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PARK DIVISION

AGREEMENT FOR
CONSTRUCTION OF IMPROVEMENTS AND LEASE OF
RECREATION FACILITIES LOCATED ON CITY-OWNED PROPERTY AT
MORLEY FIELD, BALBOA PARK

FILED
OCT 20 1976
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

THIS AGREEMENT for construction of improvements and lease of City-owned property at Morley Field is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation, (hereinafter referred to as CITY) and the SAN DIEGO COMMUNITY COLLEGE DISTRICT OF SAN DIEGO COUNTY, CALIFORNIA, a political subdivision of the State of California, (hereinafter referred to as DISTRICT):

W I T N E S S E T H:

WHEREAS, CITY has recreational facilities on City-owned land at Morley Field, Jacaranda Drive, San Diego, California; and

WHEREAS, DISTRICT is the owner and operator of San Diego City College which is located in the immediate proximity to Morley Field; and

WHEREAS, the current facilities for college baseball at San Diego City College are inadequate; and

WHEREAS, it is to the mutual benefit of CITY and DISTRICT to contribute jointly to the establishment of recreational facilities which can serve both the needs of DISTRICT and the general public; and

WHEREAS, the estimated average life of all improvements to be constructed on the leased property is no greater than the term of this lease; and

WHEREAS, DISTRICT's Board of Trustees, at its regular public meeting held on January 28, 1976, provided for the funding of projects under the Community Services Special Purpose Tax for Fiscal Years 1974-75 and 1975-76;

NOW, THEREFORE, CITY and DISTRICT do mutually agree as follows:

I. TERM

CITY hereby grants to DISTRICT a twenty-five (25) year leasehold interest in the property hereinafter specifically described, commencing on the date of execution of this Agreement by CITY.

11. PREMISES

The real property covered by this Agreement consists of an approximately five (5) acre parcel of land, a portion of Pueblo Lot #1129, in the Morley Field Area of Balboa Park, San Diego, more particularly described in Exhibit "A," which is attached hereto, and by this reference incorporated together with the right of access to said parcel.

III. CONSIDERATION

In consideration for the leasehold interest herein granted by CITY to DISTRICT, DISTRICT agrees to improve facility with a one-time funding in the amount of approximately One Hundred Eleven Thousand and No/100 Dollars (\$111,000.00). Improvements will include extending the outfield fences to approximately 335 feet, installing a new sprinkling system, dugouts, constructing a storage area and scorers' booth (a portion of the storage area is to be used exclusively by the CITY in conjunction with its programs), grade and fill the outfield area as required, and reconstruct and elevate the height of the fences around the complex as required for safety purposes.

IV. USE OF PROPERTY

CITY agrees to assume responsibility for operation and maintenance of facilities as is presently provided. Any additional maintenance beyond the level that is currently provided by CITY will be at DISTRICT's expense. In the event such recreational facilities are not substantially constructed within three years of the date of this Agreement, then this Agreement may be terminated by DISTRICT or CITY. In the event DISTRICT terminates, DISTRICT is not liable for any damages or expenses incurred by CITY. In the event CITY terminates, CITY is not liable for any damages or expenses incurred by DISTRICT.

DISTRICT shall have exclusive use of the facility in connection with the San Diego City College baseball program as stated herewith. Schedule

of use shall provide that the facility be available to the DISTRICT from January 2 through May 20 of each year in which this Agreement remains in force, between the hours of 12:00 noon and 5:30 p.m., Monday through Friday. Additionally, the facility shall be reserved for DISTRICT use on Saturdays, from January 2 through May 20, between the hours of 9:00 a.m. and 5:30 p.m. for scheduled competitive events only.

DISTRICT use of the facility beyond the dates and times specified shall be requested from CITY on a case-by-case basis a minimum of two weeks in advance of date of use. CITY shall provide priority consideration to DISTRICT requests for facility use to accommodate intercollegiate tournament games of San Diego City College.

The CITY and DISTRICT will meet annually prior to January 1 of each year to review the joint use of the facility. As a result of this review, the use schedule as identified in this Agreement may be revised upon the mutual consent of both CITY and DISTRICT. Said changes when made will then become a part of this Agreement.

V. CITY RECREATION PROGRAM

CITY may use aforesaid recreational facilities in connection with its public recreational program at all such times as are not reserved for exclusive DISTRICT use. CITY agrees to coordinate community use of said facilities.

VI. MAINTENANCE AND UTILITIES

DISTRICT will not be required to pay for routine maintenance, depreciation, reserves for replacement, water, electricity, and sewer charges, and other such expenses. Any additional utilities required beyond what is currently provided by CITY will be at DISTRICT's expense.

VII. IMPROVEMENTS

All improvements installed upon said premises by DISTRICT shall remain the property of the CITY upon termination of this Agreement. CITY, prior to construction, shall review and approve the plans and

specifications for the improvements described herein.

VIII. ENTRY AND INSPECTION

CITY reserves, and shall always have the right, to enter said premises for the purpose of viewing and ascertaining the condition thereof.

IX. ASSIGNMENT

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.

X. COMPLIANCE WITH LAW

The CITY, at its sole cost and expense, and the DISTRICT, at its sole cost and expense, shall comply and secure compliance, where applicable, with all requirements of all Municipal, County, State, and Federal authorities now in force, or which may hereafter be in force concerning the use and safety of the leased premises, and each shall make any repairs, changes, or modifications in, on, or to the leased premises required by any of the foregoing solely because of its use of the premises for the purposes herein stated, or as a result of alterations made by it to the leased premises, or as a result of its negligence or wrongful conduct or of the negligence or wrongful conduct of its agents, employees, or invitees. CITY shall pay before delinquency all taxes, assessments, and fees assessed or levied upon CITY or the said premises by reason of any buildings, structures, machines, appliances, or other improvements or property of any nature erected, installed, or maintained by CITY or by reason of the activities of CITY upon or in connection with the leased premises.

XI. ASSIGNS

Time is of the essence of each and all of the terms and provisions

of this Agreement, and this Agreement shall inure to the benefit of and be binding upon the parties hereto and any successor of CITY as fully and to the same extent as though specifically mentioned.

XII. WAIVER

The waiver by DISTRICT or CITY 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 conditions of this Agreement.

XIII. ADMINISTRATION OF AGREEMENT -- NOTICES

Control and administration of this Agreement is under the jurisdiction of the Assistant Chancellor, Management Services, as to DISTRICT's interest herein, and any communication relative to the terms or conditions or any changes thereto or any notice or notices provided for by this Agreement or by law required to be given or served upon DISTRICT may be given or served by registered letter deposited in the United States mails, postage prepaid, and addressed to the San Diego Community College District at 3375 Camino del Rio South, San Diego, California, 92108, Attention: Assistant Chancellor, Management Services, or may be personally served upon DISTRICT or any person hereafter authorized by DISTRICT to receive such notice. Any notice or notices provided for by this Agreement or by law to be given or served upon CITY may be given or served by depositing in the United States mails, postage prepaid, a registered letter addressed to the City Manager, City Administration Building, Charles C. Dail Concourse, San Diego, California, 92101. Any notice or notices given or served as provided herein shall be effectual and binding for all purposes, upon the principals of the parties so served upon personal service or forty-eight

hours after mailing in the manner required herein.

XIV. REMEDIES IN THE EVENT OF DEFAULT BY CITY OR DISTRICT

In the event that CITY shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by CITY and shall fail to cure said default within thirty (30) days following the service on CITY of a written notice from DISTRICT specifying the default complained of, then DISTRICT may, at its option, without further notice or demand upon CITY or upon any person claiming through CITY, immediately terminate this Agreement and all rights of CITY and of all persons claiming rights through CITY.

In the event that DISTRICT shall default in the performance or fulfillment of any covenant or condition herein required to be performed or fulfilled by DISTRICT and shall fail to cure said default within thirty (30) days following the service on DISTRICT of a written notice from CITY specifying the default complained of, then CITY may, at its option, without further notice or demand upon DISTRICT or upon any person claiming through DISTRICT, immediately terminate this Agreement and all rights of DISTRICT and of all persons claiming rights through DISTRICT.

XV. INDEMNITY

DISTRICT agrees to indemnify and save CITY, its agents and employees, harmless from any and all liability, claims, damages, or injuries to or death of any person caused by the independent acts of DISTRICT, its agents, or employees in connection with the performance of this Agreement and the use of the property described herein. CITY agrees to indemnify and save DISTRICT, its agents and employees, harmless from any and all liability, claims, damages, or injuries to or death of any person caused by the independent acts of CITY, its agents,

and employees in connection with the performance of this Agreement and the use of property described herein. In addition, the DISTRICT will, during the term of this Agreement, maintain a policy of public liability in the amount of Five Hundred Thousand Dollars (\$500,000.00), single limits coverage, naming the CITY as an additional insured.

XVI. LEGAL PROCEEDINGS

The parties agree that the law of the State of California shall be used in interpreting this Agreement and will govern all disputes under this Agreement and will determine the rights thereunder. At the option of either party, venue of any action involving this Agreement may be in, or changed to the County of San Diego or the Southern District of California. Personal service either within or without the State of California shall be sufficient to give personal jurisdiction to any court in which an action is filed for litigation of rights under this Agreement.

XVII. VERBAL AGREEMENTS

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

XVIII. SEVERANCE

If any part of the Agreement contained herein 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.

XIX. AMENDMENT OR RENEWAL

This Agreement may be amended or renewed in writing on the mutual agreement of the City Manager, City of San Diego, and the Chancellor, Community College District.

XX. NONDISCRIMINATION

DISTRICT and all others who from time to time may use the property and recreational facilities described hereinabove with the permission and on the terms and conditions specified by CITY, shall not discriminate in any manner against any person or persons on account of race, color, sex, creed, or national origin, including but not limited to the providing of goods, services, facilities, privileges, advantages, and the holding and obtaining of employment.

IN WITNESS WHEREOF, this Agreement is executed by DISTRICT, acting by and through its Chancellor, and by CITY, acting by and through its City Manager, pursuant to Resolution No. 216941, authorizing such execution.

THE CITY OF SAN DIEGO

By [Signature]
Assistant to the City Manager

Date OCT 6 1976

SAN DIEGO COMMUNITY COLLEGE DISTRICT
OF SAN DIEGO COUNTY, CALIFORNIA

By [Signature]
Chancellor

Date September 3, 1976

APPROVED AS TO FORM, JOHN WITT,
CITY ATTORNEY,

By [Signature]
Deputy City Attorney

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNCIL

By [Signature]
DEPUTY