
- 5.9 Maintenance of Shared Radial Drive.** Subject to the reimbursement provisions set forth below in Section 6.7 of this Agreement, DISTRICT shall be responsible for maintenance of the shared Radial Drive, including pavement re-stripping and re-surfacing.

5.10 Utilities. DISTRICT shall be responsible for the cost of electricity for irrigation controller(s) which operate the irrigation system within the Joint Use Area. DISTRICT is responsible for the maintenance of the storm drain system within the Joint Use Area.

5.11 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 Joint Use Area in a manner which aids in the protection of San Diego's water quality. All maintenance and construction activities associated with the Joint Use Area shall comply with the Park and Recreation Department's Best Management Practices (BMP) to prevent storm water pollution and a Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.

5.12 Maintenance of Walls, and Retaining Walls within the Joint Use Area. The DISTRICT shall be responsible for all maintenance, repairs and structural repairs or modifications to all retaining walls within the Joint Use Area. Graffiti removal shall be as set forth in Sections 5.4 and 6.2 of this Agreement.

6. City Responsibilities. CITY shall, at CITY'S sole cost and expense, be responsible for the following:

6.1 Litter Removal. CITY shall be responsible for collection and removal of litter in the Joint Use Area during CITY'S use of the Joint Use Area as described in Section 4.1 of this Agreement.

6.2 Graffiti Removal. CITY shall be responsible for removal of graffiti and/or repainting of surfaces within the Joint Use Area that have been defaced during CITY's use of the Joint Use Area as described in Section 4.1 of this Agreement,

6.3 Maintenance. Until the Parties reach parity as set forth in Section 3 of this Agreement, CITY shall be responsible for 100 percent (100%) of the maintenance of the Turf fields, landscaping, irrigation system and its associated electrical system within the Joint Use Area, including the cost of water, in accordance with standards mutually acceptable to the CITY and DISTRICT. Maintenance includes weekly or bi-weekly mowing, three (3) fertilizations annually, three (3) aerations annually, weed abatement, and pest control, as appropriate. Replenishment of infield mix shall occur as necessary. Cost for replenishment of infield mix will be borne by the CITY. After the Parties reach parity, terms shall be as set forth in Section 5.2 of this Agreement.

6.4 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 field (whether school is in

session or not), CITY shall notify the District 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 dated 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.

6.5 Portable Restrooms. CITY shall be responsible for maintenance of portable restrooms if placed within the Joint Use Area as mutually agreed by District and City pursuant to Section 4.6 of this Agreement.

6.6 Reimbursement for Maintenance of DISTRICT's Parking Lot and Accessible Route. DISTRICT shall bill CITY as expenses are incurred, and CITY shall reimburse DISTRICT, for the pro rata share of costs incurred by DISTRICT and attributable to CITY for maintenance of DISTRICT'S School Parking and Accessible Route, as defined in Section 5.8 of this Agreement based upon the following formula: the number of hours CITY has exclusive use of School Parking shown on Exhibit "A" during the billing period, divided by the total number of hours in the billing period. DISTRICT shall also bill CITY and CITY shall reimburse DISTRICT for such maintenance costs incurred by DISTRICT resulting from CITY special events. Reimbursement for said work shall be made within ninety (90) calendar days of written notification from the DISTRICT. For major maintenance or renovation (such as resurfacing or re-striping, etc.), the CITY's pro rata share shall be calculated and billed as expenses are incurred. Reimbursement of major maintenance and renovations shall be subject to City Council approval through the fiscal year end budget process. Cost incurred by DISTRICT for maintenance of landscaping and irrigation shall not be subject to reimbursement by CITY.

6.7 Reimbursement for Maintenance of Shared Radial Drive. DISTRICT shall bill CITY as expenses are incurred, and CITY shall reimburse DISTRICT, for a 50 percent share of the costs incurred by DISTRICT for maintenance of the shared Radial Drive, shown on Exhibit "A", and as defined in Section 5.9 of this Agreement. Reimbursement for said work shall be made within ninety (90) calendar days of written notification from the DISTRICT. For major maintenance or renovation (such as resurfacing or re-striping, etc.), the CITY's 50 percent share shall be calculated and billed as expenses are incurred. Reimbursement of major maintenance and

renovations shall be subject to City Council approval through the fiscal year end budget process.

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 Joint Use Area. As a result of this review, the use schedule, including major maintenance or renovation efforts identified in this Agreement, may be revised in accordance with Paragraph 7.2. 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.

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 CITY-financed improvements installed in the Joint Use Area shall remain the property of CITY during the term of this Agreement and will be removed from the DISTRICT-owned Joint Use Area by CITY upon request by DISTRICT at termination or expiration of this Agreement, and the Joint Use Area shall be returned to DISTRICT free of all legal encumbrances and in the condition existing at the commencement of this Agreement. In the event the CITY does not so remove its improvements, upon expiration or termination of this Agreement, as requested in writing by DISTRICT, DISTRICT may remove, sell, or destroy the same and restore the Joint Use Area to the condition existing at the commencement of this Agreement. Upon written notice from the DISTRICT stating that the CITY financed improvements installed within the Joint Use Area will not be utilized by the DISTRICT, CITY will reimburse the DISTRICT for the removal of the facilities and reinstatement of the Joint Use Area. Reimbursement shall be subject to City Council approval through the fiscal year end budget process. Cost incurred by DISTRICT for maintenance of landscaping and irrigation shall not be subject to reimbursement by CITY. Should the DISTRICT sell the improvements, the sale price shall be credited to the reimbursement. 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.

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 Joint Use Area 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 Joint Use Area 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 Worker's Compensation Insurance. CITY and DISTRICT acknowledge and warrant that they maintain, and shall maintain for the term of this Agreement, Worker's 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, MS #9B
 San Diego, California 92101
 Attention: Park and Recreation Director

If to DISTRICT: San Ysidro School District
 4350 Otay Mesa Road
 San Diego CA 92173
 Attention: Assistant Superintendent Business Services

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 Joint Use Area.

- 11.2 Entry, Maintenance and Inspection.** CITY reserves and shall always have the right to enter upon the Joint Use Area for the purpose of viewing and ascertaining the condition thereof, and for the purpose of maintenance of Turf recreational facilities that cannot be accommodated during non-school hours. Turf fields damaged due to excessive use or misuse, such as conducting sports activities during or immediately after rainfall, shall be repaired in a timely manner by the City if damage occurs during CITY's use of the Joint Use Area as described in Section 4.2 of this Agreement. If damage occurs during DISTRICT's use of the Joint Use Area as described in Section 4.2 of this Agreement, DISTRICT shall reimburse CITY for costs incurred by the CITY and attributable to DISTRICT for repairs to the Joint Use Area.
- 11.3 Assignment.** CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT. DISTRICT shall not assign this Agreement or any interest herein without the prior written consent of CITY. 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. DISTRICT shall reserve the right to review the third party agreement before it is finalized. DISTRICT shall receive a copy of the final third party agreement.
- 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 Joint Use Area, 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 Joint Use Area 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 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 will 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.

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 City Manager 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 CITY Manager pursuant to Ordinance No. 0-19394, adopted _____, authorizing such execution, and by the San Ysidro School District of San Diego County, California, acting by and through its Superintendent pursuant to a Resolution of its Board of Education, adopted _____.

THE CITY OF SAN DIEGO,
a Municipal Corporation

SAN YSIDRO SCHOOL DISTRICT
a political subdivision
in the State of California

By: Ted Medina
Name: Ted Medina
Title: Park and Recreation Director
Date: 7/25/05

By: Karl Christensen
Name: KARL CHRISTENSEN
Title: ASST. Supt. BUSINESS
Date: 7-25-05

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

By: Sharon Thomas
Title: Deputy City Attorney
Date: 7/27/05

APPROVED AS TO FORM AND
LEGALITY BY BOWIE,
ARNESON, WILES & GIANONNE

By: _____
Title: Partner
Date: _____

Exhibit A: Depiction of the Joint Use Area
Exhibit B: Calculations of Financial Contributions

0-19394

IN WITNESS WHEREOF, this Agreement is executed by the CITY of San Diego acting by and through its CITY Manager pursuant to Ordinance No. _____, adopted _____, authorizing such execution, and by the San Ysidro School District of San Diego County, California, acting by and through its Superintendent pursuant to a Resolution of its Board of Education, adopted _____.

THE CITY OF SAN DIEGO,
a Municipal Corporation

SAN YSIDRO SCHOOL DISTRICT
a political subdivision
in the State of California

By: _____
Name: Ellen Oppenheim
Title: Park and Recreation Director
Date: _____

By: [Signature]
Name: VAN CHRESTENSEN
Title: ASST. Supt, BUSINESS
Date: 5-25-05

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

APPROVED AS TO FORM AND
LEGALITY BY BOWIE,
ARNESON, WILES & GIANONNE

By: _____
Title:
Date: _____

By: [Signature]
Title: Partner
Date: 5/25/05

- Exhibit A: Depiction of the Joint Use Area
- Exhibit B: Calculations of Financial Contributions

SURFCREST DRIVE

DEL SOL BLVD.

Ocean View Hills Middle School

Shared Radial Drive

School Parking

Ocean View Hills Community Park

20' Drainage Easement (32" Pipe)

40' Drainage Easement (42" Pipe)

5 acres Joint Use Area



EXHIBIT "A" - Joint Use Area

EXHIBIT "B"

CALCULATION OF FINANCIAL CONTRIBUTIONS

Value of DISTRICT's land contribution (\$1,200,000/ac. x 5 acres) =	\$6,000,000
Value of CITY's land contribution (\$500,000/ac x 0 acres) =	\$0
Value of DISTRICT's development contribution (\$250,000/ac. x 5 acres) =	\$1,250,000
Value of CITY's development contribution (\$200,000/ac x 0 acres) =	\$0
<u>Parties Financial Contributions</u>	
Value of DISTRICT's contribution	\$7,250,000
<u>Value of CITY's contributions</u>	<u>\$0</u>
Difference:	\$7,250,000

CITY's maintenance contribution per year for play field:
(\$8,500 per acre x 5 acres) = \$42,500

Date parity will be reached $(\$7,250,000 / \$42,500) = 170.6$ years of CITY Maintenance.

Note:

These figures are estimates and are to be revised based on actual costs incurred.

ORDINANCE NUMBER O-19394 (NEW SERIES)

ADOPTED ON JUL 18 2005

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH THE SAN YSIDRO SCHOOL DISTRICT AT OCEAN VIEW HILLS MIDDLE SCHOOL.

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

Section 1. That the City Manager is authorized to execute, for and on behalf of the City of San Diego, an agreement with the San Ysidro School District [SYSD] for the Construction, Operation, Maintenance, and Use of Turf Fields, Radial Drive, School Parking, and Accessible Routes at Ocean View Hills Middle School [Agreement]. The improvements to the joint use fields will be funded by the SYSD, and in return the City will maintain the joint use field per the terms of the Agreement and conditions set forth in that agreement on file in the office of the City Clerk as Document No. OO-19394.

Section 2. 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 passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

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

SMT:als
04/08/05
Or.Dept: Park&Rec
O-2005-43
MMS#303

Passed and adopted by the Council of The City of San Diego on July 19, 2005 by the following vote:

YEAS: PETERS, ATKINS, YOUNG, MAIENSCHIN, FRYE, MADAFFER.

NAYS: NONE.

NOT PRESENT: ZUCCHET, INZUNZA.

VACANT: MAYOR.

AUTHENTICATED BY:

TONI ATKINS

Mayor Pro Tem of The City of San Diego,
California

JOYCE LANE

Assistant City Clerk of The City of San Diego,
California

(Seal)

By:  Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. 19394 (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 June 20, 2005 and on July 19, 2005.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

JOYCE LANE

Assistant City Clerk of The City of San Diego,
California

(Seal)

By:  Deputy