

COPY

AGREEMENT FOR THE
MAINTENANCE, OPERATION AND USE OF THE
HOWARD LANE NEIGHBORHOOD PARK

THIS JOINT USE AGREEMENT is entered into this First day of January 1990, by and between the City of San Diego, a municipal corporation, hereinafter referred to as "CITY", and the South Bay Union School District of San Diego County, California, a political subdivision in the State of California, hereinafter referred to as "DISTRICT".

R E C I T A L S

It is to the mutual benefit of CITY and DISTRICT to jointly use the recreational facilities which can serve the needs of both the general public and DISTRICT at Howard Lane Neighborhood Park.

It is deemed advisable to share landscape maintenance costs to facilities on the City-owned property known as Howard Lane Neighborhood Park.

NOW THEREFORE, CITY and DISTRICT do mutually agree as follows:

1. TERM

City hereby grants to DISTRICT a leasehold interest in the property hereinafter described, commencing on the first day of the month following execution hereof by the City Manager for a period of forty (40) years. Effective dates of initial term are January 1, 1990 through December 31, 2030.

2. PROPERTY

The real property covered by this Agreement shall consist of that dedicated City-owned park site, as set forth in Exhibit "A" hereto.

3. CONSIDERATION

Good, valuable, and adequate consideration exists in the mutual benefit enjoyed and the legal detriment incurred by CITY and DISTRICT as a result of their entering into and fulfilling this Agreement. As additional consideration the DISTRICT agrees to finance, design and construct improvements totaling \$150,000 to Howard Lane Neighborhood Park, consisting of an expanded children play lot with play apparatus which design, placement and selection shall be approved in writing by CITY in advance of DISTRICT'S construction and placement. Any change in such design, placement and selection by DISTRICT after CITY'S approval shall again be submitted to CITY for further approval prior to DISTRICT implementation. Such approvals shall not be unreasonably withheld. If any portion of the improvement project requires State architect approval further

DOCUMENT NO. RR-275384

approval by the CITY will not be required. During construction DISTRICT shall keep CITY informed of the progress and permit CITY personnel to inspect the work at any time during normal business hours to insure compliance with the approved development. CITY has the right to conduct a final inspection to determine acceptance of the stated improvements. DISTRICT agrees to pay fifty percent (50%) of landscape maintenance costs as indicated in Sections 7 and 8 below.

4. USE OF PROPERTY

The property herein described shall be used exclusively for the purpose of maintaining, and operating the park and its amenities for public recreation and for no other purposes.

5. CITY RECREATION PROGRAM

CITY shall have access to park and its amenities in connection with its public recreational program at all times. CITY agrees to coordinate community use of park.

6. DISTRICT USE OF CITY PROPERTY

DISTRICT shall have access to said property Monday through Friday, during the regular school day and shall be limited to class recess periods and lunch time breaks, not to exceed a total of three (3) hours daily. For any additional use, DISTRICT shall make prior arrangements with CITY. DISTRICT shall always provide adequate supervision of their students when the DISTRICT is using the park site.

7. CITY USE OF DISTRICT PROPERTY

CITY shall have access to school facilities for public use during nonschool hours as prescheduled with DISTRICT.

8. CITY'S RESPONSIBILITIES

A. CITY shall provide all landscape maintenance services to the park, including normal trash pickup and removal.

B. Upon monthly receipt of an invoice from CITY, DISTRICT shall pay to CITY fifty percent (50%) of the cost of landscape maintenance of the City-owned park site. The cost of maintaining this site shall not include monthly utility costs.

As used in this Section, "cost of maintaining" shall mean the lesser of (1) the actual cost to the DISTRICT, or (2) the cost which results from competitive bidding for work described in specifications approved by the CITY prior to bid issuance or, in the case that competitive bids are not obtained, the estimated annual cost for the CITY to maintain the site with City forces.

9. DISTRICT'S RESPONSIBILITIES

A. DISTRICT shall pay for fifty percent (50%) of landscape maintenance costs according to the established schedule of maintenance.

B. DISTRICT shall be responsible for litter collection and removal for special DISTRICT activities.

C. DISTRICT shall always provide adequate supervision of their students when the DISTRICT is using the park site.

10. UTILITIES

CITY shall pay all water bills and all other utilities in connection with the park site.

11. JOINT REVIEW

CITY and DISTRICT shall meet annually prior to January 1 of each year to review the joint use of the park, insurance limits, annual maintenance responsibility, annual maintenance cost and proportionate shares of maintenance cost. As a result of this review, the use schedule, insurance limits, annual maintenance responsibility and proportionate shares of maintenance cost as may be revised for the subsequent school year upon the mutual consent of both CITY and DISTRICT. The agreement will be amended to include said changes upon approval by the City Manager and the District Board of Education.

12. COMMENCEMENT OF MAINTENANCE PAYMENTS

The date of participation in costs of maintenance on the subject site by the DISTRICT shall be concurrent with the first day of use of the site by the DISTRICT.

13. GENERAL TERMS AND CONDITIONS

CITY and DISTRICT hereby agree to the following thirteen (13) general terms and conditions attached hereto, and by this reference incorporated herein.

GENERAL TERMS AND CONDITIONS

1. 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.

2. COMPLIANCE WITH LAW

At its sole cost and expense DISTRICT shall comply, and shall secure compliance by persons within its 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 said premises or the operations conducted thereon; 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 the premises by persons within its control and authority.

3. ASSIGN

Time is of the essence of each and all of the terms and provisions of the Agreement, and this Agreement shall inure to the benefit of and be binding upon the parties hereto and any successor thereof as fully and to the same extent as though specifically mentioned in each instance, and all covenants, stipulations, and agreements in the Agreement shall extend to and bind any successor or successors of the parties.

4. WAIVER

The waiver by either party for any breach of any term, covenant, or conditions herein contained shall not be deemed to be a waiver of any other term, covenant or condition of this Agreement.

5. ADMINISTRATION OF AGREEMENT: NOTICES

Control and administration of this Agreement is under the jurisdiction of the Superintendent as to DISTRICT's interest herein and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Agreement or by law required to be given or served upon DISTRICT may be given or served by certified letter deposited in the United States mails, postage prepaid, and addressed to the South Bay Union School District at 601 Elm Avenue, Imperial Beach, California 92031, Attention: Superintendent, or may be personally served upon DISTRICT or any person hereafter authorized by DISTRICT to receive such notice. Any notice or notices provided for by this Agreement or by law to be given or served upon CITY may be given or served by depositing in the United States mails, postage prepaid, a certified letter addressed to the City Manager, City Administration Building, 202 "C" Street, San Diego, California 92101. Attention: Park and Recreation Director. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes, upon the principals or the parties so served upon personal service or forty-eight (48) hours after mailing in the manner required herein.

6. 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 thirty (30) 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 thirty (30) 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.

7. 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 subject parcel. 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, licensees or employees in connection with the performance of this Agreement and the use of the subject parcel, including all liability, claims, damages or injuries in connection with the park improvements provided by the DISTRICT.

8. INSURANCE

DISTRICT shall procure and maintain public liability and property damage insurance which names City of San Diego, its officers and employees, as an additional insured with any insurance company licensed to do business in California, which company must have a (B+ 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 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 DISTRICT on premises or any person acting for DISTRICT or under DISTRICT's control or direction on premises. Such public liability and property damage insurance shall be maintained in full force and effect during the entire term of this Agreement, in the amount of no less than one million dollars (\$1,000,000) COMBINED SINGLE LIMITS LIABILITY with an Occurrence Claims form. DISTRICT shall submit a policy of said insurance to the Park and Recreation Director of City on or before the effective date of this Agreement indicating full coverage of the contractual liability imposed by this Agreement and stipulating that the insurance selected by DISTRICT shall not be subject to cancellation, any change in coverage, reduction in limits or non-renewal, except after written notice to CITY by certified mail, return receipt requested, not less than thirty (30) days prior to the effective date thereof.

DISTRICT shall not use or permit the use of said premises for any purpose other than the purpose for which said premises are herein permitted. DISTRICT 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 and appurtenances during DISTRICT's use.

CITY represents to DISTRICT that it is legally self-insured for public liability risk, and maintains a full time staff of qualified claims investigators for the purpose of administering self insured claims.

9. 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. VERBAL AGREEMENTS

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. This contract cannot be enlarged, modified, or

changed in any respect except by written agreement between the said parties.

11. SEVERANCE

If any part of the Agreement contained herein 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.

12. AMENDMENT OR RENEWAL

At DISTRICT'S request, at the expiration of the original term of the agreement, CITY may offer to extend the Agreement for additional periods of five (5) years not to exceed a total of forty (40) years. At least 180 days prior to the expiration hereof DISTRICT will deliver to the CITY notice of its intent to renew. CITY will within 30 days of receipt of such notice respond as to its willingness to proceed with any renewal.

Any Amendment to this agreement will be by mutual consent of the parties which Amendment will be approved by the Board of DISTRICT and City Council of CITY.

13. NONDISCRIMINATION

DISTRICT, CITY and all others who from time to time may use the property and recreational facilities described herein 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, national origin, age or mental or physical disability, including, but not limited to the providing of goods, services, facilities, privileges, advantages, and the holding and obtaining of employment

IN WITNESS WHEREOF, this Joint Use Agreement is executed by the City of San Diego, acting by and through its City Manager pursuant to Resolution R-275384, authorizing such execution, and by the South Bay Union School DISTRICT, acting by and through its Superintendent pursuant to a Resolution of its Board of Education.

THE CITY OF SAN DIEGO

Date MAR 26 1990

By [Signature]
~~Director~~
Park & Recreation Director

DISTRICT

Date 1-2-90

By [Signature]

By _____

APPROVED as to form and legality this 1 days of March, 1990.

JOHN W. WITT, City Attorney

By [Signature]
Deputy City Attorney

R-275384

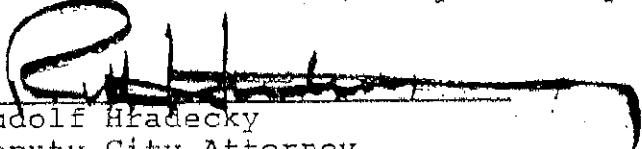
(R-90-1172)

RESOLUTION NUMBER R- 275384ADOPTED ON MAR 26 1990

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered, for and on behalf of said City, to enter into a 40-year joint use agreement with the South Bay Union School District, for school recreation purposes at the Howard Lane Neighborhood Park, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR- 275384, together with any reasonably necessary modifications or amendments thereto which do not increase the agreement's scope or cost and which the City Manager shall deem necessary from time to time in order to carry out the purposes and intent of this agreement.

APPROVED: JOHN W. WITT, City Attorney

By


Rudolf Hradecky
Deputy City Attorney

RH:mb
01/30/90
Or.Dept:Pk.&Rec.
R-90-1172
Form=r.auagr

Passed and adopted by the Council of The City of San Diego on
March 26, 1990 by the following vote:

YEAS: Wolfsheimer, Roberts, Hartley, Pratt, Bernhardt,
Henderson, McCarty, Filner, O'Connor.

NAYS: None.

NOT PRESENT: None.

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: ELLEN BOVARD, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 275384, passed
and adopted by the Council of The City of San Diego, California
on MAR 26 1990.

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California

(SEAL)

By: Ellen Bovard, Deputy