

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Public Works/Engineering-AEP	DATE: 12/01/2011
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SUBJECT: Jefferson Elementary School Improvements - Joint Use Agreement

PRIMARY CONTACT (NAME, PHONE): Darren Greenhalgh, 619-533-6600, MS 908A	SECONDARY CONTACT (NAME, PHONE): Todd Schmit, 619-533-4620, MS 908A
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): The San Diego Unified School District is funding the design and construction of the joint use area using Proposition S funds. The San Diego Unified School District is also providing the land. No City funds are being used for the land, design or construction of the joint use area.

The total project cost is estimated to be approximately \$1,892,912.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Equal Opportunity Contracting	Comptroller	Nagelvoort, James	12/13/2011
Park and Recreation	CFO		
Financial Management	DEPUTY CHIEF		
Environmental Analysis	COO		
Liaison Office	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF:	<input type="checkbox"/> RESOLUTIONS	<input checked="" type="checkbox"/> ORDINANCE(S)	<input checked="" type="checkbox"/> AGREEMENT(S)	<input type="checkbox"/> DEED(S)
1. Approve an Ordinance to authorize the Mayor to execute a lease and joint use Agreement between the City of San Diego and the San Diego Unified School District for the lease, design, construction, operation and maintenance of a new 1.46 acre synthetic turf and hard court joint use area at Jefferson Elementary School.				
STAFF RECOMMENDATIONS: Adopt the Ordinance.				
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)				
COUNCIL DISTRICT(S):	3 (Gloria)			
COMMUNITY AREA(S):	Greater North Park Community Planning Area			
ENVIRONMENTAL IMPACT:	This action is categorically exempt from CEQA per State CEQA Guidelines, Section 15303 (New Construction or Conversion of Small Structures).			
CITY CLERK INSTRUCTIONS:	<p>This Item is subject to Charter Section 99 requirements (10 day public noticing and 6 votes required).</p> <p>Please send copies of the approved Ordinance to: Jim Winter, MS 35; Todd Schmit, MS 908A; Deborah Sharpe, MS 413.</p>			

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: 12/01/2011

ORIGINATING DEPARTMENT: Public Works/Engineering-AEP

SUBJECT: Jefferson Elementary School Improvements - Joint Use Agreement

COUNCIL DISTRICT(S): 3 (Gloria)

CONTACT/PHONE NUMBER: Darren Greenhalgh/619-533-6600, MS 908A

DESCRIPTIVE SUMMARY OF ITEM:

Approve an Ordinance to authorize the Mayor to execute a lease and joint use Agreement between the City of San Diego and the San Diego Unified School District for a new 1.46 acre synthetic turf and hard court joint use area at Jefferson Elementary School.

STAFF RECOMMENDATION:

Adopt the Ordinance.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: Jefferson Elementary School is located at 3770 Utah Street, at the corner of North Park Way and Utah Street, in the Greater North Park Community Planning Area. The Greater North Park Community Planning Area is park deficient; therefore, this project will help to satisfy the community's and San Diego Unified School District's recreational and athletic programmatic needs. The proposed Agreement includes the lease, design, construction, operation and maintenance of a 1.46 acre joint use area at Jefferson Elementary School. The joint use area includes a 0.96 acre synthetic turf, multi-purpose sports field, and 0.50 acres of hard court area. The hard court area includes a children's play area and a drinking fountain.

The City and the San Diego Unified School District have been cooperating in the use of numerous recreational facilities in accordance with the City-San Diego Unified School District Recreation Agreement of September 1948, and the Memorandum of Understanding Between the City and the San Diego Unified School District for the Development and Maintenance of Joint Use Facilities [MOU] adopted by the San Diego City Council on October 7, 2002 (Resolution No. 297149), and by the San Diego Unified School District's Board of Education on October 8, 2002. The City and San Diego Unified School District will enter into a ten (10) year, no fee lease and joint use agreement for the joint use area at Jefferson Elementary School.

Funding for design and construction of the joint use area will be provided by the San Diego Unified School District utilizing Proposition S funds. San Diego Unified School District is also providing the land. These contributions will be used to calculate maintenance responsibilities and parity, pursuant to the terms of the MOU.

FISCAL CONSIDERATIONS: The funding for design and construction of the joint use area is being provided by the San Diego Unified School District using Proposition S funds. The total project cost is estimated to be approximately \$1,892,912, including land value, and design and construction costs.

No City funds are being used for the design and construction of the joint use area. The City will be responsible for maintenance of the joint use area once the Agreement is executed. It is estimated that the annual maintenance cost to the City for maintenance of the joint use area will be approximately \$11,390 per year. These contributions will also be used to calculate maintenance responsibilities and parity, pursuant to the terms of the MOU.

The joint use area is scheduled to be completed and open to the public in early 2012.

EQUAL OPPORTUNITY CONTRACTING INFORMATION: EOC Exempt per November 14, 2011 memo.

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee): Project will be heard at Committee.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: The San Diego Unified School District held numerous publicly noticed workshops on the Jefferson Elementary School improvements, which included the joint use area.

The San Diego Unified School District also attended the North Park Recreation Council meeting on 05/24/2010 and received a recommendation for approval of the joint use area improvements.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: This project will increase population-based park acreage in the park-deficient Greater North Park Community Planning Area.

Stakeholders include: The Greater North Park Community Planning Area, the San Diego Unified School District, the City of San Diego's Park and Recreation Department, and Jefferson Elementary School.

Nagelvoort, James
Originating Department

Deputy Chief/Chief Operating Officer

**AGREEMENT FOR THE
CONSTRUCTION, OPERATION, MAINTENANCE, AND LEASE
OF JOINT USE FACILITIES AT
JEFFERSON ELEMENTARY SCHOOL**

THIS AGREEMENT [Agreement] for the Construction, Operation, Maintenance and Lease of Joint Use Facilities, as further described in Section 1 of this Agreement, at Jefferson Elementary School [School] is entered into this _____ day of _____, 2012 between the CITY OF SAN DIEGO, a 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] based on the following facts:

RECITALS

- A. CITY and DISTRICT have been cooperating in the use of numerous recreational facilities in accordance with the CITY-DISTRICT Recreation Agreement of September 1948, and the Memorandum of Understanding Between the CITY and DISTRICT for the Development and Maintenance of Joint Use Facilities [MOU] adopted by the San Diego City Council on October 7, 2002 (Resolution No. 297149) and by DISTRICT's Board of Education on October 8, 2002, incorporated by reference.
- B. CITY desires to supplement park acreage to meet community recreational needs by utilizing the joint use facilities at the School for recreational purposes. DISTRICT desires the opportunity to use the improvements as described in Section 1 of this Agreement during its 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.
- C. CITY and DISTRICT desire to establish this mutually beneficial arrangement by entering into this Agreement for a ten (10) year period to provide for both Parties' recreational programs. During the ten (10) year term, Parties will contribute to the development and maintenance of the Joint Use Facilities per the terms of this Agreement.
- D. CITY and DISTRICT shall calculate the financial contributions of each Party for this Agreement pursuant to Section III.A of the MOU.
- E. The estimated average life-span of all improvements constructed within the Joint Use Area is no less than the term of this Agreement.
- F. APPROVED PLANS shall hereby be defined as a copy of final construction plans signed by both the CITY and DISTRICT and kept on file with each entity.

NOW, THEREFORE, the Parties agree as follows:

A G R E E M E N T

1. Property.

1.1 Lease Terms. DISTRICT hereby leases to CITY a portion of certain DISTRICT-owned real property located at Jefferson Elementary School, 3770 Utah Street, San Diego, CA 92104, in the Greater North Park Community Planning Area as depicted in Exhibit "A" of this Agreement, incorporated herein by this reference [Joint Use Area].

1.2 Included Amenities. The Joint Use Area is further described as consisting of approximately:

- A total of 1.46 acres, to include:
 - Synthetic turf field (0.96 acres)
 - Hard court and children's play area (0.50 acres);
- Associated infrastructure, fencing and gates;
- Accessible routes and concrete walkways; and
- Drainage as required.

2. Term.

2.1 Term. This Agreement shall be for a term of ten (10) years, commencing on the date of its execution by both the Mayor, as authorized by ordinance adopted by the San Diego City Council, and by the authorized representative of the DISTRICT's Board of Education.

2.2 DISTRICT Wishes to Sell School. If at any time during the ten (10) year period, DISTRICT should determine that the Joint Use Area is no longer needed for school purposes and if DISTRICT should propose to sell the school, DISTRICT shall so notify the CITY in writing pursuant to Section 9 and grant to CITY a two (2) year option, commencing on the date of said notification, to purchase all or part of the school, at its fair market value not including the value of the improvements constructed by or on behalf of CITY. In the event of such notification, the agreement shall terminate at the end of the two (2) year period or upon written notification by CITY that CITY does not intend to exercise its option.

2.3 DISTRICT Leases School. If at any time during the ten (10) year period, DISTRICT should determine that the Joint Use Area is no longer needed for school purposes and if DISTRICT should propose to lease the School, DISTRICT shall so notify the CITY in writing pursuant to Section 9. Any such lease shall not interfere with the CITY's right to use the Joint Use Area, unless otherwise agreed to in writing.

3. Consideration.

3.1 Mutual Benefit. The Parties acknowledge that good, valuable, and adequate consideration exists in the mutual benefits enjoyed 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 Parity.

3.2.1 Calculation of Financial Contributions. CITY and DISTRICT shall calculate the financial contributions of each Party in accordance with Section III.A of the MOU for "New Agreements" as depicted in Exhibit "B" of this Agreement, and incorporated herein by this reference. The Parties agree that the values stated in the MOU are fair and accurate for the purpose of calculating financial contributions.

3.2.1.1 Financial Contribution of each Party for Synthetic Turf During 10-Year Term

3.2.1.1.1 As set forth in this Agreement until the 10-year term is reached, CITY shall, except where specifically excluded in other sections of this Agreement, be responsible for 100 percent (100%) of general maintenance of the synthetic turf field in accordance with Section 5.9 of this Agreement. CITY shall be responsible for maintenance and repairs of any damage to the synthetic field and its infrastructure, including the turf drainage system.

3.2.1.1.2 After parity is reached, DISTRICT shall reimburse CITY fifty percent (50%) of incurred costs for maintenance and repairs to the synthetic turf field.

3.2.1.2 Financial Contribution of each Party for Associated Improvements During 10-Year Term

3.2.1.2.1 As set forth in this Agreement until the 10-year term is reached, DISTRICT shall, except where specifically excluded in other sections of this agreement, be responsible for 100 percent (100%) of all maintenance and repairs to include the fencing, gates and associated hardware and appurtenances located within the Joint Use Area in accordance with Section 5.6 of this Agreement.

3.2.1.2.2 DISTRICT shall, except where specifically excluded in other sections of this agreement, be responsible for repairs of all damage to the walkways, mow curbs, and the sound wall within and leading to the Joint Use Area in accordance with Section 5.4 of this Agreement. CITY shall reimburse DISTRICT fifty percent (50%) of incurred costs for maintenance and repairs.

3.2.1.2.3 CITY shall, except where specifically excluded in other sections of this agreement, be responsible for

maintenance and repair to the DISTRICT-installed storm drainage system within the Joint Use Area in accordance with Section 5.5 of this Agreement. DISTRICT shall reimburse CITY fifty percent (50%) of incurred costs for maintenance of the storm drain system.

3.2.1.3 Financial Contribution of each Party for Children's Play Area and Hard Court Area During 10-Year Term

3.2.1.3.1 As set forth in this Agreement until the 10-year term is reached, DISTRICT shall, except where specifically excluded in other sections of this agreement, be responsible for 100 percent (100%) of all maintenance of the children's play area, play equipment, and play area surfacing located within the Joint Use Area in accordance with Section 5.7 of this Agreement.

3.2.1.3.2 DISTRICT shall, except where specifically excluded in other sections of this agreement, be responsible for all maintenance and repairs of any damage to the hard court area in the Joint Use Area, such as resurfacing and restriping in accordance with Section 5.8 of this Agreement. CITY shall reimburse DISTRICT fifty percent (50%) of incurred costs for maintenance and repairs.

3.2.1.4 Financial Contribution of each Party Upon Agreement Expiration

3.2.1.4.1 Two (2) years prior to this 10-year Agreement expiring, the CITY and DISTRICT shall meet to review the use of the Joint Use Area and determine whether or not to amend or renew the Agreement.

3.2.1.4.2 If it is determined by the CITY and DISTRICT that this Agreement is to be amended or renewed, the Parties shall recalculate the financial contributions to this Agreement pursuant to Section III. A and IV.D of the MOU, and adjust the Parties' maintenance obligations accordingly.

3.2.2 Review of Joint Use Agreement. CITY and DISTRICT shall meet 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; the implementation of a major maintenance or renovation effort; or any other capital improvement may cause a need to revise the parity equation in accordance with Section 3.3 of this Agreement. Said changes, when made, shall then become a part of this Agreement.

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

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 recreation programs beginning thirty (30) minutes after the end of the school day on each and every day that school is in session during the traditional or single-track school year. The end of the school day is defined as thirty (30) minutes after the school dismissal bell. The CITY's hours of use shall be mutually agreed upon and noted on Exhibit C in conformance with Section 4.3, Annual Site Use Schedule. CITY shall also have exclusive use of the Joint Use Area at all times on holidays, weekends, and other days when school is not in session. CITY agrees to coordinate and schedule community use of the recreational facilities during non-school hours. For any additional use, CITY shall make prior arrangements and coordinate scheduling with the DISTRICT.
- 4.2 DISTRICT's Use of Property.** DISTRICT shall have exclusive use of the Joint Use Area for 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 traditional or single-track school year. For any additional use, including use for summer session, DISTRICT shall make prior arrangements and coordinate scheduling with the CITY.
- 4.3 Annual Site Use Schedule.** The City and the District shall complete the Annual Site Use Schedule, Exhibit C, upon execution of this agreement and then 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. The District shall be responsible to lock the joint use facility at night and unlock the joint use facility in the morning as mutually agreed and stated in the Annual Site Use Schedule.
- 4.4 Scheduling Maintenance and Renovations.** The agreed upon time of maintenance shall be sensitive to the community's scheduled recreation programs, the school's instructional and athletic programs, and the availability of maintenance staff. Major maintenance of Joint Use Facilities shall be scheduled to occur at times of the year when the impact can be shared equally by both Parties.
- 4.5 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 of this Agreement. For any additional CITY use, CITY shall make prior arrangements and coordinate scheduling with the DISTRICT. For any additional DISTRICT use, DISTRICT shall make prior arrangements and coordinate scheduling with the CITY.

- 4.6 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 portable classrooms or other non-recreational equipment or facilities for the School. The Parties agree that any adjustment of the boundaries of the Joint Use Area shall be agreed to in writing by CITY and DISTRICT, pursuant to Section 3.3 of this Agreement, and that DISTRICT shall: (1) obtain the CITY's approval of DISTRICT's plans; (2) provide CITY 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 DISTRICT's sole expense, make any necessary modifications to the improvements installed by or on behalf of CITY; and (4) at the end of such use, restore the improvements installed by or on behalf of CITY to their original condition within one hundred twenty (120) calendar days. In addition, within thirty (30) calendar days of the changed use, the Parties shall recalculate the financial contributions of the Parties to this Agreement pursuant to Section III. A and IV.D of the MOU, and adjust the Parties' maintenance obligations accordingly. Pursuant to Section II.C of the MOU, DISTRICT shall reimburse CITY its pro rata share for the cost of improvements on the area of changed use for that period of time that CITY is deprived of use. Reimbursement shall be made within thirty (30) days of the deprived use. The amount of reimbursement shall be based upon a straight-line depreciation.
- 4.7 Portable Restrooms.** The siting, installation and removal of portable restrooms shall be mutually agreed upon by the CITY and DISTRICT.
- 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 to prevent storm water pollution and a 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 which occurs during DISTRICT's respective hours of use, as described in Section 4.2. CITY 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 which occurs

during CITY's respective hours of use, as described in Section 4.1. Damage to the synthetic turf system shall be repaired in accordance with Sections 3.2.1.1 and 5.9.1 of this Agreement and per the manufacturer's recommendations in compliance with the turf warranty requirements. Damage to the concrete walkways, hard courts, sound wall and children's play area shall be repaired in accordance with Sections 3.2.1.2, 3.2.1.3, and 5.10 of this Agreement.

5. DISTRICT and CITY Responsibilities.

5.1 Construction of Improvements. DISTRICT agrees to construct or cause to be constructed, at the DISTRICT'S expense, upon the Joint Use Area as delineated in Exhibit "A" of this Agreement, including, but not limited to, the amenities described as Joint Use Facilities and in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction.

5.1.1 All such construction work for the installation of synthetic turf field and its associated infrastructure, hard court area, fencing and associated gates around the field, drinking fountain, hose bib system, Joint Use Area signage, and accessible concrete walkways shall be accomplished by DISTRICT employees or by the DISTRICT's contracting agents directly under control of DISTRICT. All construction shall meet the requirements and standards of CITY and DISTRICT and all applicable provisions of the California Education Code and California Code of Regulations.

5.2 Disabled Accessibility. As required elsewhere in this Agreement, the Parties 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 among the 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.

5.3 Utilities.

5.3.1 DISTRICT shall construct or cause to be constructed within the Joint Use Area a drinking fountain with associated shutoff gate valve; a sub-meter, master valve, flow sensor, isolation globe valve, valve boxes, hose bibs with associated piping; and all other appurtenances for this construction within the Joint Use Area.

5.3.1.1 CITY shall be responsible for maintenance of the drinking fountain and its associated shutoff gate valve. City shall also be responsible for the maintenance of the isolation globe valve, piping and hose bibs within the Joint Use Area that are to be used for maintenance of the synthetic turf.

5.3.1.2 DISTRICT shall be responsible for the maintenance of the sub-meter, the master valve, the flow meter, a backflow preventer (if required)

and all appurtenances associated with the hose bib system within the Joint Use Area.

5.3.1.3 CITY shall be responsible for fifty percent (50%) of the total cost of water used within the Joint Use Area. DISTRICT staff will read the sub-meter each year on or near the same date in December. DISTRICT shall submit to CITY an invoice for reimbursement. CITY shall pay within sixty (60) days of date of invoice.

5.3.1.4 DISTRICT is responsible for any electrical charges incurred within the Joint Use Area.

5.4 Walkways, Mow Curbs and the Sound Wall located within and leading to the Joint Use Area.

5.4.1 DISTRICT shall be responsible for the installation of mow curbs and a sound wall within the Joint Use Area, and installation of walkways from the right-of-way (ROW) along Utah and 28th Streets leading to the Joint Use Area.

5.4.2 Both Parties 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 Exhibit "A" of this Agreement.

5.4.3 Repair of vandalism to walkways, mow curbs, and the sound wall within and leading to the Joint Use Area shall be in accordance with Section 4.10 of this Agreement.

5.4.4 DISTRICT shall be responsible for the maintenance and repairs of the walkways leading to the Joint Use Area, the mow curbs, and sound wall located within the Joint Use Area.

5.4.5 Both Parties agree to meet as necessary, to assess the condition of the existing mow curbs and the sound wall within the Joint Use Area and the condition of existing walkways leading to the Joint Use Area that are exclusively 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, mow curbs, or the sound wall the DISTRICT shall repair the damage. Prior to repair, CITY and DISTRICT shall assess damage and agree on cost for repair. City will reimburse District fifty percent (50%) of costs incurred to repair damages.

5.5 Storm Drain Utilities. DISTRICT shall be responsible for the installation and construction of the storm drain system within the Joint Use Area. CITY shall be responsible for the maintenance and repairs to all storm drain facilities within the Joint Use Area. Prior to major repair of the drainage system, CITY and DISTRICT shall assess damage and agree on a cost for repair. DISTRICT shall reimburse CITY fifty percent (50%) of incurred costs for maintenance of the storm drain facilities.

5.6 Fencing Areas. DISTRICT shall be responsible for the installation and construction of all fencing, including associated mow curbs, gates, and locking hardware in the synthetic field area. Fencing must accommodate access for CITY and DISTRICT maintenance vehicles and for the public to the Joint Use Area, as agreed upon by CITY and DISTRICT. DISTRICT shall be responsible for the

maintenance and repairs to all fencing, gates, devices, mow curbs, and all associated appurtenances within the Joint Use Area.

- 5.7 Children's Play Area and Playground Equipment.** DISTRICT shall be responsible for the maintenance and repairs to the children's play area, existing playground equipment, and existing play area surfacing located within the Joint Use Area.
- 5.8 Hard Courts.** DISTRICT shall be responsible for the maintenance and repairs to all existing hard courts within the Joint Use Area. CITY shall reimburse DISTRICT fifty percent (50%) of incurred costs for maintenance and repairs.
- 5.9 Maintenance.** CITY shall, at CITY's sole cost and expense, pursuant to Section 3.2.1.1 of this Agreement, be responsible for the following:
- 5.9.1 Regular Maintenance for Synthetic Turf Field** - Regular maintenance shall include, but is not limited to: daily litter control; sweeping, brushing and grooming every 6-8 weeks with Field Turf grooming machines; replacement and leveling of infill materials in high traffic areas; and cleaning and rinsing the turf per manufacturer's recommendations, or as needed. All maintenance shall be performed by personnel trained and knowledgeable about this specific synthetic turf and the equipment for field maintenance applications. CITY shall keep a maintenance log recording all maintenance services and procedures performed on the synthetic turf field within the Joint Use Area. CITY shall submit the completed maintenance log to the manufacturer and DISTRICT annually as required per to the manufacturer's recommendations and in compliance with the warranty requirements. CITY shall be responsible for the replenishment of synthetic turf infill and maintenance of the synthetic field as necessary and per manufacturer's recommendations.
- 5.9.2 Synthetic Turf Field Maintenance Equipment and Its Storage** - DISTRICT shall provide the CITY Groomright and Sweepright maintenance equipment from the synthetic turf manufacturer. DISTRICT shall provide CITY a secured and protected location for storage of maintenance equipment. DISTRICT agrees to allow CITY access to this secured location as needed for maintenance of the synthetic turf field.
- 5.10 Joint Use Facility Damage Assessment and Repair.** If any Joint Use Facilities are damaged by either CITY or DISTRICT, the party responsible for the damage shall incur all costs to repair the damage. Litter, vandalism, and graffiti removal shall be addressed person Section 4.10 of this Agreement.
- 5.11 Portable Restrooms.** If CITY wishes to place portable restrooms at the designated location as shown on Exhibit "A" within the Joint Use Area, CITY shall be responsible for maintenance of portable restrooms. Placement and removal of portable restrooms shall be in accordance with Sections 4.6 and 4.7 of this Agreement.

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 of this Agreement, 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. 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) 445-4300.

7. **Improvements.**

7.1 **Approval for Improvements to or Affecting the Joint Use Area.** Improvements shall not be installed by either party where the Joint Use Area is affected, nor shall construction of 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 improvements, including any negative impact to paths of travel or accessible routes. Parties shall consult before new construction or alteration moves forward.

7.3 **Ownership.** All CITY-financed improvements installed during the term of this Agreement in the Joint Use Area shall remain the property of CITY.

7.4 **Removal of Joint Use Area Improvements.** All CITY-financed improvements installed in the Joint Use Area shall be removed from the DISTRICT-owned Joint Use Area by CITY upon request by DISTRICT per sections 4.6 (Conversion of Joint Use Area to Other Use) or 3.3 (Amendment) of this Agreement or upon expiration of this Agreement, and the Joint Use Area shall be returned to DISTRICT free of all legal encumbrances and in the condition existing at the commencement of this Agreement. As mutually agreed, the Parties will share equally in the costs of the facility removal and reinstatement of the Joint Use Area. In the event the CITY does not remove its improvements, upon expiration, or termination of this Agreement, as requested in writing by DISTRICT, DISTRICT may remove, sell, or destroy the same and restore the Joint Use Area to the condition existing at the commencement of this Agreement. Upon written notice from the DISTRICT stating that the CITY-financed improvements installed within the Joint Use Area shall not be utilized by the DISTRICT, CITY shall

reimburse DISTRICT fifty percent (50%) of incurred costs for the removal of the facilities and reinstatement of the Joint Use Area.

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 independent acts of DISTRICT, its agents or employees in connection with the performance of this Agreement and/or 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/or the use of the Joint Use Area or the School.

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 Joint Use Agreement. Any coverage change 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 for the term of this Agreement, 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: Park and Recreation Department Director
 City of San Diego
 202 'C' Street, M.S. 37C
 San Diego, California 92101
 Facsimile No.: (619) 533-3687

If to DISTRICT: Superintendent
San Diego Unified School District
4100 Normal Street, Room No. 2219
San Diego, California 92103-2682
Facsimile No.: (619) 291-7182

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 of the Agreement peaceably and quietly have, hold, and enjoy the Joint Use Area.

10.2 Entry, Maintenance and Inspection. CITY reserves and shall always have the right to enter upon the Joint Use Area for the purpose of viewing and ascertaining the condition thereof, and for the purpose of maintenance of recreational 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 District Manager and shall be sensitive to the community's scheduled recreation programs, the school's instructional and athletic programs, and the availability of maintenance staff.

10.3 Assignment. CITY shall not assign this Agreement or any interest herein without the prior written consent of DISTRICT. 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. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and any successors 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(s) of the Parties.

10.4 Fingerprinting Requirements. No assignment 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.

- 10.5 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.
- 10.6 Time is of the Essence.** Time is of the essence for each and all of the terms and provisions of this Agreement.
- 10.7 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.
- 10.8 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 one hundred twenty (120) days following the service on the defaulting Party of a written notice, pursuant to Section 9 of this Agreement, 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 the Agreement pursuant to the default if the defaulting Party immediately commences to cure the default and diligently pursues such cure to completion.
- 10.9 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.
- 10.10 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.
- 10.11 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 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.

10.13 San Diego's Strong Mayor Form of Governance. All references to "City Manager" in this Agreement and all subsequent amendments thereto shall be deemed to refer to "Mayor." This section is effective on January 1, 2006 and shall remain in effect for the duration the City operates under the mayor-council (commonly referred to as 'strong mayor') form of governance pursuant to article XV of the City of San Diego City Charter.

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, 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. _____ 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.

THE CITY OF SAN DIEGO,
a Municipal Corporation

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

By: _____
Jay M. Goldstone.

By: Arthur S. Hanby, Jr.
Arthur S. Hanby, Jr.

Title: Chief Operating Officer

Title: Strategic Sourcing and Contracts Officer

Date: _____

Date: 12/16/2011

APPROVED AS TO FORM AND LEGALITY BY
JAN SMITH, CITY ATTORNEY

By: _____

Title: Deputy City Attorney

Date: _____

- Exhibit "A": Depiction of the Joint Use Area
- Exhibit "B": Calculation of Financial Contributions
- Exhibit "C": Annual Site Use Schedule

LEGALITY AND FORM APPROVED

James P.M. Chong
SANDRA T.M. CHONG, Assistant General Counsel
San Diego Unified School District
11.30.11

Approved in public meeting of the
Board of Education of the San Diego
Unified School District on 12/13/11
Cheryl Ward
Cheryl Ward, Board Action Officer,
Board of Education

EXHIBIT "A"
 Depiction of the Joint Use Area

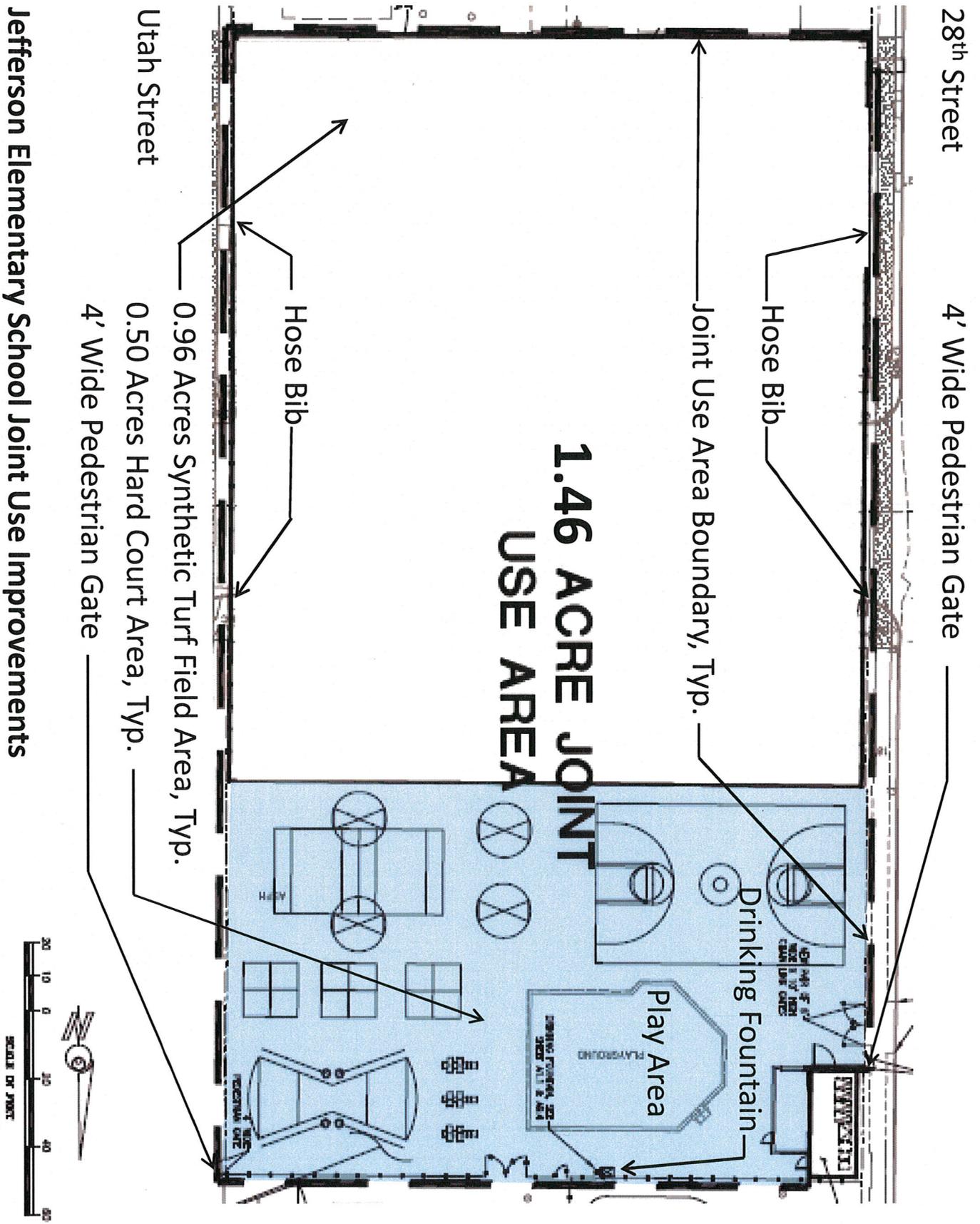


EXHIBIT "B"

**JEFFERSON ELEMENTARY SCHOOL
CALCULATION OF FINANCIAL CONTRIBUTIONS
Pursuant to Section III.A of the MOU**

Value of DISTRICT's Land Contribution	\$500,000/ACRE	x	1.46 ACRES	=	\$730,000
Value of DISTRICT's Development Contribution – Synthetic Turf	\$1,107,200/ACRE	x	0.96 ACRES	=	\$1,062,912
Value of DISTRICT's Development Contribution – Hard Court Areas	\$200,000/ACRE	x	0.50 ACRES	=	\$100,000
TOTAL DISTRICT CONTRIBUTION					\$1,892,912
Value of CITY's Maintenance Contribution	\$9,000/YEAR/ACRE SYNTHETIC TURF	x	0.96 ACRES	=	\$8,640/YEAR
	\$5,500/YEAR/ACRE NON TURF AREAS	x	0.50 ACRES	=	\$2,750/YEAR
TOTAL CITY ANNUAL MAINTENANCE CONTRIBUTION					\$11,390/YEAR

$$\begin{aligned}
 \text{Years until Parity shall be reached} &= \frac{\$1,892,912}{\$11,390} \\
 &= \mathbf{166.20 \text{ Years}}
 \end{aligned}$$

Note: These figures are estimates. When the project is constructed, this exhibit shall be revised pursuant to Section III.A of the MOU, for "New Locations".

Exhibit C

Annual Site Use Schedule

Site Name

School Address:

Principal Name and Phone #:

Head Custodian Name and Phone #:

Area Manager Name and Phone #:

District Manager Name and Phone #:

Joint Use Agreement Date: **Expires:** **City Document No.:**

Location of pedestrian gate:

Location of maintenance access gate:

Type of Padlock: **Indicate if "partner" padlocks:**

Keys Issued To:

School Weekly Schedule:

School Start Time:

School Dismal Time:

Early Dismal Time/Day:

Morning –Gate to be secured by (agency):

Afternoon – Gate to be opened by (agency):

Evening – Gate to be secured by (agency): **Time:**

Exhibit C

Annual Site Use Schedule

Site Name

Joint Use Site Description:

- A total of 1.46 acres, to include:
 - Synthetic turf field (0.96 acres)
 - Hard court and children's play area (0.50 acres);
- Associated infrastructure, fencing and gates;
- Accessible routes and concrete walkways; and
- **Drainage as required.**

Dates of Known Special Events Planned:

Additional Information:

Approvals:

Principal

Date

District Manager

Date

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