

**AGREEMENT FOR THE
JOINT USE, CONSTRUCTION, AND MAINTENANCE OF
RECREATION FACILITIES AT
LA MIRADA ELEMENTARY SCHOOL**

THIS AGREEMENT for the Joint Use, Construction, and Maintenance of Recreational Facilities at La Mirada Elementary School [Joint Use Agreement] is entered into between THE CITY OF SAN DIEGO, a municipal corporation [CITY], and the SAN YSIDRO SCHOOL DISTRICT OF SAN DIEGO COUNTY, CALIFORNIA, a public school district of the State of California [DISTRICT].

RECITALS

- A. La Mirada Elementary School [the School] owned by DISTRICT contains turfed fields and a parking lot. CITY desires to supplement park acreage to meet community recreational needs by utilizing the fields and parking lot at the School for recreational purposes, and to construct improvements on those fields. DISTRICT desires improvements to its fields and the opportunity to use the improvements during its programs. It is to the mutual benefit of CITY and DISTRICT to contribute jointly to the establishment of recreational facilities which can serve the needs of both the general public and DISTRICT.
- B. The estimated average life of all improvements to be constructed on the leased property is no greater than the term of this Agreement.

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

AGREEMENT

1. Property.

DISTRICT hereby leases to CITY all of that certain DISTRICT-owned real property situated in the City of San Diego, California consisting of approximately 4.9 acres of fields and 1.0 acre of parking area located at the School, as depicted in the Site Plan, attached hereto as Exhibit A and incorporated herein by this reference. The real property described here and depicted in the Site Plan is the subject of this Joint Use Agreement, and is referred to herein as the Joint Use Area.

2. Effective Date Of Agreement.

This Joint Use Agreement must be approved by the Board of Trustees of District and by ordinance adopted by a two-thirds vote of the San Diego City Council. Accordingly, the term of this Joint Use Agreement shall commence on the day that the ordinance approved by the San

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OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

Diego City Council becomes effective [the Effective Date]. A copy of the City Council's ordinance approving this Agreement is attached hereto as Exhibit B and incorporated herein by this reference.

3. Term.

The term of this Joint Use Agreement shall commence on the Effective Date and shall expire twenty-five (25) years after the Effective Date. However, if DISTRICT should declare that the Joint Use Area is no longer needed for school purposes and if DISTRICT should propose to sell, lease or otherwise use the School or the Joint Use Area in such a manner that the Joint Use Area would not be usable by CITY for park purposes, DISTRICT shall so notify the CITY in writing and grant CITY a one hundred and eighty (180) days option, commencing on the date of said notification, to purchase the Joint Use Area at its fair market value exclusive of any value of improvements placed upon the property by CITY. Fair market value will be determined by a neutral appraiser agreed upon by the parties. In the event of such notification, this Joint Use Agreement shall terminate at the end of the one hundred and eighty days option period or upon written notification by CITY that CITY does not intend to exercise its option. In the event CITY does not exercise its option to acquire the Joint Use Area, DISTRICT agrees to reimburse CITY in a lump sum, the costs remaining for the life of the improvements by amortizing amount for reimbursement to the CITY based on a straight line basis over the 25-year term. In addition, if at any time during the twenty-five (25) year period CITY determines the Joint Use Area is no longer needed for park purposes, CITY shall notify DISTRICT in writing and this Joint Use Agreement shall terminate one hundred eighty (180) days after notice is mailed. Further, the Joint Use Area will be returned to its original physical condition upon the terms set forth in Section 10 of this Agreement upon request by DISTRICT.

4. 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 Joint Use Agreement.

5. Use of Property.

The Joint Use Area shall be used for the purpose of constructing and maintaining turfed fields and other recreational facilities in accordance with plans and specifications approved by CITY and DISTRICT in advance of construction, and for operation of public education and recreation programs which shall include turfed ball fields, multipurpose fields, running/walking path, parking lot, and other such facilities as agreed by the parties

5.1 City's Use of Property.

CITY shall have exclusive use of recreational facilities located upon the Joint Use Area from one hour (60) minutes after the end of the school day until one hour (60) minutes before the beginning of the school day Monday through Friday on days that school is in

session. La Mirada Elementary School has a multi-track year-round schedule, with a seven (7) week summer vacation schedule. CITY shall also have such exclusive use at all times on holidays, weekends, and other days when school is not in session. CITY agrees to schedule and coordinate community use of the recreational facilities during nonschool hours.

5.2 District's Use of Property.

DISTRICT shall have exclusive use of recreational facilities in the Joint Use Area from one hour (60) minutes before the beginning of the school day until one hour (60) minutes after the end of the school day Monday through Friday, on each and every day that school is in session.

DISTRICT may, at DISTRICT's sole cost and expense, and with CITY's approval, place, or permit to be placed, upon the Joint Use Area, portable buildings, structures, equipment, and apparatus upon thirty (30) days written notice. The placement of such facilities may be for the purpose of, but not limited to, the operation of public education and/or nonprofit child care facilities. If CITY approves the placement of such facilities, DISTRICT shall, at DISTRICT's expense, make any necessary modifications to the irrigation system and other improvements installed at CITY's expense and at the completion of such use shall restore the improvements installed at CITY's expense to their original condition or to a condition satisfactory to the CITY. In the event the placement of such facilities deprives the CITY of the uses specified under this Agreement, DISTRICT shall reimburse CITY for that portion of the twenty-five (25) year term hereof that CITY does not have use of the Joint Use Area based upon the fair market value.

5.3 Schedule Changes.

CITY and DISTRICT staffs may negotiate additional hours as necessary when use by one party is desired during a time when another party has exclusive use of the area. Both parties must give forty-eight (48) hours notice to the other of needed additional hours of use.

6. District Responsibilities.

DISTRICT shall be responsible for the following:

- 6.1 Relocation of Play Equipment.** In order to accommodate reconfiguration for constructing new turf ballfields within the Joint Use Area, DISTRICT shall relocate existing play equipment at DISTRICT'S expense, not to exceed \$35,000. All improvements shall meet the requirements of CITY and DISTRICT and all applicable provisions as set forth in paragraph 10. The relocation of the existing play equipment shall be completed so as not to hinder the construction of the joint

use multi-purpose turfed fields.

- 6.2 **Maintenance of Fencing.** DISTRICT shall be responsible for maintenance repair and installation of all existing or new fencing around the perimeter of the Joint Use Area. Fencing must provide access for City maintenance vehicles and for public access to Joint Use Area during CITY use hours.
- 6.3 **Graffiti Removal.** DISTRICT shall be responsible for removal of graffiti and/or repainting of surfaces in the Joint Use Area that have been defaced during those hours that school is in session.
- 6.4 **Litter Removal.** DISTRICT shall be responsible for collection and removal of litter in the Joint Use Area during those hours when DISTRICT has exclusive use of the Joint Use Area as outlined in paragraph 5.2.
- 6.5 **Pesticide Application.** Upon ten (10) day advance written notification from the CITY, that the turfed fields in the Joint Use Area will receive pesticide applications, DISTRICT shall be responsible for posting the required signs and notifications in compliance with State requirements for pesticide applications at DISTRICT property.
- 6.6 **Maintenance at District's Parking Lot.** Subject to the reimbursement provisions set forth below in paragraph 7.8, District shall be responsible for maintenance at the District's parking lot, as follows: parking lot maintenance, including pavement re-stripping and re-surfacing, graffiti removal, and maintenance of the landscape and irrigation.

7. City's Responsibilities.

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

- 7.1 **Design and Construction of Improvements.** CITY shall be responsible for contracting with landscape architects, engineers, contractors and other professional consultants, as necessary, for the design and construction of recreational facilities in the Joint Use Area which shall include, but not be limited to, turfed fields, irrigation system, drainage as required, and landscaping in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction.
- 7.2 **Relocation of Garden Plots.** In order to accommodate reconfiguration for constructing new turfed ballfields within the Joint Use Area, DISTRICT shall relocate existing Garden plots at CITY expense, not to exceed \$6,000. Relocation of the Garden Plots shall meet the requirements of CITY and DISTRICT and all applicable provisions as set forth in paragraph 10. The relocation of the existing

Garden Plots shall be completed so as not to hinder the construction of the joint use multi-purpose turf fields.

- 7.3 Maintenance of Fields.** CITY shall be responsible for maintenance of the turf fields, including the irrigation system within the Joint Use Area, in accordance with standards mutually acceptable to the CITY and DISTRICT. Maintenance includes mowing, fertilizing, weed abatement, pest control and equipment, as appropriate.
- 7.3.1 When turf recreational playing fields within the Joint Use Area, are in poor condition, CITY reserves the right to declare the turf field areas “unplayable” and shall notify the DISTRICT and La Mirada Elementary School Principal that the field may not be used during school hours for recess, physical education classes or other use. Likewise, CITY agrees not to use the turf fields in the Joint Use Area during “unplayable” conditions for CITY and recreational purposes. DISTRICT agrees to comply with CITY requests until notified by CITY that the turf field areas within the Joint Use Area are in a condition suitable to resume CITY and DISTRICT use as outlined herein.
- 7.4 Maintenance of Improvements.** CITY shall be responsible for maintenance and repair of CITY, concrete pavement, concrete mow curb, trash receptacles, turf fields, infields, backstops and other recreational improvements within the Joint Use Area.
- 7.5 Irrigation of Fields.** CITY shall be responsible for the cost of water for irrigating turf fields within the Joint Use Area.
- 7.6 Graffiti Removal.** CITY shall be responsible for removal of graffiti and/or repainting of surfaces in the Joint Use Area that have been defaced during those hours when school is not in session and when DISTRICT does not have exclusive use of the Joint Use Area.
- 7.7 Litter Removal.** CITY shall be responsible for collection and removal of litter within the Joint Use Area during those hours when school is not in session and when DISTRICT does not have exclusive use of the Joint Use Area.
- 7.8 City’s Obligation to Reimburse for Maintenance at District’s Parking Lot.** District will bill City quarterly, and City shall reimburse District, the percentage of costs incurred by District and attributable to City for maintenance at District parking lot, based upon the following formula: the number of days City has exclusive use of parking lot during the billing period, divided by, the total number of days in the billing period. District shall also bill City and City shall reimburse

District for parking lot maintenance costs incurred by District resulting from City special events.

8. Payment for Utilities

City and District shall pay for, repair, and maintain all utilities to their respective improvements as necessary, at their own expense. City shall provide a separate water meter for irrigation. The District shall provide electricity for irrigation controllers

9. Review and Amendment of Joint Use Agreement.

9.1 Periodic Review. CITY and DISTRICT shall meet annually prior to January 1 of each year to review the use of the Joint Use Area. As a result of this review, the use schedule as identified in this Agreement may be revised upon the mutual consent of both CITY and DISTRICT. Said changes, when made in writing and approved by both parties, shall then become a part of this Joint Use Agreement.

9.2 Amendment. This Agreement may be amended or renewed in writing by mutual consent of DISTRICT and CITY as permitted by law.

10. Time for Commencement of Work.

If construction of the improvements does not commence upon the Joint Use Area within eighteen months from the Effective Date of this Joint Use Agreement, then this Agreement shall be void for all or part of the Joint Use Area unless otherwise agreed by CITY and DISTRICT. The date of commencement of construction shall be mutually agreed upon by CITY and DISTRICT. Upon completion of such construction, CITY shall furnish DISTRICT with complete as-built drawings for the improvements.

11. Construction of Improvements.

No improvements shall be installed, nor shall construction of the improvements begin, until plans and specifications for the improvements are reviewed, approved, and signed by both parties. All improvements installed upon the Joint Use Area shall remain the property of CITY during the term of this Joint Use Agreement and will be removed by CITY upon request by DISTRICT at termination of the Joint Use Agreement, and the Joint Use Area shall be returned to DISTRICT free of all legal encumbrances. In the event CITY does not remove the improvements upon expiration of this Agreement after written request by DISTRICT, DISTRICT may remove, sell, or destroy the same at CITY's expense.

12. Quiet Possession.

CITY, subject to performing the covenants and agreements herein, shall at all times during the term of the Joint Use Agreement peaceably and quietly have, hold, and enjoy the Joint Use Area.

13. Entry for Inspection or Maintenance.

DISTRICT reserves and shall always have the right to enter upon the Joint Use Area for the purpose of viewing and ascertaining the condition thereof. CITY shall have the right to enter the Joint Use Area to conduct maintenance during school hours upon such terms as are agreed upon by the parties. Prior to entering the Joint Use Area during school hours, CITY maintenance personnel shall check in at the School and provide notification of the purpose for their entry.

14. Insurance and Indemnification.

14.1 Indemnity. DISTRICT agrees to defend, indemnify, protect and hold CITY, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to DISTRICT's employees, invitees, guests, agents, or officers, caused by the independent acts of DISTRICT, its agents or employees in connection with the performance of this Agreement and the use of the Joint Use Area or the School. CITY agrees to defend, indemnify, protect and hold DISTRICT, its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to CITY's employees, invitees, guests, agents, or officers, caused by the independent acts of CITY, its agents or employees in connection with the performance of this Agreement and the use of the Joint Use Area or the School.

14.2 Insurance. CITY and DISTRICT acknowledge and warrant that they are self-insured or insured by private insurance carrier, in compliance with the laws of the State of California, that their self-insurance covers persons acting on their behalf or under their control, and that their self-insurance covers their use of the Joint Use Area as contemplated by this Agreement. The parties further warrant that they will notify the other party of any insurance coverage change at least thirty (30) days prior to the change in accordance with the notice provisions of this Joint Use Agreement. Any coverage change must be approved by the other party, which approval shall not be unreasonably withheld.

14.3 Worker's Compensation Insurance. CITY and DISTRICT acknowledge and warrant that they maintain, and shall maintain for the term of this Agreement, Worker's Compensation coverage as required by law.

15. 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, 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:

If to CITY: City Manager
 City of San Diego
 202 C Street MS 9A
 San Diego, California 92101
 Attention: Park and Recreation Director

If to DISTRICT: San Ysidro School District
 4350 Otay Mesa Road
 San Diego, California 92173-1685
 Attention: Assistant Superintendent of Business Services

16. General Provisions.

16.1 Assignment. CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT, which will not be unreasonably withheld. Any assignment without such consent shall be void.

16.2 Nondiscrimination. DISTRICT and CITY agree to 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 further agree to 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.

16.3 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 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 Joint Use Area by persons within their respective control and authority.

16.4 Disabled Access Standards. Both City and District agree to maintain their respective properties in a manner consistent with the requirements of state and federal law for disabled access including California Government Code sections 11135 through 11139.5 and the Americans with Disabilities Act.

16.5 Time of the Essence. Time is of the essence of each and all of the terms and

provisions of this Agreement.

16.6 Waiver. The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of any other term, covenant, or condition, or any subsequent breach of the same or any other term, covenant, or condition of this Agreement.

16.7 Remedies. In the event that either party shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by that party and shall fail to cure said default within one hundred twenty (120) days after service on the defaulting party of a written notice from the second party specifying the default complained of, then the second party may, at its option, without further notice or demand upon the defaulting party or upon any person claiming through the defaulting party, immediately terminate this Agreement and all rights of the defaulting party and of all persons claiming rights through the defaulting party. Notwithstanding the above provisions, in the event that any default cannot be cured within one hundred twenty (120) days after the service of written notice upon the defaulting party, the second party shall not terminate this Agreement pursuant to the default if the defaulting party immediately commences to cure the default and diligently pursues such cure to completion.

16.8 Applicable Law. The parties agree that the law of the State of California shall be used in interpreting this Agreement and will govern all disputes and determine all rights under this Agreement.

16.9 Entire Agreement. This Agreement contains the complete expression of the whole Agreement between the parties hereto and there are no promises, representations, agreements, warranties, or inducements either expressed verbally or implied except as are fully set forth herein. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the parties.

17. City Approval.

Whenever an act or approval is required by CITY pursuant to the terms of this Agreement, CITY shall mean the CITY Manager or his or her duly designated representative.

IN WITNESS WHEREOF, this Agreement is executed by the City of San Diego acting by and through its City Manager pursuant to Ordinance No. 19076 authorizing such execution, and by the San Ysidro School District of San Diego County, California, acting by and through its Superintendent pursuant to a Resolution of its Board of Education.

THE CITY OF SAN DIEGO,
a Municipal Corporation

By: Eric Oppenheim
Title: Director
Date: JUL 08 2002, 2002

SAN YSIDRO SCHOOL
DISTRICT OF SAN DIEGO COUNTY,
of the State of California

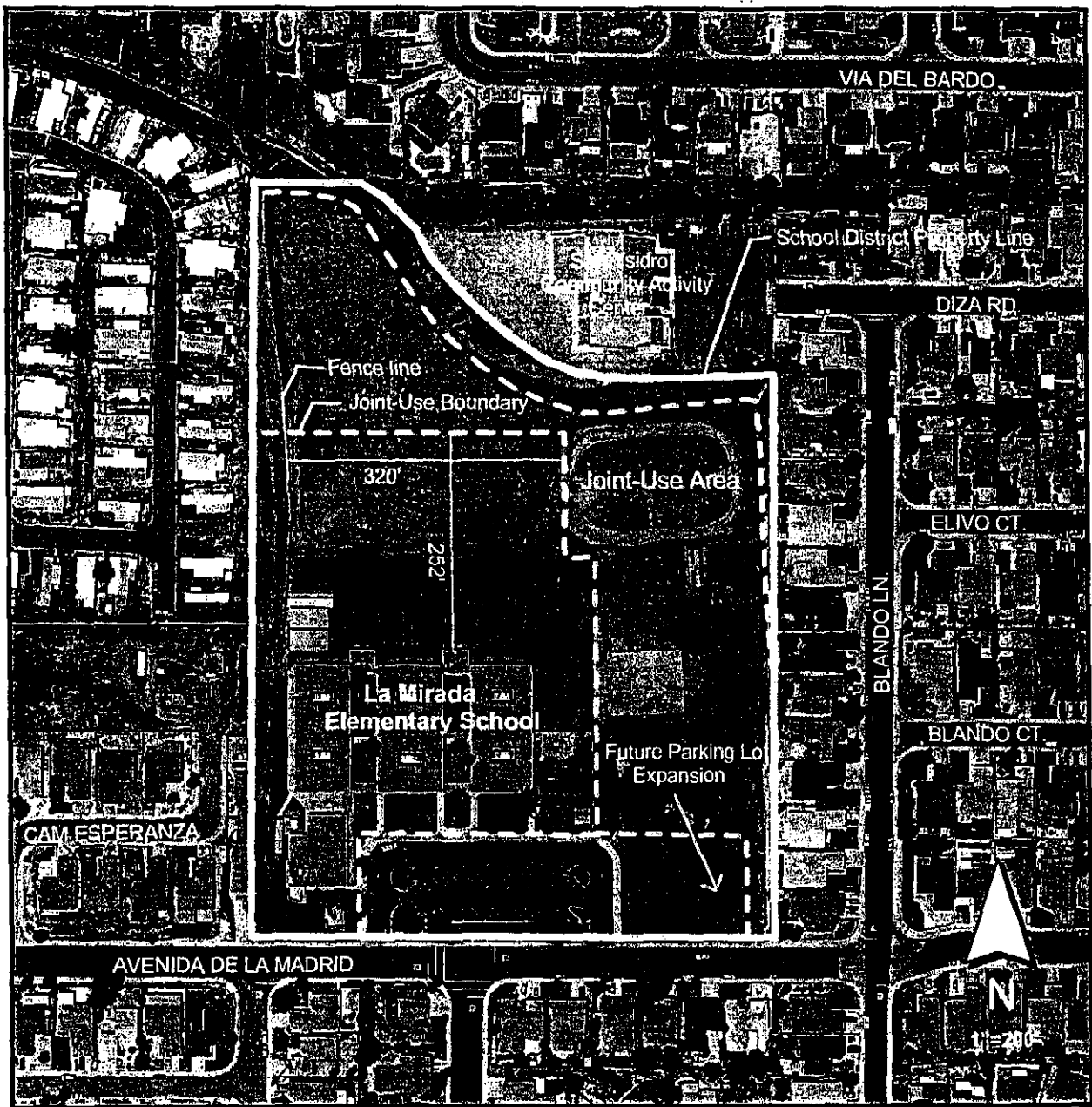
By: John E. Lavin
Title: Asst Supt
Date: May 9, 2002

APPROVED AS TO FORM AND LEGALITY:

CASEY GWINN, CITY ATTORNEY

By: [Signature]
Deputy City Attorney

Date: July 16, 2002



La Mirada Elementary School Joint-Use Area

ORDINANCE NUMBER O- 19076 (NEW SERIES)

ADOPTED ON JUL 08 2002

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A TWENTY-FIVE YEAR AGREEMENT FOR THE JOINT USE, CONSTRUCTION, AND MAINTENANCE OF RECREATION FACILITIES AT LA MIRADA ELEMENTARY SCHOOL WITH THE SAN YSIDRO SCHOOL DISTRICT; AUTHORIZING AN AGREEMENT FOR CONSULTANT SERVICES; AND AUTHORIZING THE EXPENDITURE OF \$55,000 FROM CIP 29-657.0, LA MIRADA ELEMENTARY SCHOOL, FOR PROFESSIONAL SERVICES.

WHEREAS, the La Mirada Elementary School is located adjacent to the San Ysidro Community Activity Center in the Otay Mesa Community Planning Area, an area that is currently lacking in athletic fields; and

WHEREAS, a joint use agreement between the City of San Diego and the San Ysidro School District for the use of and improvements to the turf-ed fields at La Mirada Elementary School would contribute to meeting the recreational needs of the community; and

WHEREAS, the Governing Board of the San Ysidro School District approved the Agreement for the Joint Use, Construction, and Maintenance of Recreation Facilities at La Mirada Elementary School at its meeting on March 14, 2002, and authorized the execution of the Joint Use Agreement; NOW, THEREFORE,

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

Section 1. That the City Manager is authorized and empowered to execute, for and on behalf of the City, an Agreement for the Joint Use, Construction, and Maintenance of Recreation Facilities at La Mirada Elementary School [Joint Use Agreement] with the San Ysidro School District for the joint use, construction, and maintenance of turfed multi-purpose fields and other recreational facilities La Mirada Elementary School, under the terms and conditions set forth in the Joint Use Agreement on file in the Office of the City Clerk as Document No. OO- 19076-1.

Section 2. That the City Manager is authorized and empowered to execute, for and on behalf of the City, an Agreement Between the City of San Diego and Nowell & Associates, Landscape Architecture, for Consulting Services [the Consultant Agreement] for the professional services required to prepare construction documents for a first phase of work and other professional services, under the terms and conditions set forth in the Joint Use Agreement on file in the Office of the City Clerk as Document No. OO- 19076-2.

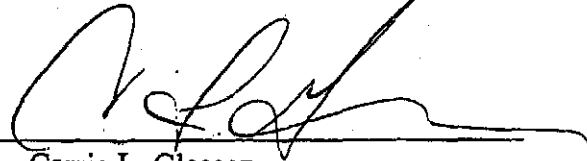
Section 3. That the appropriation and expenditure of an amount not to exceed \$55,500 from CIP No. 29-657.0, La Mirada Elementary School, is authorized, solely and exclusively, for the payment of professional services under the Consultant Agreement.

Section 4. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 5. That this ordinance shall take effect and be in force on the thirtieth day from
and after its passage.

APPROVED: CASEY GWINN, City Attorney

By



Carrie L. Gleeson
Deputy City Attorney

CLG:mm
06/11/02
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