

ORIGINAL

COMMUNITY RECREATION JOINT USE AGREEMENT

By and Between

THE CITY OF SAN DIEGO

and

SOLANA BEACH SCHOOL DISTRICT

Effective July 1, 2016

COMMUNITY RECREATION JOINT USE AGREEMENT

This Community Recreation Joint Use Agreement ("Agreement") is made by and between the City of San Diego ("City"), a California municipal corporation, and the Solana Beach District ("District"), a public school district organized and existing pursuant to California law, to be effective as of July 1, 2016 ("Effective Date") when signed by the Parties and approved by the San Diego City Attorney. The City and the District may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The District owns and operates the Solana Highlands School located at 3520 Long Run Drive within the City's boundaries ("School"). The District presently provides educational, recreational and other programs at the School for students in Transitional Kindergarten through Third Grade levels. Although the specific grade levels served at the School may change from time to time depending on demographics and other factors, the District presently anticipates that it will maintain operations at the School during the term of this Agreement.

B. The City owns and operates the Solana Highlands Neighborhood Park also located (for address purposes) at 3520 Long Run Drive ("Park"), which is adjacent to and contiguous with the property comprising the School. The Parties acknowledge and agree that the sites for the School and the Park were acquired, and the School 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 School for public educational purposes.

C. To that end, the Parties entered into that certain agreement dated June 9, 1987, and entitled "Agreement for the Construction, Maintenance, Operation and Use of the Solana Highlands School and Park" ("Original Joint Use Agreement"). In accordance with the Original Joint Use Agreement, the Parties have joint use of: (i) the cross-hatched areas as depicted in Exhibit "A" attached hereto ("Joint Use Area") and (ii) the restrooms located on the School property as are also depicted in Exhibit A hereto ("Joint Use Restrooms"). The City and District each are the fee owner of separate portions of the Joint Use Area as depicted in Exhibit "B" attached hereto. The Parties acknowledge that the improvements to the Joint Use Area and the Joint Use Restrooms (collectively, the "Joint Use Facilities") as contemplated by the Original Joint Use Agreement have all been constructed and accepted by the Parties. The Original Joint Use Agreement, by its terms, will expire on June 8, 2042.

D. Because the District needs to have use of the Joint Use Facilities in order continue to provide educational, recreational and other services at the School, the Parties desire to continue to cooperate with respect to the use, operation and maintenance of the Joint Use Facilities as has been authorized pursuant to the Original Joint Use Agreement. However, the Parties also desire to update the terms and conditions for such joint use as is appropriate to reflect changes in the Parties' respective practices and understandings since they entered into the Original Joint Use Agreement. Thus, the purpose of this Agreement is to establish the terms and conditions for the use, operation and maintenance of the Joint Use Facilities by the Parties on and after the Effective Date. The Parties intend that this Agreement shall supersede and replace the Original Joint Use Agreement in its entirety.

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.* By entering into this Agreement, the Board of Education of the District ("District Board") acknowledges that, consistent with Education Code Section 19010, 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 at the School 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 Facilities solely for purposes of constructing, operating, maintaining, repairing 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 Facilities 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 the Joint Use Facilities on each day, Monday through Friday, during the periods that school is in session at School, including, without limitation, during periods the District is conducting summer school ("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 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 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 Facilities 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 Facilities, for community recreation and other legally-authorized purposes, by organizations, clubs and similar groups that have been approved by the City; and (iii) may permit use of the Joint Use Facilities, for community recreation and other legally-authorized purposes, by individuals or groups of individuals without need for specific notice to or approval from the City.

Section 1.5 City Use Periods. The City shall have use of the Joint Use Facilities 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 may permit use of the Joint Use Facilities 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 School 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, or for such personnel to be present within any of the Joint Use Facilities, for purposes associated with their respective work functions, at times other than during the District Use Periods and to the extent such use by District or School personnel does not unreasonably interfere with City's use. In addition, nothing in this Agreement shall be deemed or construed to prohibit District or School personnel, as members of the general public, from using the Joint Use Facilities 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 Facilities for special events (each a "District Special Event") as provided by this Section. For purposes of this Agreement, "District Special Event" 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, School competitions, School fundraising events, *et cetera*. The Parties shall include all District Special Events on the Joint Use Schedule (defined in Section 2.2 herein). The City shall not charge a 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 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 of the Joint Use Area (i.e., not including the Joint Use Restrooms; 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.

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 a mutually convenient date during the month of June. 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 Meeting 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 Facilities at any time during the upcoming one-year period ("Joint Use Schedule");
- (ii) Conduct a walk-through review of the Joint Use Facilities 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 Facilities;

- (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 Facilities 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 Facilities, responsibility for performance of maintenance and repairs or the costs thereof, requirements applicable to each Party’s insurance coverage, *et cetera*; and
- (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 Facilities.

Section 2.3 District Information Required for Joint Use Meetings. Not less than five (5) business days prior to each of the annual Joint Use Meetings, the District shall provide to the City: (i) the School calendar for the upcoming school year, including, without limitation, any summer school; (ii) the “bell schedule” indicating the start of the school day and the end of the school day (regular sessions and summer school) for the upcoming school year; (iii) a list of the dates and times of any 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 Facilities 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 each of the annual Joint Use Meetings, the City shall provide to the District: (i) a calendar indicating all City organized, sponsored, authorized, or otherwise permitted events and activities to occur within the Joint Use Facilities during the upcoming school year; and (ii) the City’s proposed maintenance schedule for any and all portions of the Joint Use Facilities 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 each annual Joint Use Meeting, the Parties shall: (i) compile all of the information that is to be included on the Joint Use Schedule for the upcoming one-year period; (ii) prepare and agree upon 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 and all District Special Events, and any and all other 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 Carmel Valley Recreation Center; and (ii) the District shall make the Joint Use Schedule available to the public in the administrative offices of the School.

Section 2.6 Mid-Year Modifications to Joint Use Schedule. At any time after the Parties have prepared and agreed upon 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 change in the School calendar or bell schedule, so that, if necessary, the City may adjust its maintenance and repair activities as shown on the applicable Maintenance 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 (“Agreement Term”) shall commence as of the Effective Date and, unless this Agreement is earlier terminated in accordance with the provisions herein, the Agreement Term shall expire at 9:00 p.m. on July 31, 2042. Because the District cannot feasibly operate the School without having use of the Joint Use Area consistent with this Agreement, at least six (6) months prior to the date the Agreement Term will expire, if the District will continue to operate the School for public purposes after expiration of the Agreement Term, the Parties, acting reasonably and in good faith, may extend the Agreement 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, subject to City Council and District Board approval.

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 Facilities 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 within any of the Joint Use Facilities. Any such fees collected by a Party shall remain the property of such Party.

Section 3.4 Utilities Costs. The City shall pay all costs for utilities (including, without limitation, water, sewer and electricity) serving the Joint Use Area; provided that the District shall reimburse the City for twenty-five percent of the cost of the water bills associated with the Joint Use Area. The City shall send invoices the District for its share of the water costs, together with such documentation as reasonably evidences the total water costs for the applicable billing period. The District shall pay all costs for utilities (including, without limitation, water, sewer and electricity) for the Joint Use Restrooms.

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 Facilities. 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 Facilities. In the event of any change in such contract 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. Except as provided in Section 4.11 herein, each Party shall have the unqualified right, at any and all times, to enter within any of the Joint Use Facilities for purposes of inspecting and otherwise reviewing the condition(s) of those Joint Use Facilities. Except in the event of an emergency, a Party shall provide notice to the other Party as far in advance as reasonably possible prior to (but not in excess of 72 hours prior to) entry within the Joint Use Facilities for such purposes during any period that the Joint Use Facilities are reserved for use by the other Party. 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, to the extent such use does not conflict with any use by the City.

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 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. The Parties shall clean the Joint Use Restrooms as provided in Section 4.9 herein.

Section 4.2 Responsibility for Performance of Maintenance and Repairs. The City shall be responsible for performing all reasonably necessary maintenance and repair of the Joint Use Area. The District shall be responsible for performing all reasonably necessary maintenance and repair of the Joint Use Restrooms. 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 the possibility exists for doubt regarding whether any maintenance or repair is necessary, the Party with responsibility for performing such maintenance or repair must, prior to performing the work, consult with the other Party as to the necessity for such work. 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 Facilities, or necessary to otherwise maintain or restore the condition of any such improvements. 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, trees, *et cetera*; (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 fencing; and (vii) repair or replacement of play-structures, equipment and other improvements located 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.

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" shall mean maintenance and repairs other than "Minor Maintenance and Repairs." For purposes of this Agreement, "Minor Maintenance and Repairs" means any maintenance and/or repairs that: (i) a Party can fully complete within a few minutes and up to a few hours, and that will not unreasonably interfere with any of the operations, programs, activities or events of the other Party; or (ii) a Party can fully complete within that Party's corresponding use period (i.e., for District as set forth in Section 1.3 and for City as set forth in Section 1.5).

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 only during that Party's corresponding use period (i.e., for District as set forth in Section 1.3 and for City as set forth in Section 1.5). If any Major Maintenance and Repairs will remain unfinished for any period during which work will cease or be suspended, the Party that is performing such Major Maintenance and Repairs shall be responsible for having in place any and all safety barriers and other safety measures necessary to protect students and others. If any Major Maintenance and Repairs will cause a temporary inability to use any portion of the Joint Use Facilities 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 Facilities 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 Joint Use Area, and the District shall be responsible for performing all emergency repairs needed for the Joint Use Restrooms. Notwithstanding

the foregoing provisions of this Part 4, in the event either Party reasonably determines that emergency repairs are required to or within any portion of the Joint Use Facilities, 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 Facilities 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 Facilities; 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. In each case that a Party intends to add additional improvements to, or replace improvements then-existing within, any of the Joint Use Facilities ("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. Notwithstanding anything to the contrary, in connection with any expansion, addition, modernization or reconstruction of the School, the District may move, eliminate, reconfigure, replace or reconstruct any improvement(s) located on the School grounds and, in such event, the foregoing provisions of this Section 4.7 shall apply solely with respect to the location of the Joint Use Restrooms.

Section 4.8 Responsibility for Costs. Each Party shall be responsible for its own costs with respect to routine clean-up for which it is responsible pursuant to Section 4.1 herein. Each Party shall pay fifty percent of the actual cost, to the extent reasonable, of any and all maintenance and repairs (regardless of whether Major Maintenance and Repairs or Minor Maintenance and Repairs, and regardless of which Party 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 evidences all of the costs of such work.

Section 4.9 Joint Use Restrooms. Without limiting the foregoing provisions of this Part 4, the Parties shall clean and restock the Joint Use Restrooms in accordance with the following:

- (i) The District, if it has not done so already, shall provide to the City a single copy of the key to the Joint Use Restrooms and, if from time to time the District re-keys the locks to the Joint Use Restrooms, the District will provide to the City a single copy of each new key to the Joint Use Restrooms;
- (ii) Each day, Monday through Thursday, inclusive, during District Use Periods, commencing at 6:00 p.m. on each such day, the District, at its cost and expense, shall clean and restock the Joint Use Restrooms, and immediately close and lock the Joint Use Restrooms to preclude any theft and/or damage to, and any further use on such day of, the Joint Use Restrooms;
- (iii) Each day during City Use Periods, if the District is not responsible for cleaning and restocking the Joint Use Restrooms pursuant to the foregoing clause (ii), the City, at its cost and expense, shall clean and restock the Joint Use Restrooms, and then, at an appropriate time consistent with City regulations, policy or practice, the City shall close and lock the Joint Use Restrooms to preclude any theft and/or damage to, and any further use on such day of, the Joint Use Restrooms;
- (iv) Notwithstanding the foregoing clause (iii), each day during City Use Periods, if the next subsequent day will be or include a District Use Period, the City shall clean and restock the Joint Use Restrooms, then immediately close and lock the Joint Use Restrooms to preclude any theft and/or damage to, and any further use on such day of, the Joint Use Restrooms;
- (v) For purposes of this Section, "clean and restock the Joint Use Restrooms" shall mean:
 - (a) Removing and properly disposing of any and all debris, waste, *et cetera* in the Joint Use Restrooms or in the vicinity of the entry doors to the Joint Use Restrooms (including, without limitation, emptying trash receptacles);
 - (b) Wiping, scrubbing, or otherwise removing any human and/or animal waste products and other foreign matter and/or substances;
 - (c) Appropriately cleaning and sanitizing surfaces subject to human contact (including, without limitation, any and all entry doors, stall doors, door handles, stall dividers, sinks, faucets and handles, toilets, urinals, toilet and urinal levers or buttons, toilet paper dispensers, paper towel dispensers, mirrors, walls and floors); and
 - (d) Restocking all consumable supplies to reasonably full capacity of the applicable dispenser or, if no dispenser, as otherwise applicable (including, without limitation, any and all hand soap, paper towels, toilet paper, and urinal deodorizer/disinfectant blocks).

Section 4.10 Dog Signs. Within a reasonable time after the Effective Date, the City shall install signs in or about the parking and field areas included in 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 District shall pay fifty percent of the actual costs, to the extent reasonable, incurred by the City to design, create and install such signs.

Section 4.11 City Presence During School Hours. 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 Facilities during any District Use Period unless such personnel first check in with School administration at the School office.

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 conveyance of fee title (or any other interest) in the portions of the Joint Use Facilities owned by a Party to the other Party.

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 Facilities shall be owned by the Party that owns the real property underlying that portion of the Joint Use Facilities.

Section 5.3 Encumbrances. Neither Party shall: (i) encumber, or suffer or permit the encumbrance of, any real property underlying the Joint Use Facilities that is owned by the other Party, 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 Facilities that is owned by the other Party, or any improvements located thereon.

PART 6: INSURANCE

Section 6.1 General Insurance Requirements. At all times during the Agreement Term, 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 Part 6 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 Agreement Term (including, without limitation, any extensions or renewals of the Agreement 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 Facilities 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 within any of the Joint Use Facilities 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 activities pursuant to this Agreement, including, without limitation: (i) the use of any of the Joint Use Facilities 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 within any of the Joint Use Facilities 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, the District Board and each member thereof, and the District's other officers, employees and agents, and each of them, from and against any and all Claims that arise from the City's activities pursuant to this Agreement, including, without limitation: (i) the use of any of the Joint Use Facilities 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 or arbitrator 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 contribution as set forth in Government Code section 895.6. In the event Government Code Sections 895, 895.2 and/or 895.6 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 Sections 895.2 and 895.6 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 Agreement 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"). The Defaulting Party shall have thirty days after receipt of the Notice of Default to cure the applicable Event of Default; provided that, if the Defaulting Party promptly commences to cure said Event of Default, but reasonably is not able to complete its cure of the Event of Default within such thirty-day period, despite making diligent efforts to do so, the Defaulting Party shall have a reasonable amount of time to complete the cure, not in excess of a total of sixty days from receipt of the Notice of Default. In the event the Defaulting Party does not cure an Event of Default within the time required by this Section, 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, the attempts 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 without having use of the Joint Use Area consistent with this Agreement, in no event shall the City be entitled to seek or have the remedy of termination of this Agreement, or the District's rights pursuant to this Agreement to use 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 School 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 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

Solana Beach School District
Attention: Executive Director, Capital
Programs & Technology
309 N. Rios Avenue
Solana Beach, CA 92075

City

City of San Diego
Attention: 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 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 of the Recitals set forth on Page 1 and Page 2 of this Agreement, and each of the Exhibits attached hereto and referenced herein, is hereby incorporated as a fully operative and effective provision 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 Water Quality – Best Management Practices. The Parties 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 shall be each Party’s responsibility, with respect to the portions of the Joint Use Facilities that it owns, 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, each Party shall, at a minimum with respect to the portions of the Joint Use Facilities that it owns, implement and comply, as applicable, with the Minimum Industrial and Commercial BMPs adopted under the San Diego Municipal Code section 43.0307(a). It ultimately shall be the responsible Party’s obligation to prevent pollutant discharges to the storm drain system. Therefore, such responsible Party shall identify and implement any additional BMPs that may be required to avoid the discharge of pollutants to the storm drain system.

Section 10.5 City and District Approval. Subject to obtaining City Council approval when required, 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 of the City or his/her duly designated representative. Subject to obtaining District Board approval when required, 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 of the District or his/her duly designated representative.

Section 10.6 Entire Agreement and Supersession of Original Joint Use 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. Upon the Effective Date of this Agreement, the Original Joint Use Agreement shall terminate and this Agreement shall supersede the Original Joint Use Agreement and any and all other prior agreements between the Parties related to all or any portion of the Joint Use Facilities.

Section 10.7 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 10.8 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 arbitrations, actions, and other proceedings arising from this Agreement must be initiated and conducted in the County of San Diego, California.

Section 10.9 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 10.10 Assignment.

Subsection 10.10.1 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 10.10.2 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 Facilities owned by the City if the result would unreasonably interfere with the District's rights pursuant to this Agreement.

Subsection 10.10.3 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 Facilities owned by the District if the result would unreasonably interfere with the City's rights pursuant to this Agreement.

Section 10.11 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 10.12 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 10.13 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 10.14 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.

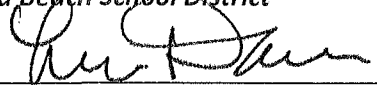
Section 11.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same original instrument. Signature pages may be detached from counterpart originals and combined to physically form one or more original copies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

[Remainder of page left intentionally blank.]

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

Solana Beach School District

By: 
Lisa Davis, Assistant Superintendent,
Business Services

Date: 03-27-17

Approved as to form:

By: Bowie, Arneson, Wiles & Giannone,
Attorneys for the Solana Beach
School District

By: 
Brian W. Smith, Legal Counsel


Date: 03-17-17

City of San Diego

By: 
Herman Parker, Park and Recreation Director

Date: 4/10/17

Approved as to form:

By: Mara W. Elliot, City Attorney
By: 

Date: 7/6/17

EXHIBIT "A"
DEPICTION OF JOINT USE AREA

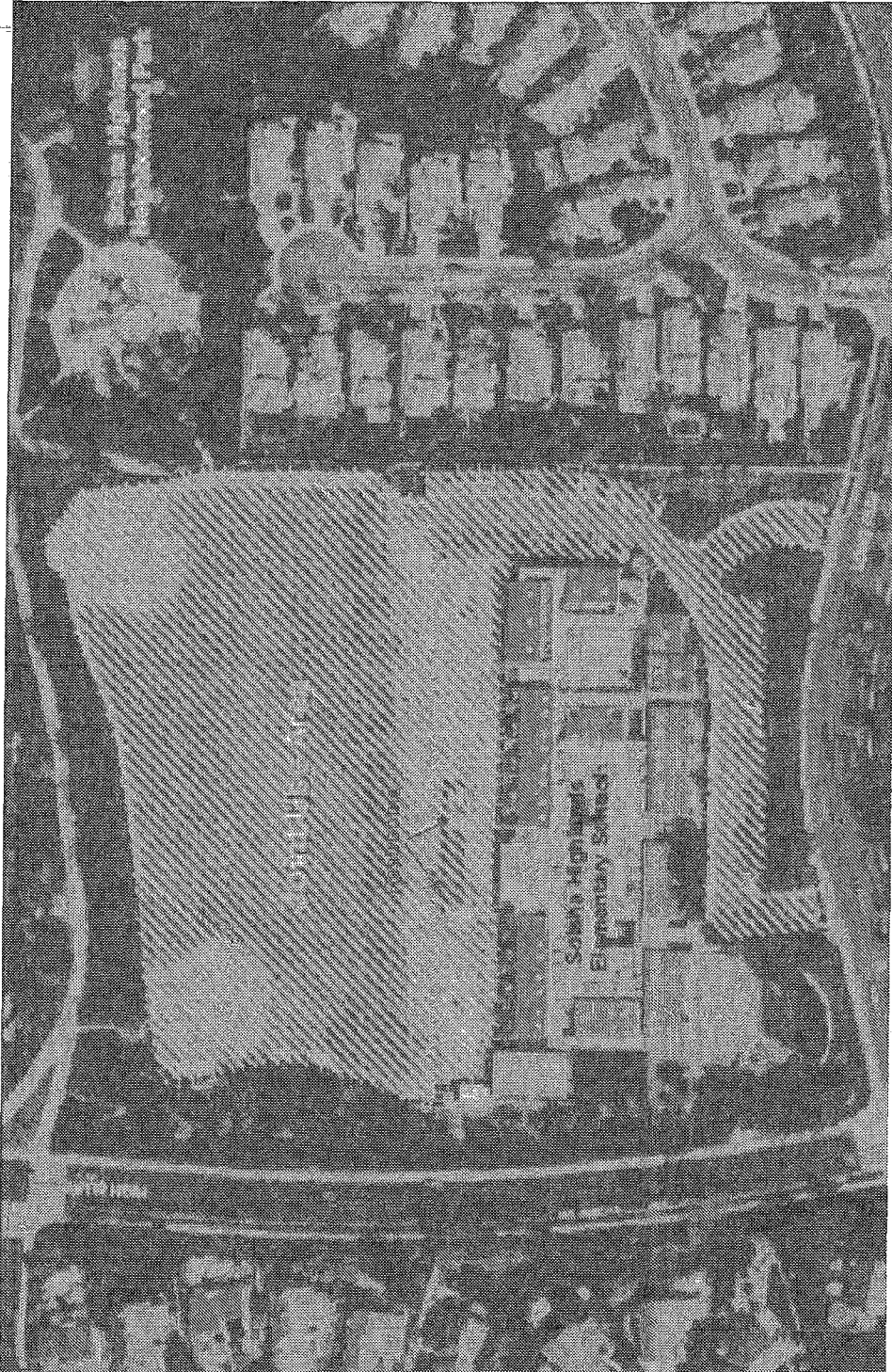


EXHIBIT "B"
APPROXIMATE PROPERTY BOUNDARIES OF CITY AND DISTRICT PORTIONS OF JOINT USE AREA



ORDINANCE NUMBER O- 20828 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 30 2017

AN ORDINANCE OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING A JOINT USE AGREEMENT
WITH THE SOLANA BEACH SCHOOL DISTRICT FOR
SOLANA HIGHLANDS NEIGHBORHOOD PARK.

ITEM # 52 B
5/16/17

WHEREAS, the City of San Diego (City) owns and operates the Solana Highlands
Neighborhood Park located at 3520 Long Run Drive, San Diego, California (Park); and

WHEREAS, the Solana Beach School District (District) owns and operates the Solana
Highlands School located at 3520 Long Run Drive, San Diego, California (School); and

WHEREAS, on June 9, 1987, the City and the District entered into the Agreement for the
Construction, Maintenance, Operation and Use of the Solana Highlands School and Park
(Original Agreement), which is scheduled to expire on June 8, 2042; and

WHEREAS, the City and the District desire to enter into a new agreement prior to the
expiration of the Original Agreement for an approximate term of 26 years in order to update the
terms and conditions of the Original Agreement to reflect changes in both parties' respective
practices and understandings (Community Recreation Joint Use Agreement); and

WHEREAS, the joint use areas of the School and the Park are comprised of restrooms,
parking lots and athletic fields; and

WHEREAS, the Solana Beach School District Board of Education approved the
Community Recreation Joint Use Agreement on August 11, 2016; and

WHEREAS, under 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 City Council; NOW, THEREFORE,

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

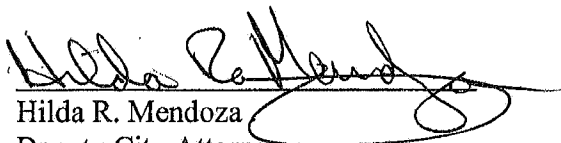
Section 1. That the Mayor, or his designee, is hereby authorized and directed to execute the Community Recreation Joint Use Agreement, on file in the Office of the City Clerk as Document No. OO- 20828, between the City of San Diego and the Solana Beach School District, for the joint use of portions of the Solana Highlands Neighborhood Park and the Solana Highlands School.

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 R. Mendoza
Deputy City Attorney


HRM:als
02/27/2017
Or.Dept: Park & Rec.
Doc. No.: 1450612

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 16 2017.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5/30/17
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on MAY 16 2017, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<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"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 30 2017.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

By [Signature], 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 25 2017

MAY 30 2017

, and on _____.

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.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

20828

Ordinance Number O-_____

Passed by the Council of The City of San Diego on May 16, 2017, by the following vote:

YEAS: **BRY, ZAPF, WARD, COLE, KERSEY, CATE, SHERMAN,
ALVAREZ, GOMEZ.**

NAYS: **NONE.**

NOT PRESENT: **NONE.**

RECUSED: **NONE.**

AUTHENTICATED BY:
KEVIN L. FAULCONER
Mayor of The City of San Diego, California
ELIZABETH S. MALAND
City Clerk of The City of San Diego, California

(Seal)

By: Matthew Hilario, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. **O-20828** (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 25, 2017**, and on **May 30, 2017**.

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