MEMORANDUM OF UNDERSTANDING
BETWEEN
THE FAIRVIEW DEVELOPMENTAL CENTER
AND THE CITY OF COSTA MESA
FOR USE OF FACILITIES

SUBJECT TO DEPARTMENT OF GENERAL SERVICES APPROVAL, THIS MEMORANDUM OF UNDERSTANDING FOR JOINT USE HAS BEEN PRODUCED BY AND FOR THE FAIRVIEW DEVELOPMENTAL CENTER AND THE CITY OF COSTA MESA, AS A COLLABORATIVE EFFORT TO CREATE OPPORTUNITIES FOR THE USE OF RECREATIONAL FIELDS AT FAIRVIEW DEVELOPMENTAL CENTER CITY OF COSTA MESA PERMITTED USERS AND DEPARTMENT OF DEVELOPMENTAL SERVICES CONSUMERS RESIDING AT FAIRVIEW DEVELOPMENTAL CENTER.

THIS Memorandum of Understanding ("MOU"), made an entered into in the City of Costa Mesa, California, is dated as of April 4, 2007, by and between the Fairview Developmental Center ("FDC"), an entity duly organized and existing under the laws of the State of California and the City of Costa Mesa ("CITY"), a municipal corporation and public body.

Nothing in this MOU shall be construed to intend that the subject property ("FACILITY" as defined below) is surplus to the needs of FDC or the State as defined in California Government Code Section 11011.

RECITALS

WHEREAS, FDC is in legal control and possession of real property and improvements thereon in the City of Costa Mesa ("FACILITY"), which is capable of being used jointly by CITY and FDC Consumers for recreational purposes; and

WHEREAS, FDC is required to provide outdoor recreational facilities and opportunities to consumers served by FDC and FACILITY is a vital and integral part of the care, treatment, and habilitation services provided by FDC;

WHEREAS, FDC use of FACILITY is generally during daylight business hours with limited need for evening and nighttime use and CITY needs are generally for non business hours evening and nighttime use;

WHEREAS, FDC has limited funds for maintaining and improving FACILITY and CITY has limited land resources for conducting CITY sponsored recreational programs;

WHEREAS, the CITY and FDC desire to use and improve FACILITY for community recreational purposes and enhance opportunities for FDC consumer use and programs;

NOW, THEREFORE, for and in consideration of the collaborative agreements herein contained, the parties hereto agree as follows:

1. TERM AND COMMENCEMENT

This MOU will commence as of the date in which the corresponding lease document (L-2313) is executed in accordance with State policy and will continue for a period not to exceed five (5) years (hereinafter called the INITIAL term), unless sooner terminated as provided for herein.

During this initial term, CITY proposes to undertake certain improvements as delineated in Section 7B (also see Exhibit B). Further, during the initial term of this MOU, parties shall jointly endeavor to develop a FACILITY Masterplan. Improvements identified for the FACILITY Masterplan are not mandated as a result of this MOU and are dependent upon funding and approval from all vested interests (i.e., FDC and CITY). FDC and CITY agree to meet and confer upon the schedule of improvements and length of future terms. If agreement on FACILITY Masterplan is not achieved during the initial term, this MOU may be terminated in accordance with the terms and conditions as specified in the subject lease (L-2313) or as provided for hereinafter in Section 12 prior to the expiration of the MOU, or it may be extended by mutual agreement of the parties as allowed by State guidelines.

2. FACILITIES COVERED

The term "FACILITY" will be used for the purposes of this MOU to mean all property designated in Exhibit A (Site Map).

3. HOURS OF OPERATION OF FACILITY

CITY will be entitled to use FACILITY for CITY-related youth (15 years old and under) recreational activities, in accordance with the terms of this MOU, Monday through Friday, 4:00 to 8:00 p.m. and Saturday from 9:00 a.m. to 5:00 p.m. CITY-related activities must cease at 8:00 p.m. weekdays and at 5:00 p.m. on Saturdays, but participants, coaches, spectators, and referees shall have 30 additional minutes to clear FDC property.

FDC retains the right to schedule full or partial use of the FACILITY during CITY days/hours up to four (4) events every calendar year (see section 4A for scheduling parameters and minimum time frame of notification) provided that the total number of event days does not exceed eight (8) days. FDC shall have the right to unlimited use of FACILITY during CITY days/hours for non-conflicting compatible use by its consumers concurrent with CITY scheduled activities.

4. SCHEDULING USE OF FACILITY

A. FDC and CITY will develop a master schedule for joint use of FACILITY. FDC and CITY will schedule bi-annual meetings unless alternate meeting times are mutually agreed upon. At these meetings both parties will review and evaluate the status and condition of jointly used FACILITY, address outstanding issues related to operational impacts on FDC, and will modify or confirm the upcoming six (6) months' schedule.

B. FDC will have the opportunity to schedule activities after 4:00 p.m. and on weekends one (1) month in advance of CITY-permitted users. Once the advanced scheduling period has elapsed, FDC priority will revert to the same as other CITY Group One User Organizations. CITY shall provide FDC with CITY schedule planning calendar at least sixty (60) days in advance of start of FDC scheduling window.

C. The CITY will be responsible for scheduling use of FACILITY in accordance with the terms of this MOU for community recreational purposes during hours of CITY use. FACILITY will be used for youth programs only. For the purposes of this MOU, youth shall be defined as age 15 and under. CITY may schedule concurrent use of up to two (2) fields at any given time and permit up to two (2) teams per field.

D. CITY shall only permit use of FACILITY for practice sessions. Official league game and tournament play is prohibited, unless otherwise agreed by FDC and City. FACILITY will be permitted to:

1. CITY sponsored youth programs or activities.
2. CITY co-sponsored Group One User Organizations (90% resident youth programs or activities).
3. CITY designated Group Three User Organizations (51% or more resident youth programs or activities).

E. CITY shall provide community user groups with permits authorizing use of FACILITY and setting out rules and conditions of use as provided in this agreement and the rules that govern use by the CITY. When rules appear to be in conflict, the more stringent entity's rules shall apply.

F. CITY and FDC agree to schedule FACILITY for maintenance "rest and renovation" periods for turf regeneration during which time no use shall be scheduled by either party.

G. FDC reserves the right to request staggered scheduling of consecutive users to mitigate parking, traffic, and associated operational impacts on FDC.

5. <u>OBLIGATIONS OF CITY</u>

During the term of this MOU, CITY hereby covenants and agrees to the following:

A. Upon the expiration of the initial term of this MOU, or upon the sooner termination thereof, and when surrendered, CITY will leave FACILITY in as good order and condition as FACILITY was after CITY's initial improvements and renovations.

B. CITY will maintain, or cause to be maintained, turf as identified in Exhibit A (Site Map) and any improvements made upon FACILITY by CITY as listed in Exhibit B. This paragraph shall not be deemed to require installation of any of the improvements listed on Exhibit B.

1. CITY shall maintain and/or improve sprinklers and irrigation controller for the life of this agreement. Repairs to irrigation system may require access during non-use hours. FDC shall allow CITY access for irrigation repairs. All irrigation systems beyond the valve assembly as shown in Exhibit A shall be the responsibility of CITY.
2. Maintenance schedule and access shall be jointly agreed to by FDC and CITY. FDC shall allow a minimum of 4 consecutive hours per week during the 7:00 a.m. to 5:00 p.m. Monday through Friday time window to perform routine maintenance. CITY will contact FDC as need arises to approve extraordinary or other infrequent maintenance.
3. CITY shall mow, or cause to be mowed, and provide rodent control to the turf areas as identified in Exhibit A (Site Map), weekly, or as needed during slow growth periods. Mowing frequency shall be mutually determined by FDC and CITY.

C. All utilities associated with CITY use and permanent improvements installed as a result of this MOU shall be paid by CITY. CITY shall be responsible for the incremental increase in water usage needed to maintain FACILITY turf in acceptable condition for permitted uses. Exhibit C details the mechanism by which CITY and FDC utility responsibilities will be determined.

D. CITY shall provide and maintain, or cause to be maintained, portable temporary rest room facilities for CITY-permitted FACILITY users. Restrooms will be located on City property as indicated on Exhibit A (Site Map) or at a mutually agreed upon location on an as needed basis. Access to temporary rest room facilities shall be provided at CITY cost via a gate installed in the fencing surrounding the FACILITY. Restrooms shall be locked when not in use and will be fully screened to the satisfaction of both parties.

E. CITY and/or CITY-permitted user groups shall be allowed use of portable storage containers located on City property as indicated on Exhibit A (Site Map) or at a mutually agreed upon location on an as needed basis. CITY shall install an access gate to allow direct access from FACILITY to adjacent CITY property.

F. CITY will allow no vehicles to enter upon turf area of FACILITY except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services.

G. CITY shall appoint an employee with whom any authorized agent of FDC may confer regarding the terms of this MOU.

H. CITY shall enforce all FDC rules, regulations, and policies during use of FACILITY by CITY-permitted community users. CITY will inform all users of FDC rules, etc., and will also make known to CITY-permitted users that compliance with all applicable government codes is additionally required.

I. CITY shall provide for adult personnel necessary for the direction or supervision of activities sponsored or permitted by the CITY during use of FACILITY.

J. CITY will hold user groups responsible for picking up trash and debris at FACILITY and for depositing it into the proper trash bins. CITY may provide one (1) three (3) cubic yard trash bin for CITY-permitted FACILITY users to be located at a mutually agreed upon location on an as needed basis. If bin is located in a stand-alone location, CITY shall provide screening or enclosure as required by FDC procedure.

K. CITY may provide portable, temporary lights for use by CITY-permitted FACILITY users, until such time as permanent lights are installed. Use of portable lights will be allowed until 8:30 p.m. CITY shall provide secure enclosure(s) for storage of temporary lights during periods of non-use ("Non-use periods" shall be defined as periods of two weeks or longer). Enclosures shall be located at a mutually agreed upon location at or near FACILITY on an as needed basis. FDC and CITY shall meet and confer regarding placement of temporary lights. CITY shall need access to field to place and remove temporary lights for re-fueling. FDC shall have the right to approve the type, make, and model of temporary lights prior to installation.

L. CITY police forces shall be required to respond to incidents and/or requests for services involving FACILITY during periods of CITY permitted use. However, FDC reserves the right to use FDC police forces and/or assume incident command if the incident primarily concerns FDC consumers, employees or guests at FDC discretion. FDC police will confer with City police in this event. Control of any criminal act involving CITY permitted users at the site will be the purview of CITY police, although FDC police may be first responders.

M. CITY shall only use maintenance products and materials on the FACILITY that have been reviewed and approved by FDC.

6. <u>OBLIGATIONS OF FDC</u>

During the term of this MOU, FDC hereby covenants and agrees to the following:

A. FDC shall appoint an employee with whom CITY, or any other authorized agent of the CITY, may confer regarding the terms of this MOU.

B. FDC shall provide at least thirty (30) days' notice to CITY prior to making any improvements or placing any equipment, containers or other objects that may temporarily or permanently reduce area listed in Exhibit A (Site Map). In the event of a declared FDC, local, regional, state or federal emergency, FDC shall be granted immediate access to FACILITY and all activities permitted by the CITY will be voided until such time as the emergency has ended.

C. FDC reserves the right to cancel previously approved and permitted CITY use of FACILITY. FDC will provide CITY with as much notice as is practical when canceling previously approved CITY use of FACILITY. Cancellations shall only be made for unforeseeable events or activities.

D. FDC will have the right to make emergency repairs to FACILITY and to any improvements made by CITY. In the event that FDC has to make emergency repairs to any improvement installed by CITY, FDC shall notify CITY within 24 hours of the time when repairs were made and apprise CITY of what work was performed and current condition of item repaired.

E. FDC shall maintain any improvements installed by FDC or by CITY that are put in for the exclusive use of FDC consumers.

F. FDC shall pay that portion of the utility expenses attributable to its existing fields and improvements, as set forth in the schedule shown on Exhibit "C" directly to the applicable utility provider.

G. FDC shall, at its own expense, arrange for trash disposal for the contents of City provided trash bins as part of its regularly scheduled trash collection. The parties shall meet and confer regarding any issues arising from excess trash accumulation.

H. FDC shall identify and make available nearby on-site parking sufficient for use of the premises by the CITY, consisting of not less than forty (40) spaces.

7. <u>IMPROVEMENTS</u>

A. CITY will obtain prior written consent of FDC to meke any alterations, additions, or improvements to FACILITY. CITY understands that any such alterations, additions, or improvements must comply with all state and local standards.

B. Initial improvements to be made prior to onset of CITY-permitted use of FACILITY shall include the following:

1. Pest control, grading, top dressing, verticutting, sprinkler maintenance and irrigation controller upgrade and/or other measures as needed to meet playability standards of CITY utility fields. Scheduling of access to FACILITY by CITY and its agents, as well as review of procedures and methodology prior to onset of any work, shall be by mutual consent of both parties. FDC agrees to provide access to site as needed by CITY or its agents to perform work, which may include the use of heavy equipment. FDC further agrees to schedule no FDC use of FACILITY during rehabilitation period of three (3) months following completion of initial improvements.

2. CITY will remove or cause to be removed unutilized/abandoned equipment located on the property adjacent to the FDC fields and provide FDC approved fencing or screening suitable to provide a visual barrier between the FDC fields and the golf course storage site (see Exhibit A, Site Map).

3. CITY will provide access to FDC fields from golf course for heavy equipment and vehicles such as mowers, trash trucks, grading equipment, etc.

C. CITY will remove unutilized portions of blacktop surface located as indicated in Exhibit A (Site Map) within six (6) months after date of approval of FACILITY Masterplan.

D. CITY may undertake additional improvements by mutual consent of both parties.

E. CITY shall maintain improvements, excepting those installed for the exclusive use of FDC consumers, at its sole cost, during the term of this Agreement.

8. <u>OTHER TERMS AND CONDITIONS</u>

A. All CITY-permitted FACILITY users shall be required to adhere to all FDC policies, procedures, rules and regulations. FDC reserves the right to ban any individual, team, group or league from use of FACILTY for violation of FDC rules and regulations at the sole discretion of FDC. FACILITY users who fail to comply with FDC rules and regulations may be asked to immediately leave the property. FDC will not be responsible for recompense for costs or hours lost due to expulsion.

B. CITY agrees to monitor site sufficient to control permitted activities with appropriate adult staff, which may include, but not be limited to Field Ambassadors, City Park Rangers, City Police, and Recreation Division personnel. City and FDC shall meet and confer to ensure monitoring of permitted activities at site is sufficient. FDC will be

provided emergency call numbers for all relevant personnel. FDC shall reserve the right to use its own police force and/or personnel to enforce FDC rules and regulations and State codes, laws, etc. as these pertain to their clients, employees and guests and/or non-criminal infractions.

C. All CITY-permitted FACILITY users shall respect the privacy and sensitivity of FDC consumers, visitors and staff. Users are to comply with all requests of FDC administrators and managers regarding health and safety issues and impacts on facility operations.

D. CITY-permitted FACILITY users shall be made aware that the site is on California State Developmental Center property under the jurisdiction and control of the State of California and that FDC has consumers who occupy housing in the same general area.

E. CITY-permitted FACILITY users shall cooperate with FDC authorities, and shall not interfere or cause interference with operations of FDC.

F. Clear access for emergency vehicles shall be maintained at all times.

G. Vehicular and pedestrian access to site shall be as directed by FDC.

H. FACILITY shall be available to FDC and State personnel and inspectors at all times. CITY-permitted FACILITY users shall anticipate that FDC personnel will visit the FACILITY on a frequent, irregular basis to observe activities. CITY-permitted FACILITY users will keep a copy of their CITY-issued permit available for inspection at all times of FACILITY use.

I. Amplified sound producing devices are prohibited at all times.

J. CITY and CITY-permitted FACILITY users shall report to FDC immediately upon discovery the loss of any tools, equipment or materials stored or used on FACILITY. FDC will not be responsible for losses due to theft or otherwise. However, this paragraph shall not be construed to obligate FDC to assume responsibility for investigations of thefts reported to FDC.

K. Material Safety Data Sheets (MSDS) for all materials CITY uses on site must be available on-site for all required materials and supplies.

L. No firearms, narcotics, drugs, intoxicants, alcoholic beverages, knives or similar sharp objects, weapons of any kind, or other prohibited items are allowed on FACILITY or FDC property at any time.

M. All CITY-permitted FACILITY users who drive a vehicle onto FDC property shall remove ignition keys from their vehicle when they are out of the vehicle. Unattended vehicles are to be locked at all times when on FDC property. All vehicles

must park in designated parking areas (See Exhibit A, Site Map). Only "head in" parking is allowed. Additionally, vehicles dropping off and/or picking up FACILITY users shall do so utilizing available parking spaces. The dropping and/or retrieving of FACILITY users from the street, curb, or general central parking lot area is prohibited.

N. If CITY places locks on any improvements to FACILITY, FDC shall also have the right to install a lock ("daisy chain") in order for both entities to have access to said improvement, except for any facilities located on CITY property, as well as CITY storage facilities and portable lights (except when in use on FDC FACILITY).

O. City employees and field users shall not have access to or use of any facilities on the FDC site except for the recreational areas and related parking lot(s) covered by this MOU.

P. Smoking is prohibited on FACILITY and/or FDC grounds.

Q. All City rules and regulations with respect to recreational field use and allocation shall apply to use of FACILITY where they do not directly contradict the terms of this MOU. Where redundant references to rules, regulations, or terms are present, the more stringent shall apply.

R. No pets (except Guide Animals) are allowed on FDC grounds.

S. Barbeques or other heat producing devices are prohibited.

T. The taking of photographic or video-graphic pictures is prohibited without the written approval of FDC.

U. FACILITY users shall observe all FDC posted rules and regulations.

V. No foreign objects of any kind are to be discarded on FDC property.

9. <u>LIABILITIES AND INDEMNIFICATION</u>

A. CITY is financially responsible for damages to the real or personal property of FDC caused by CITY or CITY-permitted FACILITY users' use of FACILITY. Nothing herein shall be deemed to preclude CITY from seeking or obtaining reimbursement from any responsible party.

B. CITY will indemnify, defend, and hold harmless FDC, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by CITY at FACILITY, except those which arise out of the sole negligence of FDC. CITY shall not be liable for damages arising out of or caused by an alteration or an

attachment not made or installed by the CITY, or for damage to alterations or attachments that may result from the normal operation and maintenance of the improvements provided by the CITY during the term of the MOU

C. FDC will indemnify, defend, and hold harmless CITY, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with activities or programs sponsored by FDC at FACILITY, except those which arise out of the sole negligence of CITY.

D. When performing work on property in the care, custody or control of the State, CITY shall either be lawfully self-insured or shall maintain commercial general liability insurance, workers' compensation insurance and any other appropriate insurance the parties agree upon. Upon request, the CITY may be required to have the State shown as an "additional insured" on selected policies of insurance which it may have.

E. CITY agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, or any person, firm, or corporation furnishing or supplying work, services, materials or supplies in connection with the construction of the improvements to be built on FACILITY by CITY. CITY shall not permit any lien to be placed on the property of the State in connection with any such work of improvement.

10. ASSIGNMENTS AND SUBLEASE

A. CITY may enter into agreements of use by permit with groups for recreational purposes. CITY will be the sole permitting agent for FDC FACILITY during CITY use hours. Such agreements for use are subject to and deemed to incorporate by reference all provisions of this MOU.

B. CITY may charge a fair and reasonable fee or accept in-kind services from CITY-permitted FACILITY users to offset the costs associated with the use of FACILITY.

C. Neither CITY nor FDC may assign or transfer this MOU, or any part thereof, without the written consent of the other party.

11. NOTICES

A. All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other will be in writing and will be deemed given and served upon the other party, if delivered

personally or three (3) days after depositing in the United States mail, postage prepaid, addressed to:

If to CITY:	If to FDC:
City of Costa Mesa 77 Fair Drive Post Office Box 1200 Costa Mesa, California 92628-1200 Attention: Recreation Division Manager	Fairview Developmental Center Costa Mesa, California 92626 Attention: Executive Director

12. TERMINATION

This MOU may be terminated, with cause, at any time during the term hereof by either party to this MOU upon six (6) months' written notice to the other party. No such termination notice may be given until a written notice has been given to the other party specifying the asserted cause for termination and giving that party at least thirty (30) days to cure the condition or conduct which is alleged to be cause for termination.

13. SEVERABILITY AND APPLICABLE LAW

Whenever possible, each provision of this MOU will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this AGREEMENT will be invalid under the applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this MOU. This MOU has been made and entered into in the State of California and the laws of said State will govern the validity and interpretation hereof and the performance hereunder by the parties herein.

14. AGREEMENT

This MOU and the parties' lease sets forth the entire agreement between the parties with respect to the facilities listed in Exhibit A (Site Map). Both parties must agree to any modifications in the form of a written amendment.

15. WAIVER

The failure of CITY or FDC to insist upon strict performance of any of the terms, conditions, or covenants in this MOU will not be deemed a waiver of any right or remedy which CITY or FDC may have and will not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions, or covenants herein contained.

16. BINDING EFFECT

This MOU and all the terms, covenants, conditions, and agreements herein contained will be binding upon and inure to the benefit of the parties hereto and their respective successors.

IN WITNESS WHEREOF, this MOU has been duly approved by both FDC and CITY.

FDC:

Fairview Developmental Center

By: Karen Larson
(Insert typed name)
Manager

Dated: April 4, 2007

CITY:

City of Costa Mesa

By: [illegible]
(Insert typed name)
Mayor

Dated: 5-26-06

Exhibit A Site Map
Exhibit B Site Improvements to be done by CITY in initial term
Exhibit C Utility Costs

EXHIBIT A
SITE MAP
2500 BLOCK, MERRIMAC WAY
FAIRVIEW DEVELOPMENTAL CENTER

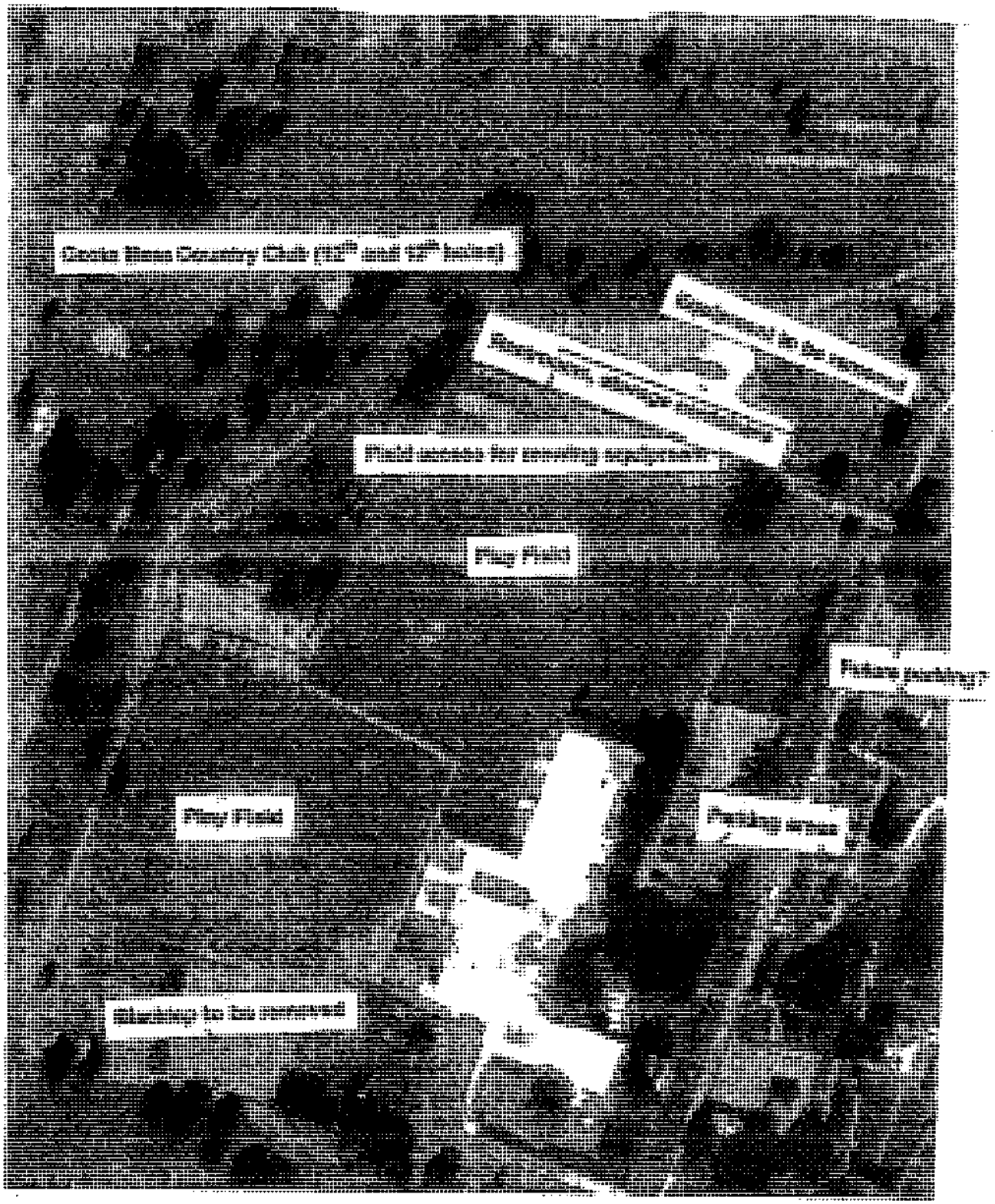

EXHIBIT B PROPOSED SITE IMPROVEMENTS BY CITY

Initial Term Site Improvements:
Pest control
Grading
Top dressing
Verticutting
Sprinkler maintenance
Irrigation controller upgrade
Rodent control
Trash bin enclosure (if needed)
Construction Fencing (near FDC Building to provide an area for FDC consumers during periods of field/FACILITY initial term improvements)

Other Non-permanent on-going initial term FACILITY Improvements:
Lockable portable rest rooms (located on City property) with screening/enclosure
3 cubic yard trash bin (if needed)

On-going FACILITY maintenance:
Mowing
Aerating
Sprinkler maintenance
Verticutting
Fertilization
Litter Control (for days of use only)
Rodent control

Other Permanent Improvements to be done by CITY after adoption of FACILITY Masterplan as funding permits:
Removal of unused blacktop area (within 6 months after approval of Masterplan)
Removal of fencing around unused black top area
Installation of beach volleyball court
Installation of bocce ball courts (2)
Additional Parking Facilities
Permanent lighting
Picnic area improvements
ADA to Code for area
Monument signage naming the field as the FDC Special Olympics Training Facility
Other items as agreed to by FDC and CITY in the Master Plan

Location of Leased Premises
Fairview Developmental Center 2501 Harbor Blvd. Costa Mesa, California 92626 ORANGE COUNTY
Agency Department of Developmental Services Real Property # 790

GROUND LEASE for Athletic Field

Lease No. L-2313

Lessee City of Costa Mesa

THIS LEASE, dated for reference purposes only, March 29, 2007, is made by and between the State of California, acting by and through its Director of the Department of General Services, with the consent of the Department of Developmental Services, hereinafter called STATE, and the City of Costa Mesa, a California municipal corporation and public body, hereinafter called CITY.

RECITALS:

WHEREAS, the State has under its control and jurisdiction certain property known as Fairview Developmental Center (the "STATE"), 2501 Harbor Boulevard, Costa Mesa, California 92626, situated in the County of Orange; and

WHEREAS, pursuant to Government Code Section 14670(a), the Director of the Department of General Services (the "DGS"), with the consent of the Department of Developmental Services (the "DDS"), is authorized to let STATE-owned real property for a period not to exceed five years if the Director deems such letting is in the best interest of the STATE; and

WHEREAS, STATE is required by law to provide outdoor recreational facilities and opportunities to consumers served by STATE;

WHEREAS, STATE has limited funds for maintaining and improving outdoor facilities that are vital and integral to the care, treatment, and habilitation services provided by STATE;

WHEREAS, the CITY provides playing fields and athletic facilities to the public through its recreation programs and local organizations, has limited land resources for conducting CITY sponsored recreational programs, is subject to increasing demand, and accordingly seeks cooperative joint-use agreements with public land owners for shared-use athletic facilities;

WHEREAS, STATE use of the Premises is usually during daylight business hours with limited need for evening and nighttime use, and CITY recreation programs needs are usually for weekend, evening and nighttime use;

WHEREAS, the STATE's policy is to make available for Lease property under its control, when it is for the benefit of the public, and same is consistent with the State of California's program needs; and

WHEREAS, CITY and STATE desire to jointly use and improve the STATE playing fields for STATE consumers and community recreation and it is in the best interest of the STATE that a Lease to develop the campus of STATE be consummated between STATE and CITY on the terms and conditions herein contained;

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, STATE and CITY hereby agree as follows:

WITNESSETH:

NOW THEREFORE, the parties agree to the provisions that follow and are incorporated herein as:

Section 1: Site Specific Provisions
Section 2: Ground Lease Specific Provisions
Section 3: Standard Provisions

SECTION 1 – SITE SPECIFIC PROVISIONS

PROPERTY DESCRIPTION

1.STATE does hereby lease to CITY, and CITY hereby hires from STATE an area of land within the boundaries of the Fairview Developmental Center, situated in the City of Costa Mesa, County of Orange, State of California, 92626, as shown on Exhibit "A" attached hereto. CITY acknowledges that access to the playing field is through STATE'S private property, and thus, CITY has limited access by road to the above described playing field and parking areas accompanying the playing field. CITY'S area consists of the following components:

(a) Playing field – An area of approximately five (5) acres of land located adjacent to North Shelley Circle within the Fairview Developmental Center site.
(b) Parking – At least 40 "head-in" parking spaces located within proximity to the Playing Field.
(c) Access - Non-exclusive right of ingress and egress for approximately one (1) mile from the terminus of the public road to the Playing Field site including the above described areas.

Together the Playing Field, the Access and the Parking are hereinafter called the "Premises" as outlined in Exhibit "A" consisting of 3 pages, attached hereto and incorporated herein. CITY has visited and inspected said Premises, and it is agreed that the land area stated herein and on the attached Exhibit "A" is only approximate and the STATE does not hereby warrant or guarantee the actual square footage included hereunder.

JOINT USE

2. (a) The Premises shall be used during the term hereof jointly by CITY and STATE Consumers for recreational purposes.
(b) CITY shall have a non-exclusive right of ingress and egress to the Premises from the terminus of the authorized access road to the above described leased areas during CITY'S periods of use authorized by STATE.

TERM

3. The term of this Lease shall be, five (5) years, commencing on April 1, 2007, and terminating on March 31, 2012, with such rights of termination as may be hereinafter expressly set forth.

BENEFIT IN LIEU OF RENT

4. STATE agrees to waive the Rent for each period or part thereof that CITY provides the In-lieu Rent Benefit. In the event that any of the In- lieu benefit to the STATE is discontinued for any reason, STATE shall notify CITY in writing of such default for failure to provide to STATE such In-lieu Rent Benefit, and CITY shall either promptly commence provision of the In-lieu Rent Benefit or this Lease and the use of the field by CITY shall terminate. The CITY'S contribution constituting the In-lieu Rent Benefit, is as set forth on Exhibit "B" hereto, generally described as:
(a) Ball Field Construction and Maintenance of Turf. The CITY shall plan, construct, mow and maintain the Playing Field at the Premises, and all improvements used by CITY or its Permitted Users thereon.
(b) Watering . CITY shall perform watering to the Premises, subject to the provisions of Section 1, Paragraph 5 hereof.
(c) Irrigation Systems. CITY shall upgrade and maintain existing irrigation systems for the Premises.

UTILITIES

5. (a) CITY agrees to separately meter the Premises for all utility costs (i.e., electricity and water) in connection with CITY'S use of the Premises during the term of this Lease. This expense excludes trash pick-up. Utility payments shall be made payable to and sent directly to the utility provider.

(b) CITY shall comply with energy conservation measures required by law, or reasonably required by STATE as the result of an energy crisis. STATE shall not be liable to CITY for failure to provide utilities for causes beyond STATE's control.

PLAYING FIELD PRESENTATIVES

6. Prior to occupancy, CITY and STATE shall each designate in writing to the other party a representative who shall be responsible for the day-to-day issues of operation, maintenance, cleanliness and general order. CITY'S designated representative shall be available at all times during City's permitted use, and STATE may contact CITY's Communications Center, (714) 754-5252, at any

SECTION 1 – SITE SPECIFIC PROVISIONS

other time and CITY'S designated representative shall be empowered to immediately address any concerns of STATE, due to the sensitive nature of the STATE'S consumers, clients and users of the Fairview Development Center.

CANCELLATION

7. Any willful violation of the terms of this Lease or the Fairview Developmental Center's rules and regulations shall be grounds for cancellation of the Lease and removal of the CITY, except that CITY shall have the right to receive notice of such violation and a period of 10 calendar days, only if such violation is curable, to cure prior to any such cancellation, and only if CITY fails to cure the specified violation shall cancellation be permitted pursuant to this section. Cancellation or termination of this Lease shall result in the Memorandum of Understanding executed by and between the parties on April 4, 2007 also be terminated simultaneously.

EARLY TERMINATION

8. (a) The parties hereto agree that STATE may terminate this Lease at any time during the term hereof by giving written notice to the other party, ninety (90) days prior to the date when such termination shall become effective. If STATE elects early termination of the Lease, STATE shall reimburse CITY for the prorated share of initial improvement costs incurred by CITY.

(b) Notwithstanding the above early termination clause, this Lease may be terminated at anytime by STATE upon default by CITY of any covenant contained herein.

(c) Termination of this Lease for any reason shall also constitute termination of the Memorandum of Understanding. Termination of the Memorandum of Understanding shall also constitute termination of the Lease. If CITY terminates its Memorandum of Understanding with the STATE, CITY shall concurrently give notice to terminate this Lease.

HOLDING OVER & LEASE RENEWAL

9. STATE offers and CITY accepts no assurance that the Premises or any other comparable land and facilities at the Property described herein will be made available to CITY beyond the term stated above or as said term is reduced as provided herein.

NOTICES

10 (a) All notices or other communications required or permitted hereunder shall be in writing with Lease number L-2313 prominently displayed, and shall be personally delivered (including by means of professional messenger service) or sent by overnight courier, or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by electronic facsimile to the fax numbers set forth below.

(b) All such notices or other communications shall be deemed received upon the earlier of (1) if personally delivered or sent by overnight courier, the date of delivery to the address of the person to receive such notice, (2) if mailed as provided above, on the date of receipt or rejection, or (3) if sent by fax, when received by the other party if received Monday through Friday between 6:00 a.m. and 5:00 p.m. Pacific Standard Time so long as such day is not a state or federal holiday and otherwise on the next day provided that if the next day is Saturday, Sunday, or a state or federal holiday, such notice shall be effective on the following business day.

TO STATE: **Department of General Services**

Department of General Services
Real Estate Services Division
SOLD (L-2313)
P.O. Box 989052
West Sacramento, CA95798-9052

(916) 375-4025 (phone)

Department of General Services
Real Estate Services Division
SOLD (L-2313)
707-3rd Street, Fifth Floor
West Sacramento, CA 95605

(916) 375-4029 (fax)

SECTION 1 – SITE SPECIFIC PROVISIONS

TO DDS: **California Department of Developmental Services**
(note: U.S. Postal Services will not deliver to street address)

Department of Developmental Services
Health and Program Support Branch
Developmental Centers Division
1600-9th Street, Room 340, MS 3-16
Sacramento, CA 95814

(916) 653-2457 (phone) (916) 654-3666 (fax)

Fairview Developmental Center
2501 Harbor Blvd.
Costa Mesa, California 92626
(714) 957-5000 (phone) (714) 957-5510 (fax)

TO CITY: **City of Costa Mesa**

Post Office Box Address

City of Costa Mesa
Jana Ransom, Recreation Manager
City of Costa Mesa
P.O. Box 1200
Costa Mesa, CA 92628-1200
(714) 754-5654 (phone) (714) 957-5510 (fax)

Street Address

City of Costa Mesa
77 Fair Drive
Costa Mesa, California 92628-1200
Attention: Recreation Division Manager

(b) Notice of change of representative, address, telephone or fax number shall be given by written notice in the manner described in this Paragraph. CITY is obligated to notice all STATE offices listed above and the failure to provide notice to all STATE offices will be deemed to constitute a lack of notice.

PROOF OF INSURANCE MEMORANDUM OF AGREEMENT PROVISIONS

11. Proof of insurance is required in accordance with Section 3, Item 18.

12. HOURS OF OPERATION OF FACILITY

CITY will be entitled to use FACILITY for CITY-related youth (15 years old and under) recreational activities, in accordance with the terms of this Lease, Monday through Friday, 4:00 to 8:00 p.m. and Saturday from 9:00 a.m. to 5:00 p.m. CITY-related activities must cease at 8:00 p.m. weekdays and at 5:00 p.m. on Saturdays, but participants, coaches, spectators, and referees shall have 30 additional minutes to clear FDC property.

FDC retains the right to schedule full or partial use of the FACILITY during CITY days/hours up to four (4) events every calendar year provided that the total number of event days does not exceed eight (8) days except as provided for in Section 1, Paragraph 14. FDC shall have the right to unlimited use of FACILITY during CITY days/hours for non-conflicting compatible use (FDC shall solely determine if such activities are compatible) by its consumers concurrent with CITY scheduled activities.

13.. OBLIGATIONS OF CITY

CITY hereby covenants and agrees to the following:

(a) CITY will maintain, or cause to be maintained, turf as identified in Exhibit A (Site Map) and any improvements made upon FACILITY by CITY as listed in Exhibit B. This paragraph shall not be deemed to require installation of any of the improvements listed on Exhibit B.
   1. CITY shall maintain and/or improve sprinklers and irrigation controller for the life of this

SECTION 1 – SITE SPECIFIC PROVISIONS

agreement. Repairs to irrigation system may require access during non-use hours. STATE shall allow CITY access for irrigation repairs. All irrigation systems beyond the valve assembly as shown in Exhibit A shall be the responsibility of CITY.

(b) All utilities associated with CITY use and permanent improvements installed as a result of this Lease shall be paid by CITY. CITY shall be responsible for the incremental increase in water usage needed to maintain FACILITY turf in acceptable condition for permitted uses. Exhibit C details the mechanism by which CITY and STATE utility responsibilities will be determined.

(c) CITY shall provide and maintain, or cause to be maintained, portable temporary rest room facilities for CITY-permitted FACILITY users. Restrooms will be located on the north side of the existing fence and as indicated on Exhibit A (Site Map) or at a mutually agreed upon location on an as needed basis. Access to temporary rest room facilities shall be provided at CITY cost via a gate installed in the fencing surrounding the FACILITY. Restrooms shall be locked when not in use and will be fully screened to the satisfaction of both parties.

(d) The CITY shall insure that CITY users are familiar with the rules, regulations, and any terms that govern the CITY users conduct at FACILITY, and will inform CITY users about the special needs and conduct required when dealing with, associating with, or interacting with STATE FACILITY consumers, clients, and guests. CITY shall remain responsible to ensure that CITY users are familiar with the rules, regulations, and terms and shall be responsible for any consequences of failure of CITY users to comply with rules, regulations, and terms herein. All CITY-permitted FACILITY users shall be required to adhere to all FDC policies, procedures, rules and regulations. FDC reserves the right to ban any individual, team, group or league from use of FACILTY for violation of FDC rules and regulations at the sole discretion of FDC. FACILITY users who fail to comply with FDC rules and regulations may be asked to immediately leave the property. FDC will not be responsible for recompense for costs or hours lost due to expulsion. The person whose name appears on any issued permit for usa of the Premises shall be present during users activities and be responsible for knowledge of all FDC rules and regulations which are described generally at Section 1, Paragraph 15 below.

(e) CITY and/or CITY-permitted user groups shall be allowed use of portable storage containers located on the north side of the existing fence and as indicated on Exhibit A (Site Map) or at a mutually agreed upon location on an as needed basis. CITY shall install an access gate to allow direct access from FACILITY to adjacent CITY property.

(f) CITY will allow no vehicles to enter upon turf area of FACILITY except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services and will be responsible for the immediate repair or restoration of the FACILITY from such vehicle use.

(g) CITY will hold user groups responsible for picking up trash and debris at FACILITY and for depositing it into the proper trash bins. CITY shall be responsible for any trash or debris left at the facility and may be charged the cost of clean-up and/or trash or debris disposal by STATE, if it leaves trash and debris at the FACILTY after any use by CITY. At the request of FDC, CITY shall provide one (1) three (3) cubic yard trash bin for CITY-permitted FACILITY users to be located at a mutually agreed upon location on an as needed basis. If bin is located in a stand-alone location, CITY shall provide screening or enclosure as required by STATE procedure. (See Section 2, paragraph 14 for further explanation.)

(h) CITY may provide portable, temporary lights for use by CITY-permitted FACILITY users, until such time as permanent lights are installed. Use of portable lights will be allowed until 08:30 p.m. CITY shall provide secure enclosure(s) for storage of temporary lights during periods of non-use ("Non-use periods" shall be defined as periods of two weeks or longer). Enclosures shall be located at a mutually agreed upon location at or near FACILITY on an as needed basis. STATE and CITY shall meet and confer regarding placement of temporary lights. CITY shall be given access to the field, and related property shown on Exhibit A, to place and remove temporary lights, including for any required re-fueling. STATE shall have the right to approve the type, make, and model of temporary lights prior to installation. FDC

SECTION 1 – SITE SPECIFIC PROVISIONS

representative shall have the right to approval of light placement and orientation.

(i) CITY police forces shall be required to respond to incidents and/or requests for services involving FACILITY during periods of CITY permitted use. However, STATE reserves the right to use STATE (Fairview Development Center) police forces and/or assume incident command if the incident primarily concerns STATE consumers, employees or guests at STATE discretion. STATE police will confer with City police in this event. Control of any criminal act involving CITY permitted users at the site will be the under the purview of CITY police, although STATE police may be first responders. However, any disputes as to incident command or jurisdiction shall be determined solely by STATE, if the incident occurs on the STATE property.

(j) CITY shall only use maintenance products and materials on the FACILITY that have been reviewed and approved by STATE. CITY shall endeavor to limit the use of any toxic or hazardous substances, and shall at all times remain responsible for the storage, use and transportation of any toxic or hazardous substances. CITY shall notify and provide any requested information on any hazardous substances brought on the STATE property, prior to use and/or transport.

(k) CITY acknowledges that parking on the STATE's property will be limited and that STATE will issue citations as to parking violations and other violations of the rules and regulations which may result in fines for CITY users. CITY shall assist as much as possible in the collection of such fines and shall try to limit violations by use of CITY personnel, users, guests and invitees who are on site during such use.

14. OBLIGATIONS OF STATE

During the term of this Lease, STATE hereby covenants and agrees to the following:

(a) STATE shall provide at least thirty (30) days' notice to CITY prior to making any improvements or placing any equipment, containers or other objects that may temporarily or permanently reduce the area listed in Exhibit A (Site Map). In the event of a declared STATE, local, regional, state or federal emergency, STATE shall be granted immediate access to FACILITY and all activities permitted by the CITY will cease until such time as the emergency has ended.

(b) STATE reserves the right to cancel previously approved and permitted CITY use of FACILITY. STATE will provide CITY with as much notice as is practical when canceling previously approved CITY use of FACILITY. Cancellations shall only be made for unforeseeable events or activities. STATE shall not be responsible, in any way, including, but not limited to, for any damages, fees or costs as a result of such cancellations.

(c) STATE will have the right to make emergency repairs to FACILITY and to any improvements made by CITY. In the event that STATE has to make emergency repairs to any improvement installed by CITY, STATE shall notify CITY within 24 hours of the time when repairs were made and apprise CITY of what work was performed and the current condition of item repaired.

(d) STATE shall maintain any improvements installed by STATE or by CITY, that have been approved by the STATE, that are put in for the exclusive use of STATE consumers.

(e) STATE shall pay, directly to the applicable utility provider, that portion of the utility expenses attributable to its existing fields and improvements, as set forth in the schedule shown on Exhibit "C."

(f) STATE shall, at its own expense, arrange for trash disposal for the contents of City provided trash bins as part of its regularly scheduled trash collection. The parties shall meet and confer to resolve any issues arising from excess trash accumulation.

15. OTHER TERMS AND CONDITIONS

CITY shall also be solely responsible to ensure that all these terms and conditions are met by CITY users:

(a) All CITY-permitted FACILITY users shall be required to adhere to all STATE policies,

SECTION 1 – SITE SPECIFIC PROVISIONS

procedures, rules and regulations. STATE reserves the right to ban any individual, team, group or league from use of FACILTY for violation of STATE rules and regulations at the sole discretion of STATE. FACILITY users who fail to comply with STATE rules and regulations may be asked to immediately leave the property. STATE will not be responsible for recompense for costs or hours lost due to expulsion.

(b) City users are to comply with all requests of STATE administrators and managers regarding health and safety issues and impacts on facility operations.

(c) CITY-permitted FACILITY users shall be made aware that the site is on California State Developmental Center property under the jurisdiction and control of the State of California and that STATE has consumers who occupy housing in the same general area. All CITY-permitted FACILITY users shall respect the privacy and sensitivity of STATE consumers, visitors and staff.

(d) CITY-permitted FACILITY users shall cooperate with STATE authorities, and shall not interfere or cause interference with operations of STATE.

(e) Clear access for emergency vehicles shall be maintained at all times.

(f) Vehicular and pedestrian access to site shall be as directed by STATE.

(g) FACILITY shall be available to STATE and State personnel and inspectors at all times. CITY-permitted FACILITY users shall anticipate that STATE personnel will visit the FACILITY on a frequent, irregular basis to observe activities. CITY-permitted FACILITY users will keep a copy of their CITY-issued permits available for inspection at all times of FACILITY use.

(h) Amplified sound producing devices are prohibited at all times.

(i) CITY and CITY-permitted FACILITY users shall report to STATE, immediately upon discovery, the loss of any tools, equipment or materials stored or used on FACILITY. STATE will not be responsible for losses due to theft or otherwise. However, this paragraph shall not be construed to obligate STATE to assume responsibility for investigations of thefts reported to STATE.

(j) Material Safety Data Sheets (MSDS) for all materials CITY uses on site must be available on-site for all required materials and supplies.

(k) No firearms, narcotics, drugs, intoxicants, alcoholic beverages, knives or similar sharp objects, weapons of any kind, or other prohibited items are allowed on FACILITY or STATE property at any time.

(l) If CITY places locks on any improvements to FACILITY, STATE shall also have the right to install a lock ("daisy chain") in order for both entities to have access to said improvement, except for any facilities located on CITY property, as well as CITY storage facilities and portable lights (except when in use on STATE FACILITY).

(m) City employees and field users shall not have access to or use of any facilities on the STATE site except for the recreational areas and related parking lot(s) covered by this Lease.

(n) Smoking is prohibited on FACILITY and/or STATE grounds.

(o) All City rules and regulations with respect to recreational field use and allocation shall apply to use of FACILITY where they do not directly contradict the terms of this Lease. Where redundant references to rules, regulations, or terms are present, the more stringent shall apply.

(p) No pets (except Guide Animals) are allowed on STATE grounds.

(q) Barbeques or other heat producing devices are prohibited.

(r) The taking of photographic or video-graphic pictures is prohibited without the written approval of STATE.

(s) FACILITY users shall observe all STATE posted rules and regulations.

(t) No foreign objects of any kind are to be discarded on STATE property.

SECTION 1 – SITE SPECIFIC PROVISIONS

16. PERMITTING
   (a) CITY may enter into agreements of use by permit with groups for recreational purposes. CITY will be the sole permitting agent for STATE FACILITY during CITY use hours. Such agreements for use are subject to and deemed to incorporate by reference all provisions of this Lease.
   (b) CITY may charge a fair and reasonable fee or accept in-kind services from CITY-permitted FACILITY users to offset the costs associated with the use of FACILITY.
   (c) Neither CITY nor STATE may assign or transfer this Lease, or any part thereof, or any rights thereunder, without the written consent of the other party.

End of Section 1

SECTION 2 – GROUND LEASE SPECIFIC PROVISIONS

1. **ROAD ACCESS AND FEES.** CITY agrees to the following terms and conditions regarding the use of said access road:

(a) CITY shall exercise its right personally or through its authorized agents, employees, contractors, servants and Permitted Users whenever it is necessary.

(b) CITY shall use said road at its sole risk and avoid traveling upon it to the greatest practical extent at all times when weather conditions are such that excessive damage to the road surface may result from such use, and further, CITY shall, at its expense, promptly repair any road damage caused by its use, including such road surface protective features as water drains, berms, or culverts.

2. **ACCESS TO PREMISES.** Only the CITY, its properly qualified and authorized agents, employees, contractors, servants, and Permitted Users shall have the right of ingress to and egress from said Premises.

3. **REGULATION BY STATE,** STATE shall, through the Fairview Developmental Center's Administrative Services Director, have the full power and right to determine and regulate the operations of the CITY insofar as they affect the operation, safety of consumers and the effective use of STATE-owned facilities at Fairview Developmental Center.

4. **RIGHT TO ENTER.** During continuance in force of this Lease, there shall be and is hereby expressly reserved to STATE and to any of its agencies, contractors, agents, employees, representatives or licensees, the right at any and all times, and any and all places, to temporarily enter upon said Premises for survey, inspection, or any other lawful STATE purposes.

5 **IMPROVEMENTS & MODIFICATIONS.** CITY at its sole cost and expense may, subject to the approval of FDC, from time to time during its tenancy of the Premises:

(a) Furnish, install and use at the Premises such improvements and property of whatsoever kind and nature as CITY and STATE mutually deems necessary consistent with the purpose of this Lease as set forth in "Use" Section hereof.

(b) Improve the Premises in a manner consistent with the purposes of this Lease as set forth in "Use" Section hereof, and provided further that plans for the construction or enlargement of any improvement will be submitted to STATE in advance of such construction or enlargement, and will be subject to written approval by STATE. Such approval by STATE shall not relieve CITY of the obligation of complying with any and all terms and conditions of this Lease; CITY shall notify the STATE thirty (30) days prior to the actual construction. No further approval by STATE or FDC shall be required to install the improvements called for in Exhibit "B" hereof prior to approval of any Facility Master Plan.

(c) In making any excavation and/or installation of equipment on the Premises and/or easement areas, CITY shall make the same in such manner as will cause the least injury to the surface of the ground around such excavation and/or construction, and shall replace the earth so removed by it and restore the surface of the ground and any improvement thereon to as near the same condition as they were prior to such excavation as is practicable.

6. **DISPOSITION OF CITY'S PERSONAL PROPERTY.**
(a) During the term of this Lease, all personal property placed in, upon, or under the Premises by CITY shall remain the property of CITY and shall be removed by CITY, at its sole cost and expense within thirty (30) days after expiration or termination of CITY'S tenancy.
(b) Should CITY fail to remove said equipment and personal property within thirty (30) days after expiration or termination of the Lease, STATE may do so at the risk of CITY. Upon written demand by STATE, CITY shall immediately pay all costs and expenses of the removal of CITY'S personal property and equipment.

(c) CITY may, however, with written consent of STATE, abandon in place any and all of CITY'S equipment and personal property, whereupon, as abandoned, title to said improvements will vest in STATE.

7. **SURRENDER OF PREMISES.** Upon termination of this Lease for any cause, the CITY shall remove any and all of CITY'S equipment and personal property and restore the entire Premises to its condition prior to the execution of this Lease, except however, the STATE may approve, in writing, any deviation from this requirement.

8. **CITY'S SECURITY.** CITY shall be responsible for the security of the Premises and all persons in its program while such persons are in, on or about the Premises. In the event of a serious security emergency the State shall cooperate with the staff of CITY, but such assistance shall not interfere with the State's normal treatment program. Rules and regulations governing employees and customers of the Developmental Center which are applicable to CITY shall be strictly adhered to by CITY'S staff.

9. **FIRE/POLICE PROTECTION.** CITY is a separate and distinct entity from Fairview Developmental Center and shall so inform the local Fire and Police Agencies. The STATE shall in no way be responsible or liable for such protection to CITY.

10. **MEDICAL.** Medical support shall not be provided by Fairview Developmental Center or by STATE. Necessary emergency medical or surgical care of CITY'S clients and employees will be lessee's responsibility. As used herein, this is intended to mean that CITY shall be liable for any and all medical and/or surgical care costs for CITY'S employees served by CITY'S program.

11. **EMERGENCY PREPAREDNESS.** CITY agrees to be responsible for maintaining an emergency preparedness program for CITY. CITY shall not rely on STATE to provide food or supplies during a local or area wide disaster. STATE will, if time and material allow, assist CITY during a disaster.

12. **PARKING.** CITY'S employees,, their guests and invitees and Permitted Users shall have the use of the Fairview Developmental Center, of non-reserved designated automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by STATE. STATE reserves the right to designate parking areas within reasonable proximity to the Premises for CITY'S agents, invitees, and employees. Parking is allowed in designated parking areas only.

SECTION 2 – GROUND LEASE SPECIFIC PROVISIONS

13. **CITY GUARANTEES.** CITY hereby guarantees, for the term of this Lease any and all work or services performed by CITY or CITY'S properly qualified or authorized agents, employees, contractors and servants, in order to accomplish the installation and/or maintenance of its Playing Field at the STATE'S facilities. All costs to repair or replace STATE'S existing irrigation systems upon the Premises shall be the sole responsibility of CITY during the term of this Lease.

1. 14. **TRASH:** CITY shall pick up trash and debris at Premises and deposit trash in trash bins. STATE shall allow CITY to use the existing three (3) cubic yard trash bin for the Premises. If CITY needs additional capacity for CITY-permitted Users CITY may provide one (1) additional three (3) cubic yard trash bin, such trash bin to be enclosed to STATE standards and located at a mutually agreed upon location. STATE shall, at its expense, arrange for trash disposal for the contents of City provided trash bins as part of its regularly scheduled trash collection

End of Section 2

SECTION 3 – STANDARD PROVISIONS

1. **PERMITS AND APPROVALS.** The parties agree that CITY'S ability to use the Premises is dependent upon CITY obtaining all of the certificates, permits, licenses, and other approvals that may be required from any third party. State will cooperate with CITY, if at no expense to State, in CITY'S effort to obtain such approvals in connection with said permits, licenses or other approvals

2. **LEASE MODIFICATION FEES.** An administration fee shall be assessed for any action originated by CITY requiring lease administration or technical review staff work by STATE which result in an amendment to, or assignment of this Lease. To initiate such services, CITY must submit a written request to DDS. The administration fee will be assessed at the prevailing rate in effect at the time the request is received. CITY will be required to remit the administration/technical review fee to the DGS address listed in the "Notices" Paragraph of this Lease. If the request is found to be complex and/or requires non-standard handling for administrative services, the transaction will be billed at the DGS current hourly rate for the actual additional hours required to complete the requested administrative/technical review services.

3. **DEFAULT.** CITY shall make all payments to the STATE without deduction, default or delay. In the event of the failure of CITY to do so, or in the event of a breach of any of the other terms, covenants or conditions herein contained on the part of CITY to be kept and performed, and if such default continues for a period of thirty (30) days after receipt of written notice from STATE to CITY of such default, this Lease may, at the STATE'S sole discretion, be terminated. In the event of termination of this Lease, it shall be lawful for STATE to reenter into and upon the Premises and every part thereof and to remove and store at CITY'S expense all property there from and to repossess and occupy the Premises. In the event STATE terminates this Lease pursuant to this Paragraph, the STATE shall not be required to pay CITY any sum or sums whatsoever.

4. **INTEREST ON PAST DUE OBLIGATIONS.** STATE may charge interest, for any amount due to STATE but not paid when due, at a rate equal to the annual maximum rate allowable by law from the due date. Payment of such interest together with the amount due shall excuse or cure any monetary default by CITY under the "Default" Paragraph herein.

5. **COMPLIANCE WITH LAWS.** CITY shall at its sole cost and expense comply with all the statutes, laws, ordinances and regulations of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the Premises and use of the Premises as provided by this Lease.

6 **FAILURE TO PERFORM.** In the event of the failure, neglect, or refusal of CITY to do, or perform work, or any part thereof, or any act or thing in this Lease provided to be done and performed by CITY, STATE will, at its option, have the right to do and perform the same, and CITY hereby covenants and agrees to pay STATE the cost thereof on demand.

7. **ASSIGNMENT, SUBLETTING & CHANGE IN USE.** CITY shall not transfer or assign ("assign" shall include any transfer of any ownership interest in the Lease by CITY or by any partner, principal, or controlling stockholder, as the case may be, from the original CITY, its partner or principal) this Lease, and shall not sublet, license, permit or suffer any use of the Premises or any part thereof without first obtaining the written consent of the STATE, which consent is at the sole discretion of the STATE.

8. **RIGHTS RESERVED BY STATE.**
(a) STATE reserves the right to use the real property involved (not including real property installed, erected or constructed by CITY) in any manner, including but not limited to the right to construct, place, maintain, use, operate, repair, replace, alter and move pipelines, conduits, culverts, ducts, fences, poles, electrical energy, power and communication lines, roads, bridges, subways, sidewalks, to grant easements over, across, upon and under said real property, and the continuous right of ingress to and egress from any portion or portions of said real property in such manner as not to create any unreasonable interference with the exercise of the rights granted to CITY.

(b) Any grant herein contained is subject to all valid and existing contracts, leases, licenses, easements, encumbrances and claims of title which may affect said real property.

(c) No priority or other rights will attach to the use of any STATE'S real property, except the Premises as set forth herein.

9. **PROHIBITED USES.** CITY shall not commit, suffer or permit any waste or nuisance on the Premises or on STATE property or any acts to be done thereon in violation of any laws or ordinances, and shall not use or permit the use of the Premises for any illegal or immoral purposes. No dumping of refuse by CITY is permitted at the Premises. CITY agrees not to cut or remove any trees thereon except as approved in writing in advance by STATE. CITY agrees that it shall at all times exercise due diligence in the protection of the Premises and the STATE'S property against damage or destruction by fire or other cause.

10. **FIRE AND CASUALTY DAMAGES.** STATE will not keep improvements which are constructed or installed by CITY under the provisions of this Lease insured against fire or casualty, and CITY shall make no claim of any nature against STATE by reason of any damage to the business or property of CITY in the event of damage or destruction by fire or other cause, arising other than from or out of negligence or willful misconduct of agents or employees of the STATE in the course of their employment or agency.

11. **ACTS OF NATURE.** If CITY'S improvements or equipment are destroyed by acts of nature, CITY may replace them with improvements or equipment of the same general type of the original equipment that occupies no more physical space and that consumes no more electrical power. CITY shall immediately notify STATE of such items and the date the replacement is completed.

12. **HAZARDOUS WASTE.** CITY agrees that it shall comply with all laws, federal, state, or local, existing during the term of this Lease pertaining to the use, storage, transportation, and disposal of any hazardous substance as that term is defined in such applicable law.

(a) In the event STATE or any of its affiliates, successors, principals, employees, or agents should incur any liability, cost, or expense, including attorney's fees and costs, as a result of the CITY'S illegal use, storage, transportation, or disposal of any hazardous substance, including any petroleum derivative, the CITY shall indemnify, defend, and hold harmless any of these individuals against such liability.

SECTION 3 – STANDARD PROVISIONS

(b) Where the CITY is found to be in breach of this Paragraph due to the issuance of a government order directing the CITY to cease and desist any illegal action in connection with a hazardous substance, or to remediate a contaminated condition caused by the CITY or any person acting under CITY'S direct control and authority, CITY shall be responsible for all costs and expenses of complying with such order, including any and all expenses imposed on or incurred by STATE in connection with or in response to such government order.

(c) In the event a government order is issued naming the CITY, or the CITY incurs any liability during or after the term of the Lease, in connection with contamination which pre-existed, the CITY'S obligations and occupancy under this Lease or which were not caused by the CITY, STATE will hold harmless, indemnify, and defend the CITY in connection therewith and shall be solely responsible as between CITY and STATE for all efforts and expenses therefore.

13. **CONDITION OF PREMISES.**
(a) CITY is aware of the current condition of the Premises and accepts the Premises in "as is" condition. CITY and agrees that on the last day of the term, or sooner termination of this Lease, to surrender up to STATE the Premises, with any appurtenances or improvements therein, in good condition, reasonable use and wear thereof and damage by act of God, excepted.

(b) CITY shall not call on STATE to make any repairs or improvements on the Premises and CITY shall keep the same in good order and condition at its own expense.

14. **VACATING THE PREMISES.** CITY shall, on the last day of said term or sooner termination of this Lease, peaceably and quietly leave, surrender, and yield up to STATE, the Premises in good order, condition, and repair, reasonable use and wear thereof and damage by acts of nature, excepted.

15. **RECOVERY OF LEGAL FEES.** If action is brought by one party against the other under the provisions hereof or for any breach hereof, or to restrain the breach of any agreement contained herein, or for the recovery of possession of said Premises, or to protect any rights given hereunder, each party shall pay its own legal expenses and attorney's fees.

16. **TAXES AND ASSESSMENTS.** CITY, as a municipal corporation, is not currently obligated to pay taxes. Where applicable, CITY agrees to pay taxes, assessments, or charges which at any time may be levied by any public entity upon any interest in this agreement, or any possessory right which CITY may have in or on the Premises or the improvements thereon by reason of CITY'S use or occupancy thereof or otherwise as well as all taxes, assessments and charges on goods, merchandise, fixtures, appliances, equipment and property owned or leased by CITY for its use in or about the Premises.

17. **NON-DISCRIMINATION.**
(a) In the performance of this Lease, the CITY shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition, age (over 40), marital status, sex, sexual orientation, or use of family care leave. CITY shall insure that the evaluation and treatment of its employees and applicants for employment are free from such discrimination and harassment.

(b) Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(c) CITY shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated there under (California Code of Regulations, Title 2, Section 7285 et seq.) The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Lease by reference and made a part thereof as if set forth in full. CITY shall give written notice of its obligations under this clause to any labor organizations with which they have collective bargaining or other agreement. Further, CITY shall post in conspicuous places available to employees and applicants for employment, notices to be provided by the STATE setting forth the provisions of this Fair Employment Practices Section. (Government Code, Section 12920-12994).

(d) Remedies for willful violations:

(1) The STATE may determine a willful violation of the Fair Employment Practices provision to have occurred upon the receipt of a final judgment having that effect from a court in an action to which CITY was a party, or upon receipt of a written notice from the Fair Employment Practices Commission that it has investigated and determined that the CITY has violated the Fair Employment Practices Act and has issued an order pursuant to the appropriate provisions of the Government Code.

(2) The STATE will have the right to terminate this Lease and any loss or damage sustained by the STATE by reason thereof will be borne and paid for by the CITY.

18. **INSURANCE.**
(a) CITY shall either maintain legal self-insured status under California law or furnish a certificate of insurance with the STATE'S Lease Number indicated on the face of said certificate, issued to STATE with amounts of Commercial General Liability of at least ONE MILLION AND NO/100 DOLLARS ($1,000,000.00) per occurrence and Fire Legal Liability of at least FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($500,000.00) naming the State of California, its officers, agents and employees as additional insured. Any certificate of self-insured status or certificate of insurance shall be delivered to the Department of General Services at the address listed in the "Notices" Paragraph hereof. Any required certificate of insurance shall be issued by an insurance company with a rating that is acceptable to the Department of General Services, Office of Risk and Insurance Management. STATE reserves the right to review and adjust insurance requirements as necessary during the term of this Lease.

(b) It is agreed that STATE will not be liable for the payment of any premiums or assessments on any insurance coverage required by this Paragraph. Any certificate of insurance shall provide that the insurer will not cancel the insured's coverage without thirty (30) days' prior written notice to STATE. CITY agrees that the insurance or lawful self-insured status herein provided for shall be in effect at all

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times during the term of the Lease, all extensions thereof, holdover periods or any other occupancy of the Premises by CITY. In the event said lawful self-insured status or insurance coverage expires at any time or times during the term of this Lease, CITY agrees to provide STATE at least thirty (30) days following said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than one (1) year. In the event CITY fails to keep in effect at all times insurance coverage as herein provided, STATE may, in addition to any other remedies it may have, terminate this Lease upon the occurrence of such event.

(c) CITY agrees to provide necessary Workers Compensation insurance or maintain lawful self-insured status for all employees of CITY upon said Premises at the CITY'S own cost and expense.

(d) If CITY is self-insured, CITY shall provide STATE with written acknowledgment of this fact at the time of the execution of this Lease. CITY shall annually thereafter, on the anniversary of the date of execution of this Lease, provide STATE with a written acknowledgment of the continuation of its self-insured status. If, at any time after the execution of this Lease, CITY abandons its self-insured status, CITY shall immediately notify STATE of this fact. Upon abandonment of CITY'S self-insurance status, CITY shall be required to provide insurance coverage and certificates as outlined above.

19. **HOLD HARMLESS/ INDEMNIFICATION.** Notwithstanding any language to the contrary elsewhere in this Lease, STATE agrees, to the extent legally permissible, to indemnify and defend CITY in the event of any claim, demand, causes of action, judgments, obligations, or liabilities, and including all reasonable litigation and attorneys' fees which CITY may suffer, as a direct or proximate result of the negligence, actual or alleged, or other wrongful act or violation of Law or of this Lease by STATE, its employees, or any person or persons acting under the direct control and authority of STATE, in connection with STATE's rights and obligations during the term of this Lease, whether or not such claim is ultimately proved meritorious and/or successful, except to the extent that any such damages or expenses suffered by CITY are the result of CITY's negligence, intentional or wrongful acts, actual or alleged, or the negligent, intentional or wrongful acts of any persons acting under the control of or on behalf of CITY; except where STATE or CITY, as applicable, are found to have no liability by reason of any immunity arising by statute or common law.

Notwithstanding any language to the contrary elsewhere in this Lease, CITY agrees, to the extent legally permissible, to indemnify and defend STATE in the event of any claim, demand, causes of action, judgments, obligations, or liabilities, and including all reasonable litigation and attorneys' fees which STATE may suffer as a direct or proximate result of the negligence, intentional, actual or alleged, or other wrongful act or violation of Law or of this Lease by CITY, its employees, or any person or persons acting under the direct control and authority of CITY, in connection with CITY's rights and obligations during the term of this Lease, whether or not such claim is ultimately proved meritorious and/or successful, except to the extent that any such damages or expenses suffered by STATE are the result of STATE's and/or FDC's negligence or wrongful acts, actual or alleged, or the negligent or wrongful acts of any persons acting under the control of or on behalf of STATE; except where STATE or CITY, as applicable, are found to have no liability by reason of any immunity arising by statute or common law.

20. **LOSSES.** STATE will not be responsible for losses or damage to personal property, equipment or materials of CITY and all losses shall be reported to STATE immediately upon discovery.

21. **DEBT LIABILITY DISCLAIMER.** The STATE, including but not limited to the State's General Fund or any special self insurance programs, is not liable for any debts, liabilities, settlements, liens or any other obligations of the CITY or its heirs, successors or assigns. The STATE and its agencies, departments and divisions will not be liable for and will be held harmless by CITY and for any claims or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the CITY, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the CITY. The STATE has no obligation to defend or undertake the defense on behalf of the CITY or its heirs, successors or assigns. CITY shall defend the State of California and its agencies, departments and divisions from any claims, actions, lawsuits, administrative proceedings or damages associated with any contract, tort, action or inaction, error in judgment, act of negligence, intentional tort, mistakes, or other acts taken or not taken by the CITY, its employees, agents, servants, invitees, guests, or anyone acting in concert with or on behalf of the CITY.

22. **RELOCATION PAYMENTS.**

(a) In the event that State terminates this Lease pursuant to it terms, CITY acknowledges and agrees that it has no claim against the State for Relocation Payments, Relocation Advisory Assistance, or costs pursuant to the Government Code sections 7260 et seq., or any regulations implementing or interpreting such sections. CITY further agrees that it has no claim in either law or equity against the State for damages or other relief should the Lease be terminated, and waives any such claims it may have.

(b) In the event subleasing, under the terms of this Lease, is permitted, CITY shall incorporate this Paragraph into the sublease. Failure to do so may obligate CITY for damages and costs resulting from claims for relocation payments by sublessees.

23. **SUBROGATION WAIVED.** To the extent authorized by any fire and extended coverage insurance policy issued to CITY on the herein leased Premises, CITY hereby waives the subrogation rights of the insurer, and releases the STATE from liability for any loss or damage covered by said insurance.

24. **RECORDING.** CITY shall not record this Lease or a short form memorandum thereof. Any such recordation will, at the option of STATE, constitute a non-curable default by CITY hereunder.

25. **AUTHORITY TO CONTRACT.**

(a) If CITY is a public, private or non-profit corporation, each individual executing this Lease on behalf of said CITY shall provide evidence, which is acceptable to the STATE, that he/she is duly authorized to execute and deliver this Lease on behalf of said CITY in accordance with a duly adopted resolution of the Board of Directors or in accordance with the

SECTION 3 – STANDARD PROVISIONS

Bylaws of said Board, and that this Lease is binding upon said Board of Directors in accordance with its terms.

(b) CITY shall, concurrently with the Execution of this Lease, deliver to the STATE at the address for the Department of General Services shown in the "Notice" Paragraph of this Lease, either a copy of the board's bylaws or a certified copy of the resolution of the Board of Directors authorizing or ratifying the execution of this Lease.

(c) In addition prior to the execution of this Lease, CITY shall provide STATE with a copy of CITY'S current bylaws and corporate filing status as filed with the California Secretary of State.

26. **PARTNERSHIP DISCLAIMER.** CITY its agents and employees shall act in an independent capacity and not as officers or employees of STATE. Nothing herein contained will be construed as constituting the parties herein as partners.

27. **CEQA.** Any physical changes made to the improvements by CITY or its agents shall comply with the California Environmental Quality Act (CEQA).

28. **BANKRUPTCY.** In no event shall this Lease or the leasehold estate become an asset of CITY in bankruptcy, receivership or other judicial proceedings. CITY shall be in default under this Lease and the provisions of the "Right of Entry" Paragraph hereof shall apply in the event of any of the following: (a) CITY becomes insolvent or makes an assignment for the benefit of creditors, (b) a petition in bankruptcy is filed by or against CITY, (c) a writ of execution is levied against this Lease or the leasehold estate, (d) CITY abandons or vacates or does not continuously occupy or safeguard the Premises.

29. **AMENDMENTS AND MODIFICATIONS.** No amendment, modification, or supplement to this Lease shall be binding on either party unless it is in writing and signed by the party to be bound by the modification.

30. **MUTUAL CONSENT.** Notwithstanding anything herein contained to the contrary, this Lease may be terminated and the provisions of the Lease may be altered, changed, or amended by mutual consent of the parties hereto in writing.

31. **FORCE MAJEURE.** If either CITY or STATE will be delayed or prevented from the performance of any act required hereunder by reason of acts of God, governmental restrictions, regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Lease) or other cause without fault and beyond the control of the party obligated (except financial inability), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Nothing in this Paragraph shall excuse CITY from prompt payment of any rent, taxes, insurance or any other charge required of CITY, except as may be expressly provided in this Lease.

32. **WAIVER.** If either party waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of that or any subsequent term, covenant or condition. Failure by either party to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or decrease that party's right to insist thereafter upon strict performance by the other Party. Waiver by either party of any term, covenant, or condition contained in this Lease may only be made by a written document properly signed by an authorized representative of the party waiving such term, covenant or condition.

33. **ENTIRE AGREEMENT.** This Lease, the Memorandum of Understanding executed by the parties on or about April 4, 2007 and exhibits hereto constitute the entire agreement between STATE and CITY. No prior written or prior, contemporaneous or subsequent oral promises or representations shall be binding. To the extent that any provision of this Lease is in conflict with any term of the Parties' Memorandum of Understanding, the terms of this Lease shall take precedence and prevail. All non-conflicting provisions of the MOU remain in full force and effect.

34. **PARAGRAPH HEADINGS.** All Paragraph headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Lease.

35. **SEVERABILITY.** If any term, covenant, condition, or provision of this Lease or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Lease will not be affected thereby, and will be valid and enforceable to the fullest extent permitted by law.

36. **SUPERSEDURE.** This Lease supersedes and voids any prior license, lease or agreement between the STATE and the CITY, whether or not identified in this Lease with regards to the Premises, except the Memorandum of Understanding executed on April 4, 2007.

37. **BINDING.** The terms of this Lease and covenants and agreements herein contained shall apply to and shall bind and inure to the benefit of the heirs, representatives, assigns and successors in interest of the parties hereto.

38. **ESSENCE OF TIME.** Time is of the essence for each and all of the provisions, covenants and conditions of this Lease.

End of Section 3

SECTION 3 – STANDARD PROVISIONS

IN WITNESS WHEREOF, this Lease has been executed by the parties hereto as of the date written below.

STATE OF CALIFORNIA

DIRECTOR OF DEPARTMENT OF GENERAL SERVICES

By: _____
TONY PSIHOPAIDAS, Manager
State Owned Leasing & Development

_____
Date Executed

CITY

CITY OF COSTA MESA

By: _____
ALLAN MANSOOR, Mayor
City of Costa Mesa

_____
Date Signed

Consent of
DEPARTMENT OF DEVELOPMENTAL SERVICES

By: _____
BONNIE BANKS, Assistant Deputy Director
Developmental Centers Division

Recommended for Approval
DEPARTMENT OF GENERAL SERVICES

By: _____
BETH BLAIR
Real Estate Officer

_____
Date Signed

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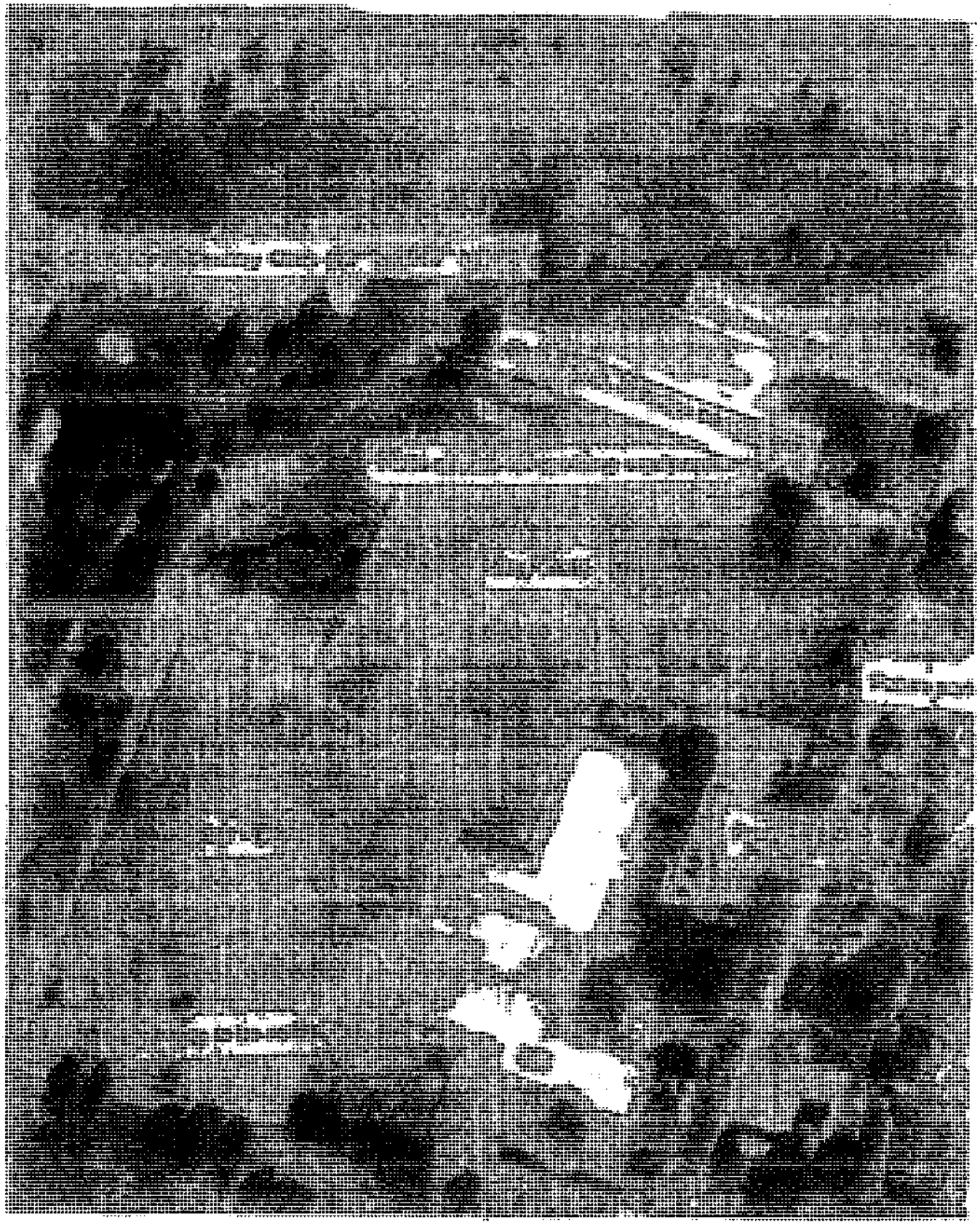
EXHIBIT A
SITE MAP
2500 BLOCK, MERRIMAC WAY
FAIRVIEW DEVELOPMENTAL CENTER



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* WATER VALVE LOCATIONS (TO BE INSTALLED)

- - - - PARKING AREA

XXXX SCREENING TO BE INSTALLED

*→ INDICATES SIDE OF VALVE FOR CITY MAINT.

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~~Attachment "B"~~

Note: Maintenance Area to be off set 5 feet from Bldg.

EXHIBIT B
PROPOSED SITE IMPROVEMENTS BY CITY

Initial Term Site Improvements:

BALL FIELD CONSTRUCTION

- Grading
- Top dressing
- Verticutting
- Trash bin enclosure (if needed)
- Construction Fencing (near FDC Building to provide an area for FDC consumers during periods of field/FACILITY initial term improvements)
- Lockable portable rest rooms (located on City property) with screening/enclosure
- 3 cubic yard trash bin (if needed)

IRRIGATION SYSTEMS EXTENDED

- Irrigation controller upgrade

MAINTENANCE OF TRUF

- Mowing
- Aerating
- Sprinkler maintenance
- Verticutting
- Fertilization
- Litter Control (for days of use only)
- Rodent and Pest control

WATERING

Other Permanent Improvements to be done by CITY after adoption of FACILITY Master Plan as funding permits:

Removal of unused blacktop area (within 6 months after approval of Masterplan)
Removal of fencing around unused black top area
Installation of beach volleyball court
Installation of bocce ball courts (2)
Additional Parking Facilities
Permanent lighting
Picnic area improvements
ADA to Code for area
Monument signage naming the field as the FDC Special Olympics Training Facility
Other items as agreed to by FDC and CITY in the Master Plan

EXHIBIT C
IRRIGATION WATER COSTS

The following procedure will be used to determine the share of water costs that FDC and City will pay with respect to irrigation requirements of the School Complex field area as required by the subject lease between FDC and City for the use of certain FDC property for City recreational programs.

FDC Plant Operations personnel will estimate the number of minutes per year that FDC has historically irrigated the area over the last few years. The estimation will attempt to determine the number of minutes that the subject area was irrigated during normal use by FDC prior to cutbacks in use by FDC due to the deteriorating condition/vermin infestation that currently exists.

It is recognized that while minimal irrigation of the area has occurred in the last few years, FDC has historically irrigated the area approximately 6 months per year to a level that would allow for the area to be maintained in a green and healthy state with minimal use by FDC clients and staff.

The estimated number of annual minutes of irrigation will be divided by 12 to determine an estimated monthly number of minutes.

The estimated number of minutes will be compared with published recommendations from the local Irvine Ranch Water District (monthly residential turf irrigation recommendations) data to check for significant discrepancies.

After installation of the two shut-off / back-flow prevention meter valves, the area will be irrigated for the purpose of determining gallon flow rates per minute of irrigation time with the valve/meters fully open.

The valve-time /gallon flow data will be used to determine an estimated monthly gallon historical usage by FDC. The estimated historical monthly FDC gallon usage will be the amount of usage, as a monthly average of the annual total, which FDC will be responsible for paying. The remainder of the water usage bill shall be paid by the City.