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DOCUMENT NO. RR-267647

AGREEMENT

FILED FEB 9 1987
OFFICE OF THE CITY CLERK

BETWEEN THE CITY OF SAN DIEGO, SAN DIEGO, CALIFORNIA

SAN DIEGO UNIFIED SCHOOL DISTRICT,

AND SAN DIEGO COMMUNITY COLLEGE DISTRICT

*Stadium
Operating
Agreement*

This Agreement is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation in the State of California (the "City"), the SAN DIEGO UNIFIED SCHOOL DISTRICT, a body corporate and politic and a school district organized under the Education Code of the State of California (the "School District"), and the SAN DIEGO COMMUNITY COLLEGE DISTRICT, a body corporate and politic and community college district organized under the Education Code of the State of California (the "College District").

WITNESSETH:

WHEREAS, the City is empowered by law to acquire, construct, maintain and operate real and personal property and control the same for the benefit of the City, and to establish, maintain and operate recreational facilities;

WHEREAS, the School District is empowered by law to acquire, construct, maintain and operate real and personal property and control the same for the benefit of the School District, and to establish, maintain and operate recreational facilities;

WHEREAS, the College District is empowered by law to acquire,

construct, maintain and operate real and personal property and control the same for the benefit of the College District and to establish, maintain and operate recreational facilities;

WHEREAS, the City, the School District and the College District are now engaged in numerous cooperative activities designed to provide recreation for the benefit of the residents of the City, the School District and the College District; and

WHEREAS, the City has leased to the School District until the year 2024 that property known as Balboa Stadium located at San Diego High School which is dedicated for park and recreational purposes according to the City Charter.

WHEREAS, the Amateur Athletic Foundation of Los Angeles, a California non-profit public benefit corporation, has agreed to grant to the Friends of Balboa Stadium, a non-profit ad hoc community association, the sum of one hundred sixteen thousand six hundred seventy dollars (\$116,670.00) to be expended for the resurfacing of the Balboa Stadium track; and

WHEREAS, the making of said grant by the Amateur Athletic Foundation of Los Angeles is conditioned upon the establishment of a common account into which must be deposited, not later than November 21, 1986, matching funds from the City of San Diego in the sum of seventy-seven thousand seven hundred seventy-eight dollars (\$77,778.00), the San Diego Community College District in the sum of seventy-seven thousand seven hundred seventy-eight

dollars (\$77,778.00), and the San Diego Unified School District in the sum of seventy-seven thousand seven hundred seventy-eight dollars (\$77,778.00); and

WHEREAS, said grant is further conditioned upon the execution of a mutual agreement between the City of San Diego, the San Diego Unified School District, and the San Diego Community College District, which agreement is to provide for the maintenance of the Balboa Stadium track, and for community access to and equitable use of said facility; and

WHEREAS, the following agreement is entered into by and between the City, the School District, and College District for the purpose of meeting the two above-stated conditions for the release of funds by the Amateur Athletic Foundation of Los Angeles to the Friends of Balboa Stadium.

NOW, THEREFORE, the City, the School District, and the College District, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1 Definitions

Unless the context otherwise requires, the terms defined in this section shall for all purposes of the agreement have the meanings herein specified.

Advisory Board

The term "Advisory Board" shall mean the Balboa Stadium

Community Advisory Board composed of seven (7) community members appointed by the City, School District and College District.

Agreement

The term "Agreement" shall mean this agreement as the same now exists and as it may from time to time be amended by all supplemental agreements entered into pursuant to the provisions hereof.

City

The term "City" shall mean The City of San Diego, a municipal corporation organized and existing under the Constitution and law of the State of California.

College District

The term "College District" shall mean the San Diego Community College District, a community college district organized pursuant to the law of the State of California.

Concessions

The term "concessions" shall mean the sale or dispensing of programs, librettos, periodicals, books, magazines, newspapers, beverages, flowers, candies, food, gifts, novelties and souvenirs, all advertising, radio and television broadcasting, transcriptions and recording rights and parking.

Foundation

The term "Foundation" shall mean the Amateur Athletic Foundation of Los Angeles.

Friends of Balboa Stadium

The term "Friends of Balboa Stadium" shall mean a non-profit ad hoc community association.

Lease

The term "lease" refers to the lease between the School District and City dated May 23, 1974 by which the City leases to the School District the premises known as a portion of San Diego High School including Balboa Stadium. The lease is hereby incorporated by reference and attached hereto as Attachment A.

Parking

The term "parking" refers to parking on the grounds of San Diego High School and specifically excludes parking on San Diego City College premises.

School District

The term "School District" shall mean the San Diego Unified School District, a school district organized pursuant to the law of the State of California.

Stadium

The term "Stadium" and "Balboa Stadium" shall be used interchangeably and shall mean the track and field facility, seating, press box, restrooms and all fixtures and appurtenances around and attached to the Stadium facility located at San Diego High School referred to as Balboa Stadium and described as Parcel C in the Lease.

Section 2 Purpose

The purpose of this Agreement is to satisfy the conditions for the release of a \$116,670 grant by the Foundation to the Friends of Balboa Stadium. Said conditions require an agreement between the City, the School District, and the College District for community access, equitable use, and continued maintenance of the Stadium track. Said conditions further require the establishment of a common account for the deposit of matching funds by the City, the School District, and the Community College District.

Section 3 Term

The Agreement shall become effective as of the date hereof and shall continue in full force and effect until May 29, 2024.

Section 4 Operation of the Stadium

The School District shall have responsibility for the

operation of the Stadium.

Section 4.1 Balboa Stadium Restricted Fund

The Controller of the School District shall establish a Balboa Stadium restricted fund upon the completion of the Resurface Balboa Stadium Track Project as set forth in Section 6, which shall be under the control of the Board of Education of the School District into which all income including rent from the Stadium shall be deposited and from which only expenditures including salaries for the maintenance and operation of the Stadium can be made. Income derived from concessions shall be deposited in the Balboa Stadium restricted fund with the exception that whenever the School District or the College District are scheduled for events in the Stadium they will have full concession rights and may retain the proceeds from such concessions.

The School District shall charge Balboa Stadium maintenance and operating costs to the restricted fund. The School District acknowledges its responsibilities under paragraph 6 of the Lease to maintain the Balboa Stadium. Annually, the projected costs in maintaining and operating the Stadium (including adequate reserves for long-term maintenance and repair) and projected income will be reviewed and will serve as a basis for determining the rental rates to be used the following year.

Section 4.2 Schedule Priorities For Stadium Use

The School District shall schedule use of the Stadium subject to the following priorities:

First, School District curricula and extra-curricular recreational program; second, College District curricula, intercollegiate athletics and co-curricular recreational program; third, should the City decide to sponsor an event, two City-sponsored recreational events annually, fourth subject to the lease for use of the Stadium, the youth (ages 8-18), minority, and the handicapped and physically disadvantaged members of the community, fifth all other park and recreational events. The School District reserves the right to refuse to permit the use of the Stadium when said use is not in the best interest of the School District or College District.

Section 4.3 Rental Charges for Use of the Stadium

a. The School District shall decide at the time an event is scheduled whether to grant free use of the Stadium. The School District and College District curricular, extra-curricular and co-curricular events; College District intercollegiate athletic events; and the two City events set forth in paragraph 4.2 shall qualify for free use. Only non-profit organizations and clubs or associations organized to promote youth, school or community activities may qualify for free use of the Stadium.

b. The School District shall charge fair rental value to

those organizations that do not qualify, as determined by the School District, for free use of the Stadium.

c. The School District shall have all concession rights for the Stadium except for College District events and the two City events described in paragraph 4.2. Any user of the Stadium may not engage in or contract for any concession rights without written consent from the Facilities Services Director of the School District. Whenever an event requires City College parking, the organization shall make arrangements directly with City College officials regarding use of City College parking.

Section 5 Maintenance

The School District shall provide all maintenance services as may be determined by the District to be necessary to maintain the Stadium in proper working order and condition.

Maintenance services are defined as routine repairs, preventive maintenance to structures and grounds, custodial care and cleanup, grounds care and cleanup, and any other services as may be appropriate to the proper upkeep of the stadium. Services shall be coordinated through the School District's Facilities Services Department.

Section 5.1 Annual Review

Upon completion of the annual review of the projected costs in maintaining and operating the Stadium, as required by paragraph 4.1, the School District shall advise the Balboa Stadium Community Advisory Board, as hereinafter described in

Section 12, concerning the adequacy of the maintenance of Balboa Stadium.

Section 5.2 Track Maintenance

In order to further insure the long-term maintenance of the track facility at an adequate level, an undertaking pursuant to the provisions of Attachment B may be utilized.

Section 6 Resurface Balboa Stadium Track Project

Section 6.1 Commencement of Resurfacing Operations

The School District shall proceed with the project to resurface the Stadium track when, (a) the School District shall have completed arrangements for all gifts, appropriations, contributions, advances and proceedings necessary to pay all costs of the Project, (b) the contracts for the construction and maintenance and operation of the Project shall have been completed and approved by the School District and the City and all necessary permits for such construction and maintenance and operation shall have been obtained, and (c) final approval of subsections (a) and (b) have been completed by the Foundation.. The Project shall be constructed in accordance with such plans and specifications, subject to changes approved by the School District.

Section 6.2 Establishment of Account for Deposit of
Matching Funds

The City, the School District and the Community College District hereby agree to the establishment of an account for the deposit of matching funds by each of said entities in the sum of seventy-seven thousand seven hundred seventy-eight dollars (\$77,778.00) and the Foundation through the Friends of Balboa Stadium agrees to deposit its share of one hundred sixteen thousand six hundred seventy dollars (\$116,670.00). Said account shall be established by the Controller of the School District and shall be under the control of the Board of Education of the School District and shall be drawn from exclusively for the renovation of the Balboa Stadium track. Any unexpended matching funds remaining in said account following completion of the renovation of the track shall be returned to the City, School District, College District and Foundation on a pro rata basis as determined by their proportionate share of the initial contribution.

The parties shall each deposit said matching funds into the matching fund account not later than fifteen (15) days following the execution of this agreement by all parties.

Section 7 Publicity

The School District shall include the City's, College District's, Foundation's and School District's name and logo on

any temporary or permanent signage of any type on or adjacent to the project site. The City, College District, Foundation and School District shall have prior approval of the design of said signage.

The School District shall make arrangements, prior to completion of the track renovation, to permanently recognize the City, College District, Foundation and School District as sponsors of said project and the City, College District, Foundation and School District shall have prior approval of the design of permanent signage or display.

Section 8 Agreement Not Exclusive

The Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the City, the School District, and the College District.

Section 9 Contributions and Advances

Contributions or advances of public funds and of personnel, equipment or property may be made to the School District by the City and the College District for any of the purposes of the Agreement. Any such advance may be made subject to any agreed upon repayment provisions, and in such case shall be repaid in the manner agreed upon by the City, the School District, and the College District, as the case may be, at the time of making such advance.

Section 10 Accounts and Reports

The School District shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the School District shall be open to inspection at all reasonable times by the City, the College District, the Foundation and the Advisory Board and their representatives.

Section 11 Liability

It is expressly agreed and understood that neither the Foundation, the College District, nor Friends of Balboa Stadium, nor any director, member, officer, employee or other representative of them, shall incur any financial responsibility or liability of any kind or nature whatsoever in connection with this Agreement or the operation of Balboa Stadium, other than such as may arise directly from the actual use of Balboa Stadium by said particular party. This provision concerning financial responsibility or liability shall be expressly included in and made a part of any and all agreements between the parties subsequent to this Agreement.

Section 12 Balboa Stadium Community Advisory Board

An advisory board known as the Balboa Stadium Community Advisory Board shall be established. This Advisory Board shall advise the School District in the operation of Balboa Stadium. The Advisory Board shall meet at least quarterly. The

Advisory Board shall be comprised of the following members who shall be private residents of the City of San Diego, none of whom may be employees, officers, or elected officials of either the School District, College District, or the City:

San Diego Unified School District	one member
San Diego Community College District	one member
City of San Diego	one member
Youth Services Organizations	one member
Handicapped and Physically Challenged Organization	one member
Track and Field Organizations	one member
Youth Track, Youth Soccer, and Youth Football Organizations	one member

Within sixty (60) days following execution of this Agreement by all parties, the City, the School District, and the College District shall each select their respective members. Such members shall thereafter contact representatives of the various community organizations identified above for the purpose of establishing a list of potential member representatives for such organizations. The City, College District, and School District members shall by majority vote nominate one member representative for each such community organization, and shall forward such nominations to the governing bodies of the City, College District, and School District for approval. In the event of a vacancy, the vacant member shall be replaced for the remainder of

the term for that member in the same manner as the initial appointment. Each Advisory Board member shall serve for an initial two year term, and for such additional two year terms as may be approved.

The School District Secondary Athletic Director shall be the pro-tem chair of the Advisory Board for purpose of convening the initial meeting. At its first meeting the Advisory Board shall elect from its membership of seven a chair for the initial term. The Advisory Board shall determine its operating procedures and the length of term for its chair.

The Advisory Board shall be subject to the Ralph M. Brown Act, Public Meeting Law, Government Code Section 54950, et seq., or any successor open meeting law.

Section 13 Breach

If default shall be made by any party to this Agreement in the performance of any covenant contained herein, such default shall not excuse the defaulting party or any other party from the performance of its obligations under this Agreement and all parties hereto shall continue to be liable for the payment of all contributions and the performance of all obligations herein contained.

Section 14 Severability

Should any part, term or provision of the Agreement be

decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

Section 15 Successors; Assignment

The Agreement shall be binding upon and shall inure to the benefit of the successors of the parties. Except to the extent expressly provided herein, no party may assign any right or obligation hereunder without the written consent of the other parties to this Agreement.

Section 16 Amendment of the Agreement

The Agreement may be amended by a supplemental agreement executed and approved by the City, the School District, the College District and the Foundation.

Section 17 Form of Approvals

Whenever the approval of any party hereto is required by this Agreement, unless the context specified otherwise, such approval shall be given by resolution or other formal action duly and regularly adopted by the governing body of the party providing the approval.

Section 18 Section Headings

All section headings contained herein are for convenience of

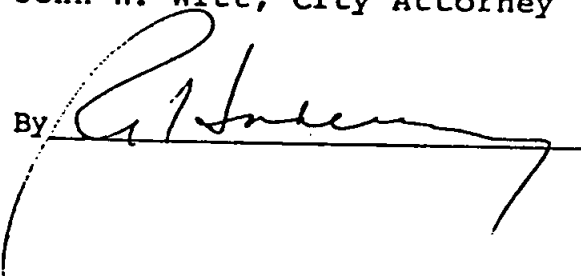
reference only and are not intended to define or limit the scope of any provision of the Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the Agreement to be executed and attested by their proper officers thereunto duly authorized and their official seals to be hereto affixed, as of the day and year first above written.

THE CITY OF SAN DIEGO

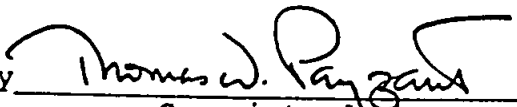
[SEAL]

Approved as to form:
John W. Witt, City Attorney

By 

By 
ASSISTANT TO THE City Manager

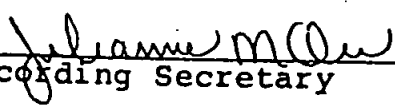
SAN DIEGO UNIFIED SCHOOL DISTRICT

By 

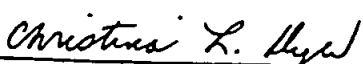
Superintendent

[SEAL]

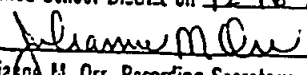
Attest:


Recording Secretary

Approved as to form:


Christina L. Dyer
General Counsel

Approved in public meeting of the
Board of Education of the San Diego
Unified School District on 12-16-86


Julianne M. Orr, Recording Secretary
Board of Education

SAN DIEGO COMMUNITY COLLEGE
DISTRICT

By Gerald P. Reed
Chancellor

[SEAL]

Attest:

Shirley L. Strong
Recording Secretary

Approved as to form:

W. Taylor 12-15-86 86-01460
San Diego County Counsel

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ATTACHMENT B

Undertaking

The National Football Foundation and Hall of Fame, San Diego Chapter, in recognition of the community benefits to be gained by proper maintenance of the track facility of the Stadium and for consideration of and to encourage the College District, School District and City to enter into the agreement to which this is appended, hereby agrees to finance a surety bond in the amount of five thousand dollars and no cents (\$5,000.00) to guarantee performance of the obligations expressed in Section 5.2 of said agreement.

Said bond shall be issued to remain in effect for five (5) year periods and shall be renewed at the end of each five (5) year period to continually remain in effect until the year 2024. The conditions of the bond shall be such that upon the demand of the City, the surety shall undertake to perform these obligations.

National Football Foundation and
Hall of Fame

Date

12/24/86

JERRY RINGER, President
San Diego Chapter

ATTACHMENT B

r balboa8

Passed and adopted by the Council of The City of San Diego on

FEB 9 1987

by the following vote:

YEAS: Wolfsheimer, Cleator, McColl, Jones, Struiksma, Gotch,
McCarty, Ballesteros.

NAYS: None.

NOT PRESENT: O'Connor

AUTHENTICATED BY:

MAUREEN O'CONNOR

Mayor of The City of San Diego, California

CHARLES G. ABDELNOUR

City Clerk of The City of San Deigo, California

By JUNE A. BLACKNELL

Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true
and correct copy of RESOLUTION NO. R- 267647 passed and
adopted by the Council of The City of San Deigo, California, on

FEB 9 1987

CHARLES G. ABDELNOUR

City Clerk of The City of San Deigo, California

(SEAL)

By

June A. Blacknell

Deputy

(R-87-1485)

RESOLUTION NUMBER R- 267647

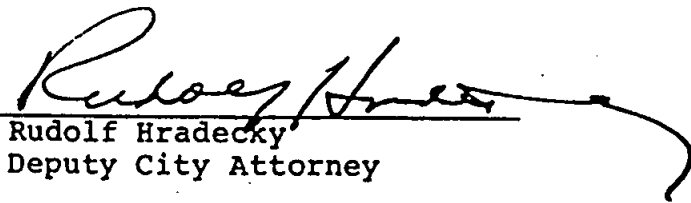
ADOPTED ON FEB 9 1987

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, an agreement with the San Diego Unified School District and the San Diego Community College District, for the use and maintenance of the Balboa Stadium, in accordance with the terms of the Agreement on file in the office of the City Clerk as Document No. RR- 267647.

BE IT FURTHER RESOLVED, that the City Auditor and Comptroller is hereby authorized to expend the sum of \$77,778.00, solely and exclusively as the City's share of the matching funds for the aforementioned project in accordance with the terms of the agreement hereby authorized.

APPROVED: John W. Witt, City Attorney

By


Rudolf Hradecky
Deputy City Attorney

RH:mrh
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