

000323

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE OF) 50  
07/08  
3. DATE: 4/29/2008

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): PARK & RECREATION

SUBJECT:

FIRST AMENDMENT TO JOINT USE AGREEMENT THURGOOD MARSHALL MIDDLE SCHOOL

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)  
Jim Winter, 55257, MS35

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)  
Gary Stromberg, 58265, MS37C

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	RR	39301		
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT		9544		
JOB ORDER		299200		
C.I.P. NUMBER		29-920.0		
AMOUNT		20,000		

9. ADDITIONAL INFORMATION / ESTIMATED COST:  
Increase in City contribution to joint use facility improvements by \$20,000.  
  
Increase in District contribution to joint use facility improvements by \$23,000.

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	5/12/08	8	DEPUTY CHIEF	<i>[Signature]</i>	5/27/08
2	EAS	<i>[Signature]</i>	5/13/08	9	COO	<i>[Signature]</i>	5/27/08
3	LIBRARY	<i>[Signature]</i>	5/14/08	10	CITY ATTORNEY	<i>[Signature]</i>	6/3/08
4	LIAISON OFFICE	<i>[Signature]</i>	5/14/08	11	ORIGINATING DEPARTMENT	<i>[Signature]</i>	6/3/08
5	FINANCIAL MGMT	<i>[Signature]</i>	5/19/08		DOCKET COORD:	<i>[Signature]</i>	
6	AUDITORS	<i>[Signature]</i>	5/22/08		COUNCIL LIAISON:	<i>[Signature]</i>	
7	FAC FIN AA	<i>[Signature]</i>	5/21/08		COUNCIL PRESIDENT	<i>[Signature]</i>	

11. PREPARATION OF:  RESOLUTION(S)  ORDINANCE(S)  AGREEMENT(S)  DEED(S)

1. Authorizing the Mayor or his representative to introduce the ordinance to execute a First Amendment to Agreement for Construction, Operation, Maintenance and Lease at Thurgood Marshall Middle School, joint use agreement between the City and the San Diego Unified School District.

(Resolutions continued on page 2)

11A. STAFF RECOMMENDATIONS:  
Introduce the Ordinance and approve the Resolutions

12. SPECIAL CONDITIONS:

**COUNCIL DISTRICT(S):** 5 (Maienschein)

**COMMUNITY AREA(S):** Scripps Ranch

**ENVIRONMENTAL IMPACT:** This activity is not a "Project" and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(C)(3).

**HOUSING IMPACT:** None

**OTHER ISSUES:** None

**ATTACHMENTS:** Six (6) original copies of the first amendment

**CITY CLERK INSTRUCTIONS:** Please return three (3) original signed copies to Jim Winter, MS35, Park & Recreation Dept. Please note on the docket that the ordinance is a 6 vote item

000324

REQUEST FOR COUNCIL ACTION

FIRST AMENDMENT TO JOINT USE AGREEMENT THURGOOD MARSHALL MIDDLE SCHOOL

Resolutions continued:

2. Authorizing a \$20,000 increase in the Fiscal year 2008 Capital Improvements Program budget in CIP 29-920.0, Future Thurgood Marshall Middle School Joint Use Agreement, Fund 39301, Scripps Ranch Library;
3. Authorizing the Auditor and Comptroller to appropriate and expend \$20,000 from CIP 29-920.0, Future Thurgood Marshall Middle School Joint Use Agreement, Fund 39301, Scripps Ranch Library, for the purpose of reimbursing the cost of the improvements;
4. Authorizing the Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

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**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: \_\_\_\_\_ REPORT NO: \_\_\_\_\_  
ATTENTION: Council President and City Council  
ORIGINATING DEPARTMENT: Park and Recreation  
SUBJECT: First Amendment to Joint Use Agreement Thurgood Marshall  
Middle School  
COUNCIL DISTRICT(S): Five  
CONTACT/PHONE NUMBER: Park and Recreation: Jim Winter (619-235-5257)

REQUESTED ACTION: Authorizing the Mayor or his representative to introduce the ordinance to execute a First Amendment to Agreement for Construction, Operation, Maintenance and Lease at Thurgood Marshall Middle School, joint use agreement between the City and the San Diego Unified School District.

STAFF RECOMMENDATION: Introduce the ordinance

EXECUTIVE SUMMARY: On March 27, 2007, City and District entered into an "Agreement for the Construction, Operation, Maintenance, and Lease at Future Thurgood Marshall Middle School, Ordinance No. 00-19582. This Agreement provided approximately 5.25 acres of turfed athletic fields for use by both the public and school district. The construction period of the facilities extended longer than anticipated which pushed the date for planting the turf stolons beyond the optimum planting window for the species of turf being used. Therefore, the City and District agreed to share the cost of installing turf sod with the anticipation that the fields could be opened for use earlier than if stolons had been used.

The additional cost to change from stolons to sod was \$43,000. The City agreed to fund \$20,000 of this addition cost through Fund 39301, Scripps Ranch Library. This Fund was created in 2001 to receive \$35,000 from McMillin Homes pursuant to the Big 5 Agreement negotiated by the various planning groups and civic organizations in Scripps Miramar Ranch and Miramar Ranch North as part of the approval of the Rancho Encantada Precise Plan. The funds were originally intended for the purpose of constructing a stairway for access to the Scripps Ranch Library. Subsequent to the approval of the Big 5 Agreement, the community realized that because of ADA requirements, a stairway could not be built for that amount of money, and they decided to use those funds for other community needs to be determined later. The funds were received from McMillin in 2004.

In June 2007, the Scripps Ranch Planning Group voted to approve the use of \$20K of the \$35K to pay for the sod at the Thurgood Marshall Middle School joint-use facility. Facilities Financing staff contacted several of the library staff, including the Director. A meeting was held in August, 2007, with a designee from the library, a representative from Council District 5, and a representative from the Scripps Ranch Planning Group, to confirm the use of these funds for the sod installation at the joint use facility.

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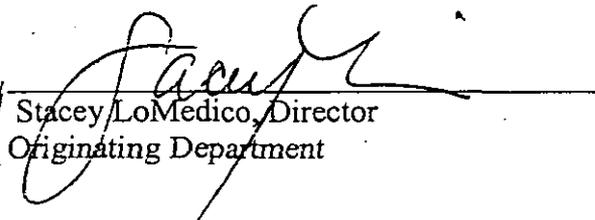
The additional funds contributed by the City and the District required the parity formula within the Agreement be revised. The revision in the parity formula increased the number of years of City maintenance required to reach parity from 42.43 years to 42.5 years, a 0.07 year increase. In addition, the school opened on September 4, 2007; therefore, all references to the "Future" Thurgood Marshall Middle School in the agreement are changed to read Thurgood Marshall Middle School.

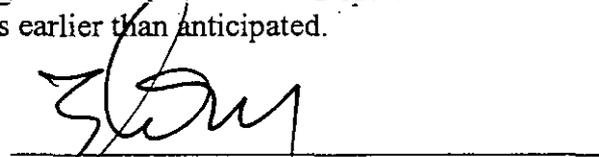
FISCAL CONSIDERATIONS: The additional 0.07 year increase in City maintenance to reach parity equates to an increase of \$2,689.40 in City maintenance costs contributions. Once parity is reached, the City and the District will equally share the maintenance costs associated with the the joint use facilities.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Ordinance No. OO-19582, March 27, 2007, Agreement for the Construction, Operation, Maintenance, and Lease at Future Thurgood Marshall Middle School

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Scripps Ranch Planning Group approved the additional expenditure of \$20,000.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Scripps Ranch Recreation Council, San Diego Unified School District, City of San Diego Park and Recreation Department. This action will allow public use of the joint use facilities earlier than anticipated.

  
Stacey LoMedico, Director  
Originating Department

  
Elmer Heap  
Deputy Chief/Chief Operating Officer

000327

The City of San Diego  
CERTIFICATE OF CITY AUDITOR AND COMPTROLLER

CERTIFICATE OF UNALLOTTED BALANCE

AC 2800809  
ORIGINATING DEPT. NO.: 446

I HEREBY CERTIFY that the money required for the allotment of funds for the purpose set forth in the foregoing resolution is available in the Treasury, or is anticipated to come into the Treasury, and is otherwise unallotted.

Amount: \_\_\_\_\_ Fund: \_\_\_\_\_

Purpose: \_\_\_\_\_  
\_\_\_\_\_

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

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
TOTAL AMOUNT										

FUND OVERRIDE

CERTIFICATION OF UNENCUMBERED BALANCE

I HEREBY CERTIFY that the indebtedness and obligation to be incurred by the contract or agreement authorized by the hereto attached resolution, can be incurred without the violation of any of the provisions of the Charter of the City of San Diego; and I do hereby further certify, in conformity with the requirements of the Charter of the City of San Diego, that sufficient moneys have been appropriated for the purpose of said contract, that sufficient moneys to meet the obligations of said contract are actually in the Treasury, or are anticipated to come into the Treasury, to the credit of the appropriation from which the same are to be drawn, and that the said money now actually in the Treasury, together with the moneys anticipated to come into the Treasury, to the credit of said appropriation, are otherwise unencumbered.

Not to Exceed: \$20,000.00

Vendor: San Diego Unified School District

Purpose: Authorizing funds to execute a First Amendment to Agreement for Construction at Thurgood Marshall Middle School, joint use agreement for the purpose of reimbursing the cost of improvements. CIP 29-920.0

Date: May 22, 2008 By: *Rd. Rucita*

AUDITOR AND COMPTROLLER'S DEPARTMENT

ACCOUNTING DATA										
ACCTG. LINE	CY PY	FUND	DEPT	ORG.	ACCOUNT	JOB ORDER	OPERATION ACCOUNT	BENF/ EQUIP	FACILITY	AMOUNT
001	0	39301			9544					\$20,000.00
TOTAL AMOUNT										\$20,000.00

FUND OVERRIDE

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING A FIRST AMENDMENT TO THE JOINT USE AGREEMENT WITH THE SAN DIEGO UNIFIED SCHOOL DISTRICT FOR THE THURGOOD MARSHALL MIDDLE SCHOOL.

WHEREAS, on March 27, 2007, the City of San Diego [City] and the San Diego Unified School District [District] entered into an agreement for the construction, operation, maintenance, and lease at future Thurgood Marshall Middle School, on file in the office of the City Clerk as Document No. OO-19582; and

WHEREAS, the District intends to make improvements to the fields at Thurgood Marshall Middle School to make the fields suitable for recreational use and the City would like to make use of the District improvements; and

WHEREAS, the City agrees to maintain the turfed fields once constructed; NOW,  
THEREFORE,

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

Section 1. That the Mayor be and he is hereby authorized and empowered to execute, for and on behalf of said City, a First Amendment to the Joint Use Agreement with the San Diego Unified School District for the Thurgood Marshall Middle School, under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. OO-\_\_\_\_\_.

Section 2. That this activity is not a Project, and is therefore not subject to California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

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Section 3. 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 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas  
Shannon Thomas  
Deputy City Attorney

ST:sc  
06/03/08  
Aud.Cert.: AC2800809  
Or.Dept:Park & Rec  
O-2008-163

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

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

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

\_\_\_\_\_  
JERRY SANDERS, Mayor

000331

RESOLUTION NUMBER R-\_\_\_\_\_

DATE OF FINAL PASSAGE \_\_\_\_\_

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

1. That an increase in the Fiscal Year 2008 Capital Improvements Program budget is authorized in CIP No. 29-920.0, Future Thurgood Marshall Middle School Joint Use Agreement, Fund 39301, Scripps Ranch Library for an amount not to exceed \$20,000.

2. That the City Auditor and Comptroller is authorized to appropriate and expend \$20,000 from CIP 29-920.0, Future Thurgood Marshall Middle School Joint Use Agreement from Fund 39301, Scripps Ranch Library, for the purpose of reimbursing the cost of the improvements.

3. That the City Auditor and Comptroller, upon advice from the administering department, is authorized to transfer excess funds, if any, to the appropriate reserves.

4. That this activity is not a Project, and is therefore not subject to California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By Shannon Thomas  
Shannon Thomas  
Deputy City Attorney

ST:sc  
06/03/08  
Aud.Cert.:AC2800809  
Or.Dept: Park & Rec  
R-2008-1131

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I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

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

\_\_\_\_\_  
JERRY SANDERS, Mayor

000333

FIRST AMENDMENT TO AGREEMENT FOR CONSTRUCTION,  
OPERATION, MAINTENANCE AND LEASE  
AT THURGOOD MARSHALL MIDDLE SCHOOL

THIS FIRST AMENDMENT TO AGREEMENT FOR CONSTRUCTION,  
OPERATION, MAINTENANCE AND LEASE at Thurgood Marshall Middle School is entered into  
this 22nd day of January, 2008 between THE CITY OF SAN DIEGO [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].

RECITALS

WHEREAS, on March 27, 2007, CITY and DISTRICT entered into an "Agreement for the  
Construction, Operation, Maintenance, and Lease at Future Thurgood Marshall Middle School",  
Ordinance No. OO-19582. A copy of said Agreement is attached hereto as Exhibit "1".

WHEREAS, CITY and DISTRICT desire to amend said Agreement.

NOW, THEREFORE, in consideration of the recitals and mutual obligation of the Parties  
herein expressed, CITY and DISTRICT agree as follows:

1. Exhibit "1", Thurgood Marshall Middle School opened on September 4, 2007; therefore, all references to the "future" Thurgood Marshall Middle School in the Agreement are changed to read, Thurgood Marshall Middle School.
2. Exhibit "2", Thurgood Marshall Middle School Calculation of Financial Contributions, shall be amended to add \$23,000 to the DISTRICT'S "Value of DISTRICT'S Development Contribution" to increase that portion of contribution from \$1,054,000 to \$1,077,000 for a total contribution by the DISTRICT equaling \$3,712,000.
2. Exhibit "2", Thurgood Marshall Middle School Calculation of Financial Contributions, shall be amended to add \$20,000 to increase the CITY'S total contribution from \$2,059,000 to \$2,079,000.
3. Exhibit "2", Thurgood Marshall Middle School Calculation of Financial Contributions, shall be amended to revise the "Years Until Parity Shall Be Reached" formula to reflect the revised total contributions from both the CITY and the DISTRICT to read:

TOTAL DISTRICT CONTRIBUTION (\$3,712,000 - \$2,079,000)  
 CITY MAINTENANCE CONTRIBUTION (\$38,420/YEAR)  
 = 42.50 Years

All other terms and conditions of said Agreement not expressly amended herein shall remain in full force and effect and shall be binding upon the Parties hereto.

FIRST AMENDMENT TO JOINT USE AGREEMENT  
AT FUTURE THURGOOD MARSHALL MIDDLE SCHOOL  
page 2 of 2

IN WITNESS WHEREOF, this First Amendment to 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, acting by and through its Superintendent or designee pursuant to a Resolution of its Board of Education.

THE CITY OF SAN DIEGO  
A Municipal Corporation

SAN DIEGO UNIFIED SCHOOL DISTRICT  
A Public School District

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: Peter M. Iverson  
Peter M. Iverson  
Title: Interim Chief Administrative Officer  
Date: 2-21-08

Approved as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

By \_\_\_\_\_  
DISTRICT General Council

Approved as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

By \_\_\_\_\_  
Deputy City Attorney

LEGALITY AND FORM APPROVED

Sandra T.M. Chong 2.5.08  
SANDRA T.M. CHONG, Assistant General Counsel  
San Diego Unified School District

Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on 1/22/08  
Cathy Ward  
Cathy Ward, Board Action Officer,  
Board of Education

**AGREEMENT FOR THE  
CONSTRUCTION, OPERATION, MAINTENANCE, AND LEASE  
AT FUTURE THURGOOD MARSHALL MIDDLE SCHOOL**

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THIS AGREEMENT [Agreement] for the Construction, Operation, Maintenance and Lease of Joint Use Facilities, as Further described in Section 1 of this Agreement at Future Thurgood Marshall Middle School [School] is entered into this \_\_\_\_\_ day of MAR 27 2007, 2007 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:

**R E C I T A L S**

- 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 twenty-five (25) year period to provide for both Parties' recreational programs.
- 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 greater than the term of this Agreement.
- F. APPROVED PLANS shall hereby be defined as a copy of final construction plans signed by both the DISTRICT and CITY and kept on file with each entity.

NOW, THEREFORE, the Parties agree as follows:

DOCUMENT NO. 00-19582  
FILED MAR 20 2007  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

## A G R E E M E N T

1. **Property.**

DISTRICT hereby leases to CITY a portion of that certain DISTRICT-owned real property located at Thurgood Marshall Middle School, 9700 Avenue of Nations, San Diego, California, 92131, in the Scripps Miramar Ranch community, as depicted on Exhibit "A" of this Agreement, incorporated herein by this reference [Joint Use Area].

The Joint Use Area is further described as consisting of approximately

- 4.5 Acres of Irrigated, Lighted natural Turf (grass) softball & soccer fields in accordance with City Parks & Recreation Standards (CPRS),
  - Parking Lot, (32,880 SF; 0.75 Acres),
  - 2 City of San Diego Park & Recreation Standards Backstops and related fencing,
  - Comfort station with storage and snack bar (780 SF),
  - 3 Drinking Fountains, (one at snack bar, and one behind each backstop),
  - Stub up water for future irrigation of upper dirt field,
- incorporated herein by this reference [Joint Use Facilities].

2. **Term.**

**2.1 Term.** This Agreement shall be for a term of twenty-five (25) years, commencing on the date of its execution by both the City Manager, 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 twenty-five (25) 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 twenty-five (25) 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.
- 3.2.2 Until Parity Is Reached.** Until the Parties reach parity as set forth in this Agreement, CITY shall, except where specifically excluded in other sections of this agreement, be responsible for 100 percent (100%) of the maintenance of the Joint Use Facilities.
- 3.2.3 When Parity is Met.** The Parties agree that after CITY and DISTRICT have contributed equally to the costs of the Joint Use Area in terms of land value, design, construction, and maintenance, CITY and DISTRICT agree to share maintenance costs equally, thereafter, as conceptually shown for explanation purposes in Exhibit "B" of this Agreement. After the Parties reach parity, CITY and DISTRICT shall each be responsible for fifty percent (50%) of the cost of maintenance of the Joint Use Facilities except where specifically excluded in other sections of this agreement.
- 3.2.4 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 of the like 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 DISTRICT and CITY 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 recreational 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 each and every day that school is in session during the traditional or single-track school year. 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 **Rain considerations.**
- 4.3.1 The DISTRICT and CITY should not use the turf field and running track, if applicable, after substantial rain or if irrigation has created excessively wet conditions to avoid severe damage.
- 4.3.2 DISTRICT shall notify the CITY if irrigation is creating excessively wet playing conditions.
- 4.4 **Scheduling Maintenance and Renovations.** CITY shall have the right of entry for maintenance purposes during school hours upon such terms as are agreed upon by the Parties such that the need for staff overtime is not required. 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 or renovation of Joint Use Facilities shall be scheduled to occur at times of the year when the impact can be shared equally by both Parties and is estimated to total approximately six (6) weeks between the months of April and June each year, or other periods as mutually agreed to by both the CITY and DISTRICT.
- 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.
- 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 to 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 irrigation system and other 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 or to a condition satisfactory to CITY within one hundred twenty (120) calendar days (not including plant maintenance and establishment period). 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 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 during CITY's respective hours of use, as described in Section 4.1.

## 5. DISTRICT and CITY Responsibilities.

**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.

All such construction work 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.

### 5.1 Joint Use Area Reimbursement

**5.1.1 Right to Reimbursement.** CITY shall reimburse to the DISTRICT not to exceed \$2,059,000. Funds to be allocated from the Special Park Fee (SPF), Village and Country Settlement (V&CS), and Miramar Ranch North Development Agreement (MRNDA).

**5.1.2 Type of Reimbursement.** The DISTRICT shall be entitled to reimbursement for the [Reimbursable Costs] (See section 5.1.5) advanced by the DISTRICT in accordance with the Scripps Miramar Ranch Public Facilities Financing Plan [PFFP]. Reimbursable Costs are defined for purposes of design, construction, operation and maintenance of turfed fields, comfort station, parking lot, drinking fountains, backstops, and recreation facilities to be an amount not to exceed \$2,059,000 to be reimbursed upon submission by DISTRICT to City of Reimbursement Cost Documentation as set forth below.

**5.1.3 Funds for Reimbursement.** The DISTRICT shall only be entitled to reimbursement from the funds stated in section 5.1.1 and as described for Project number 34-52 in the Scripps Miramar Ranch PFFP, pursuant to the method of reimbursement described further in section 5.1.5 of this agreement, provided however, that regardless of any provisions in the PFFP or amounts and respective fair share percentages as described for Project number 34-52 in the Scripps Miramar Ranch PFFP, the DISTRICT shall be reimbursed in an amount not to exceed \$2,059,000.

**5.1.4 Amount of Reimbursement.** Notwithstanding any other provision of this agreement, the DISTRICT shall be entitled to reimbursement in an amount not to exceed \$2,059,000. The DISTRICT is not entitled to reimbursement for increased construction costs, expenses, and increases caused by the DISTRICT negligence, and omissions.

**5.1.5 Method of Reimbursement.** The DISTRICT shall submit to CITY a request for reimbursement for all Reimbursable Costs incurred or advanced for a project for which DISTRICT was not previously reimbursed or granted credit. The Reimbursement Request must clearly identify the Project for which reimbursement is requested. The

Reimbursement Request must also include all relevant documents in accordance with section 5.1.6. If CITY determines that all relevant documents have not been submitted, CITY shall request that DISTRICT provide additional documentation. DISTRICT shall provide additional documentation in a timely fashion. CITY is not obligated to reimburse the DISTRICT until CITY has received all relevant documentation to support Reimbursement Request if the Reimbursement Request Documentation submission is incomplete. After CITY approves the Reimbursement Request Documentation, and all appropriate cost documentation has been received, CITY shall reimburse the DISTRICT within sixty (60) calendar days of receipt of complete Reimbursement Request Documentation.

**5.1.6 Verification of Reimbursement Request.** The DISTRICT shall supply the following Reimbursement Request Documentation and it shall be processed in the following manner:

- The DISTRICT shall submit two (2) copies of Reimbursement Request Documentation (consisting of a cover letter and an invoice prepared by the DISTRICT) to the Park and Recreation Project Manager [PR Project Manager], with a copy of the cover letter and invoice to the Facilities Financing Project Manager [FF Project Manager].

- After review and approval, the PR Project Manager shall prepare a memorandum to Facilities Financing indicating that the invoice is appropriate to pay. One (1) set of the Reimbursement Request Documentation shall be forwarded to the FF Project Manager with the memorandum recommending payment, and one (1) set of the Reimbursement Request Documentation shall be retained by the PR Project Manager for his/her files.

- Reimbursable costs are considered to be the constructed turfed fields, comfort station, parking lot, drinking fountains, backstops, and recreation facilities as designed per construction document for Future Thurgood Marshall Middle School Joint Use.

- Prior to the approval of the Reimbursement Request, CITY has the right to verify whether or not the materials and work for which reimbursement is being requested have been installed and performed as represented in the Reimbursement Request.

**5.1.7 Non-reimbursable Costs.** The DISTRICT is not entitled to reimbursement for any cost or expenditure that is out side of this agreement.

## **5.2 Disabled Accessibility.**

**5.2.1** As required elsewhere in this Agreement, DISTRICT shall construct or cause to be constructed within the Joint Use Area, the Joint Use Facilities, and all paths of travel to the Joint Use Facilities within the Joint Use Area consistent with the requirements of state and federal law for disabled access, including the California Government Code section 4450, et. seq., the California Building Code in the California Code of Regulations at Title 24, the Americans with Disabilities Act, and the Americans with

Disabilities Act Accessibility Guidelines. When a conflict exists amongst requirements, the most restrictive requirement shall be followed, i.e., that which provides for the greater access. Said accessible routes shall be available during and after school hours.

- 5.2.2 DISTRICT shall construct or cause to be constructed a new parking lot and an accessible path of travel from the parking lot to the Joint Use Facilities.

**5.3 Joint Use Parking Lot and Accessible Routes.**

- 5.3.1 DISTRICT shall be responsible for installation and maintenance of the DISTRICT's Joint Use parking lot including pavement re-striping, slurry coating, overlay, maintenance of the landscaping and irrigation, weeding, litter control, and general clean up.
- 5.3.2 CITY shall reimburse DISTRICT upon being billed, for the pro rata share of costs incurred by DISTRICT and attributable to CITY for maintenance of DISTRICT'S Parking and Accessible Routes, based upon the following formula: the number of hours CITY has exclusive use of DISTRICT'S Parking shown on Exhibit "A" of this Agreement during the billing period, divided by the total number of hours in the billing period. DISTRICT shall also bill CITY and CITY shall reimburse DISTRICT for such maintenance costs incurred by DISTRICT resulting from CITY special events for major maintenance or renovation (such as resurfacing or re-striping, etc.). The CITY's pro rata share shall be calculated and billed as expenses are incurred. Cost incurred by DISTRICT for maintenance of landscaping and irrigation shall not be subject to reimbursement by CITY.
- 5.3.3 CITY shall reimburse DISTRICT pro rata, as calculated in paragraph 5.3.2. for the expense of those specific maintenance or repair activities conducted by the San Diego County Water Authority (SDCWA) as related to the SDCWA facilities within the easement granted by SDCWA to the DISTRICT for SDWCA's removal, replacement, rearrangement, or relocation within the joint use portion of the road/parking lot as identified in this Agreement.

**5.4 Water.**

- 5.4.1 DISTRICT shall install the new water meter(s) and backflow preventer(s) to accommodate irrigation for the new turfed multi-purpose fields within the Joint Use Area.
- 5.4.2 DISTRICT shall be responsible for the cost of electricity for irrigation controller(s) which operate the irrigation system within the Joint Use Area except for when a booster pump is required.
- 5.4.3 CITY will pay for the water and electricity for the installed booster pump until parity is reached.

**5.5 Walls, Stairs, the elevator, Pedestrian Ramps, Walkways, path of travel, Planters, Mowcurbs and Retaining Walls within the Joint Use Area.**

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- 5.5.1 The DISTRICT shall be responsible for the installation of walls, stairs, the elevator, pedestrian ramps, walkways, **path of travel**, planters, mowcurbs and retaining walls within and leading to the Joint Use Area.
  - 5.5.2 DISTRICT shall ensure such work noted in this section meets all local, state and federal safety and accessibility regulations located within the Joint Use Area, as depicted on Exhibit "A" of this Agreement.
  - 5.5.3 Repair of vandalism to walls, stairs, the elevator, pedestrian ramps, walkways, planters and retaining walls with and leading to the Joint Use Area shall be in accordance with Section 4.10 of this Agreement.
  - 5.5.4 DISTRICT shall be responsible for structural and non-structural repairs of planters, mowcurbs and retaining walls within and leading to the Joint Use Area.
  - 5.5.5 Both Parties agree to meet as necessary, to assess the conditions of the existing walkways, stairs and pedestrian ramps within the Joint Use Area and existing walkways, stairs and pedestrian ramps leading to the Joint Use Area that are 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, stairs and pedestrian ramps DISTRICT shall repair the damage. Prior to repair, CITY and DISTRICT shall assess damage and agree on cost for repair. DISTRICT shall invoice CITY half of the cost of the repairs and CITY shall reimburse DISTRICT as required.
- 5.6 **Adjacent Areas.** DISTRICT shall be solely responsible for maintaining the adjacent slopes that are inside of the Joint Use Area.
- 5.7 **Storm Drain Utilities.**
- 5.7.1 DISTRICT shall be responsible for the installation and maintenance associated with any necessary structural repair of the storm drain system within the Joint Use Area.
  - 5.7.2 CITY shall be responsible for cleaning and maintaining the storm drain facilities within the Joint Use Area.
- 5.8 **Fencing Areas.** DISTRICT shall be responsible for installation, maintenance and repair of all fencing, including associated mow curbs, around the perimeter of the Joint Use Area. Fencing must accommodate access for CITY maintenance vehicles and for the public to Joint Use Area, as agreed upon by CITY and DISTRICT.
- 5.9 **Backstops.**
- 5.9.1 DISTRICT shall be responsible for the installation and maintenance of DISTRICT backstops associated within the Joint Use Area.
  - 5.9.2 CITY shall be responsible for the maintenance of CITY backstops associated within the Joint Use Area.
  - 5.9.3 CITY shall be responsible for maintenance of the infield mix.
- 5.10 **Children's Play Equipment.** Reserved.

- 5.11 **Hard Courts.** Reserved.
- 5.12 **Standard Level of Maintenance.** Standard level of maintenance for fields that are 2.0 acres or more includes: weekly or bi-weekly mowing; three (3) fertilizations annually; three (3) aerations annually; weed abatement; watering; and, pest control and leveling of in-field and running track, as needed.
- 5.13 **Joint Use Field Damage Assessment and Repair.** If fields are damaged by either CITY or DISTRICT during the term of this Agreement, CITY shall repair the damage. Prior to repair, CITY and DISTRICT shall assess damage and agree on cost for repair. If DISTRICT is responsible for the damage, CITY shall invoice DISTRICT and DISTRICT shall reimburse CITY as required.
- 5.14 **Maintenance of Running Track.**
- 5.14.1 CITY shall be responsible for maintenance of the running track. Running Track material shall be supplied and spread by the CITY.
- 5.14.2 DISTRICT will reimburse the CITY for 50% of the total cost for replenishment.
- 5.15 **Sports Field Lighting.** CITY shall bear the cost for the improvement. The CITY shall provide for a separate meter and pay for all electrical expenses. CITY shall maintain the sports field lighting, regardless of the parity formula. The maintenance costs related to the exclusive use of the field lighting shall be the sole responsibility of the City and shall not be included in the parity calculations.
- 5.16 **Portable Restrooms.** If CITY wishes to install portable restrooms within the JUA, CITY shall seek location approval from DISTRICT. CITY shall be responsible for maintenance of portable restrooms placed within the Joint Use Area. Placement and removal of portable restrooms shall be in accordance with Section 4.7 of this Agreement.
- 5.17 **Maintenance of Trees within the Joint Use Area.** DISTRICT shall guarantee and maintain all trees on school property, including within the Joint Use Area for three years before turning over to CITY. CITY shall then be responsible for all maintenance of the trees installed in the Joint Use Area, which shall include, but is not limited to, tree trimming, pruning, shaping, treatments for disease and insect infestation, replacement of dead or dying trees, and fertilization.
- 5.18 **Maintenance of Comfort Station/Storage/Snack Bar.** CITY shall be responsible for maintaining all of the utilities servicing the restroom and snack bar, which shall include, but not be limited to, electrical, water, sewer, and ventilation. CITY shall also be solely responsible for the monthly utility costs, including electricity, water, sewer, and ventilation for the building.

CITY shall maintain all fixtures within the building, to include, but not be limited to, the toilet, sink, hand dryer, soap dispenser, toilet paper dispenser, floor drains, walls, floors, stall doors, and other items in accordance with plans and specifications approved by CITY and DISTRICT prior to the commencement of construction.

CITY shall have exclusive use of the restroom and shall be responsible for opening and closing the restroom in conjunction with Joint Use Area hours set forth in this Agreement. CITY shall also be responsible for cleaning and providing all supplies for the restroom. If DISTRICT chooses to use comfort station or snack bar facility in the future, costs will be prorated for regular maintenance. The CITY shall bill DISTRICT as expenses are incurred, and DISTRICT shall reimburse CITY, as mutually approved by the CITY and DISTRICT, for the costs incurred by CITY and attributable directly to DISTRICT as a result of damage to utilities, such as electrical, water, sewer and ventilation, from DISTRICT activities.

The comfort station sewer lateral is connected to the DISTRICT sewer main.

City shall be responsible for maintenance of the sewer lateral until its point of connection to the District main line.

DISTRICT shall have exclusive use of its designated storage area and shall be responsible for the lock, door and upkeep of the area.

**5.19 Maintenance of Drinking Fountain.** CITY shall be responsible for maintenance of the drinking fountains. Repair of vandalism to the drinking fountains shall be in accordance with Section 4.10 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. The CITY shall be responsible for removing the posted signs in a timely manner after the posting period. CITY shall notify parents/guardians/staff who have requested in writing to be notified seventy-two (72) hours prior to a pesticide application. The DISTRICT's Integrated Pest Management office shall supply a list of those individuals who wish to be notified to the CITY designee in charge of the pesticide application. Notice shall include product name, the active ingredient(s) in the product, and the intended area and date of application. CITY shall maintain pesticide records for four (4) years following application of any pesticides. For additional requirements or information, CITY may contact the California Department of Pesticide Regulation, at (916) 445-4300.

## 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 JUA 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. In the event the CITY does not so 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 the DISTRICT 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. 9A  
    San Diego, California 92101

If to DISTRICT:                Superintendent  
    San Diego City Schools  
    4100 Normal Street  
    San Diego, California 92103-2682

## 10. General Provisions.

**10.1 Quiet Possession.** DISTRICT and CITY, subject to performing the covenants and agreements herein, shall at all time 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 maintenance supervisor 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. CITY reserves the right to enter into a partial assignment agreement with a third party to fulfill its maintenance responsibility. DISTRICT shall reserve the right to review the proposed third party maintenance agreement for compliance with Section 10.4 of this Agreement. DISTRICT shall receive a copy of the final third party agreement.
- 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.

**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 City Manager 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 City Manager pursuant to Ordinance No. 0-19582 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: Ted Medina  
Ted Medina  
Title: Park and Recreation Director for Mayor  
Date: 12/19/06

By: David Umstot  
David Umstot  
Title: Interim Chief Facilities Officer  
Date: 14 Dec 2006

APPROVED AS TO FORM AND LEGALITY BY  
MICHAEL J. AGUIRRE, CITY ATTORNEY

By: Pete A. Meixid  
Title: Deputy City Attorney  
Date: April 5, 2007

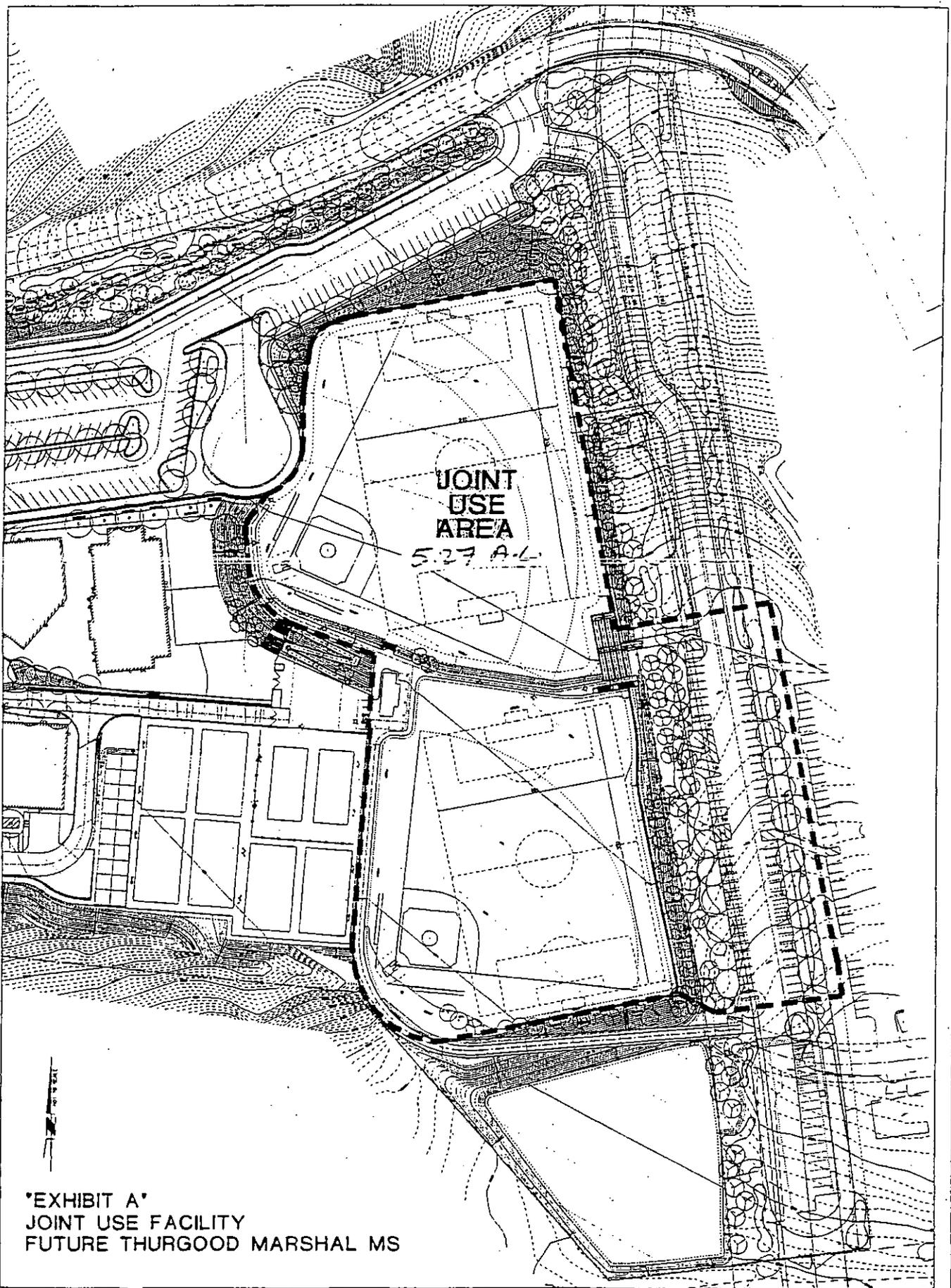
LEGALITY AND FORM APPROVED  
Sandra T.M. Chong  
SANDRA T.M. CHONG, Assistant General Counsel  
San Diego Unified School District

12-14-06

Exhibit "A": Depiction of the Joint Use Area  
Exhibit "B": Calculation of Financial Contributions

Approved in public meeting of the  
Board of Education of the San Diego  
Unified School District on 12/12/06  
Cheryl Ward  
Cheryl Ward, Board Action Officer,  
Board of Education

By: Tammy Rimes 4/23/07  
Tammy Rimes  
Purchasing & Contracting  
Director



'EXHIBIT A'  
JOINT USE FACILITY  
FUTURE THURGOOD MARSHAL MS

**EXHIBIT "B"**  
**THURGOOD MARSHALL MIDDLE SCHOOL**  
**CALCULATION OF FINANCIAL CONTRIBUTIONS**  
 Pursuant to Section III.A of the MOU

Value of DISTRICT's Land Contribution	\$500,000/acre	x	5.27 acres	=	\$2,635,000
Value of DISTRICT's Development Contribution	\$200,000/acre	x	5.27 acres	=	\$1,054,000
<b>TOTAL DISTRICT CONTRIBUTION</b>					<b>\$3,689,000</b>
Value of CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$1,850,000 (of SRPG's PFFP of SPF)*
Additional CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$33,702 (of SRPG's PFFP of V&CS)***
Additional CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$17,298 (of MRNDA)****
<b>TOTAL CITY CONTRIBUTION</b>					<b>\$2,059,000</b>
Value of CITY's Maintenance Contribution	\$8,500/acre	x	4.52 acres	=	\$38,420 /YEAR

Years Until Parity shall be reached =  $\frac{\text{TOTAL DISTRICT CONTRIBUTION } (\$3,689,000 - \$2,059,000)}{\text{CITY MAINTENANCE CONTRIBUTION } (\$38,420/\text{YEAR})}$   
 = 42.43 Years

*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".*

\* SPRG: Scripps Ranch Planning Group  
 PFFP: Public Facilities & Financing Plan  
 SPF: Special Park Fee funds

\*\*\*V&CS: Village & Country Settlement funds

\*\*\*MRNDA: Miramar Ranch North Development Agreement

000355

ORDINANCE NUMBER O- 19582 (NEW SERIES)DATE OF FINAL PASSAGE MAR 27 2007

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A 25 YEAR JOINT USE AGREEMENT WITH THE SAN DIEGO UNIFIED SCHOOL DISTRICT FOR THE CONSTRUCTION, OPERATION, AND MAINTENANCE OF TURFED FIELDS, RESTROOM, PARKING LOT, DRINKING FOUNTAINS, BACKSTOPS, AND RECREATIONAL FACILITIES AT THURGOOD MARSHALL MIDDLE SCHOOL.

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

Section 1. That the Mayor or his designee is authorized to execute, for and on behalf of the City of San Diego [City], the lease and Agreement between City and San Diego Unified School District [District] for the construction, operation and maintenance of turfied fields, restroom, parking lot, drinking fountains, backstops, and recreational facilities at Thurgood Marshall Middle School in the Scripps Miramar Ranch Community Planning Area, on file in the office of the City Clerk as Document Number OO- 19582.

Section 2. Authorizing the addition of CIP No. 29-920.0, Future Thurgood Marshall Middle School, to the Fiscal Year 2007 Capital Improvements Program.

Section 3. Authorizing a \$2,059,000 increase in the Fiscal Year 2007 Capital Improvements Program Budget in CIP No. 29-920.0, Future Thurgood Marshall Middle School by \$1,370,000 in Special Park Fee, Fund No. 11230, \$480,000 from CIP No. 29-717.0, Fairbrook Neighborhood Park-Acquisition, Fund No. 11230, \$33,702 in Village and Country Settlement, Fund No. 10604, and a total of \$175,298 from Miramar Ranch North Development Agreement funds 392110 (\$24,192), 392131 (\$21,210), 392133 (\$23,901), 392143 (\$23,691), 392162 (\$2,962) and 392164 (\$79,342).

Section 4. Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$2,059,000 from CIP No. 29-920.0, Future Thurgood Marshall Middle School, for the purpose of reimbursement to District for the construction of facilities as described in the Future Thurgood Marshall Middle School Joint Use Agreement.

Section 5. That this activity is categorically exempt from CEQA Guidelines pursuant to State CEQA Guidelines Section 15301.

Section 6. 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 7. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By



Peter A. Mesich  
Deputy City Attorney

PAM:cfq  
11/16/06  
Aud.Cert.: 2700499  
Or.Dept:P&R  
O-2007-53  
MMS#4070

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAR 20 2007

ELIZABETH S. MALAND  
City Clerk

By Laura Richardson  
Deputy City Clerk

Approved: 3-27-07  
(date)

JSL  
JERRY SANDERS, Mayor

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

\_\_\_\_\_  
JERRY SANDERS, Mayor

000359

Passed by the Council of The City of San Diego on March 20, 2007, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MAIENSCHIN,  
FRYE, MADAFFER, HUESO.  
NAYS: NONE.  
NOT PRESENT: NONE.  
VACANT: NONE.

AUTHENTICATED BY:

**JERRY SANDERS**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: \_\_\_\_\_, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O - 19582 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on February 6, 2007 and on March 27, 2007.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: Mary Zumaaga, Deputy

000361

EXHIBIT "B"  
**REVISED JANUARY 2008**  
**THURGOOD MARSHALL MIDDLE SCHOOL**  
**CALCULATION OF FINANCIAL CONTRIBUTIONS**  
Pursuant to Section III.A of the MOU

Value of DISTRICT's Land Contribution	\$500,000/acre	x	5.27 acres	=	\$2,635,000
Value of DISTRICT's Development Contribution	\$200,000/acre	x	5.27 acres	=	\$1,077,000
<b>TOTAL DISTRICT CONTRIBUTION</b>					<b>\$ 3,712,000</b>
Value of CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$185,000 (of SRPG's PFFP of SPF)*
Additional CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$33,702 (of SRPG's PFFP of V&CS)***
Additional CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$17,298 (of MRNDA) ****
Additional CITY's Development Contribution	\$200,000/acre	x	LUMP SUM acres	=	\$20,000
<b>TOTAL CITY CONTRIBUTION</b>					<b>\$2,079,000</b>
Value of CITY's Maintenance Contribution	\$8,500/acre	X	4.52 acres	=	\$38,420/YEAR

Years Until Parity shall be reached =  $\frac{\text{TOTAL DISTRICT CONTRIBUTION } (\$3,712,000 - \$2,079,000)}{\text{CITY MAINTENANCE CONTRIBUTION } (\$38,420/\text{YEAR})}$   
= 42.50 Years

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".

\* SPRG: Scripps Ranch Planning Group  
PFFP: Public Facilities & Financing Plan  
SPF: Special Park Fee Funds

\*\*\*V&CS: Village & Country Settlement Funds

\*\*\*\*MRNDA: Miramar Ranch North Development Agreement