

**JOINT USE AGREEMENT BETWEEN THE CITY OF SAN BRUNO AND
THE SAN BRUNO PARK SCHOOL DISTRICT**

COPY

This JOINT USE AGREEMENT (this "Agreement") is dated December 15, 2011 between the CITY OF SAN BRUNO (hereinafter, the "City"), and the SAN BRUNO PARK SCHOOL DISTRICT (the "District"). District and City may each be referred to individually as a "party" or jointly as "parties".

RECITALS

WHEREAS, the City and the District agree that the provision of adequately maintained recreational facilities and programs are beneficial to the residents of the City and to those who reside within the geographical boundaries of the District; and

WHEREAS, the District and the City each own certain indoor and outdoor facilities, such as athletic fields, play areas, community rooms, gymnasiums, classrooms and other facilities (hereinafter, collectively referred to as "Facilities") which are suitable for District and City recreational programs and community use; and

WHEREAS, the City and the District have a well-established history of working together to ensure that their respective Facilities are available and utilized for the common good and for the enhanced benefit of the community; and

WHEREAS, the City and the District have, in the past, agreed to arrangements relating to the joint use and maintenance of the Facilities, as well as relating to the sharing and allocation of costs for Facilities maintenance. Most recently, the City and the District entered into a joint use agreement dated October 1, 2007, which was subsequently amended, and the parties have been operating under the terms and conditions of such joint use agreement; and

WHEREAS, sections 10900 *et seq.* of the Education Code authorize cities and school districts to maintain and operate joint use playgrounds and outdoor playing fields in order to reduce capital and operational costs to both governmental jurisdictions and provide recreational areas for the community as a whole; and

WHEREAS, the City and the District wish to enter into this Agreement to update the joint use agreement referenced above and provide for the joint use of their respective Facilities and set forth their respective obligations with respect to Facilities maintenance.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth below, the District and City agree as follows:

1. **Advance Notice:** At least thirty (30) days before the commencement of each school year (and within thirty days after the effective date of this Agreement during the first school year of the Agreement's term), the District shall submit a written schedule to the City, specifying anticipated events including the first and last day of school holidays, minimum

days and other special events. The District shall also provide at least thirty (30) days notice to City of special events and games.

2. No Conflicting Agreements: The District and City represent that neither has entered into use agreements with third parties which materially conflict with the joint use of the Facilities. Any future use agreement proposed by a party with third parties shall not be executed without first consulting with the other party with a view to eliminating conflicts with this Agreement.

3. Term of the Agreement: The initial term ("Term") of this Agreement shall be for ten (10) years, beginning on December 15, 2011 until August 31, 2021, unless earlier terminated as provided in this Agreement. After the expiration of the Term, the Agreement may be extended annually by mutual written agreement of the parties. This Agreement must be approved by the Board of Trustees of the San Bruno Park School District ("Board") and by the City Council of the City of San Bruno ("City Council") prior its effectiveness. The effective date of this Agreement ("Effective Date") shall be the date when this Agreement has been approved by the Board and the City Council and executed by their authorized agents.

4. Facility Priority Use: The City and District agree that each will maintain top priority for use when either party requests the use of the other party's Facilities and that such use shall be without charge, except as specifically provided for herein. Thus, when the City is not using a City-owned Facility, the District will have first priority to use that Facility if the District chooses to use it. Likewise, when the District is not using a District-owned Facility, the City will have first priority to use the Facility if the City chooses to use it.

5. Non-Permanent Improvements: Personal property, furnishings, or equipment provided or paid for by the District and the City shall remain the property of the District and the City respectively. Upon the expiration or termination of this Agreement, the City shall have the option of removing or leaving any personal property, furnishings, or equipment belonging to the City. If the City leaves any personal property, furnishings, or equipment belonging to the City, such property shall become the sole property of the District. If the City removes any personal property, furnishings, or equipment belonging to the City and not considered to be a permanent improvement, the City shall return to its original condition that portion of the property affected by such removal.

6. Permanent Improvements. Any permanent improvements installed or constructed by the City on any District Facility shall become the property of the District at the expiration of this Agreement, unless otherwise agreed to in writing by the District. Such permanent improvements shall include the existing improvements installed at Lion's field, including the outfield lights. For purposes of this Agreement, "permanent improvement" shall mean an improvement done or put upon the land which has become physically impossible to separate from the land, or has been put into the soil of the land and become a functioning part of the property. Should District terminate this Agreement prior to expiration, District will pay to City the remaining depreciated value of permanent improvements. Should City terminate this Agreement prior to expiration, City will restore District facilities to the status of the property prior to permanent improvements or transfer ownership of permanent improvements to District with no cost to District.

7. Master Calendar: The City and District shall develop and maintain a master calendar listing all City and District sports Facilities (the "Master Calendar") and proposed events. The Master Calendar will cover a twelve month period from January to December (except that the initial Master Calendar developed pursuant to this Agreement shall cover the 12.5 month period from December 15, 2011 through December 31, 2012. The City and District shall have priority for using each other's facilities and shall cooperate in determining the schedule for the Facilities, and shall make reasonable efforts to avoid conflict with each other's use of the Facilities. The City and District agree to participate in a process pursuant to which local sports organizations may request and secure use of specific sports Facilities with the District and City maintaining top priority use, and other organizations having secondary use of the Facilities.

8. Procedure for Use of Indoor/Outdoor Facilities: If either party to this Agreement seeks to request the use of the other party's Facilities, the request shall be granted if each of the following conditions are complied with:

- a. The requests is made no sooner than sixty (60) days prior to the date on which use is proposed to commence.
- b. The requesting party agrees to abide by existing use regulations (excluding those relating to the imposition of fees or charges) imposed by the owner of the Facility on general public users of the Facility.
- c. The Facility in question has not previously been scheduled for use by any other person or entity.
- d. Neither party may reserve the use of any of the other party's Facilities for more than one hundred and twenty (120) consecutive days at a time except as provided for in section 12 below, "After School Recreation Program."
- e. Requests for the use of District or City Facilities shall be made in writing directed to the appropriate District or City staff or designee. For purposes of this Agreement, request for use of City recreational Facilities and issues regarding outdoor maintenance are to be made in writing and directed to the City's Community Services Director. Requests for use of District Facilities shall be made in writing and directed to the District's Chief Business Officer, with a copy to the District's Superintendent.

If either party denies the other party's request for use of a Facility, the denying party shall explain in writing the basis for denial within two weeks of the request. Requests for use of Facilities and responses in such requests may be delivered by regular mail, facsimile or e-mail.

9. Recovery of Personnel Expenses and Waiver of Rental and Other Charges: The party making use of the other party's Facility shall pay the other party the actual additional personnel time which the other party accrues exclusively because of the use of the Facility. Invoices for reimbursement for such expenses shall be supported by documentation showing the exact hourly rate for personnel performing tasks related to the use of the Facility, the tasks performed, the exact time expended by the employee, and a brief explanation of why the expense was exclusively due to the use of the Facility. An hourly rate schedule itemizing

the exact personnel costs for staff that may provide services referenced in this Agreement shall be exchanged at the execution of this agreement and by the parties by September 1 of each year during the term of this Agreement and shall be promptly updated in writing in the event of any changes prior to the succeeding September 1 which rates shall be adopted as of September 1. Aside from the personnel expenses referenced in this section 9, the City and District hereby agree to waive rental or other charges for use of their respective facilities by the other party.

10. Supervision: The District's use of City Facilities shall be supervised at all times by District employees or agents. When deemed appropriate by the City, District employees supervising the use of City property and equipment shall be subject to the administrative authority of the City's Community Services Director. City's use of the District's facilities shall be supervised at all times by City employees or agents. When deemed necessary by the District, City employees supervising the use of District property or equipment shall be subject to the administrative authority of the applicable school site administrator.

11. Grounds Maintenance: The maintenance of facilities on City-owned property shall be the responsibility of the City. Maintenance of District Facilities on District property shall also be the responsibility of the City for those District Facilities as set forth in this Agreement. As to other District Facilities, the District shall be responsible for maintenance, except as provided below.

a. At the conclusion of the use of a Facility, each party shall leave the other party's property in good repair, condition and as clean as it was prior to the party's authorized use, including the removal of all trash and debris from the party's use of the Facility.

b. Any requests regarding repair or maintenance of District-owned property, which is maintained by the City pursuant to this Agreement, shall be made directly in writing to the City's Community Services Director.

c. In the event that a condition exists which creates an immediate threat to the health or safety of users, the party with knowledge of such condition shall immediately inform the other party (District Superintendent or City's Community Services Director, or their respective designees). The owner of the Facility at issue will promptly undertake corrective action.

12. After School Recreation Programs: The City and District have implemented After School Recreation Programs for each of the District schools. These programs run the length of the traditional school year, and operate each weekday (Monday through Friday) that school is in session, from the last school bell until 6:00 p.m. The City and the District agree that, where possible, they will partner with one another to apply for appropriate grants for the After School Recreation Programs. The parties agree that they will use reasonable efforts to ensure that recreation, leisure and educational components will be incorporated into the After School Recreation Programs in an effort to meet the individual needs and desires at each program site. The parties agree to work in a cooperative and interactive manner to ensure the success of this program, which directly and indirectly benefits the elementary aged students who live in the area surrounding each program site.

a. City-Owned Portable Buildings: The City owns portable buildings located at the Portola and Belle Air Elementary School campuses, which will be the primary facility for after-school recreation programs on these sites.

b. District-Owned Classrooms: The District will permit the City to utilize classrooms for after school recreation programs and activities, when and where possible.

c. District-Owned Storage Containers: The District will permit the City to maintain a temporary locking storage container approximately 10' x 10' in size on the Allen School and Portola School campuses for the purpose of storing program materials, supplies and equipment. The City agrees to accept all risk and responsibility for items stored in this container, as well as the container itself. The District shall maintain control over the exact placement of this container, although the parties agree that reasonable efforts will be made to place it in close proximity to the classrooms.

13. Land and Maintenance and Equipment: The City and the District agree to the following arrangement for the maintenance of the sports facilities/athletic fields at Parkside Intermediate School and Belle Air School.

a. The City shall maintain the sports facilities/athletic fields at Parkside Intermediate School and Belle Air School. City acknowledges that it has made certain improvements at its sole expense to such athletic fields and accepts all potential liability with regard to the improvements, including compliance with California law and any applicable rules and regulations.

b. The District agrees that no other agency or individual shall be permitted to perform or attempt to perform maintenance tasks or Facility improvements at these sites without having provided prior written notice to the Community Services Director.

c. All irrigation equipment at these sites, above/below ground level, shall be the sole responsibility of the City. This includes valves, irrigation pipe, irrigation equipment/boxes, controllers, irrigation heads, electrical wiring, and related components. District personnel will have access to all boxes and controllers shall be able to access them in the event of an emergency or when otherwise necessary. The parties acknowledge that the City may pursue damages and monetary judgments against known user group or individuals responsible for damage to equipment.

d. City maintenance staff shall be permitted, in accordance with a written schedule submitted to the District by the City, to perform regular maintenance duties at these sites, including mowing, fertilizing, edging, field preparation and other related duties. City staff shall be permitted to enter District property without prior permission to address emergency maintenance situation involving the risk of damage to property, or a risk to life or safety. City officials will use their best efforts to promptly notify the District of such conditions.

e. City maintenance staff shall have responsibility to determine whether any City-owned sports Facilities at these sites are in a safe condition for use. As to these District Facilities maintained by the City, the District shall retain the authority to access such District-owned Facilities to determine whether unsafe conditions exist. The District shall notify the City

of any unsafe conditions identified by the District. The District shall abide by City's field use determinations of District fields maintained by the City.

14. Scheduling Facilities: The District shall have responsibility for scheduling ball field and other sport Facilities owned by the District during the regular school year when school is in session until 3:00 p.m. or the last dismissal bell, whichever occurs first. Notwithstanding the foregoing, Parkside School athletic programs have priority beyond 3:00 p.m. or the last school dismissal until the conclusion of those programs. From that time forward until dusk (or until 10:00 p.m. as to Facilities that have sports lights), the City shall be responsible for scheduling all Facility use at the District sites. The City shall have the responsibility for scheduling these Facilities on weekends, holidays, and during periods when school is not in session. District playground Facilities shall be made available to the public when the District is not using the Facilities.

15. Maintenance Cost Recovery Plan:

a. Location of Services: The City shall provide athletic field maintenance at the Belle Air School and Parkside Intermediate School pursuant to the terms set forth below in this section 15.

b. Service Level: The City shall provide forty (40) weeks per year of basic mowing and irrigation maintenance service at the Belle Air School and Parkside Intermediate School sites. For purpose of this Agreement, "mowing service" means cutting the grass once per week, weather conditions permitting. "Irrigation Maintenance" means maintaining irrigation heads, maintaining controllers, underground irrigation lines, and wiring and replacing parts, as needed. Irrigation maintenance services shall not include the cost of water used for irrigation purposes and the District shall continue to pay City for water used to irrigate District fields.

c. Cost Recovery: The District shall pay one combined annual flat fee for the City's mowing and irrigation maintenance services at Belle Air and Parkside Intermediate Schools. This fee is \$12,110.00 for the period July 1, 2011, to June 30, 2012, which represents the District's approximate share of cost for forty (40) weeks per year of such services. For the following year, the parties shall meet annually before July 1 of the upcoming year to review the costs of the previous year's maintenance and reasonably determine such maintenance costs for the upcoming three (3) years. Thereafter and for the life of this Agreement, the parties shall meet every three (3) years to review and determine the appropriate fees for the athletic field maintenance to be performed by the City.

d. City's Additional Services: The City may, from time to time, provide the following services to the District at the City's sole discretion and option, but without additional cost to the District, and the City may discontinue such services at any time without liability.

(1) Additional Belle Air and Parkside Intermediate Schools ball and field basic mowing services during the remaining twelve (12) weeks of the year; and

(2) Additional Belle Air and Parkside Schools ball and field maintenance services, such as aeration, fertilization, pest control, and trash removal from garbage cans adjacent to the ball fields.

The costs for such additional services noted in this subsection 15(d) shall be negotiated and agreed to in writing by the parties before the commencement of any work. In the event that such costs are not agreed to before the commencement of the work, then District shall pay the City the average market industry rate for such services.

16. Indemnification and Insurance: Each party shall identify, defend, and hold harmless to the other party and its officers, officials, governing board members, employees and volunteers from and against any and all liability, loss, damage, expense, cost including, without limitation, cost and fees of litigation (including reasonable attorneys' fees) of every nature to the extent such liability, loss, damage, expense, or costs are caused by the failure of a party's officers, agents, volunteers, contractors, and employees to comply with any of its obligations contained in the Agreement by the party from whom indemnification is sought and except for the sole negligence of willful misconduct of the party seeking indemnification. This indemnity shall survive the termination of this Agreement.

Each party shall maintain the following insurance coverage:

(a) General Liability Insurance with limits of not less than the following:

(i) General Aggregate: Two Million Dollars (\$2,000,000.00).

(ii) Personal Injury: One Million Dollars (\$1,000,000.00).

(iii) Each Occurrence: One Million Dollars (\$1,000,000.00).

(b) Name the other party, its officers, agents, and employees as additional insureds.

(c) Contain provisions making the insurance to be provided herein primary whereby no insurance held by the other party shall be called upon to contribute to a loss and not be cancelled without thirty (30) days advance notice to other party.

17. Compliance with Laws: In performing under this Agreement, both the District and City shall comply with the requirements of all municipal, state and federal statutes, ordinances, rules, orders, regulations or other controlling authorities in effect during the term of this Agreement which pertain to the City and District Facilities. The parties shall adhere to all rules and regulations adopted from time to time by the other party that govern the use of the party's facilities. This section 17 shall apply to all improvements constructed on any of the Facilities by a party.

18. Early Termination: This Agreement may be terminated at any time by either party, upon written notice to the other party at least one hundred eighty (180) days in advance.

Upon such early termination, the parties shall meet to discuss the classification of any improvements in accordance with sections 5 and 6 of this Agreement.

19. Alternative Dispute Resolution: If either party possesses a claim or dispute with respect to the duties and responsibilities required under this Agreement, that party shall give the other written notice and demand an informal conference to meet and confer for settlement of the issues in dispute. Notice shall be given within fifteen (15) days of knowledge of the claim or dispute. Upon receipt of a party's demand, the other party shall schedule a meet and confer conference, to take place within thirty (30) days, at a time and location convenient to all parties. Senior representatives of the District and City, with the authority to settle on the party's behalf, will attend the meet and confer conference, in good faith, in an attempt to resolve any controversy or claim between the parties. Attendance at this conference shall be a condition precedent to the initiation of arbitration, mediation or a civil action.

20. Assignments: Neither this Agreement nor any interest therein, whether legal or equitable, shall be assigned, transferred, alienated, or pledged (voluntarily or by operation of law) without the prior mutual and written consent of both parties.

21. Amendments: This Agreement may only be amended by a written instrument executed by both parties.

22. Additional Agreements: District and City may negotiate and enter into additional agreements separate and unique to this agreement upon written instrument executed by both parties. Additional agreements will not be considered amendments and will negate any portion of this agreement unless specified in the written instrument executed by both parties.

23. Entire Agreement: This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or oral, including the joint use agreement dated October 1, 2007 and all amendments thereto.

24. Applicable Law: This Agreement shall be governed by and construed in accordance with the laws of the state of California

25. Warrant of Authority: Each individual executing this Agreement warrants that he or she authorized to do so and that this Agreement constitutes the legally binding obligation of the entity which he represents.

26. Waivers: A waiver of a breach of any covenant or condition by the City or District shall not be construed as a waiver of any subsequent breach of the same of difference covenant or condition.

27. Execution in Counterparts: This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date set forth above.

SAN BRUNO PARK SCHOOL DISTRICT

By: 


Dr. David Hutt
Superintendent

CITY OF SAN BRUNO

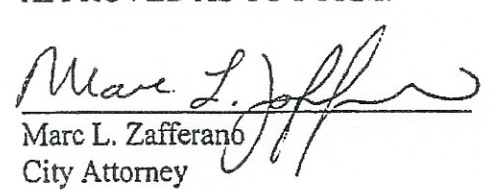
By: 

Connie Jackson
City Manager

APPROVED AS TO FORM:


Mark S. Williams
Legal Counsel for District

APPROVED AS TO FORM:


Marc L. Zafferano
City Attorney



Connie Jackson
City Manager

received

MAY 05 2015

Superintendent
CITY OF SAN BRUNO
CITY MANAGER

May 4, 2015

David E. Hutt, EdD.
Superintendent
San Bruno Park School District
500 Acacia Avenue
San Bruno, CA 94066

Dear Dr. Hutt,

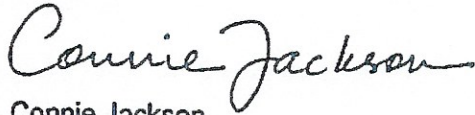
At the April 28th City Council meeting, the City Council took action to approve waiver of the District's share of costs for maintenance of the Belle Air School and Parkside School fields on a one time basis for the 2015-16 school year. The City Council took this action in response to requests for assistance from parents in the community who are raising funds to offset the District's projected budget deficit for the coming school year. Parent group representatives who have appeared at recent City Council meetings advised the City Council that their goal is to raise \$191,000 to restore 4 teacher positions scheduled for lay off for the 2015-16 school year. The City Council action to approve waiver of the District's 2015-16 field maintenance cost is specifically intended to contribute toward this fundraising goal.

Pursuant to the Joint Use Agreement between the City of San Bruno and the San Bruno Park School District dated September, 2014, the District is responsible for a proportionate share of the City's total cost for certain services to maintain the Belle Air and the Parkside School fields. Under the terms of that agreement, the amount of the District's cost for the field maintenance services due July 1, 2015 for the 2015-16 year is \$30,235. The City Council action at the April 28th meeting approved waiver of the full \$30,235 amount due to the City on a one-time basis for 2015-2016.

As outlined in the attached City Council Resolution and as described above, the City Council intends that its action to provide a one-time waiver of the \$30,235 cost that would otherwise be due from the District to the City will directly benefit the parent group fundraising initiative and its objectives. The City Council recognizes that action by the School District Governing Board may be required to allocate or to otherwise recognize the cost savings to the District as a benefit or offset to the parent group fundraising goal. Therefore, the City requests written confirmation from the District that the cost savings resulting from the City waiver will be treated in the manner intended by the City Council or alternatively that the District prefers to maintain the existing terms of the Joint Use Agreement with no waiver of costs due to the City.

Please do not hesitate to contact me if you have questions or need further information.

Sincerely,

A handwritten signature in cursive script that reads "Connie Jackson".

Connie Jackson
City Manager

cc: San Bruno City Council

Enclosure (1)

RESOLUTION AUTHORIZING WAIVER OF CHARGES TO THE SAN BRUNO PARK SCHOOL DISTRICT FOR SERVICES PROVIDED BY THE CITY

WHEREAS, the San Bruno Park School District is projecting a budget deficit for the coming fiscal year in an amount that exceeds \$2 million; and

WHEREAS, in response to the District's consideration of substantial reductions to District programs and services for the coming school year, parents have organized to raise funds to help offset the deficit with the intent to avoid some of the proposed reductions; and

WHEREAS, at the April 14, 2015 City Council meeting a City Councilmember requested that the City Council consider a one-time waiver of costs charged by the City to the School District for services provided by the City; and

WHEREAS, the City provides a broad range of programs and services to the District to support the District's educational programs; and

WHEREAS, the City recognizes the important role of education in supporting the general welfare of the community; and

WHEREAS, according to the terms of the Joint Use Agreement between the City and the District approved by the City Council in September, 2014, the City performs field maintenance services at the Belle Air and Parkside School fields and charges the School District a proportionate share of the costs for this service that represents approximately 28% of the City's total cost for the service; and

WHEREAS, the School District's cost for field maintenance services for fiscal year 2015-16 is \$30,235; and

WHEREAS, waiver of the field maintenance cost to the District would reduce the District's overall budgeted costs for fiscal year 2015-16 by \$30,235; and

WHEREAS, the City Council wishes to support the parents' fundraising initiative by waiving the 2015-2016 field maintenance cost to the District; and

WHEREAS, in order to avoid disruption to the regular use of the School District fields by the public and the community's sports organizations, the City Council has determined that field maintenance services should be provided by the City at its cost for the 2015-16 fiscal year.

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of San Bruno that the City's charge to the San Bruno Park School District for field maintenance services in the amount of \$30,235 is hereby waived on a one-time basis for fiscal year 2015-16.

BE IT FURTHER RESOLVED that this waiver is authorized specifically as a contribution to the parent fundraising initiative.

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I hereby certify that foregoing Resolution No. 2015 - 38
was introduced and adopted by the San Bruno City Council at a regular meeting of
April 28, 2015, by the following vote following vote:

AYES: Councilmembers: Ibarra, Medina, O'Connell, Salazar, Mayor Ruane

NOES: Councilmembers: None

ABSENT: Councilmembers: None

I hereby certify this to be a full, true and correct
copy of the document it purports to be, the
original of which is on file in my office.

Dated: May 5, 2015

Victoria S. Haskin Deputy City Clerk
City Clerk of the City of San Bruno

Carol Bonner
Carol Bonner, City Clerk

