

**AGREEMENT FOR LEASE AND MAINTENANCE  
OF JOINT USE FACILITIES  
FOR THE CARMEL VALLEY NEIGHBORHOOD #4  
ELEMENTARY SCHOOL/PARK**

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THIS AGREEMENT FOR LEASE AND MAINTENANCE OF JOINT USE FACILITIES ("Joint Use Agreement") is made between THE CITY OF SAN DIEGO, a municipal corporation, herein called ("City") and the DEL MAR UNION SCHOOL DISTRICT, a public school district of the State of California, herein called ("District") based on the following facts:

**RECITALS**

A. City and District have concurrently entered into an IMPROVEMENT AND REIMBURSEMENT OF COSTS AGREEMENT FOR CARMEL VALLEY NEIGHBORHOOD #4 ELEMENTARY SCHOOL AND PARK JOINT USE AREA ("Reimbursement Agreement"), attached hereto as Exhibit "A," and incorporated herein including all definitions therein; and

B. Pursuant to the Reimbursement Agreement, District will be advancing and City will be reimbursing District for certain costs associated with the Carmel Valley Neighborhood #4 Park Project (hereafter "Park Project" or "Park Site") and the Joint Use Area Project (hereafter "JUA Project" or "JUA Site") adjacent to the Carmel Valley Elementary School ("CVE School"); and

C. City and District have found that it is to their mutual benefit to contribute jointly and equitably to the establishment of recreational facilities which can serve the needs of both the general public and District; and

D. The estimated average life-span of all improvements to be constructed as part of the JUA Project is no greater than the term of this Joint Use Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the Parties hereto agree as follows:

**AGREEMENT**

1.0. TERM

Subject to mutual satisfaction of paragraph 10.3 as a precondition to the effectiveness of this Agreement, the term of this Joint Use Agreement shall commence on the date of acceptance of the JUA Project by District and City in accordance with the Reimbursement Agreement and

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OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

shall expire twenty-five (25) years from the completion date of the JUA Project or for as long as the adjacent CVE School is operated by District, whichever condition expires first. It is the intent of the Parties to renew this Agreement if the CVE is still being operated by the District twenty-five (25) years after the completion date of the JUA Project. The purpose of this renewal provision is for the Parties to re-evaluate respective needs, rights, and obligations of the Parties under this Agreement and to address issues regarding replacement of any improvements which may have served their useful life.

2.0. PROPERTY

The real property covered by this Joint Use Agreement shall consist of the City owned parcels adjacent to the CVE School known as the Park Site and the JUA Site, and more particularly described in Exhibit "B," attached hereto and incorporated herein.

3.0. USE OF JUA SITE

The JUA Site shall be used exclusively for the purpose of constructing, maintaining, and operating facilities for public and District recreation (including physical education) programs in accordance with this Agreement.

4.0. DISTRICT'S EXCLUSIVE USE OF JUA SITE

District shall have exclusive use of all facilities located within the JUA Site in connection with its public education programs from thirty (30) minutes before the beginning of the school day until thirty (30) minutes after the end of the school day Monday through Friday, on each and every day that school is in session during the regular school year. For any additional use, including use for summer session, District shall make prior arrangements and obtain permission from City. The City agrees to use best efforts to accommodate requests by District for use of the JUA Site during summer vacation periods for summer session or other requirements of District. City shall have the right of entry to the JUA Site to perform maintenance during regular school hours, as mutually agreed upon by City and District.

*summer school*

5.0. CITY'S EXCLUSIVE USE OF JUA SITE

City shall have exclusive use of all facilities located within the JUA Site in connection with its public recreation programs from thirty (30) minutes after the end of the school day until thirty (30) minutes before the beginning of the school day, Monday through Friday on days that school is in session during the regular school year. For any additional use, City shall make prior arrangements and obtain permission from District. City shall also have such exclusive use on holidays, weekends, and other days when school is not in session. City intends to coordinate any organized league events at the JUA Site with any City recognized recreation council in existence during the term of this Agreement.

6.0. CITY'S EXCLUSIVE USE OF PARK SITE

City shall have exclusive use of the City owned Park Site at all times.

7.0. UTILITIES FOR JUA SITE

7.1. City Obligation. Subject to reimbursement as set forth below in subparagraph 7.2., City shall pay all water, electricity, sewer, and other utility costs in connection with operation of the JUA Site.

7.2. District Obligation to Reimburse for Water Usage. City shall bill quarterly and District shall reimburse the City for a pro-rata share of water usage at the JUA Site. The District's pro-rata share shall be calculated by dividing the total number of days in the billing period by the number of days during the billing period when the District had exclusive use of the JUA Site for any portion of the day, as provided for above in Paragraph 4.

8.0. MAINTENANCE AND LITTER REMOVAL FOR JUA SITE

8.1. City's Maintenance Obligation. Subject to the reimbursement provision as set forth below in subparagraph 8.4. and exclusive of those facilities or areas set forth in Paragraph 8.2. below, City shall be responsible for maintenance and litter collection at the JUA Site, as follows: parking lot maintenance, parking lot and pavement re-stripping and re-surfacing, turf mowing, fertilizing, weed and pest control, and renovation; plant maintenance and replacement; irrigation system maintenance and repair; repair and replacement of perimeter fencing; maintenance and repair of basketball court equipment; litter removal; graffiti removal; maintenance, repair, and replacement of drinking fountains; security lighting; electrical lines and systems, concrete walks and drainage systems.

8.2. District's Obligation. District shall be solely responsible for maintenance of any improvements installed upon the JUA Site at the request of the District and solely serving to satisfy the educational program for the District. For example, maintenance of striping for the multi-purpose hard court area; maintenance of playstacks and resilient surfacing; maintenance of the long jump and surrounding decomposed granite surface; maintenance of ball walls, tetherballs and tetherball poles; maintenance and replacement of any internal fencing installed for supervision of school children; and maintenance of any monument signage for the School.

8.3. Maintenance Standards. City and District shall maintain the improvements in the JUA Site, as required pursuant to obligations set forth in this paragraph, in a manner consistent with the City-wide standards of the Park and Recreation Department and standards promulgated by the District, respectively. Both Parties acknowledge that failure to maintain the JUA Site in a timely and workmanlike manner consistent with these City-wide and District standards creates an unacceptable hardship for both Parties.

8.4 District Obligation to Reimburse for Maintenance and Litter Removal. City shall bill quarterly and District shall reimburse the City for a pro-rata share of the maintenance and litter removal described above and performed by City pursuant to Paragraph 8.1. The District's pro-rata share shall be calculated by dividing the total number of days in the billing period by the number of days during the billing period when the District had exclusive use of the JUA Site for any portion of the day, as provided for above in Paragraph 4. However, District shall not be obligated to reimburse City for the cost of any litter removal associated with special events sponsored or permitted by the City during times when City has exclusive use of the JUA Site.

#### 9.0. JOINT ANNUAL REVIEW

City and District shall meet annually prior to January 1 of each year to review the joint use of the JUA Site. As a result of this review, the use schedule, maintenance, and utility obligations as identified in this Joint Use Agreement may be discussed and amended in writing by mutual consent of the Parties after obtaining necessary approvals from the Council of The City of San Diego and the District Board of Education.

#### 10.0. GENERAL PROVISIONS

10.1. 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.

10.2. Indemnity. City agrees to indemnify and save District, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of City, its agents or employees in connection with the performance of this Agreement and the use of the JUA Site and Park Site. District agrees to indemnify and save City, its agents and employees harmless from any and all liability, claims, damages, or injuries to any person caused by the independent acts of District, its agents or employees in connection with the performance of this Agreement and the use of the JUA Site.

10.3. Insurance. Unless there is mutual agreement as to self-insurance as provided below, each party hereto shall procure and maintain public liability and property damage insurance which names the other party, its officers and employees, as an additional insured with an insurance company licensed to do business in California, which company must have an A excellent rating in the current issue of Best's Insurance Guide, to protect against loss from liability imposed by law for damages on account of property damage, bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons whomsoever, resulting directly or indirectly from any act or activities of the other party on or about the JUA Site or any person acting for the other party or under the other party's control or direction on or about the JUA Site. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Agreement, on the minimum basis of \$1,000,000 of COMBINED SINGLE LIMIT LIABILITY for damage to property or bodily injury. Each party shall submit a policy of

said insurance to the other party on or before the commencement of this Agreement pursuant to paragraph 1 of this Agreement indicating full coverage of the contractual liability imposed by the Agreement and stipulating that the insurance selected by the insured party shall not be subject to cancellation, any change in coverage, reduction in limits or non-renewal, except after written notice to the other party by certified mail, return receipt requested, not less than thirty (30) days prior to the effective date thereof. Each party shall not use the JUA Site for any purpose other than the purpose for which it is permitted herein. Each party at its sole cost and expense shall secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering said premises, buildings, and appurtenances during that party's use. Each party may meet its insurance obligations hereunder through a legal self insurance program for equivalent or exceeding the value of \$1,000,000 worth of insurance coverage procured from an insurance company and by maintaining or having access to a full-time staff of qualified claims investigators for the purpose of administering its self-insured claims. The other party must consent to such self-insurance in writing, which consent shall not be unreasonably withheld.

10.4. Quiet Possession. City and District, subject to performing the covenants and agreements herein, shall at all times during the term of this Agreement peaceably and quietly have, hold, and enjoy the JUA Site for the term aforesaid during the period of exclusive use as provided for above in paragraphs 4 and 5.

10.5. Entry and Inspection. City reserves, and shall always have, the right to enter upon the JUA Site for the purpose of viewing and ascertaining the condition thereof.

10.6. Assignment. District shall not assign this Agreement or any interest herein, without the prior written consent of City. Any such assignment without such consent shall be void.

10.7. Time. Time is of the essence of each and all of the terms and provisions of this Agreement.

10.8. Legal Proceedings. The Parties agree that the law of the State of California shall be used in interpreting this Agreement and will govern all disputes under this Agreement and will determine all rights thereunder.

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 said default within one hundred twenty (120) days after the service of written notice upon the defaulting party specifying the default complained of, then the second party may, at its option, without further notice or demand upon the defaulting party or upon any person claiming through the defaulting party, immediately terminate this Agreement and all rights of the defaulting party and of all persons claiming rights through the defaulting party. Notwithstanding the above provisions, in the event that any default cannot be cured within one hundred twenty (120) days after the service of written notice upon the defaulting party, the second party shall not

terminate this Agreement pursuant to said default if the defaulting party immediately commences to cure said fault and diligently pursues such cure to completion.

10.10. Verbal Agreements. This Agreement contains the complete expression and 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. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the Parties, as provided for herein.

10.11. 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.

10.12. Amendment. This Agreement may be amended in writing by mutual consent of District and City as permitted by law.

10.13. Nondiscrimination. District, City, and all others who from time to time may use the Property with the permission and on the terms and conditions specified by both Parties shall not discriminate in any manner against any person or persons on account of race, color, sex, creed, religion, marital status, ancestry, or national origin including, but not limited to, the providing of goods, services, facilities, advantages, and the holding and obtaining of employment.

10.14. Notices. Any demand upon or notice required or permitted to be given by one party to the other party shall be in writing. Except as otherwise provided by law, any demand upon or notice required or permitted to be given by one party to the other party 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, return receipt requested, 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:

City Manager  
City of San Diego  
202 "C" Street  
San Diego, California 92101

and

Del Mar Union School District  
225 Ninth Street  
Del Mar, California 92014  
Attention: Superintendent

With a copy to:

Little Mendelson,  
A Professional Corporation  
701 "B" Street, 13<sup>th</sup> Floor  
San Diego, California 92101-8102  
Attention: William Wood Merrill

Notice of change of address shall be given by written notice in the manner set forth in this Paragraph.

10.15. Successors in Interest. This Agreement and all rights and obligations contained herein shall be in effect whether or not any or all Parties to this Agreement have been succeeded by another entity, and all rights and obligations of the Parties signatory to this Agreement shall be vested and binding on their successors' interest.

IN WITNESS WHEREOF, this Joint Use Agreement is executed by The City of San Diego, acting by and through its City Manager, pursuant to Ordinance No. O- 18433 authorizing such execution, and by the Del Mar Union School District. This Agreement shall be effective as of the last date of the Parties signing below.

THE CITY OF SAN DIEGO,  
A MUNICIPAL CORPORATION

DEL MAR UNION SCHOOL DISTRICT

By: *William C. McIntyre*  
Title: *Director, P. Rec.*  
Date: *9/18/97*

By: *[Signature]*  
Title: *Superintendent*  
Date: *8/27/97*

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, CITY ATTORNEY

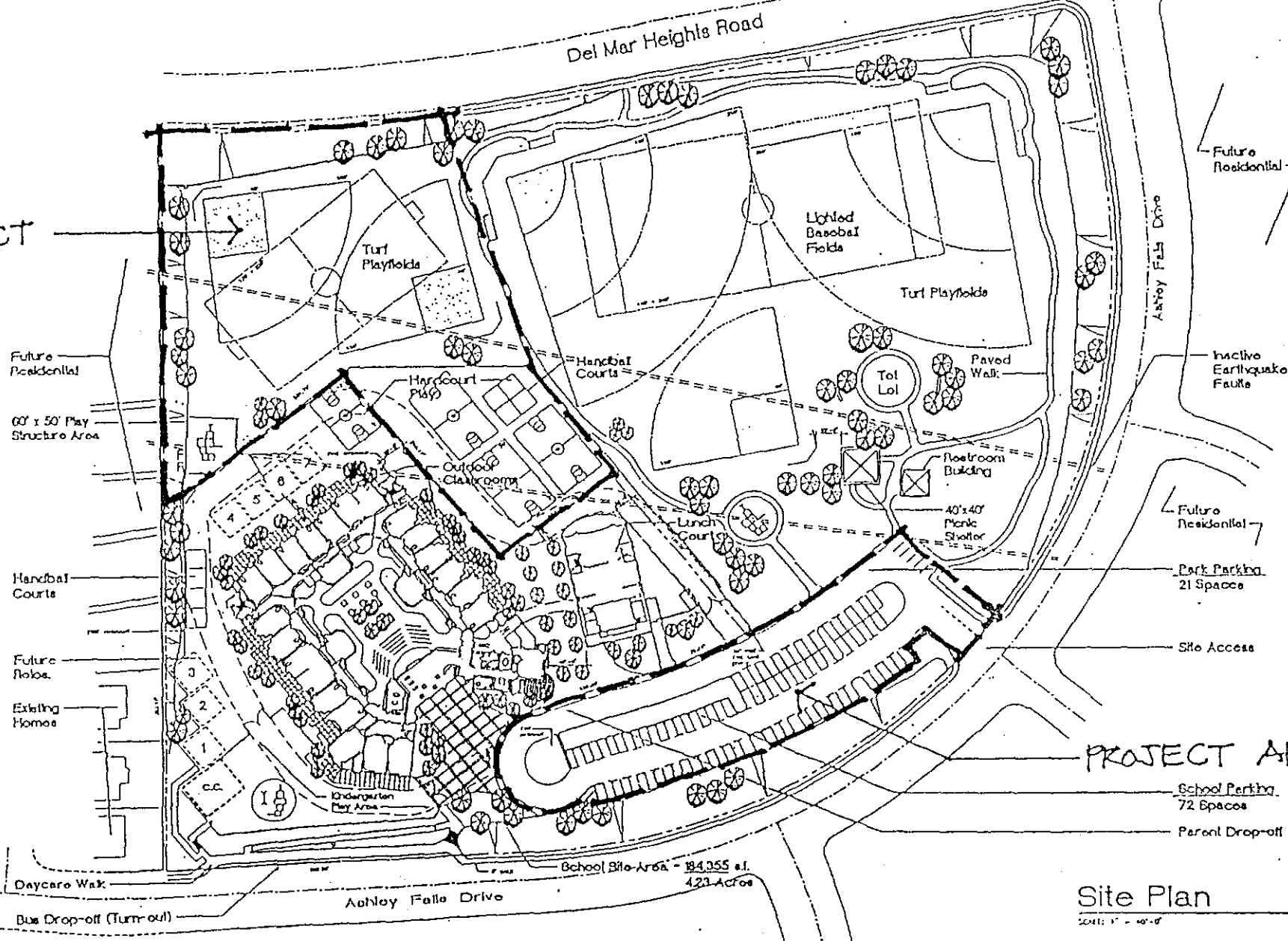
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*[Signature]*  
*8/23/97*

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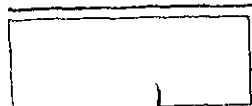
PROJECT AREA



PROJECT AREA

Site Plan

Scale: 1" = 40'-0"



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**DEL MAR ELEMENTARY SCHOOL**  
 11500 DORTMOUTH 4 CARMEL VALLEY  
 DEL MAR UNION SCHOOL DISTRICT

**EXHIBIT B**
