

**DUPLICATE**

I. 29 3/14/2023

SV23-0393-99

**AGREEMENT FOR THE  
CONSTRUCTION, OPERATION, MAINTENANCE, AND USE  
OF JOINT USE FACILITIES AT  
CLARK MIDDLE [LEGACY SITE]**

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THIS AGREEMENT [Agreement] for the Construction, Operation, Maintenance and Use of Joint Use Facilities, as further described in Section 1, below, at Clark Middle [School] is entered into this 7<sup>th</sup> day of Aug 2023, between the CITY OF SAN DIEGO, a California municipal corporation [CITY], and the SAN DIEGO UNIFIED SCHOOL DISTRICT of San Diego County, a public school district of the State of California [DISTRICT], [collectively, the "Parties", singularly "Party"] based on the following facts:

**RECITALS**

- A. The Community Recreation Act (California Education Code sections 10900 through 10914.5) authorizes school districts and cities to organize, promote, and conduct community recreation programs and activities to promote the health and general welfare of the community.
- B. The California Civic Center Law (California Education Code sections 38130-38138) establishes a civic center at every school for use by citizens for a variety of purposes, including recreation.
- C. California Education Code section 10905 authorizes the governing bodies to enter into agreements with each other to promote the health and general welfare of the community and to enhance the recreational opportunities afforded to the community.
- D. CITY and DISTRICT have been cooperating in the use of numerous recreational facilities beginning with the CITY-DISTRICT Recreation Agreement of September 1948.
- E. CITY desires to supplement park acreage to meet community recreational needs by using the Joint Use Area, as defined herein, and Joint Use Facilities to be constructed thereon, for recreational purposes. DISTRICT desires to assist the CITY in meeting community recreational needs by permitting CITY to use the Joint Use Facilities to be constructed on the Joint Use Area pursuant to this Agreement for CITY's recreational programs. 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.
- F. CITY and DISTRICT desire to establish this mutually beneficial arrangement by entering into this Agreement to provide for both Parties' educational and recreational programs.
- G. CITY and DISTRICT have prepared Exhibit "A": General Depiction of the Joint Use Area.

DOCUMENT NO

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- H. The financial contributions of each Party for this Agreement are detailed in Section 3.1, below.
- I. APPROVED PLANS and SPECIFICATIONS shall hereby be defined as a copy of final construction plans signed by both the DISTRICT and CITY and kept on file with both Parties.

NOW, THEREFORE, the Parties agree as follows:

**A G R E E M E N T**

Upon the Term Commencement Date, the prior agreement for joint use of this property filed in the Office of the City Clerk on September 16, 1997 as Document No. OO-18434 by and between DISTRICT and CITY, which was executed on September 30, 1997, [Prior Agreement], is hereby terminated and replaced in its entirety by this Agreement.

**1. Property.**

DISTRICT hereby permits CITY to use a portion of that certain DISTRICT-owned real property as depicted on attached Exhibit "A" and further described on attached Exhibit "B", incorporated herein by this reference [DISTRICT Property].

The DISTRICT Property, as depicted on attached Exhibit "A" is hereinafter referred to as the "Joint Use Area." This Joint Use Area includes improvements herein referred to as the "Joint Use Facilities."

**2. Term.**

**2.1 Term Commencement Date.** This Agreement shall be for a period of twenty-five (25) years ("Term"). The term commencement date of this Agreement shall be the later of the date recorded by the City Clerk, as authorized by ordinance adopted by the San Diego City Council, and the date recorded by the authorized representative of the DISTRICT's Board of Education, but in no event before the CITY terminates the Prior Agreement ("Term Commencement Date").

**2.2 DISTRICT Wishes to Sell DISTRICT Property.** If at any time during the Term, DISTRICT should determine that the DISTRICT Property is no longer needed for school purposes and if DISTRICT should propose to sell DISTRICT Property, DISTRICT shall so notify the CITY in writing pursuant to Section 9, below, and Education Code 17464. Reimbursement for the remaining value of the Joint Use Facilities shall be in accordance with Section 2.6, below.

**2.3 DISTRICT Leases DISTRICT Property.** If at any time during the Term, DISTRICT should determine that the DISTRICT Property is no longer needed for school purposes and if DISTRICT should propose to lease the DISTRICT Property, DISTRICT shall so notify the CITY in writing pursuant to Section 9, below. Reimbursement for the remaining value of the Joint Use Facilities shall be

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in accordance with Section 2.6, below, if said lease does not provide for the continuation of Joint Use.

**2.4 CITY Wishes to Use or Sell CITY Property.** {NOT APPLICABLE FOR THIS AGREEMENT}

**2.5 CITY Leases CITY Property.** {NOT APPLICABLE FOR THIS AGREEMENT}

**2.6 Remaining Value Reimbursement.** If events in Sections 2.2, 2.3, 2.4 or 2.5, above, occur, and should construction or installation of the Joint Use Facilities have been funded solely by the Party seeking to sell or lease its property, no further action will be necessary. Should the Joint Use Facilities be funded in part or full by the non-selling/leasing Party, the CITY and DISTRICT shall agree to the remaining value of the Joint Use Facilities based on 25-year life expectancy of the Joint Use Facilities. The agreed to value of actual construction costs shall be reimbursed to non-selling, non-leasing Party but only in proportion to Party's contribution, as provided for in Section 5.22, below, which will also be reduced due to amortization. However, if this Agreement is terminated on or after 10 years from the Term Commencement Date, no reimbursement shall be required. Reimbursement may be in the form of cash, or any other means determined to be equitable by both Parties.

### **3. Consideration.**

**3.1 Mutual Benefit.** The Parties acknowledge that good, valuable, and adequate consideration exists in the mutual benefits enjoyed, respective financial contributions, commitments to maintenance, 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 Review of Joint Use Agreement.** CITY and DISTRICT shall meet regularly and at such other times as requested by either CITY or DISTRICT to review the use and condition of the Joint Use Area, this meeting may include, but not be limited to, the CITY's Parks and Recreation Department District Manager, Area Manager, or designees of the Parks and Recreation Director, for the purpose of reviewing the schedule for the maintenance, operations and services for the Joint Use Area, which shall be consistent with the provisions set forth in Section 5.12.1, below.

**3.3 Amendment.** This Agreement may only be amended, renewed or terminated in writing by mutual consent of DISTRICT and CITY as permitted by law and the terms of this Agreement.

### **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 Joint Use

Facilities in accordance with this Agreement.

- 4.1 CITY's Use of Property.** CITY shall have exclusive use of the Joint Use Area for its recreational programs beginning thirty (30) minutes after the dismissal bell at the end of the School Day, defined as any day DISTRICT students are in attendance, until thirty (30) minutes before the beginning of the School Day on each and every day that school is in session during the traditional or single-track school year unless mutually agreed upon and noted on what will be attached to this Agreement as Exhibit "C": Annual Site Use Schedule and in conformance with Section 4.3, below. CITY shall also have exclusive use of the Joint Use Area at all times on DISTRICT holidays, weekends, and other days when school is not in session. CITY agrees to coordinate and schedule community use of the Joint Use Facilities during non-school hours. CITY reserves the right to charge members of the public a participant fee for the use of the Joint Use Area during CITY exclusive Use Hours. For any additional use, CITY shall make prior arrangements and coordinate scheduling with the DISTRICT at no cost to CITY. During CITY exclusive use, the "Rules Governing City Use of Joint Use Area" shall apply and are incorporated herein as attached Exhibit "D".
- 4.2 DISTRICT's Use of Property.** DISTRICT shall have exclusive use of the Joint Use Area for its public education, curricular and extra-curricular programs for thirty (30) minutes before the beginning of the School Day until thirty (30) minutes after the dismissal bell at end of the School Day, Monday through Friday (including early dismissal); on each and every day that school is in session during the traditional or single-track school year unless mutually agreed upon and noted on attached Exhibit "B" in conformance with Section 4.3, below. For any additional use, including use for summer session, DISTRICT shall make prior arrangements and coordinate scheduling with the CITY at no cost to DISTRICT. The DISTRICT shall not use or permit the use of the Joint Use Area for any purpose other than for its curricular and extra-curricular programs.
- 4.3 Annual Site Use Schedule.** The CITY and the DISTRICT shall complete the Annual Site Use Schedule, which will be attached to this Agreement as Exhibit "C", prior to completion of construction of Joint Use Facilities and thereafter annually just prior to the beginning of each new school year. The Annual Site Use Schedule may be modified, upon mutual consent, at any time during the school year to accommodate site specific needs.
- 4.4 Wet Conditions.**
- 4.4.1** To avoid severe damage DISTRICT and CITY should not use the turf field and running track, if applicable, after substantial rain or if irrigation has created excessively wet conditions. Any damage caused by either Party shall be addressed in accordance with Section 5.13, below.
- 4.4.2** DISTRICT shall notify the CITY if irrigation is creating excessively wet conditions.

- 4.5 Scheduling Maintenance and Renovations.** CITY shall have the right to enter the Joint Use Area for maintenance purposes during school hours upon such terms as are agreed upon by the Parties such that neither CITY or DISTRICT are required to incur the cost of overtime for their respective staff. The agreed upon time of maintenance shall be sensitive to the community's scheduled recreation programs, the school's instructional, curricular and extra-curricular programs, and the availability of maintenance staff. CITY must give forty-eight (48) hours' notice to DISTRICT for renovations to be performed during school hours except in the event of an emergency that may impact health, safety or property. 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 but with an effort to ensure the least disruption to DISTRICT educational activities. CITY has estimated that major turf maintenance or renovation activities will total approximately six (6) weeks. CITY must give sixty (60) calendar days' notice to DISTRICT for any major maintenance or renovation.
- 4.6 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 if additional hours of use are needed, pursuant to Section 9, below.
- 4.7 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 non-recreational equipment or facilities to the School. The Parties agree that any adjustment of the boundaries of the Joint Use Area and resultant modifications to the Joint Use Facilities installed by or on behalf of the CITY or DISTRICT, or a reduction in either Party's use shall be agreed to in writing by CITY and DISTRICT, pursuant to Section 3.3, above. Thereafter, the initiating Party shall: (1) obtain the other Party's approval of plans; which consent shall not be unreasonably withheld; (2) provide the other Party forty-five (45) calendar days written notice prior to placement of any such buildings, structures, equipment, or apparatus on the Joint Use Area; (3) at initiating Party's sole expense, make any necessary modifications to the irrigation system and other improvements installed by or on behalf of the other Party as agreed to when the Joint Use Area boundaries were adjusted; and (4) at the end of such use, meet with the other Party to develop a restoration plan and schedule. If the CITY and DISTRICT do not agree as provided for in (1), above, either Party may terminate this Agreement upon written notice as provided for in Section 9, below.
- 4.8 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.



**4.9 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 Environmental Protection Agency's National Pollution Discharge Elimination System program, and the Clean Water Act and any Storm Water Pollution Prevention Plan (SWPPP) approved by the appropriate governing authority, if applicable.

**4.10 Litter, Vandalism and Graffiti Removal.** The DISTRICT shall be responsible for collection and removal of litter, repair of vandalism and removal of graffiti and/or painting of surfaces within the Joint Use Area that occur during DISTRICT's respective hours of use, as described in Section 4.2, above. CITY shall be responsible for collection and removal of litter, repair of vandalism and removal of graffiti (including walls) and/or painting of surfaces that occur within the Joint Use Area during CITY's respective hours of use, as described in Section 4.1, above. CITY and DISTRICT shall each pay fifty percent (50%) of any costs incurred for collection and removal of litter, repair of vandalism and removal of graffiti and/or painting of surfaces within the Joint Use Area when the litter, vandalism or graffiti occurs when the facility is closed. DISTRICT will be responsible for damage to fencing as provided for in Section 5.8, below.

**5. DISTRICT and CITY Responsibilities.**

**5.1 Construction of Joint Use Facilities.** {NOT APPLICABLE FOR THIS AGREEMENT}.

**5.2 Disabled Accessibility.** As required elsewhere in this Agreement, DISTRICT shall construct or cause to be constructed within the Joint Use Area, the Joint Use Facilities, and all paths of travel to the Joint Use Facilities within the Joint Use Area and all accessible routes from the adjacent public right-of-way 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. Said accessible routes shall be available during and after school hours. Both Parties agree to meet and determine the agency responsible for the path of travel to meet disabled accessibility regulations from other non-joint use areas on DISTRICT property.

**5.3 Joint Use Parking Lot.** If a Joint Use Parking Lot is identified on attached Exhibit 'A' then:

**5.3.1** DISTRICT shall be responsible for installation and maintenance of the Joint Use Parking Lot including pavement re-stripping, slurry coating, overlay,

maintenance of the landscaping (including trees) and irrigation, weeding, litter control, and general clean up unless landscaping and trees are irrigated by CITY's joint use water meter.

**5.3.2** CITY shall reimburse DISTRICT fifty percent (50%) of incurred costs for maintenance and repairs related to the re-stripping, slurry coating and overlay.

**5.3.3** Cost incurred by DISTRICT for maintenance of landscaping (including trees) and irrigation shall not be subject to reimbursement by CITY.

**5.4 Utilities.** CITY and DISTRICT shall determine utility meter ownership and financial responsibility based on proximity of existing infrastructure to avoid unnecessary capital costs.

**5.4.1 Water.** DISTRICT shall install the new water meter(s) and backflow preventer(s) to accommodate irrigation for the new turfed fields and landscaping within the Joint Use Area. DISTRICT shall be responsible for the cost of water used to adequately maintain the Joint Use Facilities.

**5.4.2 Electricity.** DISTRICT shall be responsible for the cost of electricity for Security Lighting and irrigation controller(s) which operate the irrigation system within the Joint Use Area, except for when an irrigation booster pump is required.

**5.4.3 Electricity for Booster Pumps.** CITY shall be responsible for the cost of electricity for irrigation booster pump(s), and all CITY electrical requirements, if installed. Costs of electricity for irrigation booster pump(s) may be a DISTRICT responsibility if it is determined by DISTRICT that it is not economically feasible for electrical connection to CITY meter.

**5.5 Walls, Stairs, Pedestrian Ramps, Walkways, Planters, Mow Curbs and Retaining Walls within and leading to the Joint Use Area.** If identified on attached Exhibit "A" or located within the Joint Use Area then:

**5.5.1** DISTRICT shall be responsible for the installation of walls, stairs, pedestrian ramps, walkways, planters, mow curbs and retaining walls constructed for the Joint Use Area, as depicted on the Approved Plans.

**5.5.2** DISTRICT shall ensure such work noted in this section meets all local, state and federal safety and accessibility regulations located within the Joint Use Area, as depicted on attached Exhibit "A".

**5.5.3** Repair of vandalism to walls, stairs, pedestrian ramps, walkways, planters, mow-curbs and retaining walls within and leading to the Joint Use Area shall be in accordance with Section 4.10, above.

**5.5.4** DISTRICT shall be responsible for structural and non-structural repairs of walls, stairs, pedestrian ramps, planters, mow curbs and retaining walls that are installed by the DISTRICT on DISTRICT owned property except as noted in Section 4.10, above. CITY shall be responsible for structural and non-structural repairs of walls, stairs, pedestrian ramps, planters, mow curbs and retaining walls that are located on CITY owned property.

**5.5.5** Both Parties agree to meet as necessary, to assess the conditions of the existing walkways, stairs and pedestrian ramps within the Joint Use Area and existing walkways, stairs and pedestrian ramps leading to the Joint Use Area that are used to access the Joint Use Area during CITY's hours of use. If there are necessary structural or non-structural repairs to said walkways, stairs and pedestrian ramps DISTRICT shall repair the damage to such items that are located on DISTRICT property and CITY shall repair such items that are located on CITY property. For any repairs required within the Joint Use Area, CITY and DISTRICT shall assess damage and agree on cost for repair prior to undertaking any repairs. For repairs within the Joint Use Area, DISTRICT shall invoice CITY fifty percent (50%) of the cost of the repairs and CITY shall reimburse DISTRICT as required.

**5.6 Adjacent Slopes.** DISTRICT shall be solely responsible for maintaining any adjacent slopes that are inside of the Joint Use Area within the DISTRICT owned property. This shall include the shrubs and plantings and installed irrigation on the slopes. CITY shall be solely responsible for maintaining any adjacent slopes that are inside of the Joint Use Area within CITY owned property. This shall include any shrubs and plantings and irrigation systems installed on the slopes. The Parties shall be solely responsible for maintaining any adjacent slopes that are outside of the Joint Use Area that are located on their respective property.

**5.7 Storm Drain System**

**5.7.1** DISTRICT shall be responsible for the installation of any new storm drain system within the Joint Use Area as depicted in the Joint Use Area construction documents.

**5.7.2** DISTRICT shall be responsible for the repair and maintenance of any storm drain system located within DISTRICT property within the Joint Use Area throughout the Term, except as stated otherwise in this Agreement.

**5.7.3** CITY shall be responsible for the repair and maintenance of any storm drain system located within CITY owned property within the Joint Use Area throughout the Term.



- 5.7.4** CITY shall be responsible for cleaning clippings and debris out of the storm drain system within the Joint Use Area that accumulate due to CITY maintenance of the Joint Use Area. If it is mutually determined that CITY damaged the storm drain system during CITY maintenance or if the storm drain system becomes damaged as a result of a lack of CITY cleaning of clippings or debris, CITY shall reimburse the DISTRICT one hundred percent (100%) of the costs to repair the storm drain system within the Joint Use Area.
- 5.7.5** CITY shall be responsible for all landscape maintenance associated with the permanent Best Management Practices [BMPs] device located within the Joint Use Area, as identified on attached Exhibit "A" as "Bio-basin". DISTRICT shall be responsible to maintain all structural devices associated with such storm water BMPs such as pipes, headwalls, bio-filtration media, filter fabrics and liners and drainage grates.
- 5.8 Fencing Areas.** DISTRICT shall be responsible for installation of all new fencing, including associated mow curbs, around the perimeter of the Joint Use Area. Fencing must accommodate access for CITY maintenance vehicles and for the pedestrian access to the Joint Use Area, as agreed upon by CITY and DISTRICT. DISTRICT shall be responsible for maintenance and repair of all fencing unless the maintenance or repair is required due to CITY's negligent acts or occurs in or on CITY owned property located outside of the Joint Use Area.
- 5.9 Backstops.** As identified on attached Exhibit "A", DISTRICT shall be responsible for maintenance of DISTRICT backstops and CITY shall be responsible for maintenance of CITY backstops.
- 5.10 Children's Play Area and Playground Equipment.** DISTRICT shall be responsible for the maintenance and repairs to the existing children's play area (as of the Term Commencement Date), existing playground equipment and existing play area surfacing located within the Joint Use Area. If cost of repair exceeds value of the existing equipment, DISTRICT, at its sole discretion, may choose to remove and not replace damaged equipment.
- 5.11 Hard Courts.** DISTRICT shall be responsible for the installation of new hard court(s), and the maintenance and repairs to all hard courts within the Joint Use Area. CITY shall reimburse DISTRICT fifty percent (50%) of incurred costs for maintenance and repairs.
- 5.12 Maintenance.** CITY shall, at CITY's sole cost and expense, pursuant to Section 3.1, above, be responsible for the following:
- 5.12.1 Maintenance Tasks.** Maintenance shall include, but is not limited to: daily litter control; weekly mowing; quarterly turf aerations, fertilization and as-needed weed abatement, repairs to irrigation system, and pest control to the extent the CITY's adopted budget for maintenance of the Joint Use Area is

sufficient. If reduction in Maintenance Tasks falls below DISTRICT's acceptable level of service or fails to meet DISTRICT standards, at DISTRICT's sole discretion DISTRICT can either close the Joint Use Area to CITY use or terminate this Agreement in accordance with Section 10.10.

**5.12.2 Access for Maintenance.** Access to Joint Use Area for CITY maintenance purposes shall be as indicated on attached Exhibit "A". CITY maintenance staff will check-in with School office upon arrival if during School hours.

**5.13 Joint Use Area Damage Assessment and Repair.** If Joint Use Facilities are damaged by either CITY or DISTRICT during the term of this Agreement, CITY or DISTRICT shall repair the damage per provisions stated in Sections 5.14 through 5.20, below. Prior to repair, CITY and DISTRICT shall assess damage and agree on cost for repair. If DISTRICT is responsible for the damage, CITY shall invoice DISTRICT and DISTRICT shall reimburse CITY as required.

**5.14 Walking Track.** If an Asphalt Walking Track and/or a Decomposed Granite Walking Track are/is identified on attached Exhibit "A" then:

**5.14.1 Asphalt Walking Track.** DISTRICT shall be responsible for repair and maintenance of the asphalt walking track. CITY shall reimburse DISTRICT fifty percent (50%) of incurred costs for maintenance and repairs.

**5.14.2 Decomposed Granite Walking Track.** CITY shall be responsible for maintenance of the decomposed granite walking track. Walking track material shall be supplied by DISTRICT, and spread and compacted by the CITY as necessary to ensure a safe walking condition.

**5.15 Sports Field Lighting.** CITY shall be responsible for repair and maintenance of any Sports Field Lighting, as well as electricity as noted in Section 5.4.3, above.

**5.16 Portable Restrooms.** If either Party wishes to install portable restrooms within the Joint Use Area, the initiating Party shall seek approval from other Party. Initiating Party shall be responsible for maintenance of portable restrooms placed within the Joint Use Area. Placement location of portable restrooms by CITY shall be approved by DISTRICT, including the School Principal. If portable restrooms are installed by CITY, they must be locked at all times when not in use by CITY.

**5.17 Trees within the Joint Use Area.** CITY shall be responsible for all maintenance of new trees installed in the Joint Use Area as expressly indicated on attached Exhibit "A", which shall include, but is not limited to, tree trimming, pruning, shaping, treatments for disease and insect infestation, replacement of dead or dying trees, and fertilization. Existing trees or new trees planted by the DISTRICT and not indicated on attached Exhibit "A" shall be the sole responsibility of the DISTRICT to maintain. DISTRICT retains the sole discretion to remove any existing trees within the Joint Use Area.

- 5.18 Drinking Fountain.** DISTRICT shall be responsible for all maintenance and repairs of any drinking fountain within the Joint Use Area, and invoice CITY for fifty percent (50%) of those costs except with respect to cartridge filter replacement which shall be at the DISTRICT'S sole cost. CITY shall reimburse DISTRICT in accordance with the terms of this Agreement.
- 5.19 Security Lighting.** DISTRICT shall be responsible for repair, maintenance and electricity provided for the Security Lighting installed within the Joint Use Area.
- 5.20 Decomposed Granite Fields.** If a Decomposed Granite Field is identified on attached Exhibit "A", CITY shall be responsible for routine maintenance, including weed abatement of the decomposed granite play surfaces within the Joint Use Area. Replenishment of decomposed granite material shall occur as necessary to ensure a safe field condition. Material shall be supplied by DISTRICT, and spread and compacted by the CITY.
- 5.21 Security.** RESERVED.
- 5.22 Joint Use Facilities/Area Construction Reimbursement if CITY reimbursement is indicated in attached Exhibit "B".**
- 5.22.1 Right to Reimbursement.** Notwithstanding any other provisions of this Agreement, the DISTRICT shall be entitled to reimbursement in an amount not to exceed the amount indicated in attached Exhibit "B" from CITY for the construction of the Joint Use Facilities and improvements to the Joint Use Area.
- 5.22.2 Type of Reimbursement.** DISTRICT shall be entitled to reimbursement for any costs incurred by DISTRICT pursuant to the following:
- After the Term Commencement Date, CITY shall reimburse DISTRICT a sum not to exceed the amount indicated in attached Exhibit "B" in accordance with the method outlined in Section 5.22.3, below.
- 5.22.3 Method of Reimbursement.** DISTRICT shall submit to CITY a request for reimbursement for costs or advanced for the construction of the Joint Use Facilities for which DISTRICT was not previously reimbursed [Reimbursement Request]. The Reimbursement Request must clearly identify the costs for which the reimbursement is requested. The Reimbursement Request must also include all relevant documents in accordance with section 5.22.4, below. CITY will have thirty (30) calendar days from receipt of the Reimbursement Request to determine if all relevant documents have been submitted. If CITY determines it requires additional documentation, CITY shall specify the additional documentation required and submit the request for documentation to the DISTRICT no later than forty-five (45) days from the date on which DISTRICT submitted the Reimbursement Request. DISTRICT shall provide additional

documentation within thirty (30) calendar days. CITY is not obligated to reimburse the DISTRICT until CITY has received all relevant documentation to support Reimbursement Request. After CITY approves the Reimbursement Request Documentation, as defined in 5.22.4, below, and all appropriate cost documentation has been received, CITY shall reimburse DISTRICT forty-five (45) calendar days of receipt of complete Reimbursement Request Documentation in accordance with Section 5.22.2, above.

**5.22.4 Verification of Reimbursement Request.** DISTRICT shall supply the following documentation with the Reimbursement Request [Reimbursement Request Documentation] and it shall be processed in the following manner:

- The DISTRICT shall submit two (2) copies of the following documents: a copy of contractor's invoice to DISTRICT or Application and Certification of Payment, proof of DISTRICT's payment to the contractor, and a cover letter and invoice to CITY's Parks and Recreation Department Director per Section 9, below.
- Prior to the approval of the Reimbursement Request, CITY has the right to verify whether or not the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request and constructed per Approved Plans and Specifications in Section 5.1, above, subject to any change orders.

**5.22.5 Non-reimbursable Costs.** The DISTRICT is not entitled to reimbursement for any cost or expenditure that is outside of this Agreement.

**5.22.6 CITY's Failure to Contribute.** If reimbursement of construction costs is required under this Agreement, CITY shall not be entitled to use the Joint Use Area until such time DISTRICT has been fully reimbursed. If CITY is prohibited from using the Joint Use Area pursuant to this Section, CITY shall have no obligation to maintain the Joint Use Facilities or perform any other obligation under this Agreement.

**5.23 Benches, Picnic Tables and Trash and Recycling Receptacles.** DISTRICT shall be responsible for installation of benches, picnic tables and trash and recycling receptacles within the Joint Use Area. CITY shall be responsible for all repair and maintenance to benches, picnic tables, and trash and recycling receptacles.

## **6. Healthy Schools Act.**

CITY shall be responsible for compliance with all requirements of the Healthy Schools Act of 2000 (AB 2260) in the application of pesticides on the Joint Use Area. Whenever any pesticide use is intended on, or around the field (whether school is in session or not), CITY shall notify the DISTRICT, pursuant to Section 9, below, at least fourteen (14) days prior to any such application, disclosing the specific type of pesticide that shall 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. CITY shall be responsible for removing the posted signs in a timely manner after the posting period. CITY shall 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 shall supply a list of those individuals who wish to be notified to the CITY designee in charge of the pesticide application. Notice shall include product name, the active ingredient(s) in the product, and the intended area and date of application. CITY shall maintain pesticide records for four (4) years following application of any pesticides. For additional requirements or information, CITY may contact the California Department of Pesticide Regulation, at (916) 445-4400.

## **7. Additional Improvements.**

**7.1 Approval for Additional Improvements within the Joint Use Area.** Additional Improvements for non-instructional purposes shall not be installed by either Party within the Joint Use Area, nor shall construction of additional improvements begin, until plans and specifications for the improvements are reviewed and approved by both Parties.

**7.2 Accessibility.** No new construction or alteration shall occur that reduces or negatively affects disabled access to the Joint Use Area, including any negative impact to paths of travel or accessible routes.

**7.3 Ownership.** All CITY-financed improvements, if any, installed during the Term in the Joint Use Area shall remain the property of CITY. All DISTRICT-financed improvements installed during the Term in the Joint Use Area shall remain the property of DISTRICT. Title to the DISTRICT-owned real property subject to this Agreement shall continue to be held by the DISTRICT. Title to the CITY-owned real property, if any, subject to this Agreement shall continue to be held by the CITY.

## **8. Insurance and Indemnification.**

**8.1 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 sole negligence or willful misconduct of DISTRICT, its agents or employees in connection with an act in the performance of this Agreement and/or the use of the Joint Use Area, the Joint Use Facilities 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 sole negligence or willful misconduct of CITY, its agents or employees in connection with an act in the performance of this Agreement and/or the use of the Joint Use Area, Joint Use Facilities, or the School.

If it is finally determined, by agreement between the Parties or a court of competent jurisdiction, that liability was caused by the comparative negligence or willful misconduct of one or more Parties, the Party responsible for liability to the other will indemnify the other Party to this Agreement for the percentage of liability determined, including its' reasonable attorney's fees and defense costs, in proportion to the established comparative liability of respective parties.

**8.2 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 shall 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 Agreement. Any coverage change that would reduce the amount of coverage must be approved by the other Party, which approval shall not be unreasonably withheld.

**8.3 Workers' Compensation Insurance.** CITY and DISTRICT acknowledge and warrant that they maintain, and shall maintain throughout the Term, Workers' Compensation coverage as required by law.

## 9. 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:           Parks and Recreation Department Director  
                                  City of San Diego  
                                  202 'C' Street, M.S. 37C  
                                  San Diego, California 92101  
                                  Facsimile No.: (619) 525-8220

If to DISTRICT: Superintendent  
                                  San Diego Unified School District  
                                  4100 Normal Street  
                                  San Diego, California 92103-2682  
                                  Facsimile No.: (619) 291-7182

With Copy to:        Director, Real Estate  
                                  San Diego Unified School District  
                                  4860 Ruffner Street, Annex 14  
                                  San Diego, California 92111



Facsimile No.: (858) 541-7854

**10. General Provisions.**

- 10.1 Quiet Possession.** DISTRICT and CITY, subject to performing the covenants and agreements herein, shall at all times during the Term peaceably and quietly have, hold and enjoy the Joint Use Area.
- 10.2 Entry, Maintenance and Inspection.** CITY and DISTRICT each reserve and shall have during the Term, the right to enter upon the Joint Use Area for the purpose of viewing and ascertaining the condition thereof, and for the purpose of maintaining the Joint Use Facilities that cannot be accommodated during non-school hours. The time of maintenance shall be agreed upon by DISTRICT's Site Administrator and CITY's maintenance supervisor and shall be sensitive to the community's scheduled recreation programs, the DISTRICT's curricular and extra-curricular programs, and the availability of maintenance staff. In the event of nonscheduled maintenance or repairs, CITY staff will check in at the School office prior to entering the site.
- 10.3 Assignment.** CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT. Any such assignment without such consent shall be void. 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 and approve the proposed third party maintenance agreement. DISTRICT shall receive a copy of the final third party maintenance agreement. Any partial assignment shall include the requirements of Sections 10.4 and 10.5, below, for any persons performing services where such services involve contact with DISTRICT students.
- 10.4 Screening Requirements.**
- 10.4.1 Tuberculosis.** CITY shall ensure that prior to providing any services in or on the Joint Use Area that it has complied with Public Resources Code Section 5163, which provides that no person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children unless the person produces or has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis and, that any such employee has been subsequently screened pursuant to Section 5163(b).
- 10.4.2 Background Check.** CITY shall ensure that each person assigned to provide services in the Joint Use Area has been screened in accordance with Public Resources Code section 5164, prohibited criminal offenses. In no event shall CITY employees, contractors, agents or volunteers have

unsupervised contact with DISTRICT students during DISTRICT use without complying with the requirements of Education Code sections 45125.1, 35021.1, and 35021.2

- 10.5 City Assignment of Maintenance to Third Party.** No assignment for maintenance services by CITY shall be permitted during times when the Joint Use Area is used or occupied for academic purposes or for other School-related functions, unless that employee or independent contractor and/or its contracting agents or any subcontractor complies with the following: (a) has submitted her/his fingerprints to the California Department of Justice [DOJ] pursuant to Education Code section 45125.1; (b) the DOJ has ascertained, based upon the submitted fingerprints, that the individual has not been convicted of a felony defined in Education Code section 45122.1 and has no criminal felony proceedings (as defined in Education Code section 45122.1) pending against her/him; (c) has provided written or electronic verification to the DISTRICT from the DOJ of the absence of felony convictions and pending felony criminal proceedings; and (d) has provided a Fingerprint Certification to the DISTRICT specifically identifying such individual as having been verified by the DOJ as not having been convicted of a felony and not having a criminal felony proceeding pending against her/him.
- 10.6 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.
- 10.7 Time is of the Essence.** Time is of the essence for each and all of the terms and provisions of this Agreement.
- 10.8 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.
- 10.9 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 thirty (30) days following the service on the defaulting Party of a written notice, pursuant to Section 9, above, 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 thirty (30) days after the service of written notice upon the defaulting Party, the second

Party shall not terminate this Agreement pursuant to the default if the defaulting Party immediately commences to cure the default and diligently pursues such cure to completion.

**10.10 Termination.** Notwithstanding the provisions of Section 10.9, above, the Parties agree as follows: DISTRICT and CITY acknowledge that the Term may extend over multiple fiscal years of CITY and DISTRICT, and CITY and DISTRICT understand and agree that any financial obligation, in kind obligation and work under this Agreement is contingent on CITY's City Council and DISTRICT's Board of Education, respectively, appropriating funding for and authorizing such financial amount, in kind and work for those fiscal years. In the event sufficient funds are not duly appropriated and authorized or the budget not approved for any given fiscal year to provide the financial amount, in kind and work, the Party who is unable to provide the funds required under this Agreement will notify the other Party and the notified Party may then terminate this Agreement upon ninety (90) days prior written notice to the notifying Party in accordance with Section 9, above. Each Party acknowledges and agrees that the other Party is not obligated to provide any financial amount, in kind and work not duly budgeted, appropriated and authorized by its respective governing body.

DISTRICT, at its sole discretion, may immediately reduce the Joint Use Area or terminate this Agreement if student or staff health and safety is deemed to be at risk. Notice of such reduction or termination will be in accordance with Section 9, above.

**10.11 Legal Proceedings.** The Parties agree that the laws of the State of California shall be used in interpreting this Agreement and shall govern all disputes and determine all rights under this Agreement.

**10.12 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.

**10.13 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.

**10.14 Nondiscrimination.** DISTRICT and CITY shall not discriminate in any manner against any person or persons on the basis of race, color, gender, religion, national origin, ethnicity, sexual orientation, age, marital status, or disability in the providing of goods, services, facilities, advantages, and the holding and obtaining of employment. DISTRICT and CITY shall not allow such discrimination by others who are within their respective control and who from time to time may use the Joint Use Area with the permission and on the terms and conditions specified by either Party.

**11. CITY and DISTRICT Approval.**

Whenever an act or approval is required by CITY pursuant to the terms of this Agreement, that act or approval shall be performed by the Mayor or his/her duly designated representative.


Whenever an act or approval is required by DISTRICT pursuant to the terms of this Agreement, except an amendment to the terms of this Agreement, that act or approval shall be performed by the Superintendent or his/her duly designated representative.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its Mayor pursuant to Ordinance No. 0-21665 authorizing such execution, and by the San Diego Unified School District of San Diego County, California, acting by and through its Superintendent pursuant to approval by its Board of Education.

*{SIGNATURES ON FOLLOWING PAGE}*

THE CITY OF SAN DIEGO,  
a Municipal Corporation


SAN DIEGO UNIFIED SCHOOL DISTRICT  
a public school district of the State of California

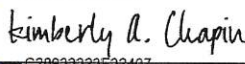
By:   
Penny Maus  
Title: Director, Real Estate and Airport  
Management  
Date: 7-10-2023

By: \_\_\_\_\_  
Gene Fuller  
Title: Director, Real Estate  
Date: \_\_\_\_\_

APPROVED AS TO FORM BY  
MARA W. ELLIOTT,  
CITY ATTORNEY

APPROVED AS TO FORM AND LEGALITY

By:   
Title: Deputy City Attorney  
Date: 8/7/2023

DocuSigned by:  
  
KIMBERLY A. CHAPIN, Assistant General  
Counsel II  
SAN DIEGO UNIFIED SCHOOL DISTRICT  
Date: February 9, 2023

Approved in public meeting of the Board of  
Education of the San Diego Unified School

District on \_\_\_\_\_

\_\_\_\_\_  
Martha Stultz, Board Action Officer, Board of  
Education

- Exhibit "A": General Depiction of the Joint Use Area
- Exhibit "B": Joint Use Area Description and Site Specific Responsibilities
- Exhibit "C": Annual Site Use Schedule
- Exhibit "D": Rules Governing City Use of Joint Use Area

THE CITY OF SAN DIEGO,  
a Municipal Corporation

SAN DIEGO UNIFIED SCHOOL DISTRICT  
a public school district of the State of California

By: \_\_\_\_\_  
Penny Maus  
Title: Director, Real Estate and Airport  
Management

Date: \_\_\_\_\_

DocuSigned by:  
Gene Fuller  
Gene Fuller  
Title: Director, Real Estate

Date: March 21, 2023

APPROVED AS TO FORM BY  
MARA W. ELLIOTT,  
CITY ATTORNEY

APPROVED AS TO FORM AND LEGALITY

By: \_\_\_\_\_  
Title: Deputy City Attorney

Date: \_\_\_\_\_

DocuSigned by:  
Kimberly A. Chapin  
KIMBERLY A. CHAPIN, Assistant General  
Counsel II  
SAN DIEGO UNIFIED SCHOOL DISTRICT

Date: February 9, 2023

Approved in public meeting of the Board of  
Education of the San Diego Unified School

District on 3/14/2023

DocuSigned by:  
Martha Stultz  
Martha Stultz, Board Action Officer, Board of  
Education



- Exhibit "A": General Depiction of the Joint Use Area
- Exhibit "B": Joint Use Area Description and Site Specific Responsibilities
- Exhibit "C": Annual Site Use Schedule
- Exhibit "D": Rules Governing City Use of Joint Use Area

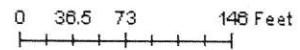


### EXHIBIT "A" GENERAL DEPICTION OF THE JOINT USE AREA

#### Clark Middle School Joint Use Area



	Joint Use Area
	District Property



**EXHIBIT "B"**  
**JOINT USE AREA DESCRIPTION AND SITE SPECIFIC RESPONSIBILITIES**

DISTRICT hereby permits CITY to use a portion of that certain DISTRICT-owned real property located at Clark Middle located at 4388 Thorn Street, San Diego, CA 92105, in the City Heights area of San Diego, as depicted on Exhibit "A" of this Agreement, incorporated herein by this reference [DISTRICT Property]. The DISTRICT Property is further described as consisting of approximately 4.58 acres including natural grass playfield, asphalt hardcourts, and asphalt parking lot.

The DISTRICT Property, as depicted on Exhibit "A" of this Agreement is hereinafter referred to as the Joint Use Area. This Joint Use Area is currently comprised of approximately 4.58 acres of natural grass playfield, asphalt hardcourts, asphalt parking lot, and includes the following [the "Joint Use Facilities"]:

- 3.12 acre(s): Irrigated natural grass playfield.
- .65 acre(s): Asphalt hardcourts
- 0.70 acre(s): Asphalt parking lot
- 2 District backstop(s)
- Trash receptacles
- Fencing

DISTRICT is contributing 4.58 acres of land for the Joint Use Area. DISTRICT pays for water to irrigate joint use area including the natural grass playfield.

CITY is contributing maintenance to the Joint Use Area for an estimated total annual contribution of \$78,084.

DISTRICT, prior to approving this Agreement, pursuant to the requirements of the California Environmental Quality Act, approved a Notice of Exemption on March 14, 2023, that addressed the potential environmental impacts associated with the project.

**EXHIBIT "C"**  
**ANNUAL SITE USE SCHEDULE**  
**Page 1 of 2**

**CLARK MIDDLE**

School Address: 4388 Thorn Street, San Diego, CA 92105

Principal Contact Info: {NAME}, {EMAIL} {PHONE #}

Head Custodian Contact Info: {NAME}, {EMAIL} {PHONE #}

Area Manager Contact Info: {NAME}, {EMAIL} {PHONE #}

District Manager Contact Info: {NAME}, {EMAIL} {PHONE #}

Recreation Center Director Contact Info: {NAME}, {EMAIL} {PHONE #}

Joint Use Agreement Date: \_\_\_\_\_ Expires \_\_\_\_\_

City Document No.:

Location of pedestrian gate and maintenance access gate:

Type of Padlock:

Keys Issued To:

City Mow Day and Time:

City Additional Maintenance Day and Time:

School Weekly Schedule:

School Start Time: \_\_\_\_\_ am

School Dismissal Time/Days: \_\_\_\_\_ pm

Early Dismissal Time/Day: \_\_\_\_\_ pm

Joint Use Facilities Opening and Closing Responsibilities:

School Day (when students are present):

Morning – Gate to be secured by DISTRICT:

Afternoon – Gate to be opened by DISTRICT:

Early Dismissal School Day:

Morning – Gate to be secured by DISTRICT:

Afternoon – Gate to be opened by DISTRICT:

**EXHIBIT "C"**  
**ANNUAL SITE USE SCHEDULE**  
**Page 2 of 2**

**CLARK MIDDLE**

Joint Use Area Description (4.58 acres):

- 3.12 acre(s): Irrigated natural grass playfield.
- .65 acre(s): Asphalt hardcourts
- 0.70 acre(s): Asphalt parking lot
- 2 District backstop(s)
- Trash receptacles
- Fencing

Dates of Known Special Events Planned:

Additional Information:

As mutually agreed, this Annual Site Use Schedule may be modified at any time to accommodate the changing needs of either agency.

**EXHIBIT "D"**  
**RULES GOVERNING CITY USE OF JOINT USE AREA**  
**Page 1 of 2**

All rules and regulations regarding the use by the City of the Joint Use Area shall be enforced by the San Diego Police Department, San Diego Unified School Police, San Diego Park Rangers, the current Animal Services contractor enforcement officers, and other entities authorized to conduct enforcement activities by state law. As authorized by law, the CITY shall enforce the following conditions.

1. City shall post regulation signs at each Joint Use Area. The regulation signs shall minimally include the following provisions: no alcohol, no glass, no smoking, no overnight camping, no golf, no motorized vehicles, no littering, no off-leash dogs, no use of field during wet conditions, hours of operation, and City contact information.
2. All relevant storm water pollution prevention requirements must be followed or a Notice of Violation (NOV) citation may be issued to the Permittee resulting in possible fines.
3. For commercial and public events, the Permittee shall not discriminate against anyone on the basis of race, color, creed, sex, age, national origin or ancestry, religion, pregnancy, physical or mental disability, veteran status, marital status, medical condition (including HIV, AIDS, and AIDS related complex), gender (transsexual and transgender) or sexual orientation.
4. Neither the City nor the District shall not be held responsible for any lost or stolen property.
5. Rental rates will apply as designated for each area as outlined in the current Parks and Recreation Department Fee Schedule that is approved by the City Council.
6. The use of any equipment including but not limited to staging, platforms, risers, inflatables, etc., shall not be permitted in the Joint Use Area without a CITY Use Permit.
7. Electronic amplification for music and or voice projection shall not be permitted in the Joint Use Area without a use permit.
8. The City shall not provide any equipment, electrical power, or water hookups for use by the public during City Joint Use without a use permit.
9. Petting zoos, pony rides, or any animal-related activities shall not be permitted in the Joint Use Area.
10. No third-party advertising on or within the Joint Use Area shall be permitted in the Joint Use Area without a Special Use Permit and shall be removed up conclusion of day use. Flyers, pamphlets, or handouts are not to be left on cars or passed out in the Joint Use Area or adjacent District parking areas.
11. Barbecues or fires of any kind shall not be permitted in the Joint Use Area during City use.

**EXHIBIT "D"**  
**RULES GOVERNING CITY USE OF JOINT USE AREA**  
**Page 2 of 2**

12. Games such as horseshoes, lawn darts, and other potentially hazardous games are not permitted in the Joint Use Area unless there are courts/fields within the Joint Use Area that are specifically designated for these purposes.
13. The use of gypsum is allowed only for infield marking in baseball or softball. Biodegradable field marking paint must be used for all other field marking. These product(s) must be manufactured in the United States and approved by the City in writing prior to use and a copy of the Safety Data Sheet of the product used must be provided to City.
14. City shall not permit caterers or food trucks to enter on the Joint Use Area.
15. Alcohol is prohibited in the District-owned property of Joint Use Area at all times.
16. All remote-controlled soaring and/or gliding crafts are prohibited except as permitted by federal and state law.
17. If City permits or otherwise allows dogs or other animals in the Joint Use Area, City will remove animal waste from the Joint Use Area to the best of the CITY's ability and CITY will repair damage to the Joint Use Area prior to the District's scheduled use.
18. Picking flowers and/or damaging shrubs, plants, and trees is prohibited in the Joint Use Area.
19. Joint use patrons shall follow all other applicable municipal, county, state, and federal laws and regulations.



ORDINANCE NUMBER O- 21665 (NEW SERIES)

DATE OF FINAL PASSAGE JUN 27 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF SIX JOINT USE AGREEMENTS BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO UNIFIED SCHOOL DISTRICT FOR THE CONSTRUCTION, OPERATION, MAINTENANCE, AND USE OF JOINT USE FACILITIES AT CLARK MIDDLE SCHOOL, EDISON ELEMENTARY SCHOOL, EMERSON ELEMENTARY SCHOOL, JEFFERSON ELEMENTARY SCHOOL, OCEAN BEACH ELEMENTARY SCHOOL, AND PERSHING MIDDLE SCHOOL AND RELATED ACTIONS.

WHEREAS, the City of San Diego (City) and the San Diego Unified School District (District) enjoy a long-standing partnership since 1948 made possible by a strong collaboration between the City and the District to maximize the joint use of public facilities and resources for educational and community use; and

WHEREAS, the District owns Clark Middle School located at 4388 Thorn Street in the City Heights Community, Edison Elementary School located at 4077 35<sup>th</sup> Street in the City Heights Community, Emerson Elementary School located at 1100 36<sup>th</sup> Street in the Southeastern San Diego Community, Jefferson Elementary School located at 3770 Utah Street in the North Park Community, Ocean Beach Elementary School located at 4741 Santa Monica Avenue in the Ocean Beach Community, and Pershing Middle School located at 8204 San Carlos Drive in the Navajo Community; and

WHEREAS, the City and the District are parties to five separate Joint Use Agreements as follows: (1) Clark Middle School dated September 30, 1997, and on file in the Office of the City Clerk as Document No. OO-18434; (2) Edison Elementary School dated August 7, 2007, and on file in the Office of the City Clerk as Document No. OO-19649; (3) Jefferson Elementary School

dated May 29, 2012, and on file in the Office of the City Clerk as Document No. OO-20145; (4) Ocean Beach Elementary School dated June 24, 1997, and on file in the Office of the City Clerk as Document No. OO-18411; and (5) Pershing Middle School dated February 15, 2018, and on file in the Office of the City Clerk as Document No. OO-20901 (Prior Agreements); and

WHEREAS, the City and the District desire to terminate the Prior Agreements and enter into six separate agreements as follows: (1) a 25-year Joint Use Agreement regarding facilities at Clark Middle School for the operation, maintenance, and use of joint use facilities; (2) a 25-year Joint Use Agreement regarding facilities at Edison Elementary School for the operation, maintenance, and use of joint use facilities; (3) a 25-year Joint Use Agreement regarding facilities at Emerson Elementary School for the operation, maintenance, and use of joint use facilities; (4) a 25-year Joint Use Agreement regarding facilities at Jefferson Elementary School for the operation, maintenance, and use of joint use facilities; (5) a 25-year Joint Use Agreement regarding facilities at Ocean Beach Elementary School for the operation, maintenance, and use of joint use facilities; and (6) a 25-year Joint Use Agreement regarding facilities at Pershing Middle School for the operation, maintenance, and use of joint use facilities; and

WHEREAS, the terms of the agreement with Clark Middle School will allow for the operation, maintenance, and use of approximately 4.58 acres of natural grass play field, asphalt hardcourts, asphalt parking lot, and associated infrastructure; and

WHEREAS, the terms of the agreement with Edison Elementary School will allow for the operation, maintenance, and use of approximately 1.1 acres of synthetic turf play field and associated infrastructure; and

WHEREAS, the City will reimburse the District for the construction costs of the synthetic turf replacement project at the Edison Elementary School Joint Use Facility in the amount not to exceed \$183,164; and

WHEREAS, the terms of the agreement with Emerson Elementary School will allow for the operation, maintenance, and use of approximately 1.6 acres of synthetic turf play field, asphalt walking track, asphalt parking lot, and associated infrastructure; and

WHEREAS, the terms of the agreement with Jefferson Elementary School will allow for the operation, maintenance, and use of approximately 1.43 acres of synthetic turf play field, asphalt hardcourts, play equipment, and associated infrastructure; and

WHEREAS, the City will reimburse the District for the construction costs of the synthetic turf replacement project at the Jefferson Elementary School Joint Use Facility in the amount not to exceed \$151,844; and

WHEREAS, the terms of the agreement with Ocean Beach Elementary School will allow for the operation, maintenance, and use of approximately 1.12 acres of natural grass play field, ball infield area, backstop, bleachers, sports field lighting, and associated infrastructure; and

WHEREAS, the terms of the agreement with Pershing Middle School will allow for the operation, maintenance, and use of approximately 7.36 acres of synthetic turf play field, ball infield area, decomposed granite area, and associated infrastructure; and

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

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. That the Mayor, or designee, is hereby authorized and directed to execute the Agreement for the Construction, Operation, Maintenance, and Use of Joint Use Facilities at Clark Middle School, on file in the Office of the City Clerk as Document No. OO- 21665-1 between the City of San Diego and the San Diego Unified School District, for the joint use of a portion of Clark Middle School.

Section 2. That the Mayor, or designee, is hereby authorized and directed to execute the Agreement for the Construction, Operation, Maintenance, and Use of Joint Use Facilities at Edison Elementary School, on file in the Office of the City Clerk as Document No. OO- 21665-2 between the City of San Diego and the San Diego Unified School District, for the joint use of a portion of Edison Elementary School.

Section 3. That the Mayor, or designee, is hereby authorized and directed to execute the Agreement for the Construction, Operation, Maintenance, and Use of Joint Use Facilities at Emerson Elementary School, on file in the Office of the City Clerk as Document No. OO- 21665-3 between the City of San Diego and the San Diego Unified School District, for the joint use of a portion of Emerson Elementary School.

Section 4. That the Mayor, or designee, is hereby authorized and directed to execute the Agreement for the Construction, Operation, Maintenance, and Use of Joint Use Facilities at Jefferson Elementary School, on file in the Office of the City Clerk as Document No.

OO- 21665<sup>4</sup>, between the City of San Diego and the San Diego Unified School District, for the joint use of a portion of Jefferson Elementary School.

Section 5. That the Mayor, or designee, is hereby authorized and directed to execute the Agreement for the Construction, Operation, Maintenance, and Use of Joint Use Facilities at Ocean Beach Elementary School, on file in the Office of the City Clerk as Document No.

OO- 21665<sup>5</sup>, between the City of San Diego and the San Diego Unified School District, for the joint use of a portion of Ocean Beach Elementary School.

Section 6. That the Mayor, or designee, is hereby authorized and directed to execute the Agreement for the Construction, Operation, Maintenance, and Use of Joint Use Facilities at Pershing Middle School, on file in the Office of the City Clerk as Document No.

OO- 21665<sup>6</sup>, between the City of San Diego and the San Diego Unified School District, for the joint use of a portion of Pershing Middle School.

Section 7. That the Prior Agreement for Clark Middle School, on file in the Office of the City Clerk as Document No. OO-18434, is terminated upon the commencement date of the agreement for Clark Middle School authorized by this Ordinance.

Section 8. That the Prior Agreement for Edison Elementary School, on file in the Office of the City Clerk as Document No. OO-19649, is terminated upon the commencement date of the agreement for Edison Elementary School authorized by this Ordinance.

Section 9. That the Prior Agreement for Jefferson Elementary School, on file in the Office of the City Clerk as Document No. OO-20145, is terminated upon the commencement date of the agreement for Jefferson Elementary School authorized by this Ordinance.

Section 10. That the Prior Agreement for Ocean Beach Elementary School, on file in the Office of the City Clerk as Document No. OO-18411, is terminated upon the commencement date of the agreement for Ocean Beach Elementary School authorized by this Ordinance.

Section 11. That the Prior Agreement for Pershing Middle School, on file in the Office of the City Clerk as Document No. OO-20901, is terminated upon the commencement date of the agreement for Pershing Middle School authorized by this Ordinance.

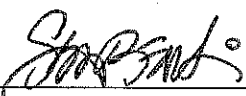
Section 12. That the Chief Financial Officer is authorized to reimburse the San Diego Unified School District for the construction costs of Edison Elementary School Joint Use Facility in the amount not to exceed \$183,164 and Jefferson Elementary School Joint Use Facility in the amount not to exceed \$154,844 from Fund 100000, Community Parks II Parks and Recreation (171413), contingent upon the Chief Financial Officer furnishing a certificate demonstrating that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 13. 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 14. 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

  
\_\_\_\_\_  
Karen S. Li  
Deputy City Attorney

KSL:nja  
05/18/2023  
Or.Dept: Parks & Rec.  
Doc. No.: 3310420

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUN 20 2023.

DIANA J.S. FUENTES  
City Clerk

By *Cannie Patterson*  
Deputy City Clerk

Approved: 6/27/23  
(date)

*Todd Gloria*  
TODD GLORIA, Mayor

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

\_\_\_\_\_  
TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUN 20 2023, by the following vote:

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

Date of final passage JUN 27 2023

AUTHENTICATED BY:

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

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Connie Patterson, 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

JUN 06 2023, and on JUN 27 2023

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

(Seal)

DIANA J.S. FUENTES  
City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21665</u>



Passed by the Council of The City of San Diego on June 20, 2023, by the following vote:

**YEAS:** LACAVA, CAMPBELL, WHITBURN, VON WILPERT, LEE, CAMPILLO,  
MORENO, & ELO-RIVERA.

**NAYS:** NONE.

**NOT PRESENT:** MONTGOMERY STEPPE.

**RECUSED:** NONE.

AUTHENTICATED BY:

**TODD GLORIA**

Mayor of The City of San Diego, California

**DIANA J.S. FUENTES**

City Clerk of The City of San Diego, California

(Seal)

By: Connie Patterson, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. O-21665 (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 6, 2023, and on June 27, 2023.

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.

**DIANA J.S. FUENTES**

City Clerk of The City of San Diego, California

(SEAL)

By: Connie Patterson Deputy