



Sent to Council:

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MAY - 8 2012
City Managers Office

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Leanna Bieganski

SUBJECT: Early Council Packet

DATE: May 8, 2012

Approved

Date

5/8/12

**EARLY DISTRIBUTION COUNCIL PACKET FOR
MAY 22, 2012**

Please find attached the Early Distribution Council Packet for the May 22, 2012 Council Meeting.

3.x Agreement with Vision Service Plan for Vision Care Insurance Services.

Recommendation: Adopt a resolution authorizing the City Manager to negotiate and execute an agreement between the City and Vision Service Plan to provide vision care insurance services to employee, retirees and their dependents at a total cost not to exceed \$3,716,410 for the period of July 1, 2012 to December 31, 2015, subject to the appropriation of funds. CEQA: Not a Project, File No. PP10-066(e) Services that involve no physical changes to the environment. (Human Resources)
TO BE DISTRIBUTED SEPARATELY

4.x Convention and Cultural Affairs Fund Budget Adjustments.

Recommendation: Adopt the following Appropriation Ordinance and Funding Sources Resolution amendments in the Convention and Cultural Affairs Fund.

- (a) Increase the Non-Personal/Equipment appropriation by \$2,600,000;
- (b) Increase the estimate for Earned Revenue by \$3,100,000; and
- (c) Increase the Ending Fund Balance by \$500,000.

(City Manager's Office)

TO BE DISTRIBUTED SEPARATELY

5.x Agreement with the Roman Catholic Welfare Association of San José (Archbishop Mitty High School) for the Renovation, Operation, Maintenance and Joint Use of John Mise Park.

Recommendation:

- (a) Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Roman Catholic Welfare Association of San José, Inc., a non-profit corporation (Archbishop Mitty High School) for the funding, renovation, operation, maintenance, and joint use of John Mise Park with the following terms:

- (1) Term of thirteen years with an automatic extension if Archbishop Mitty High School complies with all terms of the agreement for twelve years for a possible term of twenty-five years;
 - (2) Financial contribution in the amount of up to \$3,500,000 from City and up to \$375,000 from Archbishop Mitty High School for renovation of the sports field;
 - (3) In-kind contribution from Archbishop Mitty High School for park maintenance in exchange for exclusive use of the sports field and parking spaces during certain hours; and
 - (4) Financial contribution of up to \$175,000 from Archbishop Mitty High School for replacement of the artificial turf for the sports field.
- (b) Provide direction on how to respond to concerns that Archbishop Mitty High School has raised regarding the City's contractual provision imposing liquidated damages for prevailing wage violations.

CEQA: Categorically Exempt, File No, PP12-021. Council District 1. (Parks, Recreation and Neighborhood Services)
[Deferred from 5/15/12 – Item 5.1]

6.x Actions Related to the Airport Shuttle Bus Reduction.

Recommendation: Adopt a resolution authorizing the City Manager to execute the following two agreements together with other documents necessary to complete the transaction:

- (a) First Amendment to the Restated Lease between the City of San José and Penske Truck Leasing Co., LP terminating the remainder of the lease term for 14 compressed natural gas (CNG) shuttle buses (Fleet A) and sale to San José with San José's payment to Penske in the amount not to exceed \$4,407,508; and
- (b) Purchase Agreement between the City of San José and the City and County of San Francisco for the sale of Airport Shuttle Bus Fleet A for a total sales price of \$3,400,000.
- (c) Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Airport Revenue Fund:
 - (1) Increase the estimate for Earned Revenue by \$3,400,000; and
 - (2) Increase the Reserve – Per Master Trust Agreement by \$3,400,000.

CEQA: Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment. (Airport/Finance/City Manager's Office)

9.x Merged Area Redevelopment Project Revenue Bonds, Series 1996 A & B And Series 2003 A & B – JP Morgan Letters of Credit Extension Coordination.

Recommendation: It is recommended that the City Council, acting as the Successor Agency to the Redevelopment Agency of the City of San José, adopt a resolution to:

- (a) Authorize, subject to the approval of the Oversight Board, the execution and delivery of a Fifth Amendment to Reimbursement Agreements in substantially

final form with JPMorgan Chase Bank, NA ("JPMorgan"), to extend the terms of the letters of credit relating to the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Taxable Revenue Bonds (Subordinate Tax Allocation), Series 2003A and 2003B (collectively, "2003 Bonds") and the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Revenue Bonds (Subordinate Tax Allocation), Series 1996A and Series 1996B (collectively, "1996 Bonds");

- (b) Authorize, subject to the approval of the Oversight Board, the execution and delivery of a Letter Agreement regarding fees and charges for the various letters of credit in substantially final form provided by JPMorgan under the Fifth Amendment to Reimbursement Agreements for the 1996 Bonds and the 2003 Bonds in the amount of 2.25% of the aggregate outstanding amounts of the letters of credit, depending on the underlying ratings of the Redevelopment Agency of the City of San José (the "Agency");
- (c) Authorize the Executive Officer of the Successor Agency to the Redevelopment Agency of the City of San José ("Successor Agency") or her designee to take any actions and execute any and all documents necessary to complete this transaction.

CEQA: Not a Project, File No. PP10-066, Agreements/Contracts (New or Amended).

These items will also be included in the Council Agenda Packet with item numbers.


LEANNA BIEGANSKI
Council Liaison





Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: April 30, 3012

Approved

Date

5/8/12

COUNCIL DISTRICT: 1

SUBJECT: AGREEMENT WITH ARCHBISHOP MITTY HIGH SCHOOL FOR THE RENOVATION, OPERATION, MAINTENANCE, AND JOINT USE OF JOHN MISE PARK

RECOMMENDATION

- A. Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the Roman Catholic Welfare Association of San José, Inc., a non-profit corporation (Archbishop Mitty High School) for the funding, renovation, operation, maintenance, and joint use of John Mise Park with the following terms:
1. Term of thirteen years with an automatic extension if Archbishop Mitty High School complies with all terms of the agreement for twelve years for a possible term of twenty-five years;
 2. Financial contribution in the amount of up to \$3,500,000 from City and up to \$375,000 from Archbishop Mitty High School for renovation of the sports field;
 3. In-kind contribution from Archbishop Mitty High School for park maintenance in exchange for exclusive use of the sports field and parking spaces during certain hours; and
 4. Financial contribution of up to \$175,000 from Archbishop Mitty High School for replacement of the artificial turf for the sports field.
- B. Provide direction on how to respond to concerns that Archbishop Mitty High School has raised regarding the City's contractual provision imposing liquidated damages for prevailing wage violations.

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OUTCOME

Execution of an agreement with Archbishop Mitty High School (“Mitty”) would benefit the City and its residents by providing supplemental funding to support expanding the sports field at John Mise Park (“Mise Park”) to a size and quality that meets the needs of diverse sports. Mitty’s in-kind and financial contributions would improve field maintenance, reduce the City’s on-going operational costs, and help to establish an artificial turf replacement fund. In exchange, Mitty will receive long-term exclusive use of the sports field during certain hours, exclusive use of the additional parking during school hours, and assurance that their contribution would be earmarked for artificial turf replacement for the sports field.

BACKGROUND

The Community Sports Fields Study (Study), approved on December 2, 2008, by the City Council, provides a strategic framework to support future development and operations of the Citywide Sports Program. On November 4, 2008, the voters of San José passed Measure M to amend the City Charter (Charter Section 1700.1) to provide the City Council authority to enter into long-term agreements of up to 25 years for use of community public parks over five acres if certain conditions are met. Additionally, the City Council adopted City Council Policy 7-8, Long Term Use of City Parklands for Private Enterprise Purposes, setting forth guidelines for such long-term agreements under charter Section 1700.1. As described in further detail below, staff believes the proposed agreement is generally consistent with both City Charter Section 1700.1 and City Council Policy 7-8.

In response to the goals of the Study to increase the availability of sports fields for residents of the City, PRNS identified Mise Park as a viable premier sports field project within a specific planning area that should be studied. Mise Park is an 11.7 acre park located at the intersection of Moorpark Avenue and Mitty Way. Primary factors in the selection of Mise Park for this project included:

- The park already has an adult lighted natural turf softball field with a partially youth size soccer field overlay, restroom, parking lot with 36 parking spaces, basketball courts, picnic area with barbeque pits, and landscaping; and
- Although it is on the northern edge of the Council district, it is more central to the district, and thus has the ability to serve more residents than other alternatives such as Calabazas Park; and
- The City has not been successful in identifying property owned by other agencies, such as school districts, in the area for an artificial turf sports field partnership project.

The City has partial funding available for the renovation of the existing sports field and parking lot at Mise Park. In identifying a possible public-private partnership for the project, it became apparent that Mitty was a good candidate for a partnership since Mitty (i) had generally reserved and paid reservation fees for the sports field between 2:30 p.m. and 6:00 p.m. during the school

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year in support of their athletic programs, (ii) has indicated an interest in seeing a renovation and expansion of the sports field, and (iii) is located adjacent to the park. Based upon these criteria, the City approached Mitty to explore a potential partnership that would be mutually beneficial and meet the goals of the sports field study to increase the playability and quality of the City's sports field inventory. After several months of discussions, the parties are in the process of negotiating a draft agreement. Most of the terms of the agreement have been agreed upon between the parties as described below. However, Mitty has indicated to staff that it has some concerns regarding the liquidated damages provisions of the City's prevailing wage requirements. Staff will continue to coordinate with Mitty regarding this and will seek additional Council direction on how to address their concerns.

ANALYSIS

The City currently has funding in the amount of approximately \$3,500,000 to renovate the existing natural turf lighted softball field at Mise Park to an artificial turf lighted field with a soccer field overlay of 55 yards x 100 yards ("Small Soccer Field") and expand the parking lot from 36 parking spaces to 66 spaces. However, the construction of a Federation Internationale de Football Association (Adult) regulation size soccer lighted artificial field overlay of 75 yards x 120 yards ("Adult Soccer Field") would benefit both parties by providing additional recreational opportunities for the public and increase the City's ability to generate revenues to recover its costs associated with the park. The engineer's cost estimate for development of an Adult Soccer Field and expansion of the parking lot is \$4,136,000. Currently, this project has funding of \$3,487,000 allocated in the Council District 1 Construction and Conveyance Tax Fund (\$1,563,000) and the Subdivision Park Trust Fund (\$1,924,000). In addition, a total of \$13,000 was expended for project costs in 2010-2011 in the Subdivision Park Trust Fund, thereby bringing total project funding to \$3,500,000, which is under the engineer's estimate by \$636,000. Once construction bids are received for this project, if a funding shortfall exists, a recommendation will be included in the construction contract award memorandum to allocate the necessary funding from the Park Trust Fund or the Council District 1 Construction and Conveyance Tax Fund

The parties have been negotiating a proposed agreement where Mitty would assist in (i) funding the difference in cost between the development of a Small Soccer Field and an Adult Soccer Field, up to \$375,000, (ii) providing long-term maintenance of Mise Park upon completion of the project for 13 years and possibly up to 25 years, and (iii) providing up to \$175,000 for replacement of the artificial turf for the sports field. In exchange, Mitty would have exclusive use of the sports field and parking lot during certain hours during the term of the proposed agreement. The proposed project consists of replacing the existing lighted natural turf softball field to a lighted artificial turf softball field with an Adult Soccer Field overlay, replacing existing field lights with energy efficient fixtures that minimize light spillage, adding a parking lot along the Highway 280 wall with 30 parking spaces, and new fencing around the "Project." The fencing around the site will be approximately four feet high in most locations with sufficient openings for pedestrian access. The purpose of the fence is to ensure that vehicles do not drive

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on or damage the turf and, additionally, to enhance the safety of park users by creating a barrier between athletic and other park activities.

The Department of Parks, Recreation and Neighborhood Services (PRNS) has previously entered into eight similar types of joint use agreement with school districts and sports leagues. As with other joint use agreements, PRNS maintains control of the sports field scheduling and revenues for City programs. The key elements of the proposed agreement are summarized below.

Funding for the Project

The engineer's estimate for the Project is \$4,136,000 and includes the costs for planning, design, construction, review and inspection, project administration and management, and other necessary costs to complete the Project. Under the proposed agreement, the City would contribute up to \$3,500,000 and Mitty would contribute up to \$375,000 for development of the Project. The total budget for the Project is \$3,875,000 (Project Budget). Depending on the lowest responsible bid and "soft costs" for the Project, there may be a funding shortfall that would need to be addressed as explained below.

The City would be responsible for design and construction of the Project as a "public works" project in accordance with the City's Charter, Municipal Code, and policies. The City's bid solicitation for the Project would include specifications for both a Small Soccer Field and an Adult Soccer Field. Mitty agrees to fund the difference in the cost for the development of a Small Soccer Field and Adult Soccer Field up to \$375,000. The difference in cost would be determined based on the difference in cost in the lowest responsible bid. For example, if the difference in cost is \$300,000, Mitty's contribution to the Project would be as follows: \$300,000 (Incremental Hard Cost) + \$15,000 (Construction Contingency) + \$30,000 (Design and Management) = \$345,000.

If the lowest responsible bid, including all "soft costs," exceeds the Project Budget, the parties would have the following options: (i) revise the Project scope in accordance with the available funds, which revision can be accomplished in written letter form mutually agreed upon by the parties and approved by the City Manager and the letter would be made a part of the proposed agreement; (ii) revise the financial responsibilities of each Party, which revision can be accomplished only by written amendment mutually agreed upon by the Parties and approved by the City Council; or (iii) terminate this Agreement.

If, at any time, the Project expenditures are projected to exceed the Project Budget, City would immediately notify Mitty of the change in the projected expenditures. The parties would then meet to determine the appropriate course of action. The parties would have the following options: (i) revise the Project scope in accordance with the available funds, which revision can be accomplished in written letter form mutually agreed upon by the Parties and approved by the City Manager and be made a part of the proposed agreement; (ii) revise the financial responsibilities of each party, which revision can be accomplished only by written amendment mutually agreed upon by the parties and approved by the City Council; or (iii) terminate the agreement.

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Replacement Fund for Artificial Turf

The anticipated life cycle of the proposed artificial turf for the Adult Soccer Field is approximately 13 years. At the end of the cycle, depending on the weather, amount of use, and other factors, the artificial turf would at some point require replacement. Mitty has agreed to provide an annual contribution to the City up to \$175,500 to assist in the replacement of the artificial turf at the end of its useful life. The contribution would begin when the City establishes an appropriation for its obligation toward field replacement. The amount to be paid by Mitty to City shall be the pro rata share of City's contribution to the replacement cost of the artificial turf. For example, if City appropriates \$500,000 which equates to approximately fifty percent of the replacement cost of the artificial turf, Mitty would be required to contribute its pro rata replacement share which would be fifty percent of \$175,500 or \$87,750 within 10 days of City appropriation action.

The current cost estimate for replacement of the artificial turf is \$982,000, of which \$175,500 will be provided by Mitty and the remaining \$806,500 would be the City's obligation. The City is currently exploring funding options for the City's portion of future turf replacement for all sports fields, including Mise Park. When the expected life of the sports field at Mise Park has expired, if the City does not have the funds to replace the City's portion of the cost for the sports field at Mise Park (\$806,500), Mitty's portion of its Replacement Contribution paid to the City will be refunded to Mitty (\$175,500).

Joint Sports Field and Parking Use

Beginning on the Project completion date, Mitty would have exclusive use of the Adult Soccer Field from 2:45 p.m. to 5:30 p.m. on Monday thru Friday, including school holidays, from August 20th to June 1st of each year. Although the exclusive use start time was contemplated to be 3:00 p.m., the start time was adjusted to 2:45 p.m. as part of the negotiation process. Mitty would be able to use the Adult Soccer Field for organized school sports programs or activities, such as practices and games. Mitty may request an additional 20 hours annually at no other cost. All other hours would be reserved for City's programs, activities, or use and will be open to any users who go through the City's reservation process for sports fields. Weekday sports field reservation demand begins at 6:00 p.m. and the demand period is not anticipated to change. The intent of the project is to ensure that the fields retain the current practice at Mise Park where the fields are open and available to the public when they are not being reserved.

Additionally, a new parking lot would be constructed and is intended to serve the entire park. Mitty would have exclusive use of the additional 30 parking spaces constructed as part of the Project during school hours. With sport field reservation and affiliated parking demand low during school hours, staff does not believe Mitty's exclusive use would have an impact on the park and surrounding neighborhood. The City retains oversight of the field and parking lot during all other hours outside of Mitty's exclusive use periods.

Mitty would be responsible to supervise the activities and use of the Adult Soccer Field and parking lot during its exclusive use hours. Mitty would also be required to maintain the areas in

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a clean and safe condition and be responsible for any injuries or losses arising from its use of the areas.

Additionally, a memorandum regarding the traffic conditions related to the project is provided in the Attachments to this memo. In summary, the traffic memorandum concludes that the project is not projected to create a significant impact at the intersections of Lawrence Expressway/Mitty Way and Mitty Way/Moorpark Avenue. Additionally, the memorandum concludes that there will be sufficient vehicular gap time to allow for left turns in an out of John Mise Court.

Maintenance of the Park

In consideration of exclusive use of the sports field and parking lot, Mitty proposes to provide routine maintenance of the Park at its sole cost. Mitty would be responsible for health and safety inspections, refuse removal, graffiti abatement, mowing, trimming, and fertilizing natural turf, leaf removal, weed abatement, maintenance of artificial turf, and other work required to keep the park in a safe and clean condition. This change in service delivery from the current model may be subject to meet and confer with applicable bargaining units. The City has provided notification to the relevant bargaining unit regarding this potential change. The City would continue to be responsible for (i) maintenance of the restroom and playground, (ii) maintenance and operations of water service, (iii) electrical service, (iv) trash disposal, (v) tree pruning, and (vi) potable water fountains.

The park maintenance would generally be provided Monday thru Sunday between 6:30 a.m. and 4:00 p.m., unless in an emergency or approved otherwise by City. Individuals who perform the maintenance services on behalf of Mitty must be qualified to perform the duties assigned to them by Mitty and possess the requisite licenses and permits necessary. Mitty has indicated that it would provide the park maintenance with both its employees and outside contractors. In accordance with City Council Resolution No. 61144 adopted in 1989, Mitty would be required to pay prevailing wage to those who perform the park maintenance services at Mise Park under the proposed agreement.

Prevailing Wage

The City of San José has its own prevailing wage policy. While the City often looks to state law for guidance in applying its policy, the City has taken the position that it is not required to follow state law on the issue. The City Council adopted Resolution No. 61144 in 1989 requiring the payment of prevailing wages in designated City contracts and services to the City. The policy states that prevailing wage is required for "City maintenance projects of a routine, recurring or usual nature for preservation, protection and keeping of City owned buildings, structures and ground facilities, where work is performed pursuant to contracts to which the City is a party" and exceeds \$1,000.

In exchange for making payments to the City for the reservation of the sports field at Mise Park and use of the parking spaces, Mitty will provide routine maintenance of Mise Park. The value of such maintenance service exceeds \$1,000. Mitty has indicated that it is agreeable to

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complying with the requirement in Resolution No. 61144 to pay prevailing wage to those who perform the park maintenance services at Mise Park under the proposed agreement.

In addition to Resolution No. 61144, the City Council adopted Resolution No. 71584 in 2003 requiring City contracts with outside contractors containing prevailing wage requirements to include a contractual provision regarding remedies for prevailing wage violations. One of the remedies contained in Resolution No. 71584 is liquidated damages. In the event a contractor fails to pay prevailing wages, liquidated damages are applied to the difference between the actual compensation paid and the compensation that should have been paid. The difference is multiplied by three and establishes the liquidated damage to be paid to the City. Liquidated damages were established because (i) it was difficult to calculate actual damages to the City, (ii) prevailing wage compensation to workers is a high priority for the City, and (iii) as an incentive to contractors to pay prevailing wages.

Mitty has agreed to pay prevailing wages and understands it will be subject to liquidated damages if it violates the requirements. However, Mitty has expressed concerns regarding the manner in which the City would impose liquidated damages for any prevailing wage violation. As indicated above, staff will continue to work with Mitty to determine the exact scope of its concerns and the exact nature of any proposed change being requested by Mitty. Once staff has met with Mitty, it intends to provide Council with a supplemental memo on the issue and request direction from the Council if necessary

City Charter Section 1700.1 and Council Policy 7-8

City Charter Section 1700.1 states that the City Council may enter into long term leases, concessions, permits or other agreements ("Agreements") with individuals or non-City entities, to allow use of public parks for terms of up to 25 years at a time, without voter approval, if the Council determines that Agreement would benefit the community and that the following conditions have been met:

- (i) the Agreement would enhance the designated recreational purposes for the public park;
- (ii) the public park subject to the Agreement is more than 5 acres in size and has at least 1 Community Serving Amenity, as defined below;
- (iii) the Agreement complies with an adopted City Council policy for Long Term Agreements in Parks, which defines community outreach standards, requirements for affordable access to the public park, periodic performance reviews, and early termination rights among other things; and
- (iv) any funds received by the City from the Agreement shall be used for recreational purposes.

Additionally, Council Policy 7-8 states that the agreement shall comply with the City's policies on prevailing wage and living wage, to the extent applicable.

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The proposed agreement meets all the conditions in City Charter Section 1700.1 and Council Policy 7-8. Specifically, the proposed agreement:

- (i) enhances the designated recreational purposes by providing a premium reservable sports field.
- (ii) is consistent with the Mise Park Master Plan that includes a sports field.
- (iii) is consistent with affordable access requirements for Mise Park as it provides for use periods where City of San José fee structure including scholarship components is applied.
- (iv) allows the City to terminate the proposed agreement without cause at any time and without restriction to the first ten years as described in Council Policy 7-8.
- (v) provides for a detailed annual performance review and quarterly progress reviews of Mitty by PRNS.
- (vi) requires Mitty's compliance with all existing Municipal Code provisions and existing City Policies including prevailing wage.
- (vii) uses all funds received by the City toward construction and maintenance supporting recreational purposes at Mise Park.
- (viii) applies to a Public Park that exceeds the five acres size requirement and contains a community serving amenity which is the reservable sports field at Mise Park.
- (ix) aligns with public outreach, CEQA, prevailing wage/living wage policies, and has been reviewed by the Parks and Recreation Commission.

As required by Policy 7-8, the proposed agreement includes provision for termination by the City without cause at any time. In the event of termination by City, the City will give Mitty at least a 30 day written notice. If the termination occurs within the first 13 years of the agreement, the City would have to return any artificial turf replacement fund contributions paid to the City. Additionally, based upon the date of termination, the City would return a portion of Mitty's capital contribution to the Project based upon a 13 year straight line amortization schedule. The funds would be returned to Mitty within 30 days of the termination date.

EVALUATION AND FOLLOW-UP

Staff will seek City Council authorization at a later date to award a construction contract for the renovation of the Mise Sports Field. Additionally, staff will meet and confer, if requested to do so by the affected bargaining unit.

POLICY ALTERNATIVES

Alternative #1: Reject the Agreement with Mitty to renovate and operate the Mise Sports Field

Pros: This alternative would address neighborhood concerns regarding potential increased traffic and activity at Mise Park.

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Cons: The City will lose up to \$375,000 in Mitty one-time capital contribution, \$175,500 Mitty Replacement Contribution for artificial turf, and 13 years of Mitty maintenance of Mise Park.

Reason for not recommending: If the joint use agreement with Mitty is not approved, the City will lose a partnership opportunity to help with the capital construction, eventual turf replacement, and ongoing maintenance costs for Mise Park as well as an opportunity to meet the sports field needs of Council District 1.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

The proposed joint use agreement and renovation of Mise Sports Field was presented at a community meeting on October 26, 2011. Over 800 meeting notices were mailed and 67 residents attended the meeting. Meeting attendees provided significant feedback about parking, artificial turf, and noise specific to the renovation project and the majority of the attendees that spoke at the meeting were opposed to the project. Other neighborhood concerns were expressed regarding graffiti, school traffic, and the City's collaboration with Mitty.

Since then, staff has worked to address community comments relevant to this project and improve the renovation plans. Over 800 residents were notified of a February 1, 2012 Parks and Recreation Commission hearing about the proposed Mitty agreement and revised renovation plan. The revised plan was posted on the PRNS website and the Parks and Recreation Commission (PRC) website. Although the PRC did not have a quorum to deliberate and vote on staff's recommendation, the agenda item was presented for purposes of hearing community feedback on the project.

At the March meeting, the PRC voted to not accept staff's recommendation. Alternatively, the PRC unanimously asked staff to (1) analyze additional options to find a plan that would be more amenable to the existing neighborhood; and (2) provide a more detailed analysis of alternative sites that were considered. Approximately 35 to 45 people attended each of the PRC meetings and those that spoke at the meetings were unanimously opposed to proceeding with the project.

Additionally, a questions and answer forum on the project sponsored by Councilmember Pete Constant was held on April 2, 2012, to provide residents with a further opportunity to ask

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questions and provide feedback on the proposed project. Key project scope changes that have occurred as a result of the various community and PRC input forums include (1) The new parking lot has been shifted to the northern portion of the property adjacent to the freeway; (2) the field lighting has been shifted slightly to the west, light aim adjusted, and evergreen tree planting between the field and the street are proposed in order to minimize light spillage to the homes along John Mise Court.

Staff has continued to work to address community comments relevant to the City's collaboration with Mitty as well as the Mise Sports Field project. For reference purposes, Attachment 1 is the revised Mise Sports Field renovation plan.

In addition, this memorandum will be posted on the City's website for the May 22, 2012 City Council agenda.

COORDINATION

This memorandum has been coordinated with the City Manager's Budget Office, the Office of Employee Relations, the Department of Planning Building and Code Enforcement, the Department of Public Works, and the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This project is consistent with the Council policies that seek innovative partnerships with schools focused upon long term benefits to families and students in the City of San José and partnerships that seek to improve the quality and efficiency of City services and operations. Once the Mise Sports Field is constructed and operational it is currently anticipated the facility will not have a negative impact to the General Fund. The revenue generated at the facility is anticipated to fully offset all operating and maintenance expenses.

COST SUMMARY/IMPLICATIONS

This joint use agreement with Mitty is based on renovation of the Mise Sports Field. The cost implications are as follows:

1. The Mise Sports Field renovation project has funding of \$3,487,000 currently allocated in the Council District 1 Construction and Conveyance Tax Fund (\$1,563,000) and the Subdivision Park Trust Fund (\$1,924,000). In addition, a total of \$13,000 was expended for project costs in 2010-2011 in the Subdivision Park Trust Fund, thereby bringing total project funding to \$3,500,000. Staff will seek City Council authorization at a later date to award a construction contract for the renovation project and include funding recommendations as required. Per the terms of this agreement, Mitty will contribute up to \$375,000 toward capital costs.

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2. The artificial turf sports field has an expected life of 13 years and the estimated cost to replace the artificial turf at that time is \$982,000. Per the terms of this agreement, Mitty will contribute \$13,500 for 13 years for a total of \$175,500 (Mitty's Replacement Contribution). The City is currently exploring funding options for the City's portion of future turf replacement for all sports fields, including Mise Park. When the expected life of the sports field at Mise Park has expired, if the City does not have the funds to replace the City's portion of the cost for the sports field at Mise Park (\$806,500), Mitty's Replacement Contribution will be refunded to Mitty.
3. In lieu of paying the annual sports field reservation fees for Mitty Use Period, Mitty will maintain Mise Park, with the exception of the restroom and playground, for 13 years. This will result in a reduction of the City's maintenance obligations for Mise Park and allow the City to direct maintenance resources toward enhanced park maintenance at other park facilities.

BUDGET REFERENCE

This joint use agreement with Mitty is based on renovation of the Mise Sports Field. The table below identifies the existing funds and appropriations for the construction project.

Fund #	Appn #	Appn. Name	Total Appn	Amount for Contract	Adopted Budget Page	Last Budget Action (Date, Ord. No.)
Available Project Funding						
377	7191	Mise Park Sports Field Development	\$1,563,000	TBD	V-336	10/18/11 28979
375	7191	Mise Park Sports Field Development	\$1,924,000*	TBD	V-524	10/18/11 28979
		TOTAL	\$3,487,000*			

* A total of \$13,000 was expended in the appropriation in the Park Trust Fund in 2010-2011, bringing the total funding allocated for this project to \$3,500,000 (of which \$1,937,000 is allocated in the Subdivision Park Trust Fund).

CEQA

CEQA: Categorically Exempt, File No, PP12-021.

/s/
 JULIE EDMONDS-MARES
 Acting Director of Parks, Recreation and
 Neighborhood Services

For questions please contact Matt Cano, Deputy Director, at 408-535-3580.

HONORABLE MAYOR AND CITY COUNCIL

April 30, 2012

Subject: Agreement with Archbishop Mitty High School for the Renovation, Operation, Maintenance and Joint Use of John Mise Park

Page 12

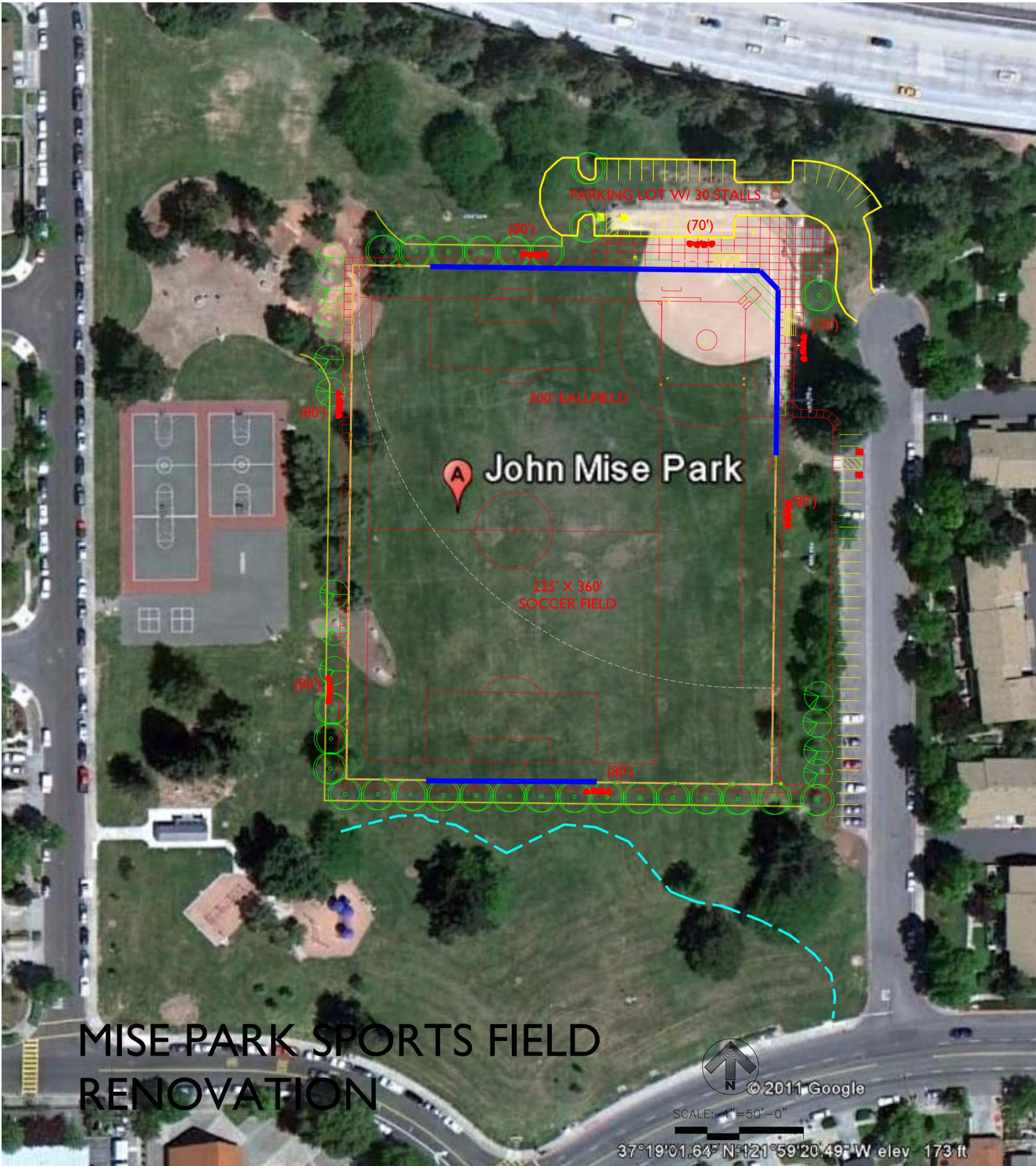
Attachments

Attachment 1: Mise Sports Field renovation plan

Attachment 2: Proposed Agreement

Attachment 3: CEQA

Attachment 4: Traffic Analysis



MISE PARK SPORTS FIELD RENOVATION

LEGEND

- | | | | |
|---|---|---|----------------------------------|
|  | 20 FT/16 FT HIGH BASEBALL BACKSTOP/SIDE FENCE |  | BOTTOM OF EXISTING BERM |
|  | PARKING LOT W/ 30 STALLS |  | 4 FT HIGH PERIMETER FENCE |
|  | BLEACHER |  | SPORTS FIELD LIGHT (POLE HEIGHT) |
|  | EXISTING PARKING AREA | | |

RD/JVP
04/27/12

DRAFT
**AGREEMENT BETWEEN
CITY OF SAN JOSE
AND
THE ROMAN CATHOLIC WELFARE CORPORATION OF
SAN JOSE (ARCHBISHOP MITTY HIGH SCHOOL)
FOR THE FUNDING, RENOVATION, AND JOINT USE OF
A SPORTS FIELD AND MAINTENANCE OF JOHN MISE
PARK**

This Agreement is made and entered into this _____ day of _____, 2012, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("City") and THE ROMAN CATHOLIC WELFARE CORPORATION OF SAN JOSE, a private 501(c)(3) nonprofit corporation of the State of California dba Archbishop Mitty High School ("Mitty"). Each of City and Mitty are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

RECITALS

A. Whereas, City is the fee simple owner of 11.7 acres located at the intersection of Moorpark Avenue and Mitty Way in San José, California, commonly known as "John Mise Park" (the "Park"). The Park currently includes a lighted softball field, restrooms, a parking lot with thirty-six (36) parking spaces, picnic area with barbeque pits, a playground, two (2) full basketball courts and a half basketball court, all as depicted in **Exhibit A**.

B. Whereas, City desires to improve the Park by renovating the existing natural turf lighted softball field to create an artificial turf lighted softball field with a soccer field overlay and construct other improvements to provide additional recreational opportunities for the community, as depicted in **Exhibit B**.

C. Whereas, Mitty currently owns and operates a Catholic college preparatory private high school called "Archbishop Mitty High School" that occupies twenty-four (24) acres located at 5000 Mitty Way, San José, California .

D. Whereas, City has available funding in the amount of Three Million Five Hundred Thousand Dollars (\$3,500,000) to convert the existing natural turf softball field

at the Park to an artificial turf field with a soccer field overlay of 55 yards x 100 yards ("Small Soccer Field"), as set forth in **Exhibit B**.

E. Whereas, the construction of an adult sized lighted artificial turf sports field overlay of 75 yards x 120 yards ("Adult Field"), as set forth in **Exhibit C**, would benefit both Parties by providing additional recreational opportunities for the community and increasing the City's ability to generate revenue to recover its cost associated with the Park.

F. Whereas, the cost estimate for the development of a Small Soccer Field is approximately Three Million Six Hundred Eighty-Four Thousand Dollars (\$3,684,000) and the Adult Field is approximately Four Million One Hundred Thirty-Six Thousand Dollars (\$4,136,000).

G. Whereas, Mitty desires to assist City in the development of an artificial turf lighted softball field with an Adult Field overlay at the Park by contributing the following to the City: (i) construction funding in the amount of the difference between the cost for the construction of a lighted artificial turf softball field with a Small Soccer Field overlay and a lighted artificial turf softball field with an Adult Field overlay ("Incremental Hard Cost"); (ii) planning and design funding in the amount of ten percent (10%) of the Incremental Hard Cost for the lighted artificial turf softball field with an Adult Field overlay; (iii) planning, design and construction of a storage facility to be located at the Park at Mitty's sole cost and expense if Mitty determines during the term of this Agreement that a storage facility is necessary for its purposes under this Agreement; (iv) funding in the amount of up to One Hundred Seventy-Five Thousand Five Hundred Dollars (\$175,500) for replacement of the artificial turf at the end of its anticipated useful life; and (v) performing certain daily maintenance at the Park in exchange for use of the artificial lighted softball field with an Adult Field overlay and parking (as depicted in **Exhibit C**) during certain specified periods, all as specified in detail in this Agreement.

H. Whereas, City desires to renovate the Park sports fields by replacing the existing lighted natural turf softball field and separate partially lighted soccer field with a lighted artificial turf sports field that includes a softball field and an Adult Field overlay,

irrigation system, fencing, connecting pedestrian pathways, additional thirty (30) new parking spaces (“Additional Parking Spaces”), lighting, drinking fountain, bleachers and storage, all as set forth in **Exhibit C** (the “Project”).

I. Whereas, Section 1700.1 of the San José Charter and City of San José Council Policy 7-8, entitled “Long-Term Use of City Parklands for Private Enterprise Purpose”, authorizes the City Council to enter into long term leases, concessions, permits or other agreements with individuals or non-City entities, to allow use of public parks for terms of up to 25 years at a time, without voter approval, if the Council determines that the agreement would benefit the community and that certain conditions have been met, including the following:

(i) the agreement would enhance the designated recreational purposes for the public park; and

(ii) the public park subject to the agreement is more than five (5) acres in size and has at least one (1) Community Serving Amenity such as a pool, community center or reservable sports field; and

(iii) the agreement complies with an adopted City Council policy for long-term agreements in parks, which defines community outreach standards, requirements for affordable access to the public park, periodic performance reviews, and early termination rights among other things; and

(iv) any funds received by the City from the agreement shall be used for recreational purposes.

J. Whereas, the Parties share the common objectives of enhancement of recreational opportunities for the students and neighbors of the Park and both City public recreational programs and Mitty school recreational programs will benefit from the field improvements contemplated pursuant to this Agreement.

K. Whereas, the Parties believe that they can best achieve such common objectives by jointly undertaking the collaborative planning, funding, construction, operation and maintenance of the Project and the Park, as further set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and for valuable consideration, receipt and sufficiency of which is hereby acknowledged, City and Mitty agree as follows:

SECTION 1. PURPOSE OF THE AGREEMENT.

A. The purpose of this Agreement is to provide for the following:

1. Development of the Project as set forth in this Agreement; and
2. Funding for the Project and replacement of the artificial turf at the end of its useful life; and
3. Joint use of the Project and maintenance of the Park.

B. The Parties intend by this Agreement to provide Mitty with all necessary access and right of entry to the Park for use of the Project (lighted softball field with an Adult Field overlay and Additional Parking Spaces) and maintenance of the Park, as set forth in this Agreement.

C. The Parties further intend that Mitty's consideration for this Agreement is the contribution of funding for the Project, replacement of the artificial turf, and maintenance of the Park, and that City's consideration for this Agreement is funding for the Project and allowing Mitty's use of the completed Project.

SECTION 2. TERM.

A. Subject to the termination provisions of this Agreement, any and all terms, conditions, and obligations of the Parties shall be effective on the full execution of this Agreement ("Effective Date") and shall remain in effect for thirteen (13) years ("Initial

Term”) from the commencement date of Mitty Use Period, as defined below in Section 6, unless such obligations explicitly survive termination.

B. The Initial Term shall automatically extend for a period of for twelve (12) years on the same terms and conditions set forth in this Agreement (the “Extension Term”) provided that Mitty: (i) makes its Replacement Contribution as required under this Agreement during the Initial Term and (ii) complies with all terms, conditions, and obligations under this Agreement during the Initial Term, including the maintenance requirements for the Park. An extension of the term of this Agreement will be confirmed in writing by the City.

C. The Parties acknowledge that City funding of the operation, maintenance, and improvement obligations under this Agreement shall be on a fiscal year basis (July 1 to June 30), and is subject to annual appropriations by the City Council. The Parties acknowledge that the City is a public entity and, as such, is precluded by the California State Constitution and other laws from entering into obligations which financially bind future governing bodies, and that, therefore, except to the extent permitted by law, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for the purposes of this Agreement.

SECTION 3. COMMUNICATION.

A. The Director of Parks, Recreation and Neighborhood Services (“Director”) and Mitty’s Principal, or their respective designees, shall meet on a quarterly basis each calendar year, to confer on maintenance and repair issues related to the Park. The Parties shall also meet on an annual basis each calendar year to confer on scheduling and other park related issues that may arise during the Initial Term or Extension Term of this Agreement.

B. Mitty shall not use, or cause the Park to be used, in any manner that violates any federal, state, local law, ordinance, rule or policy.

C. City, as owner of the Park, shall have sole discretion to make all decisions regarding the use of the Park, scheduling of the lighted softball field with the Adult Field overlay (with the exception of Mitty's exclusive use of the lighted softball field with the Adult Field overlay as set forth in Section 7), and for maintenance and repair of the Park, as further provided in this Agreement.

SECTION 4. DESIGN AND CONSTRUCTION OF THE PROJECT.

A. Subject to the terms and conditions herein, City shall be solely responsible for the design and construction of the Project, excepting the storage facility as described in Section 4.C, as a "public works" project under the City Charter and Municipal Code. City shall be responsible for managing the design and construction of the Project. City shall be responsible for hiring the design professionals for the preparation of drawings, plans, and specifications for the construction of the Project in compliance with all City policy and legal requirements; conducting and administering the bidding process for construction; awarding the construction contract; supervision and administration of construction; payment of amounts due to the architect, the contractor and other persons under contract with City providing services; and administration and resolution of any claims or disputes in connection with the design and construction of the Project.

B. City's bid solicitation for the Project shall include specifications for both a Small Soccer Field, as set forth in **Exhibit B**, and a Adult Field, as set forth in **Exhibit C**, with an add alternate or deductive alternate line item, as determined by City. The Incremental Hard Cost for purposes of determining Mitty's funding contribution for construction of the Project, as set forth below in Section 5, shall be based on the difference in cost as specified in the lowest responsive and responsible bid, as determined by City in accordance with City policies and regulations, for the construction of the Small Soccer Field and Adult Field. For example, if the lowest responsible bid specifies that the difference in cost to construct a Small Soccer Field and Adult Field is \$300,000, then the Incremental Hard Cost for purposes of this Agreement will be \$300,000.

C. If Mitty determines during the Initial Term of this Agreement that a storage facility is necessary for its purposes, then Mitty, at its sole cost and expense, shall be responsible for the development of plans and specifications, for a storage facility that will be located at the Park. The plans and specifications shall be completed in accordance with City's Standard Specifications and Details, Municipal Code, and policies, and shall be subject to City review and approval which shall not be unreasonably withheld. The plans and specifications for the storage facility shall be submitted to the City along with the applicable design and inspection fees in effect at the time of the submittal. Mitty, at its sole cost and expense, shall also be responsible for the cost of the construction of the storage facility in accordance with City's Standard Specifications and Details, Municipal Code, and policies. Subject to City policies and approval, Mitty may install up to three temporary storage containers within the Park, not to exceed 12 feet by 4 feet by 4 feet on a concrete pad. Mitty shall be responsible for any costs associated with the design, construction, inspection, or transportation of the temporary storage container and concrete pad. City shall have final approval in its discretion of the temporary storage containers.

D. The Parties understand that the Project design and construction schedule may be impacted by unforeseen events, and agree that until construction is ninety percent (90%) complete, the Parties should not plan for use of the Project by a date certain. City will provide Mitty with written notice when the construction is ninety percent (90%) complete, and of the projected Project Completion Date. The Project Completion Date shall be the date that the City fully accepts the Project from the construction contractor by issuing a Notice of Completion for the Project (or Notice of Substantial Completion that authorizes use of the Project).

SECTION 5. PROJECT FUNDING.

A. The cost estimate for the development of the Project is Four Million One Hundred Thirty-Six Thousand Dollars (\$4,136,000) ("Project Cost Estimate") as set forth in **Exhibit C.** The Project Cost Estimate includes the cost estimates for planning, design, construction, review and inspection, project administration and management, and other

necessary costs to complete the Project. The Parties agree to provide funding for the Project as follows:

1. City agrees to contribute an amount not to exceed Three Million Five Hundred Thousand Dollars (\$3,500,000) ("City Contribution") for the development of the Project. As described in **Exhibit B**, City Contribution consists of Two Million Nine Hundred Eighty-Four Thousand Dollars (\$2,984,000) for construction and construction contingency, and Seven Hundred Thousand (\$700,000) for planning, design, construction administration and management, and review and inspection costs for the Project (collectively "City's Design and Management Cost"). In no event shall City be obligated under this Agreement to provide funding above City Contribution without the approval of the City Council of the City of San José.
2. Mitty agrees to contribute an amount not to exceed Three Hundred Seventy Five Thousand Dollars (\$375,000) ("Mitty Capital Contribution") for the development of the Project. The exact amount of Mitty Capital Contribution to the Project shall be calculated by adding the following:
 - (i) Incremental Hard Cost between the construction of the lighted softball field with a Small Soccer Field overlay and Adult Field overlay; and
 - (ii) a five percent (5%) construction contingency, as determined by City based on the lowest responsive and responsible bid used to award the construction contract. Mitty's portion of the construction contingency shall be used only for change orders relating to the add alternate Adult Field as determined by City in its reasonable discretion; and
 - (iii) planning, design, construction administration and management, and review and inspection costs for the Project (collectively "Mitty's Design and Management Cost"), as determined by City, based on ten percent (10%) of the Incremental Hard Cost set forth in Sections 5.A.2(i) above.

For example, if the Incremental Hard Cost is Three Hundred Thousand Dollars (\$300,000), Mitty Capital Contribution to the Project shall be as follows: \$300,000 (Incremental Hard Cost) + \$15,000 (Construction Contingency) + \$30,000 (Design and Management Cost) = \$345,000. Any unused portion of Mitty's construction contingency funds shall be returned to Mitty within sixty (60) days of Project Completion Date; provided that City may withhold any unpaid amount or such amount in dispute with its contractor until all invoices have been closed out.

- a. Mitty shall provide its contribution to City within fifteen (15) days of written notice by City to Mitty of the exact amount of Mitty Capital Contribution to the Project as determined by City based on the formula set forth in Section 5.A.2 above. Payment shall be made by wire transfer from Mitty to a designated City bank account. Failure of Mitty to provide the payment within the time period set forth in this provision shall be a material breach of this Agreement and City may terminate this Agreement as provided in the termination provision of this Agreement.
 - b. Notwithstanding Section 5.A.2 above or any other provision in this Agreement, the cost for the plans and specifications and construction of the storage facility described in Section 4.C of this Agreement shall not be included in Mitty Capital Contribution and shall be an additional cost that is the sole responsibility of Mitty.
3. The total amount of funding available for the development of the Project based on City Contribution and Mitty Capital Contribution is Three Million and Eight Hundred and Seventy-Five Thousand Dollars (\$3,875,000) ("Project Budget") as described in Section 5.A.1 and 5.A.2. The Project Cost Estimate as described in Section 5.A is Four Million One Hundred Thirty-Six Thousand Dollars (\$4,136,000). There is a funding gap between the Project Cost Estimate and the Project Budget in the amount

of Two Hundred Sixty-One Thousand Dollars (\$261,000). If the lowest responsive and responsible bid, as determined by City in accordance with City policies and regulations, for the construction of the Project exceeds the Project Budget, then the Parties shall meet to determine the appropriate course of action. The Parties shall have the following options:

- a. Revise the Project scope in accordance with the available funds, which revision can be accomplished in written letter form mutually agreed upon by the Parties and approved by the City Manager and shall be made a part of this Agreement;
 - b. Revise the financial responsibilities of each Party, which revision can be accomplished only by written amendment mutually agreed upon by the Parties and approved by the City Council; or
 - c. Terminate this Agreement, which can be accomplished by either Party giving written notice to the other party of such termination consistent with Section 16 below.
4. If, at any time, the Project expenditures are projected to exceed the Project Budget, City shall immediately notify Mitty of the change in the projected expenditures. The Parties shall then meet to determine the appropriate course of action. The Parties shall have the following options:
- a. Revise the Project scope in accordance with the available funds, which revision can be accomplished in written letter form mutually agreed upon by the Parties and approved by the City Manager and shall be made a part of this Agreement;
 - b. Revise the financial responsibilities of each Party, which revision can be accomplished only by written amendment mutually agreed upon by the Parties and approved by the City Council; or

- c. Terminate this Agreement, which can be accomplished by either Party giving written notice to the other Party of such termination consistent with Section 16 below.
5. City shall draw down on Mitty Capital Contribution only for allowable costs and expenses related to the Project and only as they are incurred for the Project. During the term of this Agreement, the following costs and expenses are allowable:
- a. City actual costs for planning and design, with no markup.
 - b. City actual construction costs including contingency, with no markup.
 - c. City actual costs for review and inspection for the Project, with no markup.
 - d. Actual costs for postage, printing, shipping/mailing and reproduction of plans and documents, with no markup.

Expenses not listed above are not allowable unless previously approved in writing by Mitty.

B. City is the fee owner of the Park and shall own all improvements constructed as part of this Agreement. Nothing stated in this Agreement shall transfer any ownership rights or interests of the Park or any improvements therein from City to Mitty. City, its officers, employees, and agents shall have the right to enter into and upon the Park, including the Project area, at all times without any prior notice to Mitty.

SECTION 6. USE PERIODS.

A. Beginning on the commencement date of Mitty Use Period, Mitty shall have use of the lighted softball field and Adult Field overlay, as depicted in **Exhibit C**, for School Recreational Activities during the hours of 2:45 p.m. to 5:30 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday, between August 20th and June 1st of each year, including Mitty school holidays (“Mitty Use Period”) during the Initial Term and Extension Term of this Agreement. The exact commencement date of Mitty Use Period shall be

mutually determined by the Parties and confirmed in writing in the form attached hereto to this Agreement as **Exhibit H**, but in no event shall the commencement date of Mitty Use Period be more than ninety (90) days from the Project Completion Date. The written confirmation of the commencement date of the Mitty Use Period shall be made a part of this Agreement and attached and incorporated herein. For purposes of this Agreement, "School Recreational Activities" shall mean organized school sports programs or activities directly related to Mitty High School, such as practices and games for their sport teams or activities (i.e. soccer, football, baseball, field hockey, lacrosse, softball, etc.). All other hours, except for Mitty Use Period, shall be reserved for the City for its programs, activities, or use at its sole discretion ("City Use Period"). Mitty's funding contribution and agreement to maintain the Park, as set forth below, shall constitute full payment for exclusive use of the lighted softball field and Adult Field overlay during Mitty Use Period, which use shall therefore be at no other cost to Mitty. Mitty's use of the lighted softball field and Adult Field overlay, as depicted in **Exhibit C**, for times other than Mitty Use Period or at any time for other improvements in the Park shall be subject to any standard terms, fees and conditions which the City establishes for its third party users of the Park and shall be on an as available basis. Mitty may request up to twenty (20) additional hours each fiscal year during the term of this Agreement of use of the lighted softball field or Adult Field overlay during City Use Period in minimum two-hour (2-hour) increments, at no charge if City determines, at its sole discretion, that the following criteria are met: (i) the requested hours have not been reserved by the City for its programs, activities, or use; (ii) the requested hours have not been reserved by any member of the public; and (iii) the request is made by Mitty more than six (6) months from the requested date of the use or can reasonably be accommodated by City. Mitty shall have the right to use some portion of their additional 20 hours referenced above to reserve the fields until 6:00 p.m. provided that Mitty meets the requirements as set forth above.

B. Mitty shall assume full responsibility and liability for the following:

1. Setting up any equipment (approved by City) needed for Mitty's School Recreational Activities during Mitty Use Period; and

2. Returning all equipment (approved by City) to designated storage or location area after each day's use of the lighted softball field and Adult Field overlay during Mitty Use Period; and
3. Supervision of any student or other persons entering the lighted softball field or Adult Field overlay during Mitty Use Period; and
4. Any injury, losses, damages, lawsuits or actions arising from or relating to Mitty's use of the completed Project under this Agreement; and
5. Any damage above and beyond normal wear and tear to the lighted softball field or Adult Field overlay or City equipment as a result of Mitty's use or otherwise occurring during Mitty Use Period, excluding damage occurring during City's Use Period; and
6. Ensuring that the lighted softball field and Adult Field overlay is in a clean condition after Mitty Use Period. For purposes of this section, "clean" shall mean that all paper, bottles, trash, and other debris are removed from the lighted softball field and Adult Field overlay and properly disposed.

C. Mitty shall not be entitled to charge and collect fees for any use or activity conducted at the lighted softball field or Adult Field overlay during Mitty Use Period. Any fees collected shall be the sole property of City.

D. Mitty shall use and maintain the lighted softball field and Adult Field overlay in a secure, clean, and safe condition during Mitty Use Period. Mitty shall be responsible for any and all damages (other than reasonable wear and tear) caused during Mitty Use Period to any components or improvements of the lighted softball field and Adult Field overlay by (1) Mitty's negligence; or (2) students or other individual's use of the lighted softball field and Adult Field overlay. Any repairs required under this Section 6 shall be performed as soon as practical but in no case longer than within ten (10) days of notice from City to Mitty or by a date mutually agreed upon between the City and Mitty.

SECTION 7. USE OF ADDITIONAL PARKING SPACES.

A. Beginning on the commencement date of Mitty Use Period, Mitty shall be entitled, at no cost or expense to Mitty except as provided in this Agreement, to the use of the Additional Parking Spaces as shown in **Exhibit C** for parking during the hours of 7:00 a.m. to 3:00 p.m. on Monday, Tuesday, Wednesday, Thursday, and Friday, between August 20th and June 1st of each year, excluding Mitty school holidays (“Mitty Parking Use Period”) City agrees to install signs in accordance with City policies and regulations designating the Additional Parking Spaces for Mitty’s use during Mitty Parking Use Period.

B. Mitty shall use and maintain the Additional Parking Spaces in a secure, clean, and safe condition during Mitty Parking Use Period. Mitty shall be responsible for any and all damages (other than reasonable wear and tear) caused during Mitty Parking Use Period to any components or improvements of the Additional Parking Spaces by (1) Mitty’s negligence; or (2) students or other individual’s use of the Additional Parking Spaces. Any repairs required under this Section 7 shall be performed within ten (10) days of notice from City to Mitty or by a date mutually agreed upon between the City and Mitty.

C. Mitty agrees and assumes all responsibility and liability for the use of the Additional Parking Spaces during Mitty Use Period as set forth in this Section 7. Mitty understands and acknowledges that City does not provide security for any of the parking area for the Park and any and all losses, claims, damages or otherwise relating to or arising out of Mitty, or its guests, or invitees is the sole responsibility of Mitty. Additionally, Mitty agrees and acknowledges that City will not provide any parking enforcement related to Mitty’s exclusive use of the Additional Parking Spaces under this Agreement.

D. Mitty shall not be entitled to charge and collect fees for any use or activity conducted or related to the Additional Parking Spaces during Mitty Use Period. Any fees collected shall be the sole property of City.

SECTION 8. ENVIRONMENTAL CONDITIONS.

A. In the event that, during the construction of the Project, Hazardous Materials are found to exist at, in, on, or under the Property, which Hazardous Materials are required by applicable law to be remediated to complete the Project and/or use the Park, City's and Mitty's remedies shall be limited to either: (i) the Parties mutually agreeing to fund the remediation of such Hazardous Materials, as required by applicable law to complete the Project and/or use the Park, or (ii) either Party may elect to terminate this Agreement pursuant to Section 16D(2). If City or Mitty elect to terminate this Agreement, any temporary containment of the Hazardous Materials required by applicable law shall be borne by the City.

B. Mitty agrees that it will not cause or permit any Hazardous Materials to be released at, on, under, or placed upon, under or around the Park, except as permitted by law. Mitty shall indemnify and hold City harmless from any loss, claim, or expense occurring by reason of its acts or omissions in violation of this Section 8.B. Mitty's obligations under this Section 8 shall survive the termination of this Agreement.

C. In the event that any investigation, assessment or remediation is required to complete the Project and City elects, at its cost, to continue the Project, Mitty shall cooperate with City in the investigation and remediation of any Hazardous Materials existing at, in, on, or under the Park.

SECTION 9. MAINTENANCE, REPAIRS AND UTILITIES AT PARK.

A. Beginning on the commencement date of Mitty Use Period, Mitty shall, at Mitty's sole cost and expense, fully and timely perform and satisfy any and all terms, conditions, and maintenance obligations of this Agreement. Mitty shall, at Mitty's sole cost and expense, provide labor, supervision, supplies, materials, equipment, and any and all other tools and manpower necessary to maintain the Park in accordance with this Agreement during both the Initial Term and the Extension Term of this Agreement.

B. Mitty shall be fully and solely responsible for all maintenance of the Park improvements existing at the time of the Project Completion Date, with the limited exception of the restroom and playground located in the Park. Mitty will not be responsible for increased costs of maintenance related to any additional improvements constructed at the Park by City on or after the Project Completion Date. Mitty shall provide any and all general maintenance of the Park as described in **Exhibit E** of this Agreement, in order to maintain the life of the park improvements located within Park as stated in this Agreement, and any additional maintenance not set forth in this Agreement mutually agreeable by the Parties that may reasonably be required by the PRNS Director to maintain the life of the Park. The maintenance described in **Exhibit E** of this Agreement is referred to as the “Maintenance Services”.

C. The Maintenance Services must be completed in accordance with the specifications set out in **Exhibit E** of this Agreement and subject to City review and approval which shall not be unreasonably withheld. Mitty shall not be responsible for defects in park improvements covered by the standard warranty in the City’s construction contract with its contractor for the Project.

D. In the event of an imminently dangerous condition at the Park, City, at its sole discretion, shall retain all rights to take any corrective action City deems necessary to address the immediate health and safety concerns at the Park. City shall have the right to send Mitty an invoice for any such work required by City under this Section 9.D where the imminently dangerous condition at the Park was created or caused by Mitty’s failure to perform and satisfy any Maintenance Services required under this Agreement. Any such invoice issued by City to Mitty shall be paid by Mitty to City within thirty (30) calendar days of date of issuance of the invoice.

E. Except for any equipment needed for maintenance or for School Recreational Activities that would be contained within the contemplated storage facility, Mitty and/or

its contractor, subcontractor, agent, or representative shall not store any equipment, materials, or supplies in, on, or upon the Park, unless authorized in writing by City.

F. Mitty agrees and acknowledges that the Park will be a public park, open to the public during the hours set by City (currently, sunrise until one hour after sunset or until 10 p.m. for the lighted fields) and that nothing herein gives Mitty the right to restrict or to exclude any person or entity from the Park other than the lighted softball field and Adult Field overlay during Mitty Use Period. If Mitty believes that any area of the Park needs to be restricted or closed for public safety purposes to perform the Maintenance Services described herein, Mitty shall obtain City's prior written approval of any restriction on access and also obtain City's prior written approval of the method of providing notice to the public.

G. Mitty's maintenance contractor(s)/facilities manager and City shall meet on a quarterly (every three months) basis at the Park to inspect the park site and review the Maintenance Services provided herein by Mitty.

H. Mitty, and its agents, employees, representatives, and contractors shall have a non-exclusive right to enter into, over, across, upon, and under the Park that is necessary for access, ingress, egress, and all activities related to the maintenance of the park improvements located within the Park during the Initial Term and Extension Term as set forth in this Section and **Exhibit E** of this Agreement.

I. Mitty shall ensure that all employees performing work under this Agreement pass a criminal background check through the database of the California Department of Justice, and an FBI criminal database or equivalent national database, as allowed by Federal, State and Local laws. Mitty shall execute the certifications set forth **Exhibit I** (Employee Clearance Verification).

J. Mitty shall require that all employees performing work under this Agreement are at least eighteen years of age on the first day of their employment.

K. Mitty, and its contractors and subcontractors, shall pay those employees performing maintenance and repair work related to this Agreement those specified Prevailing Wage rates as set forth in **Exhibit F** (Wage Policy) and shall meet the documentation and reporting requirements set forth therein. In the event that Mitty is also required to comply with the State Prevailing Wage requirements, Mitty shall comply, and cause any of its contractors and subcontractors, to comply with such State requirements.

L. City shall, at City's sole cost, provide (1) maintenance of the restroom and playground, (2) maintenance and operation of water service (limited to backflow preventor and entire irrigation system except sprinkler heads), (3) electrical service, (4) trash disposal (limited to debris in City provided dumpsters and approved yard waste placed in approved street locations), (5) tree pruning, and (6) mechanical maintenance of potable drinking fountains. In the event there are any City approved events at the Park, City shall provide game field markings and other support and services required for the City approved events.

SECTION 10. REPLACEMENT OF ARTIFICIAL TURF FOR SOCCER FIELD.

A. As part of the consideration for exclusive use of the lighted softball field with a Adult Field overlay and Additional Parking Spaces, Mitty agrees to provide to the City a total of up to One Hundred Seventy-Five Thousand Five Hundred Dollars (\$175,500) ("Replacement Contribution") during the Initial Term for the replacement of the artificial turf for the lighted softball field with an Adult Field Overlay, as described herein. Based on various factors, such as weather, use, and maintenance, the useful life of the artificial turf for the lighted softball field with an Adult Field overlay is estimated at approximately thirteen (13) years. The current cost estimate for the replacement of the artificial turf is Nine Hundred Eighty-Two Thousand Dollars (\$982,000). Based on the Replacement Contribution from Mitty, the available funding for the replacement of the artificial turf for the lighted softball field with an Adult Field overlay at the end of the thirteenth year will be One Hundred and Seventy-Five Thousand Five Hundred Dollars

(\$175,500). There will be a significant funding gap between the Replacement Contribution from Mitty and the amount required for the replacement of the artificial turf.

B. Mitty shall make payment(s) to City within ten (10) days of City appropriating funding for the replacement of the artificial turf for the Adult Field. The amount to be paid by Mitty to the City shall be the pro rata share of City's contribution to the replacement cost of the artificial turf. For example, if City appropriates Five Hundred Thousand Dollars (\$500,000) for replacement of the artificial turf, which equates to approximately fifty percent (50%) of the replacement cost of the artificial turf (at any time during the Initial Term), Mitty would be required to contribute within ten (10) days its pro rata replacement share which would be in the amount of Eight-Five Thousand Five Hundred Dollars (\$85,000), approximately fifty percent (50%) of the Replacement Contribution. Mitty shall make its Replacement Contribution payment(s) to the City during the Initial Term, up to the maximum amount of One Hundred Seventy-Five Thousand Five Hundred Dollars (\$175,500). Mitty is not required to make its Replacement Contribution payment(s) as set forth in this Section 10 until City appropriates funding for replacement of the artificial turf for the Adult Field. City shall deposit the Replacement Contribution in a fund, approved by the City Manager, to be used towards the replacement cost of the artificial turf of the lighted softball field with an Adult Field overlay.

C. At the end of the thirteenth year from the Project Completion Date, City, at its sole discretion, shall determine whether the artificial turf needs to be replaced and whether there is sufficient City funding to assist in the replacement of the artificial turf. City shall make this determination on an annual basis until the earlier of the following events: (i) there is a need for replacement of the artificial turf and sufficient available funding, as determined by City, to replace the artificial turf for the lighted softball field with an Adult Field overlay and City will move forward with the replacement, or (ii) the Agreement earlier terminates or expires and City will return the paid Replacement Contribution back to Mitty.

D. After the Initial Term, a continued Replacement Contribution will not be required during the Extension Term, unless parties agree to extend the agreement for an additional term.

SECTION 11. STAFFING OF SOCCER FIELD.

A. The Parties shall each designate a Field Director to oversee use, clean-up, maintenance, repairs and reservations of the lighted softball field and Adult Field overlay under this Agreement during each party's individual Use Period. The Parties shall be responsible for the compensation of their own staff, including all associated employee benefits (if any), taxes and insurance.

B. The designated Field Directors shall be responsible to implement all necessary and appropriate health, welfare, safety and security measures during the use and operation of the lighted softball field with an Adult Field overlay during Mitty Use Period or City Use Period, as applicable. The Parties agree to be in compliance with all laws, rules, regulations, and standards necessary to assure the safety and welfare of those using the lighted softball field with an Adult Field overlay.

C. The City's Field Director shall be responsible for arrangement, general supervision, and monitoring of the social, educational, leisure and recreation programs and services to be provided by or through City, at the lighted softball field with an Adult Field overlay during the City Use Period. At all other times and when Mitty uses the lighted softball field with an Adult Field overlay during the Mitty Use Period, Mitty's Field Director shall be responsible for arrangement, general supervision, responsibilities and monitoring of the educational, sports and recreation programs and services to be provided by or through Mitty, at the lighted softball field with an Adult Field overlay.

SECTION 12. INDEMNIFICATION.

A. Mitty shall fully defend, indemnify and hold City, its officers, employees and agents harmless from and against any claims, costs, loss, damages or liability arising out of, relating to, or occurring by reason of anything done or omitted to be done by Mitty, including its agents, employees, contractors, invitees or users under or in

connection with this Agreement or by any of Mitty's agents, employees, contractors, invitees or users in connection with their use of or presence on the lighted softball field or Adult Field overlay or parking lot during the Mitty Use Period.

B. This Section shall survive expiration or sooner termination of this Agreement.

SECTION 13. INSURANCE REQUIREMENTS.

Mitty agrees to have and maintain the policies set forth in the attached **Exhibit G**, entitled "INSURANCE" or to provide a certificate of self insurance. All Mitty policies, endorsements, certificates and/or binders shall be subject to approval by the City's Director of Finance or the Director's authorized designee ("Risk Manager") as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Risk Manager of the City. Mitty agrees to provide the City with a copy of said policies, certificates, affidavits of insurance and/or endorsements before Mitty commences to perform any work under this Agreement.

SECTION 14. DAMAGE AND DESTRUCTION.

A. Following Project Completion Date, in the event that the Project is damaged or destroyed by fire or other casualty, City may, at its sole option, elect to repair the damage to the Project, or to terminate this Agreement pursuant to subsection C below. City shall give Mitty written notice of its election within ninety (90) days of the damage or destruction of the Project.

B. If City elects to repair the Project, all conditions applicable to Mitty's rights concerning the construction of the Project shall apply to repairs to these facilities under this Section. Upon City's election to repair the Project, it may repair the Project to such reasonable standards as determined by City. City shall be responsible for all expenses of placing fences, enclosures or other structures as City agrees is reasonable to prevent people from accessing the Project until the repair or demolition is complete.

C. If City elects to terminate this Agreement, the Parties shall have no further obligations under this Agreement, except for the Agreement provisions that expressly survive termination of this Agreement. City may retain all insurance proceeds it receives. Mitty Replacement Contributions paid to the City up to the point of termination and Mitty's Capital Contribution (based upon a 13 year straight line amortization schedule) shall be refunded within thirty (30) days.

SECTION 15. CONDEMNATION.

A. If the whole Project site shall be taken pursuant to any condemnation proceeding, this Agreement shall terminate as of the date that actual physical possession of the Project site is taken, and after that date, this Agreement shall terminate and the Parties shall be released from all duties, obligations and responsibilities under this Agreement, except for those provisions that explicitly survive termination. In the event of a full taking, the City shall be entitled to the entire condemnation award. Mitty Replacement Contributions made up to the point of termination and Mitty's Capital Contribution (based upon a 13 year straight line amortization schedule) shall be refunded within thirty (30) days.

B. If only a part of the Project site is taken pursuant to any condemnation proceeding and the remaining portion is suitable for the purposes for which City or Mitty, as applicable, was using the Project site prior to the taking, then this Agreement shall, at that Party's option, either terminate in its entirety, or, terminate only as to the part so taken as of the date that actual physical possession of such portion of the Project Site is taken, and after that date, this Agreement shall terminate with respect to such portion of the Project Site taken and the Parties shall be released from all duties, obligations and responsibilities under this Agreement, except for those provisions that explicitly survive termination. In the event of a partial taking, the City shall be entitled to the entire condemnation award. Mitty Replacement Contributions made up to the point of termination and Mitty's Capital Contribution (based upon a 13 year straight line amortization schedule) shall be refunded within thirty (30) days.

C. Nothing herein contained shall be deemed or construed to prevent City from interposing and prosecuting in any condemnation proceedings any claim or defense, including but not limited to a claim for the value of any fixtures or improvements installed in or made to the Project Site, or for its costs of moving or loss of business by reason of such condemnation.

SECTION 16. DISPUTE RESOLUTION AND TERMINATION.

A. The Parties shall first attempt to resolve any dispute arising under this Agreement through consultation and mediation, before other dispute resolution methods are employed.

1. A failure or delay by any Party to perform any material term or provision of this Agreement constitutes a breach ("Breach") under this Agreement. Breach shall also include (i) any action taken or suffered by Mitty under an insolvency or bankruptcy act, including the appointment of a receiver to take possession of all or substantially all of the assets of Mitty, (ii) a general assignment by Mitty for the benefit of creditors, or (iii) loss of Mitty's corporate status as a non-profit. The Party who commits a Breach shall promptly commence to cure, correct or remedy with reasonable diligence, and during any period of curing shall not be in default of this Agreement unless such cure is not completed within a reasonable period of time. The Breach shall be cured within thirty (30) calendar days of the Notice of Breach (as defined below) or if unable to be cured within such thirty (30) day period, shall commence to be cured within such thirty (30) day period with the cure to be completed within a reasonable time period.
2. In the event of a Breach by any Party, the injured Party shall give written notice of Breach ("Notice of Breach") to the Party in Breach.
3. Within five (5) working days of receiving the Notice of Breach, the Parties in dispute shall meet and attempt to resolve their dispute in good faith and consistent with the underlying purposes of the Agreement.

4. If the meeting between the Parties does not resolve their dispute, the Parties agree to negotiate in good faith to set the matter for mediation with a mutually agreed mediator, with said mediation to be held within thirty (30) calendar days of the Notice of Breach, unless the Parties agree to extend the deadline. The Parties to any such mediation shall share equally in the costs of the mediation.
5. If the mediation following Notice of Breach does not resolve the dispute or the Parties cannot reach agreement upon a mediator within the time period set forth above, the Parties shall have the right to exercise any and all remedies available to it at law or under equity, including, without limitation, the right to terminate this Agreement upon written notice to the breaching Party.

B. Pre-Completion of the Project.

1. If this Agreement is terminated pursuant to Section 16A as a result of Mitty's Breach at any time prior to the Project Completion Date, Mitty shall reimburse City within thirty (30) days all costs or expenses reasonably expended or incurred under or in furtherance of this Agreement to the date of the Notice of Breach.
2. In the event that there is insufficient funding to award the construction contract or insufficient funding to complete the Project as set forth in Section 5, either Party may terminate this Agreement with no less than thirty (30) calendar days written notice to the other respective Party of its intention to terminate this Agreement, and no Party shall have any further obligations hereunder unless such obligations explicitly survive termination. All costs and expenses expended or incurred by City for the Project prior to the date of termination shall be the responsibility of both Parties based on the proportionality of the contribution to the Project.

C. Post-Completion of the Project.

1. Without limiting any rights or remedies hereunder, City and Mitty agree that if City terminates this Agreement pursuant to Section 16A as a result of Mitty's

Breach at any time on or after the Project Completion Date, the Replacement Contribution paid to the City as of the termination date shall be immediately forfeited to the City.

D. Elective Termination.

City may elect to terminate this Agreement for City's convenience, at any time and for any reason, in which event City shall give Mitty no less than thirty (30) days written notice of a termination under this provision of the Agreement. Following such notice, Mitty shall vacate the Project site, and neither Mitty nor City shall have any further obligations hereunder unless such obligations explicitly survive termination. If City terminates this Agreement for convenience as provided herein during the Initial Term of the Agreement, City shall return to Mitty within thirty (30) days any Mitty Replacement Contribution paid to the City as of the date of termination and Mitty's Capital Contribution (based upon a 13 year straight line amortization schedule).

SECTION 17. SURRENDER OF PROPERTY.

Upon termination or earlier expiration of this Agreement, Mitty shall surrender to City the Project area in good order, condition and repair (except for reasonable wear and tear and except as specified otherwise in this Agreement). If the Project area is not surrendered on the last day of the term or earlier termination, Mitty shall defend and indemnify City against all loss, damage or liability suffered by City related to Mitty's delay in so surrendering the Project area.

SECTION 18. ASSIGNMENT AND SUBLETTING.

A. Mitty shall not assign any rights or duties hereunder in this Agreement without the prior written consent of the City. Additionally, Mitty acknowledges and agrees that City, at its sole discretion, may enter into any agreements or permit use of the Park, including the lighted softball field with an Adult Field overlay, in any manner City deems appropriate that is consistent with this Agreement and does not reasonably interfere with Mitty Use Period.

B. All covenants, promises, conditions, representations, and agreements expressed in this Agreement shall be binding on the Party who makes them and on that Party's representatives, successors, and permitted assigns, as authorized herein.

SECTION 19. WAIVER.

In no event shall any payment by Mitty or any acceptance of payment or services by City hereunder constitute or be construed to be a waiver by City of any Breach of covenants or conditions of this Agreement or any default which may then exist on the part of Mitty, and the making of any such payment or the acceptance of any such payment or services while any such Breach or default exists, shall in no way impair or prejudice any right or remedy available to City with respect to such Breach or default. The waiver by City of any Breach by Mitty of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent Breach either of the same or of another provision of this Agreement.

SECTION 20. INDEPENDENT CONTRACTOR.

Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between Mitty and City. Each Party acknowledges and agrees that it neither has, nor will give the appearance or impression of having, any legal authority to bind or commit the other Party in any way.

SECTION 21. AMENDMENTS.

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto and approved by appropriate authority.

SECTION 22. SURRENDER OF PROPERTY.

On the last day of the term or earlier termination of this Agreement, Mitty shall surrender to City the Project in good order, condition and repair (except for reasonable wear and tear, damage or destruction as specified in Section 14).

SECTION 23. **TIME OF ESSENCE.**

Time is expressly declared to be of the essence of each and every provision of this Agreement.

SECTION 24. **COMPLIANCE WITH LAWS.**

A. Mitty shall comply with all applicable laws, ordinances, codes and regulations (collectively "laws") of the federal, state and local governments, including without limitation, any and all laws specified elsewhere in this Agreement.

B. Mitty shall specifically comply with the provisions of Public Resources Code Sections 5163 and 5164 regarding background checks of Mitty employees, agents, contractors, subcontractors, and volunteers providing any services, conducting any program or activities, or involved in any manner under this Agreement.

C. The Parties agree that the City does not permit the possession, use, sale or consumption of alcoholic beverages, tobacco products, or of any controlled substance on City property, including the sports fields, nor at any other facility of the Park, provided that a controlled substance may be used pursuant to a valid prescription.

D. Mitty shall not commit, nor cause to be committed, any waste upon the Park, nor any illegal activity, nor any public or private nuisance, nor other act or thing which may unreasonably disturb or interfere the enjoyment of any occupant, tenant, patron or member of the public using or occupying any portion of the Park.

E. Mitty shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or any other protected classes in connection with or related to this Agreement.

SECTION 25. **TAXES ON MITTY'S INTEREST.**

A. Mitty recognizes and understands that this Agreement may create a possessory interest subject to property taxation and that Mitty may be subject to property taxation

SECTION 27. **FORCE MAJEURE.**

If either Party shall be delayed or prevented from the performance of any act required by this Agreement by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, Hazardous Materials testing or remediation ordered by any governmental entity with authority therefore or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), 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.

SECTION 28. **ENTIRE AGREEMENT.**

This Agreement, including the exhibits attached to this Agreement, constitutes the entire agreement between the Parties respecting the Project and Mitty's use and occupancy of the sports fields and correctly sets forth the obligations of City and Mitty to each other as of the Effective Date. Any agreements or representations not expressly set forth in this Agreement shall be null and void.

SECTION 29. **PARTIAL INVALIDITY.**

If any provision of this Agreement is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect and unimpaired by the holding.

SECTION 30. **GOVERNING LAW.**

This Agreement shall be governed by and in accordance with the laws of the State of California.

SECTION 31. **NONDISCRIMINATION.**

Mitty shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

SECTION 32. **HEADINGS.**

The headings of the Sections in this Agreement are merely for the convenience of the Parties.

SECTION 33. **COUNTERPARTS.**

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

SECTION 34. **PROVISIONS REQUIRED BY LAW DEEMED INSERTED.**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein; if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of either Party, the Agreement shall forthwith be physically amended to make such insertion or correction.

SECTION 35. **WARRANTY OF AUTHORITY.**

Each person below warrants and guarantees that s/he is legally authorized to execute this Agreement on behalf of the designated entity.

SECTION 36. **EXHIBITS.**

This Agreement includes the following exhibits that are attached hereto and incorporated herein.

- Exhibit A Map of John Mise Park
- Exhibit B Cost Estimate and Conceptual Diagram of Small Soccer Field
- Exhibit C Cost Estimate and Conceptual Diagram of Adult Field
- Exhibit D Hazardous Materials

RD/JVP
04/27/12

- Exhibit E Maintenance Requirements and Specifications
- Exhibit F Prevailing Wage Form
- Exhibit G Insurance Requirements
- Exhibit H Mitty Use Period Commencement Form
- Exhibit I Employee Clearance Verification

APPROVED AS TO FORM:

CITY OF SAN JOSE
a municipal corporation

JOHNNY V. PHAN
Deputy City Attorney

DENNIS D. HAWKINS
City Clerk

ROMAN CATHOLIC WELFARE
CORPORATION OF SAN JOSE, a private
501(c)(3) nonprofit corporation

Signature

Print Name

Title: _____

EXHIBIT A



EXHIBIT B

**PROJECT NAME: MISE PARK SPORTS FIELD RENOVATION-
SOFTBALL & 55x100 SOCCER FIELD**

DESCRIPTION	TOTAL
DEMOLITION, SITE PREPARATION, EARTHWORK, AND DRAINAGE	\$890,000
CONCRETE AND ASPHALT PAVING, SOCCER FIELD AND SOFT BALL FIELD FENCING	\$340,000
SITE ELECTRICAL	\$252,000
SYNTHETIC TURF SPORTS FIELD, APPROX. 110,000 SF & IRRIGATION SYSTEM	\$1,300,000
MISCELLANEOUS SITE FURNISHINGS	\$60,000
TOTAL ESTIMATED CONSTRUCTION COST	\$2,842,000
Construction Contingency (5%)	\$142,000
Project Delivery (24%)	\$700,000
ESTIMATED TOTAL COSTS OF PROJECT	<u>\$3,684,000</u>

The work consists of removing the existing softball field and replacing it with a synthetic 300' outfield softball field and a 55x100 yd. soccer field, perimeter fencing with gates, backstop, dugouts, bleachers, portable soccer goals, and irrigation. Additional parking (30 spaces) will be added to the existing parking lot to create a total of 66 parking spaces.

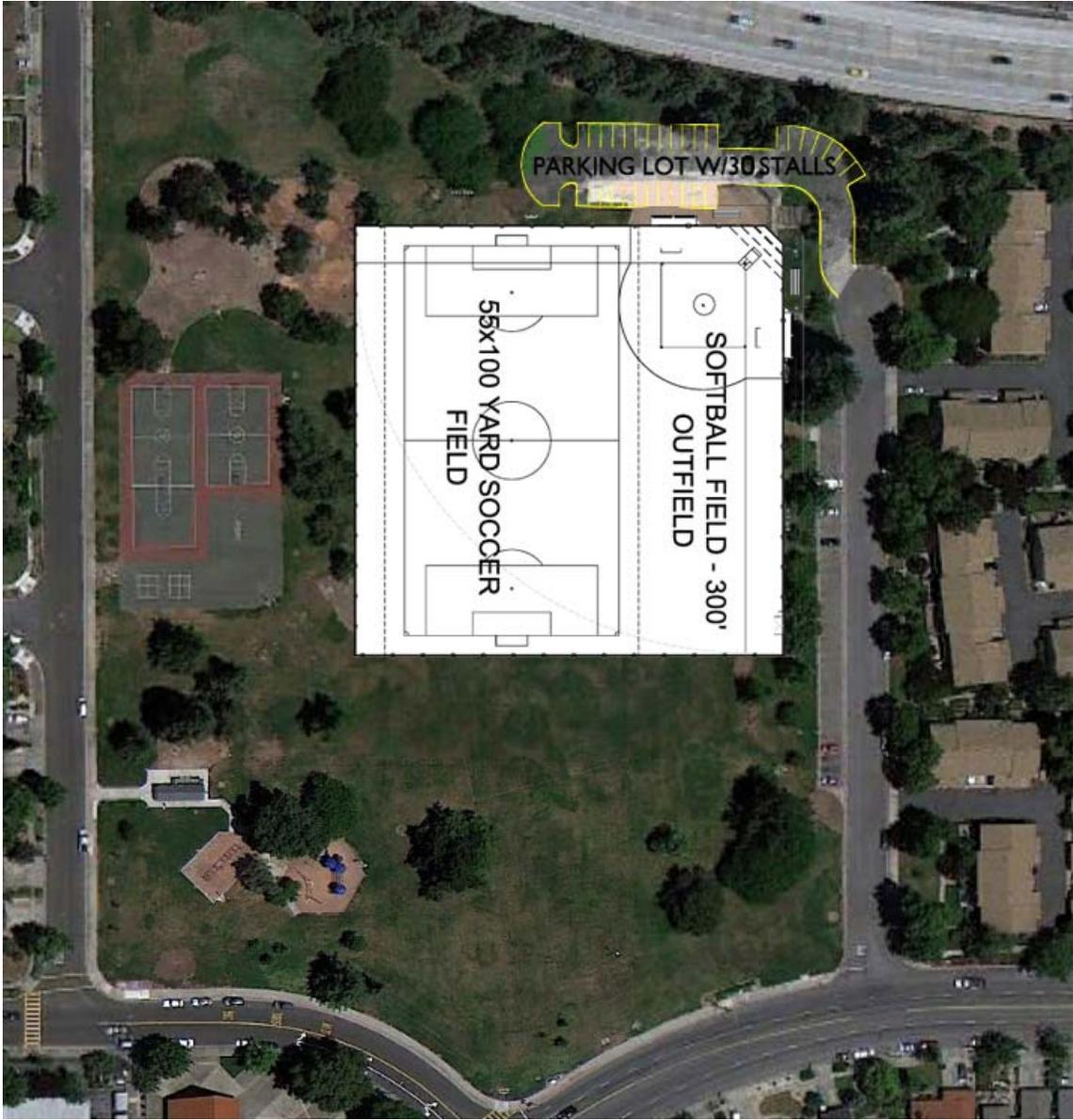


EXHIBIT C

**PROJECT NAME: MISE PARK SPORTS FIELD RENOVATION-
SOFTBALL & 75x120 ADULT FIELD**

DESCRIPTION	TOTAL
DEMOLITION, SITE PREPARATION, EARTHWORK, AND DRAINAGE	\$980,000
CONCRETE AND ASPHALT PAVING, SOCCER FIELD AND SOFT BALL FIELD FENCING	\$360,000
SITE ELECTRICAL	\$266,000
SYNTHETIC TURF SPORTS FIELD, APPROX. 134,000 SF & IRRIGATION SYSTEM	\$1,600,000
MISCELLANEOUS SITE FURNISHINGS	\$66,000
TOTAL ESTIMATED CONSTRUCTION COST	\$3,272,000
Construction Contingency (5%)	\$164,000
Project Delivery (20%)	\$700,000
ESTIMATED TOTAL COSTS OF PROJECT	\$4,136,000

The work consists of removing the existing softball field and replacing it with a synthetic 300' outfield softball field and a 75x120 yd. soccer field, perimeter fencing with gates, backstop, dugouts, bleachers, portable soccer goals, and irrigation. Additional parking (30 spaces) will be added to the existing parking lot to create a total of 66 parking spaces.



MISE PARK SPORTS FIELD RENOVATION

LEGEND

- | | | | |
|---|---|---|---|
|  | 20 FT/16 FT HIGH BASEBALL BACKSTOP/SIDE FENCE |  | BOTTOM OF EXISTING BERM |
|  | PARKING LOT W/ 30 STALLS |  | 4 FT HIGH PERIMETER FENCE |
|  | BLEACHER |  | SPORTS FIELD LIGHT (POLE HEIGHT) |
|  | EXISTING PARKING AREA |  | APPROXIMATE SPORTS FIELD LIGHT SPILLAGE LIMIT |

EXHIBIT D

DEFINITION OF HAZARDOUS MATERIALS

For purposes of this Agreement, the term “Hazardous Materials” shall mean any and all (a) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws (defined below), and (b) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Law or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court; and (c) any substance, product, by-product, waste or any other material which may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational, health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

The term “Environmental Laws” shall mean and include all federal, state, and local laws, statutes, ordinances, regulations, resolutions, decrees, and/or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational, health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state, or environmental clean-up statutes.

EXHIBIT E MAINTENANCE SERVICES AND SPECIFICATIONS

I. GENERAL

A. Scope of Work

Mitty shall furnish all supervision, labor, material, equipment and transportation required to maintain the Park, including the Park improvements, in a safe, clean, functional, and attractive condition throughout the term of this Agreement. All Maintenance Services shall be performed in accordance with all procedures set forth in operating manuals and warranty documentation for the care and preservation of any Park improvements, applicable maintenance standards of the Park improvements, City park maintenance standards, and in conformance with all applicable laws and regulations relating to maintenance and repairs of the Park improvements.

B. Work Force

1. Mitty shall designate one (1) qualified representative with experience in playfield and facility management to (1) meet with the City on a quarterly basis at the Park, (2) be available by telephone for any emergency; (3) schedule and coordinate maintenance and repairs required under this Agreement; (4) coordinate and prepare pesticide and incident reports; and (5) address and respond to any questions or concerns that may arise during the performance of this Agreement.
2. All Mitty employees, agents, representatives, contractors or subcontractors ("Work Force") to perform Maintenance Services under this Agreement shall be personally presentable at all times. All Work Force shall be competent and qualified, and shall be U.S. citizens or have the legal right to work in the United States.
3. All Work Force personnel shall be qualified to perform the duties assigned to them by Mitty and possess the requisite licenses and necessary permits to perform such Maintenance Services. All Work Force shall conduct themselves at all times in a courteous and businesslike manner.
4. Mitty represents and warrants to City that any Work Force personnel retained to perform Maintenance Services shall not have any criminal record for offenses related to the possession or use of controlled substances, sex offenses or any criminal offense involving violence.

5. All Work Force personnel shall wear clothing or a nametag, which bears Mitty's name, or if an approved subcontractor, the clothing shall bear the subcontractor's name. The clothing worn by Mitty's personnel shall be appropriate for the work assigned and shall give Mitty's staff a neat and professional appearance. Mitty's vehicles shall have appropriate identification as approved by the PRNS Director. Mitty's vehicles will not be allowed on the Park without the appropriate parking permit displayed on the dashboard.

C. Days and Hours of Services

Maintenance Services shall be performed on Monday, Tuesday, Wednesday, Thursday, Friday, Saturday and Sunday between 6:30 a.m. and 6:00 p.m., unless in an emergency or approved by the City. If the sports field and/or portions of the park are in use for an activity approved by the City, Mitty shall not perform any maintenance activities in areas that would disrupt the approved activity.

D. Materials

All materials shall be approved in advance by PRNS Director. Mitty will meet all Agricultural licensing and reporting requirements.

E. Compliance

1. Mitty shall comply with all City rules, regulations, and policies relating to park use, park hours, and special permitted park activities at the Park. Nothing herein shall give the City authority to alter, revise, or otherwise restrict the public use of the Park.
2. Mitty, or its contractor, shall be solely responsible for, and will pay, any excise, taxes, fees, contributions, or charges applicable to the conduct of its business or which may be levied on the Maintenance Services hereunder.
3. Mitty may not make any improvements, alterations, additions, or changes to the Park other than the storage facility described in Section 4.C and any normal maintenance as described in **Exhibit E** and in furtherance of providing agreed upon Maintenance Services without obtaining City's prior written consent upon such terms as City in its discretion may deem appropriate. Alterations which involve structural changes to the Park may be required to be approved in advance by City Council. Alterations which are non-structural changes to the Park Property may be approved by PRNS Director.

II. PARK CLEANUP, HEALTH AND SAFETY

A. Mitty shall ensure the park improvements and Park are clean, safe, functional and attractive by performing the Maintenance Services as outlined in **Exhibit E-2**, attached hereto and incorporated herein.

B. Mitty shall promptly report to City any conditions at the Park that may pose a health and safety risk to the public within four (4) hours of the inspection. Mitty shall secure the area to prevent public access until such time that the health or safety risk is resolved.

C. Mitty shall identify and notify PRNS in writing of any required removal and/or repairing of park improvements.

D. Mitty shall identify and immediately remove and/or repair any potentially dangerous conditions or safety hazards, i.e. broken glass, exclusive of any items which are City's obligation under this Agreement.

III. IRRIGATION AND HARDSCAPE MAINTENANCE

A. Mitty shall perform the scheduled Landscape, Irrigation and Hardscape Maintenance of the Park as outlined in **Exhibit E-2**, attached hereto.

B. Mitty shall provide all necessary care to maintain healthy, resilient and aesthetically pleasing landscaping and turf as approved by City.

C. Mitty shall prune and trim shrubs, as required, to maintain appealing, healthy, and growing trees and shrubs as approved by City. All pruning shall be performed by qualified, professional personnel using industry recognized and approved methods and techniques.

D. Tree stakes are to be inspected twice per year in the Spring and Fall as conditions require and adjusted as necessary.

E. Ivy and selected groundcover shall be trimmed to a height of six (6) to eight (8) inches each in the winter for rejuvenation as approved by City.

F. Mitty shall fertilize turf, trees and ground cover plantings once a year or as individually if plant health condition requires.

G. Plants or turf areas that are in a state of decline or dead shall be brought to City's attention immediately and may be replaced at City's sole cost, and is not Mitty's responsibility.

H. Mitty shall maintain an irrigation schedule that provides adequate moisture for optimal growth and plant health as approved by City. Any watering shall be done at night in multiple, staged applications in order to avoid standing water longer than twelve (12) hours in general turf areas.

I. The Parties shall be responsible to maintain a functional irrigation system. City shall be responsible for maintaining valves, and lateral and main irrigation lines. Mitty shall be responsible for maintenance of irrigation heads. Any repairs or replacement of irrigation heads shall be completed by Mitty within three (3) calendar days and repairs to valves, lateral and main lines shall be made by City.

J. Vandalism or accidental damage to any controller or sprinkler shall be reported promptly to City.

K. Faulty water meters and backflow preventers shall be reported promptly to City.

L. Mitty shall schedule controllers and shall be instructed by City on how to turn off the system in case of emergency.

IV. DRAINAGE MAINTENANCE

Mitty shall perform the scheduled Drainage Maintenance of the Park as outlined in **Exhibit E-2**, attached hereto.

V. OTHER MISCELLANEOUS SERVICES INCLUDED IN THIS AGREEMENT

A. In the event Mitty observes that maintenance or repairs are required for the plumbing, electrical, and gas infrastructure as described in this section, Mitty shall promptly notify the City in writing and any repairs required shall be the sole cost of the City.

B. Mitty shall be responsible for any repairs under this **Exhibit E** or as listed in **Exhibit E-2**, unless explicitly stated otherwise, if the parts for such repairs, as approved by City, do not exceed an accumulated total of Ten Thousand Dollars (\$10,000.00) in any given calendar year.

C. Mitty shall perform such other tasks as agreed to by the parties after each quarterly meeting between City and Mitty's maintenance contractor(s)/facilities manager.

VI. INTEGRATED PEST MANAGEMENT (IPM)

IPM is a decision making process for managing pests that uses monitoring to determine pest injury levels and combines biological, cultural, physical and chemical tools to minimize health, environmental and financial risks. IPM emphasizes the use of extensive knowledge about the target pests, such as infestation thresholds, life histories, environmental requirements and natural enemies to compliment and facilitate biological and other natural control measures of pests. IPM uses the least toxic pesticides only as a last resort for controlling pests.

A. Compliance with City IPM Policy

Mitty shall obtain and comply with all requirements of the City of San José's Integrated Pest Management (IPM) policy (**Exhibit E-1**). Mitty shall apply all pesticides with extreme care to avoid any hazard to persons, pets, property and the environment.

B. Best Management Practices (BMPs) and Standard Operating Procedures (SOPs)

Mitty shall obtain and comply with pest specific City BMPs and SOPs (**Exhibit E-1**). If Mitty wishes to propose the use of other BMPs and SOPs, Mitty must submit a copy of the proposed BMPs and SOPs in writing to PRNS Director for review and approval. City approval of BMPs and SOPs will be based on degree of conformance with the City IPM Policy, BMPs and SOPs.

C. Use of Pesticides

Mitty shall comply with all federal, state and local rules and regulations that govern the use of pesticides, including the City of San José's IPM Policy. Pesticides utilized for control of pests on City property shall have current EPA registration and be applied in strict accordance with label directions. All pesticide use on City property shall be subject to advance approval by PRNS Director.

D. Pesticide Approval and Application

1. As required by law, each person performing pest control activities shall be certified by the State of California.
2. All recommendations for pest control must be in compliance with the current Integrated Pest Management policies and guidelines of City of San José.
3. All pesticide applications shall receive advance approval from the PRNS Director.
4. Mitty shall provide written recommendations from a licensed California pest control advisor (PCA) for any pesticides approved for use on City of San José property.
5. Mitty, its subcontractor who applies Class I pesticides shall possess a qualified applicator certificate (QAC) from the State. This

certification (silver card) and written pesticide recommendations shall be with the employee/subcontractor while applying any pesticides.

6. Mitty or its subcontractor who oversee the application of pesticides shall possess a qualified application license (QAL) from the State. This license (brown card) and written pesticide recommendations shall be with the individual while supervising any pesticide application on City property.

E. Pesticide Use Reporting

Mitty or its subcontractor shall submit pest management reports to the City as required. The report shall contain the following information:

- Date and time of pesticide application or service*
- Site of the pesticide application* (and Project ID/Purchase order, if applicable)
- Manufacturer and name/formulation of product applied*
- Pesticide EPA registration number*
- Targeted Pest*
- Amount of product applied*
- City Generated Contract Reference Number (City contract tracking number)
- Date and time of receipt of request
- Name of site contact
- Prevention and other non-chemical methods of control used*
- Recommendations for future prevention*
- Recommendation for continued treatment based on IPM (including cause of problem, source of pest entry to facility, etc.)
- Square footage of area serviced
- Reports shall be supplied in Microsoft Excel, Access or other approved format.
- The report shall include information for San José municipal property only.

(* Indicates required field for Stormwater tracking purposes)

F. Evidence of Training

Mitty or its subcontractor shall demonstrate evidence of recent IPM training, to the maximum extent feasible.

G. Restricted Pesticides

Before Mitty or its subcontractor can apply a California Restricted Material on a City of San José site, Mitty or its subcontractor must first obtain a copy of the City of San José's Restricted Use Materials Permit that will be provided by the contract manager. Before the application can be made, the operator must notify PRNS Director twenty-four (24) hours in advance of the application. Mitty or its subcontractor must provide PRNS Director with a copy of the notice of intent per site. This should correlate to the monthly usage report also provided by Mitty.

H. Licenses and Permits

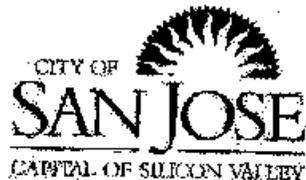
Mitty or Mitty's approved subcontractor, shall maintain all required licenses and permits, including any State Landscape Contractor's license and valid Pest Control Operator's License for any applicable Maintenance Services under this Agreement. Mitty will comply with all other license and permit requirements of the City, State and Federal Governments, as well as all other requirements of law. Mitty shall provide a copy of all such licenses to City prior to the commencement of any Maintenance Services under this Agreement and Mitty shall provide City with updated copies of such licenses on or before January 30th of every year.

I. Taxes

Mitty agrees to pay all applicable taxes, including sales tax on material supplied where applicable.

EXHIBIT E-1

IPM POLICY



**City of San Jose
Integrated Pest Management
Best Management Practices
and
Standard Operating Procedures**

December 2002

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I. INTRODUCTION

This document has been compiled to assist personnel performing pest management and/or pesticide application on City property, including contractors, in the use of integrated pest management.

On an annual basis, supervisory staff and field staff from affected City Departments will review the effectiveness of these SOPs and any other BMPs in use in order to evaluate their effectiveness in reducing pollutants in storm water and eliminating illicit discharges. This review and evaluation will normally occur as a part of annual municipal training on City Urban Runoff NPDES requirements. The Environmental Services Department (ESD) in conjunction with the affected City Departments normally conducts this training in the May/June timeframe.

II. DEFINITIONS

BEST MANAGEMENT PRACTICE (BMP)	Activities, practices, facilities, and/or procedures that when implemented to their maximum efficiency will prevent or reduce pollutants in discharges. Examples of BMPs may include public education and outreach efforts, proper planning of development projects, proper clean out of catch basin inlets, and proper waste handling and disposal, among others.
CITY DEPARTMENT	Any department of the City of San Jose and includes any pesticide applicator hired by a City department to apply pesticides on City property.
CONTRACT	A binding written agreement, including but not limited to, a contract, lease, permit, license, or easement between a person, firm, corporation or other entity, and a City department, which grants a right to use or occupy property of the City of San Jose for a specified purpose or purposes.
CONTRACTOR	A person, firm, corporation or other entity that enters into a contract with the City of San Jose.
DEFOLIATING	Includes killing or artificially accelerating the drying of plant tissues, with or without causing abscission.
DOT	Department of Transportation – City of San Jose.
EQUIPMENT OPERATOR	City personnel driving truck, or other vehicle or using City equipment or tools.
ESD	Environmental Services Department – City of San Jose.
FIELD STAFF	Non-supervisory personnel in the DOT, PRNS, GS, and/or PW.
FUNGI	Parasitic plants which have no leaves, flowers, or chlorophyll (mildews, molds, rusts, mushrooms) and reproduce by means of spores.
FUNGICIDE	Any substance that kills fungi or inhibits the growth or reproduction of spores.
GS	General Services Department – City of San Jose.

INSECTS	Any animal within the class of animals which are known as "Insecta" or any similar animal such as a centipede, spider, mite, tick, or louse.
INTEGRATED PEST MANAGEMENT (IPM)	An ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and the use of resistant varieties. Pesticides are used only after monitoring indicates that they are needed according to established guidelines, and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risk to human health, beneficial and non-target organisms, and the environment.
MAINTENANCE PERSONNEL	Any person monitoring threshold levels, taking preventative or corrective actions, or applying a pesticide.
MAXIMUM EXTENT PRACTICABLE (MEP)	The standard for implementation of storm water management programs to reduce pollutants in storm water. MEP refers to storm water management programs taken as a whole. The implementation of MEP takes into account equitable consideration and competing facts, including, but not limited to the gravity of the problem, potential or actual public health risk, environmental benefits, pollutant removal effectiveness, regulatory compliance, public acceptance, implementability, cost and technical feasibility.
MOLLUSK	Any invertebrate animal having a soft body typically covered by a shell.
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)	A permit issued by the United States Environmental Protection Agency, State Water Resources Control Board or San Francisco Bay Regional Water Quality Control Board pursuant to the Clean Water Act section 402(p) that authorizes discharges to waters of the United States and requires the reduction of pollutants in the discharge.

PEST	Any of the following that is, or is liable to become, dangerous or detrimental to the agricultural or nonagricultural environment of the state: (a) Any insect, predatory animal, rodent, nematode, or weed. (b) Any form of terrestrial, aquatic, or aerial plant or animal, virus, fungus, bacteria, or other microorganism (except viruses, fungi, bacteria, or other microorganisms on or in living man or other living animals). (c) Anything that the director, by regulation, declares to be a pest.
PESTICIDE	Means pesticide as defined in Section 12753 or Chapter 2 of Division 7 of the California Food and Agriculture Code - Pesticide includes any of the following: (a) Any spray adjuvant. (b) Any substance, or mixture of substances which is intended to be used for defoliating plants, regulating plant growth, or for preventing, destroying, repelling, or mitigating any pest, as defined in Section 12754.5, which may infest or be detrimental to vegetation, man, animals, or households, or be present in any agricultural or nonagricultural environment whatsoever.
PERSONAL PROTECTIVE EQUIPMENT (PPE)	Means apparel and devices worn to minimize human body contact with pesticides or pesticide residues that must be provided by an employer and are separate from, or in addition to, work clothing. PPE may include, chemical resistant suits, chemical resistant gloves, chemical resistant footwear, respiratory protection devices, chemical resistant aprons, chemical resistant headgear, protective eyewear, or a coverall (one- or two-piece garment).
PRNS	Department of Parks, Recreation, & Neighborhood Services - City of San Jose.
PW	Department of Public Works - City of San Jose.
RODENT	All members of the order Rodentia and all rabbits and hares.

SPRAY ADJUVANT	Any wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent, with or without toxic properties of its own, which is intended to be used with another pesticide as an aid to the application or effect of the other pesticide, and sold in a package that is separate from that of the pesticide other than a spray adjuvant with which it is to be used.
STANDARD OPERATING PROCEDURE (SOP)	Routine steps or actions, that if properly carried out, reduce the likelihood of pollutants entering the receiving waters.
SUPERVISORY STAFF	Management staff in the DOT, PRNS, GS, and/or PWM.
URBAN RUNOFF/ STORM WATER	The part of precipitation (rainfall or snowmelt) which travels via flow across a surface to the storm drain system or receiving waters. Examples of this phenomenon include the water that flows from a building's roof or parking lot when it rains (runoff from an impervious surface); and water that flows from vegetated surface when rainfall is in excess of the rate at which it can infiltrate into the underlying soil (runoff from a pervious surface).
WEED	Any plant out of place. (a) Broadleaf weed is a dicot plant (two or more leaves). (b) Grassy weed is a monocot plant (one leaf or more from a central source).

III. IPM Best Management Practices (BMPs)

Integrated Pest Management Best Management Practice

IPM is an ecosystem-based strategy that focuses on long-term prevention of pests or their damage through a combination of techniques such as biological control, habitat manipulation, modification of cultural practices, and resistant varieties. Pesticides are used only after monitoring indicates they are needed according to established guidelines and treatments are made with the goal of removing only the target organism. Pest control materials are selected and applied in a manner that minimizes risks to human health, beneficial and non-target organisms, and the environment.

Understanding pest characteristics and needs is essential to implementing IPM effectively. Pests seek habitats that provide basic needs such as air, moisture, food, and shelter. Pest populations can be prevented or controlled by creating inhospitable environments, by removing some of the basic elements pest need to survive, or by simply blocking their access into buildings. Pests may also be managed by other methods such as sanitation, traps, vacuums, or pesticides. An understanding of what pests need in order to survive is essential before action is taken. Pest-prevention measures reduce the need for pesticide applications and include sanitation and structural repair, employing physical and mechanical controls such as screens, traps, weeders, air doors, vacuums, etc.

- **Sanitation** - Removal or reduction of food source. Removing conditions that attract or favor the infestation.
- **Physical Exclusion** - Selective caulking of cracks and crevices to eliminate pest accessibility, avenues of access or hiding areas, or items brought into a building that may have been stored.
- **Mechanical/Biological Controls** - Concentrate on monitoring and controlling threshold levels using pheromone, sticky traps, or HEPA filter vacuum. Introducing or enhancing pests' natural enemies may also be a tactic in this area.
- **Chemical Treatments** - Many different kinds of pesticides are currently available for use against structural pests. An appropriate application uses the least toxic and most effective and efficient technique and material. Due to their potentially toxic nature, these materials should be applied by qualified applicators in a manner to ensure maximum efficiency, with minimal hazard. Where required, pesticides should be applied when occupants are not present in areas where they may be exposed to materials applied. Re-entry

into the affected area will be allowed according to the instructions on the pesticide labels. Where required, posting will be done.

Inspection, Identifying, and Monitor

An IPM program consists of a cycle of inspecting, identifying, monitoring, evaluating, and choosing the appropriate method of control. Inspection and accurate identification of pests are vital steps in IPM to ensure that control methods will be effective. Once the pest has been identified and the source of its activity pinpointed, habitat modifications—primarily, exclusion, repair, and sanitation efforts—may greatly reduce the prevalence of the pest. Monitoring includes inspecting areas for pest evidence, entry points, food, water, and harborage sites, and estimating pest population levels. The information gained through monitoring is evaluated to determine whether the action threshold has been exceeded and what can be done in the way of prevention.

Action Threshold Level

These are the levels of pest populations or site environment conditions that require remedial action. The pest manager and the occupants of the structure set the action threshold. It is determined by doctrine, based on the sensitivities of the structure's occupants, how many pests can be tolerated. The presence of some pests does not, in itself, necessarily require action.

When pest populations exceed pre-set action thresholds, action must be taken. Precise recommendations or actions to achieve specific results are an essential part of an IPM program. Specific recommendations, including an explanation of the benefits, should be based on the evaluation of all available data obtained through inspecting, identifying, and monitoring.

Recommendation of Pest Control Vendor for Action Plan of Control

The State Department of Pesticide Regulation or the County Department of Agriculture can provide information on pesticide applicator certification.

Pest control firms should work with the pest manager and the responsible building manager to solve pest control problems. The contract should specify the use of IPM principles and practices in meeting pest management objectives. Contracts should be written to provide expected results. Pest management objectives specific to the site should be jointly developed, agreed upon, and written into the contract. Any special health concerns (such as for individuals with allergies) should be noted and reflected in the pesticides that can be utilized, or excluded from use.

Training of Building Personnel

Education is a vital component of pest management. All occupants of a building must understand the basic concepts of IPM and who to contact with questions or problems. Staff needs to understand how their own behavior helps alleviate or contributes to pest problems. Specific instructions should be provided on what to

do and what not to do. For example, staff should not bring and use pesticides of their own on City sites. Only designated qualified personnel should apply pesticide products, including those purchased at a retail store. Educating and training staff is important to the success of an in-house IPM program.

Training Points for Inside Sites:

Typical Pests:

Mice, rats, cockroaches, ants, flies, wasps, hornets, yellow jackets, spiders, microorganisms, termites, carpenter ants, and other wood-destroying insects.

Entryways:

Doorways, overhead doors, windows, holes in exterior walls, openings around pipes, electrical fixtures, or ducts.

- Keep doors shut when not in use.
- Place weather stripping on doors.
- Caulk and seal openings in walls.
- Install or repair screens.
- Install air curtains.
- Keep vegetation, shrubs, and wood mulch at least one (1) foot away from structures.

Offices:

Offices, cubicles, hallways, conference rooms.

- Allow food and beverages only in designated areas.
- If indoor plants are present, keep them healthy. When small insect infestations appear, remove them manually.
- Keep areas as dry as possible by removing standing water and water damaged or wet materials.
- Routinely clean areas, removing dust and debris, and emptying waste receptacles as needed.
- Frequently vacuum carpeted areas.

Food Preparation and Serving Areas:

Dining room, main kitchen, break rooms, snack area, vending machines, and food storage rooms.

- Store food and waste in containers that are inaccessible to pests. Containers must have tight lids and be made of plastic, glass, or metal. Waste should be removed at the end of each day.
- Place screens on vents, windows, and floor drains to prevent cockroaches and other pests from using unscreened ducts or vents as pathways.

- Create inhospitable living conditions for pests by reducing the availability of food and water—remove food debris, sweep up all crumbs, fix dripping faucets and leaks, and dry out wet areas.
- Improve cleaning practices, including promptly cleaning food preparation equipment after use and removing grease accumulation from vents, ovens, and stoves. Use caulk or paint to seal cracks and crevices.
- Capture rodents by using mechanical or glue traps. (Note: Mechanical traps, including glueboards, used in rodent control must be checked daily. Dispose of killed or trapped rodents within 24 hours.

Rooms and Areas with Extensive Plumbing:

Bathrooms, rooms with sinks, locker rooms, dishwasher rooms, swimming pools, and greenhouses.

- Promptly repair leaks and correct other plumbing problems to deny pests access to water.
- Routinely clean floor drains, strainers, and grates. Seal pipe chases.
- Keep areas dry. Avoid conditions that allow formation of condensation. Areas that never dry out are conducive to molds and fungi. Increasing ventilation may be necessary.
- Store paper products or cardboard boxes away from moist areas and direct contact with the floor or the walls. This practice allows for ease in inspection.

Maintenance Areas:

Boiler room, mechanical room, janitorial-housekeeping areas, and pipechases.

- After use, promptly clean mops and mop buckets; dry mop buckets and hang mops vertically on rack above floor drain.
- Allow eating only in designated areas.
- Clean trashcans regularly, use plastic liners in trashcans, and use secure lids.
- Keep areas clean and dry as possible, and remove debris.

Applying Pesticides

All pesticides used in the U.S. must be EPA registered, and the registration number must be listed on the label. Although EPA registers pesticides for use within the United States, the pesticide must also be registered for use in California by the Department of Pesticide Regulation. The fact that a particular product is registered does not mean that it is "safe" under all conditions of use. Read and follow the pesticide label directions, know how to apply and handle these chemicals, and try to minimize the exposure to children, adults, and other non-target species.

The following general recommendations should minimize exposure to people and other non-target species when the application of pesticides is being considered:

- Read and follow label instructions.

- Choose a pesticide that is labeled for the specific site, intended for the pest you are trying to control, and as target specific as possible, rather than broad spectrum.
- Determine the right amount of pesticide to purchase and use.
- Use a spot-treatment method of application when pesticide treatments are required. Treat only the obviously infested areas. This procedure helps conserve predators and parasites needed to reduce future pest populations and increases the time between outbreaks.
- Limit the use of sprays, foggers, or volatile formulations. Instead use bait and crack and crevice application when possible. Look for crack and crevice label instructions on how to apply the pesticide. These treatments maximize the exposure of the pest to the pesticide while minimizing pesticide exposure for the occupants.
- Place all rodenticides, for rats and mice, either in locations not accessible to children and non-target species or in tamper resistant bait boxes. Securely lock or fasten shut the lids of all bait boxes. Place bait in the built-in-protected feeding chamber of the box. Never place bait in the runway of the box.
- Where required, apply when occupants are not present or in areas where they will not be exposed to the material applied. Note any re-entry time limits listed on the label, and be aware that some residues can remain long after application.
- Use proper protective clothing or equipment when applying pesticides, per the pesticide label and all regulations.
- Properly ventilate areas after pesticide application per label requirements.
- Where required, notify building occupants of upcoming pesticide applications.
- After applying, store and/or dispose of unused pesticides properly.
- Keep copies of current pesticide labels, consumer information sheets, MSDSs, and pesticide use records.

Evaluation of Results After Control Steps

Evaluate results to determine if pest management objectives are reached. The City must evaluate the results of practicing IPM to determine if pest management objectives have been met. Accurate records of inspecting, identifying, and monitoring activities show changes in the site environment (reduced availability of food, water, or shelter), physical changes (exclusion and repairs), pest population changes (increased or reduced numbers, older or younger pests), or changes in the amount of damage or loss.

Record Keeping

Keep written records of all aspects of the program.

Successful practice of IPM relies on accurate record keeping. Keeping accurate records leads to better decision-making and more efficient procurement. Accurate records of inspecting, identifying, and monitoring activities show changes in the site environment (reduced availability of food, water, or shelter), physical changes (exclusion and repairs), pest population changes (increased or

reduced numbers, older or younger pests), or changes in the amount of damage or loss.

A complete and accurate pest management log should be maintained for each property and kept in the office of the pest manager. Pesticide use records should also be maintained to meet State, County and local regulatory requirements. The logbook should contain the following items:

- A copy of the Pest Management Plan and service schedule for the property.
- A copy of the current EPA-registered label and the current MSDS for each pesticide product used on City property.
- Pest surveillance data sheets, which record, in a systematic fashion, the type and number of pests or other indicators of pest population levels revealed by the monitoring program for the site. Examples include date, number, location and rodent species trapped or carcasses removed as well as a date, number, and location of new rat burrows observed.
- A diagram noting the location of pest activity, including the location of all traps, trapping devices, and bait stations in or around the site.

References:

- University of California Statewide Integrated Pest Management Project website
- EPA, Office of Pesticide Programs - Pest Control In the School Environment: Adopting Integrated Pest Management. August 1993.

IV. IPM STANDARD OPERATING PROCEDURES (SOPs)

Integrated Pest Management Standard Operating Procedure

1. Aquatic Weed Control

Purpose:

To control broadleaf and grassy weeds on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Reward, Aquamaster

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control weeds on City property that contain water the following procedures will be used.

- Establish threshold level of acceptance.
- Create safe water ways that contain plant and animal in City facilities.
- Use less toxic controls such as cultural practices and aeration.
- Use pesticides only if population exceeds threshold level or at discretion of supervisor.

Integrated Pest Management Standard Operating Procedure

2. Weed Control

Purpose:

To control broadleaf and grassy weeds on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Reward, Dimension, Karmex DF, Pendulum WDG, 3.3Ec, 2G, Ronstar G, Scythe, Surflan A.S., Trimec, MSMA, Grasscutter, Weedhoe, Aquamaster, Manage, Roundup Pro, Roundup Pro Dry, Turflon ester.

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control weeds in city facilities the following procedures will be used.

- Establish threshold level of acceptance.
- Create safe play areas, & sports fields, medians and right of way areas.
- Use less toxic controls such as cultural practices such as aeration and fertilization, water
- Use pesticides only if population exceeds threshold level, or at discretion of supervisor.

Integrated Pest Management Standard Operating Procedure

3. Disease Control

Purpose:

To control **fungi caused disease damage** on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

None used at this time.

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control **fungal diseases** (i.e. Powdery Mildew, Anthracnose, etc.) on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Use plant species and varieties that resist pests and diseases.
- Use cultural practices i.e., sanitation, cultivation, fertilization, pruning, mowing, and irrigation that reduce pest and disease problems.
- Routinely monitor for damage symptoms, particularly following weather patterns, which favor the disease.
- Accurately identify the disease problem.
- Use pesticides only if damage exceeds the acceptable threshold level, or at the discretion of supervisor.

Integrated Pest Management Standard Operating Procedure

4. Insect Control

Purpose:

To control unacceptable **insect populations** (i.e. scale, aphids, tussock moth, etc.) on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Orthene, Talstar, Conserve, Imidacloprid (Mort), Niban, Deltagard, BP 300, Dormant Oil, Superior Oil

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control **insect populations** on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Determine location of **insect habitats** and pathways.
- Monitor for **insect** presence by honeydew excretions underneath tree canopy, egg masses on plant material, etc.
- Remove all sources of food and water available to **insect populations**. Clean the facility.
- Seal cracks and crevices in walls, floors, and ceilings as necessary.
- Monitor for beneficial insect presence or apply bacteria material, or dormant oil for control.
- Use less toxic controls first when feasible.
- Use pesticides only if population exceeds threshold level or at discretion of supervisor.
- For Tulip trees (*Liriodendron tulipifera*), apply Imidacloprid or other recommended pesticide by soil injection while trees are dormant in January.
- Spray Tulip trees with Dormant Oil prior to bud break in March.
- Spray Tulip trees with Superior Oil plus Imidacloprid or other recommended Caution rated insecticide in May/June only if threshold level of a substantial buildup of honeydew under the tree canopy is exceeded.

Integrated Pest Management Standard Operating Procedure

5. Roach Control

Purpose:

To control cockroach populations on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Conquer EC; Maxforce Stations; Maxforce Gel; Drione dust

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control cockroaches on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Determine location of roach habitats and pathways.
- Remove all sources of food and water available to roach populations. Clean the facility.
- Seal cracks and crevices in walls, floors and ceilings.
- Set traps in cockroach pathways, check regularly, keep track of numbers of roaches trapped and direction of travel to establish location of roach populations.
- Use less toxic controls first – when feasible.
- Use pesticides only if population exceeds threshold level, or at discretion of supervisor, or if threats to human health exist.

Integrated Pest Management Standard Operating Procedure

6. Wasp Control

Purpose:

To control wasp populations on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Driono dust; Talstar FMC

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control wasps on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Determine location of wasp habitats and pathways.
- Remove all sources of food and water available to wasp populations. Clean the facility.
- Seal cracks and crevices in walls, floors and ceilings.
- Set traps in wasp inhabited areas, check regularly, keep track of numbers of wasps trapped.
- Use less toxic controls first – when feasible.
- Use pesticides only if population exceeds threshold level, or at discretion of supervisor, or if threats to human health exist.

Integrated Pest Management Standard Operating Procedure

7. Mollusks Control

Purpose:

To control snails & slugs on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Deadline

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control snails & slugs on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Create safe play areas, medians and right of way areas.
- Use less toxic controls such as cultural practices such as timing of irrigation.
- Use pesticides only if population exceeds threshold level or at discretion of supervisor.

Integrated Pest Management Standard Operating Procedure

8. Vertebrate Control

Purpose:

To control **vertebrate** populations (i.e. gophers, moles, ground squirrels, etc.) on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Fumitoxin; P.C.Q. Rodent Bait, Strychnine

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control **vertebrates** on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Determine location of **vertebrate** habitats and pathways.
- Remove all sources of food and water available to **vertebrate** populations. Clean the facility.
- Seal cracks and crevices in walls, floors and ceilings.
- Set traps in **vertebrate** pathways, check regularly, keep track of numbers of **vertebrates** trapped and direction of travel to establish location of **vertebrate** populations.
- Use less toxic controls first – when feasible.
- Use pesticides only if population exceeds threshold level, or at discretion of supervisor, or if threats to human health exist.

Integrated Pest Management Standard Operating Procedure

9. Mouse and Rat Control

Purpose:

To control **Mouse and Rat** populations on City property and minimize use of pesticides to the maximum extent practicable.

List of Pesticides Commonly Used:

Conlac; P.C.Q. Rodent Bait

Responsible Party:

All City personnel as well as contract personnel applying pesticides for City public projects or on City property.

Methodology:

In order to control **Mouse and Rat** on City property the following procedures will be used.

- Establish threshold level of acceptance.
- Determine location of **Mouse and Rat** habitats and pathways.
- Remove all sources of food and water available to **Mouse and Rat** populations.
Clean the facility.
- Seal cracks and crevices in walls, floors and ceilings.
- Set traps in **Mouse and Rat** pathways, check regularly, keep track of numbers of **Mouse and Rat** trapped and direction of travel to establish location of **Mouse and Rat** populations.
- Use less toxic controls first – when feasible.
- Use pesticides only if population exceeds threshold level, or at discretion of supervisor, or if threats to human health exist.

**EXHIBIT E-2
MISE PARK
MAINTENANCE SERVICE LEVEL**

<i>TASK</i>	<i>DESCRIPTION</i>	<i>BASIC SERVICE LEVEL – FREQUENCY</i>
Park Cleanup, Health & Safety Inspection		
Health and Safety Inspections	Inspect all parts of the Park, identify any health and safety concerns, and immediately remove, repair, and/or address any dangerous or potentially dangerous conditions or safety hazards, i.e. broken glass.	Daily.
Refuse Removal	Remove all trash, debris and other articles from the Park and remove all trash and debris from trash receptacles, place in City dumpster and replace garbage bags from trash receptacles.	Three (3) times per week.
Graffiti Abatement	Immediate removal of graffiti by washing, cleaning, and repainting (with matching paint) of affected areas.	Within 48 hours (gang/profanity/obscenity must be removed within 24 hours).
Landscape, Irrigation & Hardscape Maintenance		
Mow Natural Turf	Mow natural turf during the months of March 1 st through October 31 st and blow and remove any debris on pathways/walkways.	One (1) time per week.
	Mow natural turf during the months of November 1 st through February 28 th and blow and remove debris on pathways/walkways.	Two (2) times per month.

**BASIC SERVICE LEVEL –
FREQUENCY**

TASK	DESCRIPTION	BASIC SERVICE LEVEL – FREQUENCY
Trim and Edge Natural Turf	Trim and power edge natural turf perimeter and blow and remove clippings.	Two (2) times per month.
Leaf Removal	Rake, blow, collect and dispose of leaves during the months of March 1 st through October 31 st .	One (1) time per month.
	Rake, blow, collect and dispose of leaves during the months of November 1 st through February 28 th .	Two (2) times per month.
Abate Weeds in Turf Areas	Abate broadleaf weeds by applying City approved herbicide to turf and submit required monthly pesticide use reports to City.	Four (4) times per year.
Abate Weeds in Non-Turf Areas	Spray tree basins, skinned areas and natural areas and submit required monthly pesticide use reports to City.	Three (3) times per year.
Hedging	Hedging to retain shape, fullness.	Two (2) times per year.
Aerate Natural Turf	Aerate turf using tractor-mounted aerator.	Two (2) times per year.
Fertilize Natural Turf	Apply fertilizer (winter formulation & spring formulation) to turf using a spreader.	Two (2) times per year.
Overseed Natural Turf	Top dress and seed turf; perform spot area repairs.	One (1) time every two years with spot repair as needed.
Renovate Natural Turf	Fence off project area, fill low spots, aerate, de-thatch, re-seed or re-sod.	One (1) time every four years or as needed.

TASK	DESCRIPTION	BASIC SERVICE LEVEL – FREQUENCY
Artificial Turf Maintenance	Brush, aerate, rake and sweep per manufacturer’s specifications. Inspect seams and monitor for need for infill topdressing. Rinse turf to remove organic matter.	Brush, aerate, rake and sweep per manufacturer’s specifications. Inspect seams and topdressing quarterly.
		Rinse turf as needed.
Emergency tree trim/prune/removal	Notify City of any emergency trimming or removal identified within 4 hours.	As needed.
Maintain landscape plantings	Trim and fertilize.	Two (2) times per year.
Blow pedestrian walkways / pathways	Clean hardscape around facilities.	One (1) time per month plus 6 extra cycles per year during periods of heavy use.
		Two(2) times per month during the winter season.
Irrigate park	Water turf and landscape according to industry standards to maintain plant materials and save water.	As needed.
Maintain and repair irrigation systems	Check system and report any problems with valves, main lines or lateral lines to City immediately. Adjust and repair sprinkler heads as needed.	Two (2) times per month during 8 warm weather months plus twice during the 4-month winter season.
Backflow preventer testing	Perform annual backflow preventer test.	One (1) time per year.
Maintain drinking fountains	Perform routine cleaning and check drainage. Report drainage and operational problems to City.	Twice a week.

TASK	DESCRIPTION	BASIC SERVICE LEVEL – FREQUENCY
Power wash surfaces	Clean picnic tables, bbq pits, and hard surfaces.	One (1) time per year and as needed.
Vector control	Provide rodent control and removal to maintain safe and attractive landscape.	As needed.
Coordination		
Program Supervision	Participate in scheduled City/Mitty quarterly park inspections. Troubleshoot park inspections issues & implement corrective action. Compile and report relevant items, e.g. use of chemical pesticides/herbicides, and repair of equipment as needed.	Four (4) times per year and as needed.
Infrastructure Repair		
Park Infrastructure Repairs	Coordinate with City for repair of Park improvements.	As needed.

EXHIBIT F
WAGE POLICY

AGREEMENT TITLE:	AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE ROMAN CATHOLIC WELFARE CORPORATION OF SAN JOSE (ARCHBISHOP MITTY HIGH SCHOOL) FOR THE FUNDING, RENOVATION, AND JOINT USE OF A SPORTS FIELD AND MAINTENANCE OF JOHN MISE PARK
CONTRACTOR Name and Address:	Roman Catholic Welfare Corporation of San Jose 5000 Mitty Way San Jose, CA 95129

By executing this Addendum, The Roman Catholic Welfare Corporation of San Jose acknowledges and agrees that the work performed pursuant to the above referenced Agreement or Service Order is subject to all applicable provisions.

Payment of Minimum Compensation to Employees. The Roman Catholic Welfare Corporation of San Jose (“Mitty”) shall be obligated to pay not less than the General Prevailing Wage Rate for any and all work or services performed pursuant to the Agreement between the City of San Jose and Roman Catholic Welfare Corporation of San Jose.

A. Prevailing Wage Requirements. California Labor Code and/or Resolutions of the San Jose City Council require the payment of not less than the general prevailing rate of per diem wages and rates for holiday and overtime and adherence to all labor standards and regulations. The General Prevailing Wage Rates may be adjusted throughout the term of this Agreement. Notwithstanding any other provision of this Agreement, Mitty shall not be entitled to any adjustment in compensation rates in the event there are adjustments to the General Prevailing Wage Rates.

B. Reports. Mitty shall file a completed and executed copy of this Addendum with the Department of Parks, Recreation & Neighborhood Services who shall provide Mitty with compliance documents to be completed and returned (with supporting documentation) to the Office of Equality Assurance. **These documents must be returned within 10 days of receipt.** Mitty shall not perform on site work on this contract until labor compliance documents are filed. Mitty shall also report additional information, including certified payrolls, as requested by Office of Equality Assurance to assure adherence to the Policy.

C. Coexistence with Any Other Employee Rights. These provisions shall not be construed to limit an employee’s ability to bring any legal action for violation of any rights of the employee.

D. Audit Rights. All records or documents required to be kept pursuant to this Agreement to verify compliance with the Prevailing Wage Requirement shall be made available for audit at no cost to City, at any time during regular business hours, upon written request by the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers. Copies of such records or documents shall be provided to City for audit at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records or documents shall be available at Mitty's address indicated for receipt of notices in this Agreement.

E. Enforcement.

1. General. Mitty acknowledges it has read and understands that, pursuant to the terms and conditions of this Agreement, it is required to comply with the Prevailing Wage Requirement and to submit certain documentation to the City establishing its compliance with such requirement ("Documentation Provision"). Mitty further acknowledges the City has determined that the Prevailing Wage Requirement promotes each of the following (collectively "Goals"):

- a. It protects City job opportunities and stimulates the City's economy by reducing the incentive to recruit and pay a substandard wage to labor from distant, cheap-labor areas.
- b. It benefits the public through the superior efficiency of well-paid employees, whereas the payment of inadequate compensation tends to negatively affect the quality of services to the City by fostering high turnover and instability in the workplace.
- c. Paying workers a wage that enables them not to live in poverty is beneficial to the health and welfare of all citizens of San Jose because it increases the ability of such workers to attain sustenance, decreases the amount of poverty and reduces the amount of taxpayer funded social services in San Jose.
- d. It increases competition by promoting a more level playing field among contractors with regard to the wages paid to workers.

2. Remedies for Mitty's Breach of Prevailing Wage Provisions.

- a. **RESTITUTION:** Mitty agrees that in the event of a breach of its obligations it will pay any amounts underpaid in violation of the required payments and City's administrative costs and liquidated damages and, in the case of financial assistance, to refund any sums disbursed by the City.
- b. **LIQUIDATED DAMAGES FOR BREACH OF PREVAILING WAGE PROVISION:** Mitty agrees its breach of the Prevailing Wage Requirement would cause the City damage by undermining the Goals, and City's damage would not be remedied by Mitty's payment of restitution to the workers who were paid a substandard wage. Mitty further agrees that such damage would increase the greater the number of employees not paid the applicable prevailing wage and the longer the

amount of time over which such wages were not paid. The City and Mitty mutually agree that making a precise determination of the amount of City's damages as a result of Mitty's breach of the Prevailing Wage Requirement would be impracticable and/or extremely difficult. **THEREFORE, THE PARTIES AGREE THAT, IN THE EVENT OF SUCH A BREACH, CONTRACTOR SHALL PAY TO THE CITY AS LIQUIDATED DAMAGES THE SUM OF THREE (3) TIMES THE DIFFERENCE BETWEEN THE ACTUAL AMOUNT OF WAGES PAID AND THE AMOUNT OF WAGES THAT SHOULD HAVE BEEN PAID.**

ADDITIONAL REMEDIES: Mitty agrees that in addition to the remedies set forth above City retains the right to suspend or terminate the Agreement for cause and to debar Mitty or its subcontractors from future City contracts and/or deem the recipient ineligible for future financial assistance.

City

Mitty

By _____
Name
Title:
Date: _____

By _____
Name:
Title:
Date: _____

EXHIBIT G
INSURANCE

Mitty and/or its subcontractor, at their sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Maintenance Services hereunder, by Mitty and on behalf of Mitty, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance.

There shall be no endorsement reducing the scope of coverage required above unless approved in writing by City's Risk Manager.

B. Minimum Limits of Insurance

Mitty and/or Mitty's Subcontractor shall maintain limits no less than:

1. Commercial General Liability: Two Million Dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of One Million Dollars (\$1,000,000) per accident. Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and Mitty; or Mitty shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. The City of San Jose, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Mitty and/or Mitty's Subcontractors; products and completed operations of Mitty and/or Mitty's Subcontractors; premises owned, leased or used by Mitty and/or Mitty's Subcontractors; and automobiles owned, leased, hired or borrowed by Mitty and/or Mitty's Subcontractors. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
 - b. Mitty's and/or Mitty's Subcontractors insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Mitty's and/or Mitty's Subcontractors insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Association shall not affect coverage provided City, its officers, employees, agents, or contractors.
 - d. Coverage shall state that Mitty's and Mitty's Subcontractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the CITY, its officials, employees, agents and contractors.

2. Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, employees, agents and contractors.

3. All Coverages

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation or non-payment of premium.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. **Verification of Coverage**

Mitty shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this Agreement through its Subcontractor. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the Risk Manager:

CITY OF SAN JOSE – Finance
Risk Management
200 East Santa Clara Street, 13th Floor Tower
San Jose, California 95113-1905

G. **Subcontractors**

Mitty shall include all contractors or subcontractors as insured under its policies or shall obtain separate certificates and endorsements for each subcontractor.

EXHIBIT H

MITTY USE PERIOD COMMENCEMENT FORM

**CONFIRMATION OF COMMENCEMENT OF MITTY USE PERIOD RELATED TO THE
AGREEMENT BETWEEN THE CITY OF SAN JOSE AND THE ROMAN CATHOLIC
WELFARE CORPORATION OF SAN JOSE**

The Parties agree as follows:

Mitty Use Period commenced on (insert date) , and shall expire on (insert date) . The Initial Term of the Agreement shall expire on (insert date) .

Roman Catholic Welfare Corporation of San
Jose

City of San Jose, a municipal corporation

By _____

Name:
Title:

By _____

Name:
Title:

EXHIBIT I

EMPLOYEE CLEARANCE VERIFICATION

If MITTY provides services involving minors, and as a CITY-approved method of complying with the provisions contained in this Agreement, MITTY shall conduct a criminal background check through the database of the California Department of Justice, **and** an FBI criminal database or equivalent national database as approved in writing by MITTY's liability insurance provider, on each of its employees and volunteers who have supervisory or disciplinary authority over minors.

MITTY shall also comply with the provisions of the Child Abuse and Neglect Reporting Act, California Penal Code Section 11164 *et. seq.* Additionally, MITTY certifies to the following:

1. Any and all personnel employed or retained by MITTY in conducting the operations of MITTY's program shall be qualified to perform the duties assigned to them by MITTY. MITTY agrees that MITTY shall not at any time allow its employees or volunteers to be in any position with supervisory or disciplinary authority over minors, if they have been convicted of any offense identified in California Public Resources Code Section 5164 (copy attached).

CITY and MITTY understand that results of background checks on minors may be confidential under state law. Therefore, all employees or volunteers must be at least 18 years of age if they are to be in a position having supervisory or disciplinary authority over any minor.

If MITTY intends to have employees or volunteers under the age of 18 providing services under this Agreement, MITTY shall maintain and make available to CITY, if requested, guidelines, procedures or policies, that safeguard and ensure that no employees or volunteers under the age of 18 will be providing services under this Agreement unsupervised, and further, MITTY shall ensure that none of its employees or volunteers under 18 years of age have any supervisory or disciplinary authority over any minor, as such term is used in California Public Resources Code Section 5164.

2. MITTY shall be responsible for ensuring that no person who has supervisory or disciplinary authority over minors, who is paid or unpaid by MITTY shall be permitted to provide services unless appropriate background checks, including fingerprints, have been performed prior to the beginning of services under this Agreement, and the person meets the standards set forth above. If requested by CITY, and to the extent allowed by law, MITTY shall promptly provide documentation listing each person that has provided or is providing services hereunder involving supervision or disciplinary authority over minors, and certifying that the MITTY has conducted the proper background check on such

person or persons, and each of the named persons is legally permitted to perform the services described in this Agreement. Regardless of whether such documentation is requested or delivered by MITTY, MITTY shall be solely responsible for compliance with the provisions of this Section.

3. That no person paid or unpaid by MITTY shall be permitted to provide services requiring contact with children or providing food concessionaire services or other licensed concessionaire services in that area, unless MITTY has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code (copy attached), verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than 2 (two) years old (if newly hired) or within 4 (four) years (if current employee) of the date of execution of this Agreement and every 4 years thereafter, if the term of this Agreement exceeds 4 years. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. MITTY shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to CITY, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.
4. MITTY understands that if services are rendered on a school site, there may be additional requirements that may apply including without limitation, requirements under the California Education Code. MITTY, acknowledges that it is MITTY's sole responsibility to comply with all applicable laws, regulations and licensing requirements in MITTY's provision of services hereunder.

By signing below, the Roman Catholic Welfare Corporation of San Jose verifies that it has read and agrees to the above:

Signature

Date

(Please print name and title)

(Please print name of organization)

CALIFORNIA PUBLIC RESOURCES CODE SECTION 5164

5164. (a) (1) A county or city or city and county or special district shall not hire a person for employment, or hire a volunteer to perform services, at a county or city or city and county or special district operated park, playground, recreational center, or beach used for recreational purposes, in a position having supervisory or disciplinary authority over any minor, if that person has been convicted of any offense specified in paragraph (2).

(2) (A) Violations or attempted violations of Section 220, 261.5, 262, 273a, 273d, or 273.5 of the Penal Code, or any sex offense listed in Section 290 of the Penal Code, except for the offense specified in subdivision (d) of Section 243.4 of the Penal Code.

(B) Any felony or misdemeanor conviction specified in subparagraph(C) within 10 years of the date of the employer's request

(C) Any felony conviction that is over 10 years old, if the subject of the request was incarcerated within 10 years of the employer's request, for a violation or attempted violation of any of the offenses specified in Chapter 3 (commencing with Section 207) of Title 8 of Part 1 of the Penal Code, Section 211 or 215 of the Penal Code, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of Section 12022 of the Penal Code, in the commission of that offense, Section 217.1 of the Penal Code, Section 236 of the Penal Code, any of the offenses specified in Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code, or any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, provided that no record of a misdemeanor conviction shall be transmitted to the requester unless the subject of the request has a total of three or more misdemeanor convictions, or a combined total of three or more misdemeanor and felony convictions, for violations listed in this section within the 10-year period immediately preceding the employer's request or has been incarcerated for any of those convictions within the preceding 10 years. (b) (1) To give effect to this section, a county or city or city and county or special district shall require each such prospective employee or volunteer to complete an application that inquires as to whether or not that individual has been convicted of any offense specified in subdivision (a). The county or city or city and county or special district shall screen, pursuant to Section 11105.3 of the Penal Code, any such prospective employee or volunteer, having supervisory or disciplinary authority over any minor, for that person's criminal background. (2) Any local agency requests for Department of Justice records pursuant to this subdivision shall include the prospective employee's or volunteer's fingerprints, which may be taken by the local agency, and any other data specified by the Department of Justice. The request shall be made on a form approved by the Department of Justice. No fee shall be charged to the local agency for requesting the records of a prospective volunteer pursuant to this subdivision.

CALIFORNIA PUBLIC RESOURCES CODE SECTION 5163

5163. (a) No person shall initially be employed in connection with a park, playground, recreational center, or beach used for recreational purposes by a city or county in a position requiring contact with children, or as a food concessionaire or other licensed concessionaire in that area, unless the person produces or has on file with the city or county a certificate showing that within the last two years the person has been examined and has been found to be free of communicable tuberculosis.

(b) Thereafter, those employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years for so long as the employee remains skin test negative. Once an employee has a documented positive skin test which has been followed by an X-ray, the foregoing examination is no longer required and a referral shall be made within 30 days of the examination to the local health officer to determine the need for follow-up care.

"Certificate" means a document signed by the examining physician and surgeon who is licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, or a notice from a public health agency or unit of the tuberculosis association which indicates freedom from active tuberculosis.

5163.1. The examination shall consist of an approved intradermal tuberculosis test, which, if positive, shall be followed by an X-ray of the lungs.

Nothing in Sections 5163 to 5163.2, inclusive, shall prevent the governing body of any city or county, upon recommendation of the local health officer, from establishing a rule requiring a more extensive or more frequent examination than required by Section 5163 and this section.

5163.2. The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a licensed physician and surgeon.

5163.3. The city or county shall maintain a file containing an up-to-date certificate for each person covered by Section 5163.

5163.4. Nothing in Sections 5163 to 5163.3, inclusive, shall prevent the city or county from requiring more extensive or more frequent examinations.



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, DIRECTOR

STATEMENT OF EXEMPTION

FILE NO. PP12-021

LOCATION OF PROPERTY John Mise Park

PROJECT DESCRIPTION Mise Park Sports Field Renovation project for:

- Replacement of an existing soccer (220' x 345') and softball field with a new 225' x 360' artificial turf soccer field and artificial turf softball field;
- Installation of a new 4-foot high chain link perimeter fence and new 16-foot high chain link fence at the goal ends;
- Removal and replacement in-kind of an existing softball backstop.
- Replacement of six existing sports field lights with seven new energy efficient sports field lights (seven 1,500 watt halide luminaires per pole; 5 poles at 80' and two poles at 70');
- Installation of a new 30-stall parking lot with new 30-foot tall parking light poles;
- Removal of eight trees, one of which is an ordinance size (25" diameter), with the other seven trees consisting of non-ordinance size Chinese Pistache trees;
- Replacement of the removed trees with a minimum of 38 trees, in conformance with the City's replacement tree ratios; and
- Replacement of two bleachers, replacement of two dugout benches, replacement of three picnic tables, installation of six trash receptacles which replace two existing, replacement of one drinking fountain, installation of four new other benches, new bike racks, and directional signage.

CERTIFICATION

Under the provisions of Section 15302 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

15302. REPLACEMENT OR RECONSTRUCTION

Class 2 consists of replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced, including but not limited to:

- (a) Replacement or reconstruction of existing schools and hospitals to provide earthquake resistant structures which do not increase capacity more than 50 percent.
- (b) Replacement of a commercial structure with a new structure of substantially the same size, purpose, and capacity.

- (c) Replacement or reconstruction of existing utility systems and/or facilities involving negligible or no expansion of capacity.
- (d) Conversion of overhead electric utility distribution system facilities to underground including connection to existing overhead electric utility distribution lines where the surface is restored to the condition existing prior to the undergrounding.

Analysis: The proposed project consists of the replacement of an existing lighted soccer and softball field with a new artificial turf soccer and softball field and light standards.

The City prepared a lighting study for the new field lighting. The lighting study concluded that with the new field lighting would increase lighting levels on John Mise Court to a level consistent with a minor street with a medium level of pedestrian activity, based on the Illuminating Engineering Society's *American National Standard Practice for Roadway Lighting* definitions and standards. Therefore, the lighting would not result in significant light or glare impacts to the surrounding properties. The lighting study is attached.

The City has also obtained the Material Safety Data Sheet from the artificial turf manufacturer, and found that there is no risk from hazardous materials from the proposed artificial turf material. The Consumer Product Safety Commission has also evaluated synthetic turf, and found that synthetic fields do not pose a health risk due to lead. The Material Safety Data Sheet for the proposed artificial turf is also attached.

Joseph Horwedel, Director
Planning, Building and Code Enforcement



Deputy

Date: April 26, 2012

attachments



John Mise Park Lighting Study

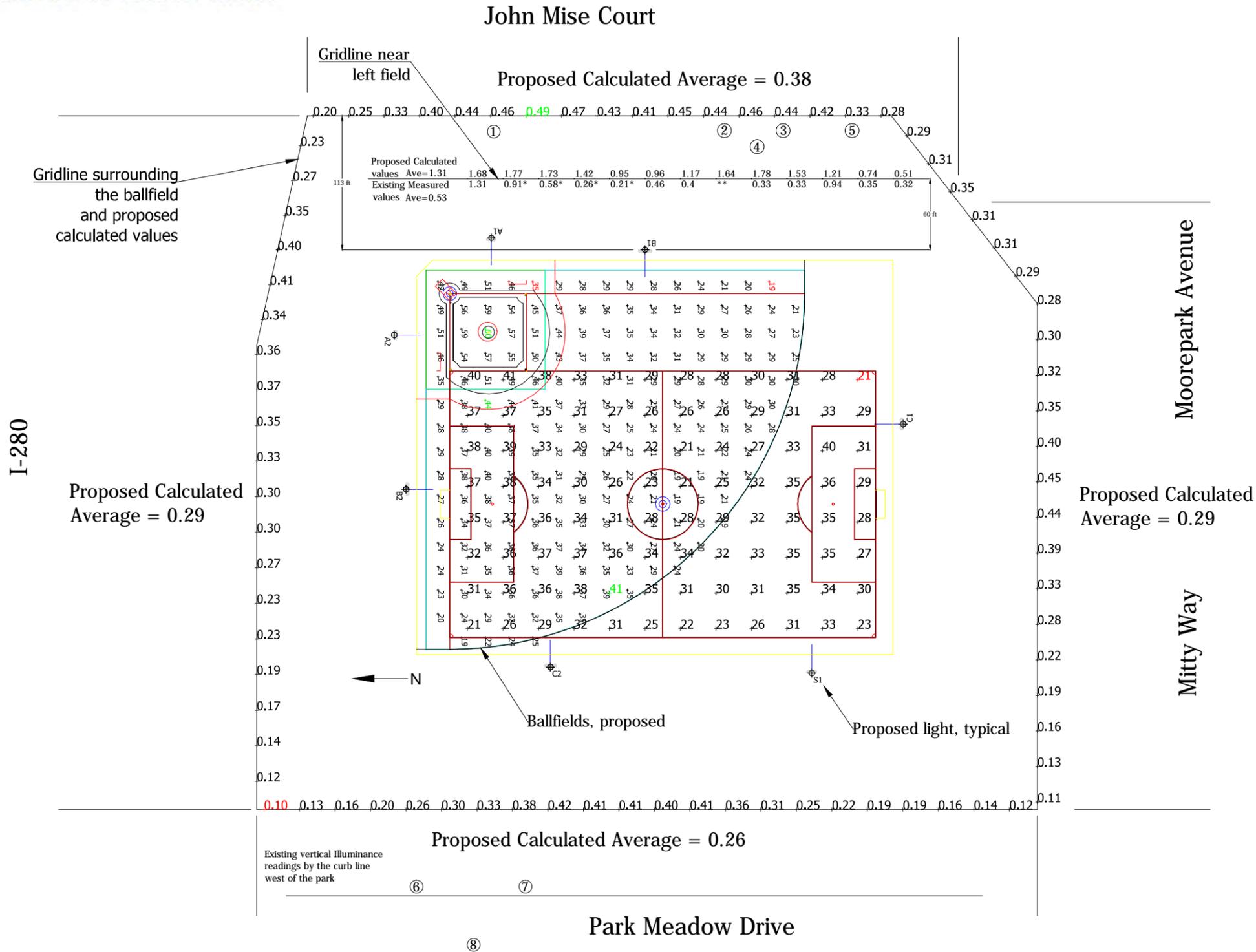
There is a project to renovate the John Mise Park. Part of this renovation is changing the lights that are used for sports events at night. There was a concern that the new lights will be too bright for the surrounding neighborhood. There was a lighting model done by the lighting manufacturer (Musco Lighting) that showed the amount of light that will spill onto a gridline (this gridline represents the effective limit of the proposed lighting) around the park and onto another gridline about 60 feet from a proposed new park light to the east. The east side of the park including the homes on John Mise Ct. is the concern as the houses here are closest to the park and are within the effective limit of the proposed lighting. The lighting model from the lighting manufacturer did not take the surrounding trees in consideration.

The study was done to compare the existing park lights with the proposed park lights. The existing park lights were very recently maintained and are in very good condition minimizing the effect of depreciation on the values measured for comparison to the lighting model of the proposed renovation. The lighting model includes a gridline that was 60 feet to the east of a proposed park light (near left field), and a gridline surrounding the ball field lighting. The model at the gridline near left field was compared to field measurements as this was the easiest to access and to isolate from other light sources. The model gridline surrounding the ball field was compared to measurements at nearby points.

Attached are the numbers from the lighting model overlaid with the measurements and notes. The following are the key findings regarding the concern:

- 1) The average lighting contribution on John Mise Ct. from the sports field lighting (0.3fc) in addition to the existing street lighting (0.2fc) will be about the same as the City's street lighting goal for lighting on John Mise Ct. (0.5fc).
- 2) The added poles with new lights for the outfield/soccer field will increase the average amount of light reaching the homes on John Mise Court.
- 3) The new lights will decrease the average amount of light reaching the homes on Moorpark Ave.
- 4) The new lights will decrease the average amount of light reaching the homes on Park Meadow Dr.
- 5) Trees and large shrubs screen light from the sports field from reaching homes in many locations.
- 6) The maximum illumination reaching homes from the existing park lighting is the same as the maximum illumination measured on the street from existing street lights.
- 7) The maximum illumination reaching homes from the proposed park lighting will be less than the maximum illumination measured on the street from existing street lights.

John Mise Park Lighting Study



Additional Measured Values:

- ① Near large tree and fence of dwelling units
V=0.36
- ② By streetlight 13G255
H=0.78
- ③ By a driveway on the east sidewalk
V=0.91 (towards the streetlight)
- ④ By a point near th driveway
H=0.06
- ⑤ By a tree on the east sidewalk
V=0.18; V'=0.23 (towards an ornamental light)
- ⑥ By the curb line on Park Meadow drive
V=0.42
- ⑦ By the curb line on Park Meadow drive
V=0.45
- ⑧ By the house at the corner of Park Meadow court and Park Meadow drive
V=0.78 (taken 8 ft. from grade)

Notes:

- 1) Values with * and ** indicate:
 - *Trees were between the park and the point of measurement.
 - **Could not get a proper reading because of vehicle obstruction.
- 2) All measured values and calculated are vertical illuminance (meter facing the park) and 3 ft. from grade unless otherwise noted, (except for calculated values on the ballfield which are horizontal).
- 3) Weather conditions were clear and cold.
- 4) Lighting study started at 7:00 pm about an hour after sunset, on February 28, 2012.
- 5) Pedestrian traffic was low as well as vehicular traffic.
- 6) Several vehicles were parked nearby and the soccer field was in use.
- 7) Lighting study done by:
 - Greg Jobe
 - Mario de Leon
 - Dan Rinerson
- 8) All existing ballfield lights maintained in January, 2012.
- 9) Measurement taken with care to screen effects of street and area lights unless otherwise noted.
- 10) Streetlight (13G256) at end of John Mise court was non-functioning.

FieldTurf Tarkett™

UNITED IN SPORT™

April 13, 2012

To Whom It May Concern:

FieldTurf Tarkett, the world's largest provider of synthetic turf fields, has committed to installing only lead-free fibers. All of our fibers fall well below any regulations and are compliant with the voluntary standard that is being imposed by the CPSC. Additionally our backing and infill systems are also lead free.

The most recent report by the Consumer Product Safety Commission (CPSC) confirmed that “there is no health risk to young children playing on synthetic fields and that parents should not be concerned about harmful levels of lead in artificial turf.” For more information visit; <http://www.cpsc.gov/CPSC/PUB/PREREL/prhtml08/08348.html>

Regards,



Darren Gill
Director of Marketing

LLDPE-Filaments

1. Substance/preparation and company identification

Filament consisting of LLDPE

Use: Filament for artificial turf

Company:

Morton Extrusionstechnik GmbH

Im Pfarrgrund 5

69518 Abtsteinach

GERMANY

Telephone: +49 6207-92395-0

Fax: +49 6207 92495-39

e-mail: info@morton-extrusionstechnik.de

2. Composition/information on ingredients

Chemical characterization of polymer:

LLD Ethylene/1-Hexene Copolymer, CAS-No: 25213-02-9

Physical characterization:

Monofilament with different yarn-count, different colours, wound-up on capable spools

3. Hazard identification

According to Regulation (EC) No. 1272/2008 on classification, labelling and packaging of substances and mixtures:

Label elements and precautionary statement:

The product does not require a hazard warning label in accordance with GHS criteria.

Classification of the substance and mixture:

No need for classification according to GHS criteria for this product.

Possible Hazards (according to Directive 67/548/EWG or 1999/45/EC):

No particular hazards known.

4. First-aid measures

Inhalation

No specific treatment is necessary since this material is not likely to be hazardous by inhalation.

If exposed to excessive levels of dusts or fumes, remove to fresh air and get medical attention if cough or other symptoms develop.

Skin contact

Product, at ambient conditions, is not expected to be hazardous by skin contact. Should irritation occur, rinse with water.

In case of contact with molten product, cool rapidly with water and seek immediate medical attention. Do not attempt to remove solidified polymer from skin.

Eye contact

Flush eyes with water as a precaution. If irritation persists get medical attention.

In case of contact with molten product, cool rapidly with water and seek immediate medical attention.

Ingestion

If swallowed, do NOT induce vomiting. Consult a physician if necessary.

Notes to physician

Contact with molten polymer can cause significant tissue damage. Provide general supportive measures and treat symptomatically.

LLDPE-Filaments

5. Fire-fighting measures

General fire hazards

Polymer can burn if exposed to a fire. Acetaldehyde vapors form explosive mixtures in air and can spontaneously ignite at temperatures above 347F (175C).

Industrial handling of polymer pellets or chips has the potential to generate dust. Polymer dust can accumulate over time on buildings and equipment. After a significant amount of dust accumulation and disturbance, dust may form explosive mixture in air. Ensure that good housekeeping practices are followed.

Hazardous combustion products

Irritating and toxic gases or fumes may be released during a fire.

Upon decomposition, this product emits carbon monoxide, carbon dioxide and/or low molecular weight hydrocarbons.

Molten polymer or prolonged air drying of polymer at temperatures above 195 °C will release small quantities of acetaldehyde (CAS# 75-07-0).

Suitable extinguishing media

Dry chemical, CO₂, water spray or regular foam.

Extinguishing media which must not be used for safety reasons

Do not use a solid water stream as it may scatter and spread fire.

Protection of fire-fighters

Wear full protective clothing, including helmet, self-contained positive pressure or pressure demand breathing apparatus, protective clothing and face mask.

Specific methods

In the event of fire and/or explosion do not breathe fumes.

6. Accidental release measures

Personal precautions

Surfaces may become slippery after spillage.

Methods for cleaning up

Clean up in accordance with all applicable regulations.

Other information

Sweep up or gather material and place in appropriate container.

7. Handling and storage

Handling

Use care in handling/storage.

Molten material can cause burns. Handle molten material with care.

Storage

Keep away from heat, sparks, and flame.

Further information

Use good housekeeping methods to keep accumulation of dust to a minimum

8. Expose controls and personal protection

Addition Exposure Data

No exposure limit value known

LLDPE-Filaments

Engineering measures

Use process enclosures, local exhaust ventilation, or other engineering controls to control airborne levels below recommended exposure limits.

Personal protective equipment

Respiratory protection

When dusts or thermal processing fumes are generated and ventilation is not sufficient to effectively remove them, appropriate respiratory protection must be provided.

Hand protection

Not normally needed under ambient conditions.
For molten material use heat resistant gloves.

Eye protection

Wear safety glasses with side shields.
If handling molten material, additional protection may be needed, which may include face shield.

Skin and body protection

It is a good industrial hygiene practice to minimise skin contact.
When material is heated, wear gloves to protect against thermal burns.

Hygiene measures

Use good industrial hygiene practices in handling this material. Wash hands before breaks and at the end of workday.

9. Physical and chemical properties

Colour	Based on specification.
Form	Solid.
Odour	Slight to none.
Auto-ignition temperature	> 300°C
Boiling point	not determined
Decomposition temperature	> 300 °C
Flashpoint	closes cup: > 300 °C
Melting point	115 to 132 °C
Octanol / H2O Coeff	not determined
Odour threshold	not determined
pH	not determined
Solubility (H2O)	insoluble

10. Stability and reactivity

Stability

This is a stable material.

Conditions to avoid

Heat, flames and sparks.

Hazardous polymerisation

Not expected to occur.

11. Toxicological Information

Toxicological information

Due to this material's high molecular weight, this material is considered to be of little to no toxicological concern.

Acute toxicity

LLDPE-Filaments

LD50/oral/rat: >5.000 mg/kg

Mutagenicity

No known significant effects or critical hazards.

Teratogenicity

No known significant effects or critical hazards.

Developmental effects

No known significant effects or critical hazards.

12. Ecological Information

Ecotoxicity

This material is not expected to be harmful to aquatic life.

Persistence and degradability

Based on the physical properties of this product, significant environmental persistence and bioaccumulation would not be expected.

13. Disposal consideration

Disposal Instructions

Dispose in accordance with all applicable regulations.

14. Transport Information

ADR Not regulated as dangerous goods.

IMDG Not regulated as dangerous goods.

IATA Not regulated as dangerous goods.

15. Regulatory Information

Regulations of the European union (Labelling) / National legislation/Regulations

Directive 1999/45/EC ('Preparation Directive')

The product does not require a hazard warning label in accordance with EC-Directives

16. Other information

This MSDS is related to Regulation (EC) No. 1907/2006, even though the product is not hazardous and there is no duty to issue a MSDS.

The data contained in this safety data sheet are based on our current knowledge and experience and describe the product only with regard to safety requirements.

The data do not describe the product's properties (product specification). Neither should any agreed property nor the suitability of the product for any specific purpose be deduced from the data contained in the safety data sheet.

It is the responsibility of the recipient of the product to ensure any proprietary rights and existing laws and legislation are observed.



EcoGreen Environmental Infill by FieldTurf



EcoGreen Environmental infill has all the playability, durability, safety and performance that FieldTurf end users at all levels have come to depend on. But what's new about it is some additional unique environmental properties that our schools, parks and communities will benefit from.

Advantages of EcoGreen Infill System:



- 100% post consumer recycled product.
- Meets all California Environmental standards.
- Manufactured under a strict factory controlled process.
- Coated infill for natural appearance.
- Grass Green or Earth Brown colors available.
- Reduced heat build-up and increased cool down.
- Superior drainage.
- Does not float.
- Dust-free and UV resistant.
- Does not compact over time.
- Preferred Gmax and MSP.
- Provides a stable and uniform playing system in all conditions.
- Least abrasive turf system against slides and falls.
- Virtually odor free.
- Meets all ADA requirements and Class I Fire rating.
- Minimal static charge.
- Meets FIFA 2-Star rating.
- No dangers to water systems.
- Environmentally clean water runoff.

FieldTurf is still the safest system in the world – and the only one proven safe by ongoing testing and independent studies. The experts confirm that any possible dangers from VOCs, PAHs, Heavy Metals, or Carcinogens are not a concern.

EcoGreen allows for the proper use of granulated post-consumer materials without creating harmful emissions.

Using FieldTurf instead of natural grass fields has to date saved:

- 17 million pounds of CO².
- 24 billion gallons of clean water.
- 123 million pounds of pesticides.



EcoGreen Environmental Infill by FieldTurf



FieldTurf with EcoGreen also provides excellent value and lifecycle costs. The turf playing surface can easily be removed at the end of its useful life and another playing surface can be laid on top of the same base for considerable monetary savings over completely replacing the field. Plus, the removed playing surface is 100% recyclable and field maintenance costs are reduced to as little as 5 percent of the maintenance costs of grass fields.

The system is guaranteed to maintain its performance and playability characteristics over its entire lifecycle and is backed by an A-rated, 3rd party insured warranty.

Installed in more than 4000 facilities worldwide, FieldTurf was designed through extensive biomechanical research to reproduce all of the properties of natural grass without the problems associated with natural grass fields or other artificial fields used by other artificial turf manufacturers, whose infills are made with thermal plastics, vulcanized rubber or organic materials, all of which are becoming increasingly controversial due to their poor playability, increased maintenance costs and potential Gmax safety issues and breakdown of their infill.

EcoGreen is not only proven as a safe and durable product but it delivers the appropriate amount of shock absorption and energy return for optimal, natural-field-like athletic performance.

FieldTurf and the Environment:

- FieldTurf fields are 100% recyclable.
- Made from 100% California recycled rubber.
- 100% lead free fibers.
- Meets all CPSC, EPA, CDC, HUD and other state or national requirements.
- Each field saves 20,000 tires from being dumped in landfills.
- Qualifies for LEED credit points.
- Storm water management, detention and water recycle systems available.
- FieldTurf is the only company to have an active recycling program.
- FieldTurf has removed and recycled old fields.

California encourages, funds and provides grants to end users of our fields and playgrounds. Now is the time to take advantage of FieldTurf EcoGreen, from the world leader in artificial turf and the company that continues to set industry standards for human health and environmental safety.



Information

(800) 724-2969
info@fieldturf.com
www.fieldturf.com



THE ULTIMATE
SURFACE EXPERIENCE



From the leaders in artificial turf comes the latest in "green" infill technology



ECOGREEN PLUS



Wellesley High School – Sprague Field



What is EcoGreen Plus?

EcoGreen Plus is a high grade thermoplastic elastomer (TPE). TPE is a combination of a rubber-phase and a plastic-phase. The rubber-phase allows for benefits that only rubber can provide while the plastic-phase gives superior strength and cross-linking. A big advantage of these materials is the processing which makes it possible to produce the granules in a specific particle shape and size. Another important point is that TPE's can be recycled by heating the material to the melting point of plastic cross-linking material.

EcoGreen Plus is the most state of the art elastomeric infill material to be used in an artificial turf system. This dynamic infill allows athletes to accelerate, pivot, and make torso movements similar to those made on natural grass. The main goal in the development of EcoGreen Plus was to provide an artificial turf system that mirrors the performance characteristics of top level natural turf fields while meeting and exceeding the most stringent FIFA 1 and FIFA 2 star requirements.

The EcoGreen Plus Advantage

1. **Nature colors** - EcoGreen Plus is available in natural green or brown.
2. **Dust Free** - Unlike lower quality infill systems, EcoGreen Plus is dust free.
3. **Player Friendly** - EcoGreen Plus keeps the infill layer loose and open. As a result, the artificial turf system performance does not degrade over time and the studs of the soccer shoes can still penetrate into the pitch providing the required grip. For the players, this means that they feel a consistent "natural turf pitch" performance.
4. **Ease of Installation** - Artificial turf systems that are installed with EcoGreen Plus show that high performance can be met without necessarily applying a shock absorbing sub-base construction, such as a lava / rubber mixture or e-layer. As a result, the turf system can be simplified, which results in less installation time and reduced costs.
5. **Environmentally Friendly** - EcoGreen Plus doesn't contain any material that could be harmful to the environment. EcoGreen Plus overcomes the carbon black from recycled black rubber, reducing the impact on humans and the environment. EcoGreen Plus can also be recycled.
6. **No compaction** - Rounded particles eliminate the worry of compaction over time.





The EcoGreen Plus Advantage



ECOGREEN PLUS



Tested for Safety

EcoGreen Plus has taken all precautions in its development to guarantee that it is absolutely harmless to the environment. EcoGreen Plus is safe for the environment, as confirmed by test method DIN 18035-7.

Environmental research test results according to DIN 18035-7:2002-6:

Characteristic	EcoGreen Plus	DIN 18035-7
DOC	6.2 mg/l	< 20 mg/l
EOX	< 11 mg/kg	< 100 mg/kg
Toxicity	0 %	< 50 %
Metal	EcoGreen Plus (mg/l)	DIN 18035-7 (mg/l)
Lead (Pd)	<0,008	< 0,04
Cadmium (Cd)	0,0001	< 0,005
Chromium (Cr)	<0,007	< 0,05
Mercury (Hg)	<0,00008	< 0,001
Zinc (Zn)	0,08	< 3,0
Tin (Sn)	<0,007	< 0,05

Best Ingredients = Maximum Performance

EcoGreen Plus is produced from carefully selected ingredients which are absolutely harmless to the environment and the health of humans and animals. Because of the players' intense physical exertion in direct contact with the infill material, they breathe much more air. Therefore the materials used in EcoGreen Plus are safe to the skin and do not contain any hazardous materials which could be of any risk to the human body - by breathing or through any other contact.

Flame retardant

An important added value of artificial turf is that it can be installed in indoor or outdoor stadiums. In these situations, it is extremely important that all materials are fire retardant. Because the polymer material itself can burn, EcoGreen Plus can be upgraded with a fire retardant system to meet the most stringent flooring requirements for fire safety. EcoGreen Plus fulfills all criteria of class T1 according to NEN 1775.



Information

(800) 724-2969
 info@fieldturf.com
 www.fieldturf.com



THE ULTIMATE
 SURFACE EXPERIENCE

WHMIS	PROTECTIVE CLOTHING	TRANSPORT OF DANGEROUS GOODS
		Not regulated

SECTION I. CHEMICAL PRODUCT AND COMPANY IDENTIFICATION

Use: Used to adhere SBS-modified bitumen membranes in roofing construction.

Formula number : Not available

Distributor: FieldTurf Tarkett
 8088 Montview Road
 Montreal (Quebec) H4P 2L7
 CANADA
 Tel.: (514) 340-9311

In case of emergency:

CANUTEC (Canada) (24h.): 613 996-6666 CHEMTREC (USA) (24h.): 1 800 424-9300

EMERGENCY OVERVIEW!!!

Semi-flexible asphaltic product with asphalt odour. Inhalation of dust or of asphalt fumes can cause a respiratory irritation.

SECTION II. COMPOSITION AND INFORMATION ON DANGEROUS INGREDIENTS

NAME	CAS #	% WEIGHT	EXPOSURE LIMIT (ACGIH)	
			TLV-TWA	TLV-STEL
Asphalt	8052-42-4	85-100	0.5 mg/m ³	Not established

SECTION III. POTENTIAL HEALTH EFFECTS

Effects of Short-Term (Acute) Exposure

INHALATION:

Inhalation is only possible if the product is heated or if asphalt fumes are generated. Asphalt fumes may be irritating to the nose, throat and upper respiratory tract causing coughing, wheezing and/or shortness of breath. The acute effects of exposure to asphalt fumes include headache, fatigue, reduced appetite. Hydrogen sulphide (H₂S) may arise from excessive heating, agitation or from contact with acids or acid salts. Inhaled H₂S may cause central nervous system depression resulting in headache, dizziness, nausea, unconsciousness, and death. (1)

SKIN CONTACT:

No likely health effect if the product is not heated. Asphalt fumes exposure can cause severe irritation of the skin, dermatitis and acne-like lesions. Contact with hot product can cause serious burns. (1)

EYE CONTACT:

No likely health effect if the product is not heated. Asphalt fumes may cause irritation and redness. Contact with hot product can cause serious burns. (1)

INGESTION:

It is unlikely that toxic amounts of this product would be ingested with normal handling and use.

Effects of Long-Term (Chronic) Exposure

SKIN CONTACT:

No likely health effect if the product is not heated. Asphalt fumes exposure can cause severe irritation of the skin, dermatitis and acne-

like lesions. Long-term contact can cause skin pigment change which is made worse by sunlight exposure. (1)

INHALATION:

No likely health effect if the product is not heated. Prolonged exposure to asphalt fumes can cause irritation to respiratory passages. Inhalation of asphalt fumes can cause central nervous system depression resulting in headache, dizziness, nausea, unconsciousness and death. (1)

NERVOUS SYSTEM EFFECTS:

No information available.

CARCINOGENICITY:

Asphalt fumes may contain a variety of polycyclic aromatic hydrocarbons (PAH), some of which are associated with the potential of inducing skin cancer. Increasing amounts of PAH may be released if this product is heated above 200°C. Prolonged or repeated contact of polycyclic aromatic hydrocarbons with skin may cause skin cancer where poor personal hygiene may be a contributing factor. Asphalt fumes contain substances such as *Benzo(a)pyrene* and *Dibenzo(a,h)anthracene* that are known to cause cancer in humans. The International Agency for Research on Cancer (IARC) considers that this product is not classifiable as to its carcinogenicity to humans. (1)

TERATOGENICITY, EMBRYOTOXICITY, FETOTOXICITY:

No information available.

REPRODUCTIVE TOXICITY: No information available.

MUTAGENICITY: No information available.

TOXICOLOGICALLY SYNERGISTIC MATERIALS:

No information available.

POTENTIAL FOR ACCUMULATION: No information available.

SECTION IV. FIRST AID MEASURES

SKIN CONTACT:

Wash gently with warm water and soap to remove dust. In case of contact with hot product, flush skin immediately with large volumes of cold water. Do not attempt to remove material from affected area without medical assistance. Obtain medical attention.

EYE CONTACT:

Flush eyes with water for at least 15 minutes while holding eyelids open. Do not attempt to remove material from affected area without medical assistance. Obtain medical attention.

INHALATION:

Remove victim from further exposure and restore breathing, if required. Obtain medical attention.

INGESTION:

Rinse mouth with water to remove dust, and drink plenty of water to help reduce irritation.

SECTION V. FIRE-FIGHTING MEASURES

FLAMMABILITY: Asphalt fumes are flammable.

EXPLOSION DATA: Not determined.

FLASH POINT: > 300°C.

AUTO-IGNITION TEMPERATURE: Not available.

FLAMMABILITY LIMITS IN AIR: (% in volume) Not available

FIRE AND EXPLOSION HAZARDS:

Asphalt fumes are flammable. Never work in a confined space to avoid gas accumulation. Do not use water on asphalt fire. Always keep away of containers exposed to intense heat.

COMBUSTION PRODUCTS:

Carbon monoxide, carbon dioxide and incomplete combustion products. Burning of this material will produce thick black smoke.

FIRE FIGHTING INSTRUCTIONS:

Evacuate area. Wear self-contained breathing apparatus and appropriate protective clothing in accordance with standards. Approach fire from upwind and fight fire from maximum distance or use unmanned hose holders or monitor nozzles. Always stay away from containers because of the high risk of explosion. Stop leak before attempting to put out the fire. If leak cannot be stopped, and if there is no risk to the surrounding area, let the fire burn itself out. Move containers from fire area if this can be done without risk. Cool containers with flooding quantities of water until well after fire is out.

MEANS OF EXTINCTION:

Anti-alcohol or universal foam, dry chemical powder, CO₂, sand.

SECTION VI. ACCIDENTAL RELEASE MEASURES

RELEASE OR SPILL:

Eliminate all sources of ignition. If hot material is spilled, allow enough time to cool completely and remove to a container for disposal. Wear appropriate breathing apparatus(if applicable) and protective clothing. Notify appropriate environmental agency(ies). Wash spill area with soap and water. Prevent entry into waterways, sewers, basements or confined areas

SECTION VII. HANDLING AND STORAGE

HANDLING:

Avoid prolonged exposure to mist, fumes or vapours from hot material. Minimise skin and eye contact. Use under adequate ventilation measures. Wash body parts after manipulation.

STORAGE:

Store material away from all sources of heat and ignition in a fresh, well ventilated area. Keep away from children. Avoid the accumulation of dust.

SECTION VIII. EXPOSURE CONTROLS / PERSONAL PROTECTION

HANDS: Wear resistant gloves.

RESPIRATORY: If the TLV is exceeded, if use is performed in a poorly ventilated confined area, use an approved respirator in accordance with standards.

EYES: Wear chemical safety goggles in accordance with standards.

OTHERS: Eye bath and safety shower.

SECTION IX. PHYSICAL AND CHEMICAL PROPERTIES

PHYSICAL STATE:

Solid

ODOUR AND APPEARANCE:

Black with asphalt odour

ODOUR THRESHOLD:

Not available

VAPOUR DENSITY (air = 1):

Not available

EVAPORATION RATE (Butyl acetate = 1):

Not available

BOILING POINT (760 mm Hg):

Not available

FREEZING POINT:

Not available

SPECIFIC GRAVITY (H₂O = 1):

Variable

SOLUBILITY IN WATER (20°C):

Insoluble

VOLATILE ORGANIC COMPOUND (V.O.C.) CONTENT:

Not available

VISCOSITY:

Not available

SECTION X. STABILITY AND REACTIVITY

STABILITY: This material is stable.

CONDITIONS OF REACTIVITY: Avoid excessive heat

INCOMPATIBILITY: Avoid accidental contact of hot material with water as this can cause violent eruptions. Avoid strong oxidizing agents.

HAZARDOUS DECOMPOSITION PRODUCTS: None identified.

HAZARDOUS POLYMERISATION: None

SECTION XI. TOXICOLOGICAL INFORMATION

TOXICOLOGICAL DATA: Not available

Effects of Short-Term (Acute) Exposure

INHALATION: No information available.

EYE IRRITATION: No information available.

SKIN IRRITATION: No information available.

Effects of Long-Term (Chronic) Exposure

TARGET ORGANS: No information available.

CARCINOGENICITY: No information available.

REPRODUCTIVE EFFECTS: No information available.

TERATOGENICITY, EMBRYOTOXICITY, FETOTOXICITY: No information available.

MUTAGENICITY: No information available.

SECTION XII. ECOLOGICAL INFORMATION

ENVIRONMENTAL EFFECTS:

Do not allow product or runoff from fire control to enter storm or sanitary sewers, lakes, rivers, streams, or public waterways. Block off drains and ditches. Provincial and federal regulations may require that environmental and / or other agencies be notified of a spill incident. Spill area must be cleaned and restored to original condition or to the satisfaction of authorities.

SECTION XIII. DISPOSAL CONSIDERATIONS

WASTE DISPOSAL:

This product is not hazardous waste. Consult provincial and federal regulations to know disposal methods. This material is not listed by the EPA as hazardous waste may require that environmental and / or other agencies be notified.

SECTION XIV. TRANSPORT INFORMATION

This product is not regulated by DOT and TDG.

SECTION XV. REGULATORY INFORMATION

- WHMIS:** Class D2B: Toxic material causing other effects (asphalt has irritant effects).
- DSL:** All constituents of this product are listed on the Domestic Substances List (DSL – Canada)
- TSCA:** All constituents of this product are listed on the Toxic Substances Control Act Inventory (TSCA – United States).

HMIS (USA):		NFPA (USA):	
Health:	0	Health:	1
Flammability:	1	Flammability:	1
Physical hazard:	0	Instability:	0
Protective equipment:	-	Specific hazard:	0

SECTION XVI. OTHER INFORMATION**Glossary:**

- ANSI:** American National Standards Institute
- ASTM:** American Society for Testing and Materials
- CAS:** Chemical Abstract Services
- CSA:** Canadian Standardisation Association
- DOT:** Department of Transportation (United States)
- EPA:** Environmental Protection Agency (United States)
- HMIS:** Hazardous Material Information System
- LD50/LC50:** Less high lethal dose and lethal concentration published
- NFPA:** National Fire Protection Association (United States)
- OSHA:** Occupational Safety & Health Administration (United States)
- RCRA:** Resource Conservation and Recovery Act (United States)
- TDG:** Transportation of Dangerous Goods
- TLV-TWA:** Threshold Limit Value – Time-weighted average
- WHMIS:** Workplace Hazardous Materials Information System (Canada)

Reference:

- (1) Material Safety Data Sheet of the supplier

Code of MSDS:

CA U DRU SS FS 071

Justification of the update:

- New product

This MSDS contains all the information required by ANSI Z-400.1-1998 standard (United States), by regulation 29 CFR Part 1910.1200 of the Hazard Communication Standard of OSHA, and is in accordance with standard DORS/88-66 OF WHMIS Canada.

To the best of our knowledge, the information contained herein is accurate. However, neither the above named supplier nor any of its subsidiaries assumes any liability whatsoever for the accuracy or completeness of the information contained herein. Final determination of suitability of any material is the sole responsibility of the user. All materials may present unknown hazards and should be used with caution. Although certain hazards are described herein, we cannot guarantee that these are the only hazards that exist.



MATERIAL SAFETY DATA SHEET

Product: **PRIMARY CARPET BACKINGS**

1. Identification product and company

Product information

Commercial Name: Applicable to all PR (Primary) and EQ (Equalmatt)

Manufacturer Name: Mattex Fabrics

P.O. Box 112470 Dubai, United Arab Emirates

Information in case of emergency: Tel: +9714 3431155 Fax: +9714 3217174

2. Composition

Woven polypropylene film tapes

3. Hazard Identification

The material is made up of approximately 98% Polypropylene and 2% additives which does not contain dangerous substance as defined in EU directive 76/769/EEC (Reference to Carcinogenic Compound 1 & 2).

4. First Aid Measures

No special measures necessary.

5. Fire-Fighting advise

Suitable extinguishing media:

Dry extinguishing agent (dry powder)

Foam

Water spray jet

6. Handling & Storage

Safe Transportation and Handling Advise

Use Forklift with appropriate load capacity to carry the product based on its specified gross weight;

Use Forklift with appropriate mounting attachment, i.e. Boom type

Safe Storage Advise

Store product in a well ventilated area and temperature not more than 30° C.

Stock product not more than 4 piles.

7. Ecological & Disposal considerations

Materials are recyclable (refer to appropriate Polypropylene recycling process)

Where necessary, consult waste disposal agency.

This information is given without engagement, however, it is reliable and is based in our present state of knowledge. It should not be construed as guaranteeing specific properties of the products described or their suitability for a particular application. Existing acts and regulations must be observed by the recipient of our products under his own responsibility.

Information issued on: 4/21/2008 Any information issued previously is hereby cancelled.



MATERIAL SAFETY DATA SHEET

Product: SECONDARY CARPET BACKINGS

1. Identification product and company

Product information

Commercial Name: Applicable to all SE (Secondary) and SP (Supermatt)

Manufacturer Name: Mattex Fabrics

P.O. Box 112470 Dubai, United Arab Emirates

Information in case of emergency: Tel: +9714 3431155 Fax: +9714 3217174

2. Composition

Woven polypropylene film tapes and texturized yarns.

3. Hazard Identification

The material is made up of approximately 98% Polypropylene and 2% additives which does not contain dangerous substance as defined in EU directive 76/769/EEC (Reference to Carcinogenic Compound 1 & 2).

4. First Aid Measures

No special measures necessary.

5. Fire-Fighting advise

Suitable extinguishing media:

Dry extinguishing agent (dry powder)

Foam

Water spray jet

6. Handling & Storage

Safe Transportation and Handling Advise

Use Forklift with appropriate load capacity to carry the product based on its specified gross weight;

Use Forklift with appropriate mounting attachment, i.e. Boom type

Safe Storage Advise

Store product in a well ventilated area and temperature not more than 30° C.

Stock product not more than 4 piles.

7. Ecological & Disposal considerations

Materials are recyclable (refer to appropriate Polypropylene recycling process)

Where necessary, consult waste disposal agency.

This information is given without engagement, however, it is reliable and is based in our present state of knowledge. It should not be construed as guaranteeing specific properties of the products described or their suitability for a particular application. Existing acts and regulations must be observed by the recipient of our products under his own responsibility.

Information issued on: 4/21/2008 Any information issued previously is hereby cancelled.

PRODUCT: Ground Rubber

MATERIAL SAFETY DATA SHEET

CRM Co.
11400 East Pecos Road
Queen Creek, AZ 85242
Emergency Phone Number: (480) 987-3006
After Hours Emergency Number: (480) 987-3006

I. PRODUCT IDENTIFICATION CHEMICAL & PHYSICAL CHARACTERISTICS

PRODUCT NAME: Ground Rubber
APPEARANCE: Black granular powder
SPECIFIC GRAVITY: .95 TO 1.40
VAPOR PRESSURE: N/A
EVAPORATION RATE: N/A

SOLUBILITY IN WATER: Insoluble
ODOR: Slight smell of vulcanized rubber
MELTING POINT: N/A
VAPOR DENSITY: N/A
BOILING POINT: N/A

II. HAZARDOUS INGREDIENTS

MATERIAL (CAS)	Wt. %	OSHA PEL	(ACGIH TLV)
Vulcanized Rubber Compound	Approx. 99%	N/A	N/A
Talc, respirable dust (14807-96-6)	Less than 4%	N/A	N/A

III. FIRE AND EXPLOSION HAZARD DATA

FLASH POINT: Ignition temperature of dust cloud 320°C (608°F) Approximately*
LEL: .025 oz/cu.ft.**

FLAMMABLE LIMITS: N/A
UEL: N/A

EXTINGUISHING MEDIA: Water, foam, dry powder (DO NOT USE HIGH PRESSURE WATER)

SPECIAL FIRE FIGHTING PROCEDURES: Noxious gases may be formed under fire conditions, Wear NIOSH approved self-contained breathing apparatus.

UNUSUAL FIRE AND EXPLOSION HAZARD: *Dust may be explosive if mixed with air in critical proportions & in the presence of an ignition source. The hazard is similar to that of many organic solids.

**Estimates based on data for 200 mesh synthetic & crude rubber dust: Information contained in the NFPA Fire Protection Handbook

IV. REACTIVITY DATA

STABLE: YES**CONDITIONS TO AVOID:** Conditions that will cause burning**INCOMPATIBILITY (materials to avoid):** Avoid strong oxidizing agents**HAZARD DECOMPOSITION OR BYPRODUCTS:** Thermal decomposition may produce carbon monoxide, carbon dioxide, zinc oxide fume/dust, sulfur dioxide, liquid and gaseous hydrocarbons.**HAZARDOUS POLYMERIZATION:** Will not occur**CONDITIONS TO AVOID:** Do not store hot material in hoppers due to possibility of spontaneous combustion

V. HEALTH HAZARD DATA

ROUTES OF ENTRY: Inhalation**HEALTH HAZARDS (Acute and Chronic):** The product can contain fine fibers that may cause itching. Otherwise not known. This material is generally thought to be a nuisance dust.**CARCINOGENICITY:** Rubber is not listed as a carcinogen**SIGNS AND SYMPTOMS OF EXPOSURE:** Itching of skin, irritation of mucous membranes, sneezing and coughing, irritation of the eyes.**MEDICAL CONDITIONS GENERALLY AGGRAVATED BY EXPOSURE:** Not known; however, could potentially aggravate allergies due to dust exposure/inhalation**EMERGENCY AND FIRST AID PROCEDURES:** Normal washing of the skin with soap & water. Ordinary means of personal hygiene are adequate.

VI. PRECAUTIONS FOR SAFE HANDLING AND USE

STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED: Sweep or vacuum into disposal containers

WASTE DISPOSAL METHOD: Product not defined as a hazardous waste. Dispose of in accordance with federal, state, and local regulations.

PRECAUTIONS TO BE TAKEN IN HANDLING AND STORING: Do not store near flame or ignition source. Do not store hot material in tubs or containers where spontaneous combustion could occur.

OTHER PRECAUTIONS: If material burns, oils will be released. These must be disposed of in accordance with federal, state, and local regulations.

VII. CONTROL MEASURES

RESPIRATORY PROTECTION (Specify Type): Use any dust and mist respirator for up to 10mg/m³.

VENTILATION: Yes

LOCAL EXHAUST: Yes if dusty conditions occur

SPECIAL: None

MECHANICAL: (General) Dust collectors and exhaust fans

PROTECTIVE GLOVES: Recommended

EYE PROTECTION: Use safety goggles to prevent dust entry.

OTHER PROTECTIVE CLOTHING OR EQUIPMENT: Enough fresh air should flow past the user to prevent exposure to airborne fibers & particles.

WORK/HYGENIC PRACTICES: Good personal hygiene, frequent washing with soap and water of exposed areas, remove and clean soiled clothing.

The information contained in this MSDS is consistent with U.S. Department of Labor OSHA Form OMB No. 1218-0072. Consult OSHA Hazard Communication Standard 29 CFR 1910.1200 for additional information. To fully understand the use of any material the user should avail themselves of reference material and expert consultation in the fields of fire prevention, ventilation and toxicology.



MATERIAL SAFETY DATA SHEET

This Material Safety Data Sheet meets or exceeds the requirements of the Canadian Controlled Product Regulations (WHMIS)

1. Product and Supplier Identification

Product: Target Abrasive 1050 Green
Target Silica Abrasive
Target Silica Sand (Lane Mountain)
Target Silica Sand
Unimin Silica Sand

Product Use: Sand Blasting

Supplier: Target Products Ltd,
7550 Conrad Street,
Burnaby, BC
Canada, V5A 2H7
Telephone: (604) 420-3620

24-Hour Emergency Response Telephone for Transport Emergencies ONLY:

+1 (613) 996-6666

2. Composition

Product	Ingredients				
	Crystalline Silica, quartz CAS No 14808-60-7 % (w/w)	Respirable Silica (10µm particle size) % (w/w)	Exposure Limits/ACGIH ¹	LD ₅₀	LC ₅₀
Abrasive 1050 Green	30	< 0.005	TLV-TWA: 0.05 mg/m ³ for respirable crystalline silica dust	>31600 mg/kg (oral/rat)	>2 mg/L (rat/1 hour)
Silica Abrasive	93	< 0.005	As above	As above	As above
Silica Sand (Lane Mountain)	100	< 0.005	As above	As above	As above
Silica Sand	100	< 0.005	As above	As above	As above
Unimin Silica Sand	100	< 0.005	As above	As above	As above

- 1 American Conference of Governmental Industrial Hygienists (ACGIH). Exposure limits may vary from time to time and from one jurisdiction to another. Check with local regulatory agency for the exposure limits in your area.

3. Hazards Identification

Routes of Entry:

Skin Absorption: No
Skin Contact: Yes
Eye Contact: Yes
Ingestion: Yes
Inhalation: Yes

Emergency Overview:

Sand (silicon dioxide) may contain crystalline quartz, which has been classified as a carcinogen by The International Agency for Research on Cancer (IARC). It has been concluded that crystalline silica in the form of quartz or cristobalite from occupational sources should be classified as carcinogenic to humans (Group 1). The major route of entry is inhalation, but the sand in this product is such that dusting of the silica is minimal. Respirable silica dust (10 μ particle size) is less than 0.005%.

When sand blasting, the abrasive is being used to remove and clean a surface. The substance that has been removed may contain materials that represent health hazards that cannot be addressed in the Material Safety Data Sheet. The employer must ensure that a risk assessment is done before any abrasive blasting activity which may cause release of a harmful level of an air contaminant from a surface or coating containing a toxic heavy metal or asbestos.

This blasting abrasive must NOT be reused unless it is being used in a fully enclosed, vented cabinet designed to recirculate the abrasive material.

Acute Health Effects:

Inhalation:

Inhalation of sand particles may cause irritation to the upper respiratory tract. Exposure may cause sore throat, coughing, sneezing, and the production of phlegm in the throat. Nosebleeds may occur in cases of those with sensitive nose membranes due to abrasion of sensitive tissue.

Skin Contact:

Sand is mildly abrasive to skin, but may aggravate tender skin causing rash, cuts or sores.

Skin Absorption:

Not applicable

Eye Contact:

Contact with the eye will cause tearing and irritation from the "foreign" object in the eye. Rubbing of the eye may cause abrasion of the cornea.

Ingestion:

No evidence of ill effects from ingestion of sand.

Chronic Health Effects:

Excessive inhalation of crystalline silica dust may result in respiratory disease, including silicosis, scarring of lung tissue, cancer, pneumoconiosis, or pulmonary fibrosis. Prolonged contact with sand by sensitive skin may result in skin redness, rash and sores.

Medical Conditions Aggravated by Exposure:

Respiratory problems may be aggravated by pre-existing lung disease such as bronchitis, emphysema, or chronic obstructive pulmonary disease.

4. First Aid Measures

Inhalation:

If irritation causes coughing or phlegm, remove to fresh air. Call for medical assistance if coughing doesn't subside.

Skin Contact:

Wash affected area thoroughly. If irritation persists, seek medical attention.

Eye Contact:

Immediately and thoroughly flush eyes with water until the foreign object is flushed out of the eye. If irritation, pain, swelling, or lacrimation exists, get medical attention as soon as possible.

Ingestion:

Ingestion of particulate is not considered to be injurious to health. Give fluids to aid in the passing of the product through the digestive system. Do not give anything by mouth to a convulsing or unconscious person. If patient shows discomfort, get immediate medical attention.

General Comments:

Good personal hygiene is essential. Avoid eating, smoking or drinking in work areas.

5. Fire Fighting Measures

Flammability: No

Flash Point: Not applicable

Autoignition Temperature: Not applicable

Lower Explosive Limit: Not applicable

Upper Explosive Limit: Not applicable

Explosion Data:

Sensitivity to Impact: No

Sensitivity to Static Discharge: No

Hazardous Combustion Products: None known

Conditions to Avoid: None

Extinguishing Media: These materials are not flammable and will not contribute to a conflagration.

Fire Fighting Instructions: Evacuate area and fight fire from a safe distance or a protected area. Approach fire from upwind and, if possible, isolate materials not involved in the fire. At high temperatures fumes of calcium oxide may evolve. Firefighters must wear self-contained breathing apparatus and full protective clothing.

6. Accidental Release Measures

Personal Protection:

Wear adequate personal protection to prevent inhalation of dusts, contact with skin or eyes. See Section 8 for specific recommendations.

Environmental Precautions:

Prevent from spilling into waterways, sewers.

Cleanup Procedures:

Restrict access to area until completion of cleanup. Only adequately trained personnel, wearing properly selected personal protective equipment and clothing described in Section 8, should be involved in the spill response and cleanup.

7. Handling and Storage

Handling Procedures:

Handle bags in a manner that will ensure minimal generation of dusts. Do not breathe dust, which may generate accidentally. Follow safe work procedures and wear the appropriate personal protective equipment specified in Section 8. The workers must be instructed and trained in the safe work procedures.

Do not rely on sight to determine if dust is in the air. Silica may be in the air without a visible dust cloud. If dust cannot be kept below permissible limits, wear a high efficiency respirator approved for silica dust.

Used abrasive blasting materials must be removed from the work area at the end of the work shift and dust collection must be used to minimize airborne contaminant. Used abrasive blasting materials must not be dry-swept.

Storage:

Store away from incompatible materials. See Section 10.

8. Exposure Controls, Personal Protection

Engineering Controls:

Engineering controls such as an enclosure or local exhaust ventilation with dust collection must be used to maintain airborne contaminations levels below the exposure limits, where practicable.

When an abrasive blasting operation is conducted inside an enclosure or cabinet, the enclosure or cabinet must have exhaust ventilation that maintains air pressure below the air pressure outside the enclosure or cabinet, so as to prevent the escape of air contaminants to other work areas, and minimizes worker exposure inside the enclosure.

When abrasive blasting is conducted outside a structure, the process must be restricted to a work zone which is identified by signs or similar means as being contaminated. Only properly protected workers, who are necessary to perform the work, are permitted inside an enclosure or a restricted work zone where abrasive blasting is being conducted.

The operating controls for a sandblasting machine or jetting gun must be located near the nozzle in a position where the operator's hands will be when using the device.

Respiratory Protection:

Respirators must be NIOSH approved and properly selected, maintained and used when working with this product. Knowledge of respiratory hazards and respiratory protection is essential to ensure appropriate selection of respirators. Use an approved high efficiency NIOSH dust respirator with a minimum N95 rating. In selecting the appropriate respirator must reflect the contaminant likely to be present in the spent sand

Skin Protection:

Wear clothing to prevent contact with skin.

Eye and Face Protection:

Wear safety glasses to prevent contact with eyes and make immediately available appropriate emergency eye washing equipment (e.g. portable or plumbed) capable of flushing the eyes for at least 15 minutes.

9. Physical and Chemical Properties

	Physical State	Appearance	Odour	Odour Threshold	pH (supernatant)	Vapour Pressure	Vapour Density (Air=1)	Solubility in water	Melting Point	Boiling Point	Specific Gravity (Water=1)	Coefficient of water/oil Distribution	Evaporation Rate (Butyl Acetate=1)
Abrasive 1050 Green	Solid	Grey to green crystals	None	None	6-7	N. App	N. App	No	1610 °C	2230 °C	2.75	N. App	N. App
Silica Abrasive	Solid	White to yellow crystals or dust	None	None	6-7	N. App	N. App	No	1610 °C	2230 °C	2.65	N. App	N. App
Silica Sand (Lane Mountain)	Solid	White to yellow crystals or dust	None	None	6-7	N. App	N. App	No	1610 °C	2230 °C	2.65	N. App	N. App
Silica Sand	Solid	White to yellow crystals or dust	None	None	6-7	N. App	N. App	No	1610 °C	2230 °C	2.65	N. App	N. App
Unimin Silica Sand	Solid	White to yellow crystals or dust	None	None	6-7	N. App	N. App	No	1610 °C	2230 °C	2.65	N. App	N. App

10. Stability and Reactivity

Chemical Stability:	This product is stable.
Hazardous Polymerization:	Will not occur.
Incompatibility:	Yes. Contact with powerful oxidizing agents such as fluorine, chlorine trifluoride and oxygen difluoride may cause exothermic reactions resulting in fires.
Reactivity:	Product components may react with mineral acids such as hydrofluoric acid to produce a corrosive gas, silicon tetrafluoride.
Hazardous Decomposition Products:	None

11. Toxicological Information

Effects of Acute Exposure:	See Section 3
Effects of Chronic Exposure:	See Section 3
Irritancy:	Yes. See Section 3.
Skin Sensitization:	None reported
Respiratory Sensitization:	None reported
Neurotoxicity:	No
Carcinogenicity:	Crystalline silica is listed by IARC
Embryotoxicity:	No
Teratogenicity:	No
Reproductive Toxicity:	No
Mutagenicity:	No
Synergistic Products:	None reported

12. Ecological Information

Environmental Toxicity: No environmental impact for uncontaminated sand. Determination of sandblasting contamination is required to determine environmental impact.

Biodegradability: No

13. Disposal Considerations

Review federal, provincial or state, and local government requirements prior to disposal. Store material for disposal as indicated in storage conditions. Disposal by controlled incineration may be acceptable.

14. Transport Information

Canadian Transportation of Dangerous Goods Regulations: Not regulated

International Air Transport Association (IATA): Not regulated

International Maritime Organization (IMO): Not regulated

15. Regulatory Information

CANADIAN FEDERAL REGULATIONS:

CEPA, DOMESTIC SUBSTANCES LIST: Listed

WHMIS CLASSIFICATION: D2A

16. Other Information

Original Preparation Date: July 05, 2005

Prepared by: Kel-Ex Agencies Ltd., P.O. Box 52201, Lynnmour RPO, North Vancouver, BC, Canada, V7J 3V5

Disclaimer: This Material Safety Data Sheet was prepared in accordance with criteria and requirements of the Hazardous Products Act and the Controlled Products Regulations using information provided by the manufacturer and other sources including CCINFO (Chemical Information published by the Canadian Centre for Occupational Health and Safety). The information in the Material Safety Data Sheet is offered for your consideration and guidance when exposed to this product. TARGET PRODUCTS LTD. expressly disclaims all expressed or implied warranties and assumes no responsibilities for the accuracy or completeness of the data contained herein. The data in this MSDS does not apply to use with any other product or in any other process.

This Material Safety Data Sheet may not be changed, or altered in any way without the expressed knowledge and permission of TARGET PRODUCTS, LTD.

Revisions: None



Memorandum

TO: John Davidson
Planning

FROM: Michael Liw
Public Works

SUBJECT: PP12-021
MISE PARK

DATE: 05-01-12

Approved

Date

DESCRIPTION: Mise Park Sports Field Renovation project.
LOCATION: John Mise Park – Supporting Traffic Analysis

Public Works has reviewed the proposed renovation for John Mise Park. The project consists of the replacement of an existing soccer field and softball field with artificial turf, the installation of project fencing (perimeter and goal ends), replacement of sports field lighting, installation of a new 30-stall parking lot with lighting, removal and replacement of onsite trees, and replacement of various park amenities (i.e. bleachers, benches, picnic tables, etc). In addition, our understanding is that the proposed 30-stall parking lot is proposed to be made available for private use by Archbishop Mitty High School during school hours and park use at other times.

Level of Service:

The City's Transportation Level of Service (LOS) Policy (Council Policy 5-3) governs the LOS at signalized intersections during the City's peak travel times (AM and PM). Under Council Policy 5-3, peak travel times are identified as being from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m, Mondays through Fridays. This policy defines an acceptable LOS as LOS D or better. Based on City analysis standards for determining the appropriate signalized intersections for LOS review (10 net project peak trips per travel lane), the only two intersections that could meet the criteria in the vicinity of the park site were determined to be the intersections of Lawrence Expressway/Mitty Way and Mitty Way/Moorpark Avenue. These two intersections operate at the following AM and PM LOS: Lawrence Expressway/Mitty Way (LOS B-/LOS B) and Mitty Way/Moorpark Avenue (LOS B-/LOS B). Based on engineering experience in analyzing traffic intersections in the City of San Jose, the City has estimated that at a minimum 200-250 new AM or PM peak hour vehicular trips would have to be generated by this project in order to begin to cause these two intersections, both currently operating at LOS B during both AM and PM peak hours, to operate at unacceptable levels (that is, to go from LOS B to LOS E).

The renovation elements for this project are not expected to generate any net AM or PM peak hour trips beyond the previous environmental clearance for the original park construction because upgrades to existing facilities, as proposed by this project, do not generate new peak hour trips, but rather encourage users of these facilities to utilize these facilities as originally intended.. Additionally, during the AM and PM peak hours, the new 30-stall parking lot will primarily be serving vehicles travelling to and from Archbishop Mitty High School. As such, the

30-stall parking lot will serve to divert existing traffic already within the area to a new location. Assuming that the project will divert 30 AM and 30 PM peak hour trips to and from the park site, respectively, the project's traffic LOS impact falls well below the estimated threshold that would be needed to begin to create an impact at an LOS B intersection. The amount of traffic diverted to the new parking lot is approximately 1/6 to 1/8 of the amount of new traffic that would have to be generated in order to begin cause the nearby intersections to operate at unacceptable levels.

Based on the proposed project description and the LOS at the nearby intersections of Lawrence Expressway/Mitty Way and Mitty Way/Moorpark Avenue), the project is not projected to create a significant impact at these two intersections during either the AM or PM Peak Hours.

Access:

John Mise Court functions as a two lane cul-de-sac north of Moorpark Avenue (4-lane roadway) and is the primary vehicular access point to the existing park parking lot and the proposed 30-space parking lot. Access to John Mise Court from Moorpark Avenue is accomplished from either right turns from westbound Moorpark Avenue or left turns from eastbound Moorpark Avenue. Current traffic data indicates that approximately 12,000 vehicles per day cross the intersection of John Mise Park and Moorpark Avenue (westbound and eastbound) which is approximately half of the carrying capacity of a typical 4-lane roadway (24,000 vehicles per day). Additionally, peak hour traffic data indicates that 419 westbound and 311 eastbound trips travel through the intersections of John Mise Court/Moorpark Avenue. The proposed project, under a worse case scenario would add 30 AM peak hour trips and 30 PM peak hour through this intersection.

Taking into consideration the fact that existing traffic volumes on Moorpark Avenue are at approximately half of the carrying capacity for that roadway, that the intersection of John Mise Court/Moorpark Avenue is in close proximity (approximately 350-feet) to the intersection of Mitty Way/Moorpark Avenue, and that the number of expected movements in/out of John Mise Court to Moorpark Avenue is approximately 66 trips in the AM Peak Hours and 70 in the PM Peaks Hours, it was concluded that there will be sufficient vehicular gap time to allow for left turns in and out of John Mise Court.

Please contact me (408) 535-6835 if you have any questions.



Michael Liw
Principal Engineer
Development Services Division

ML:ml

C: Matt Cano, PRNS
Manuel Pineda, DOT



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William F. Sherry, A.A.E.
Julia H. Cooper
Jennifer A. Maguire

SUBJECT: AIRPORT SHUTTLE BUS
REDUCTION

DATE: April 30, 2012

Approved

Date

5/8/12

RECOMMENDATION

1. Adopt a resolution authorizing the City Manager to execute the following two agreements together with other documents necessary to complete the transaction:
 - a. First Amendment to the Restated Lease between the City of San José and Penske Truck Leasing Co., LP terminating the remainder of the lease term for fourteen compressed natural gas (CNG) shuttle buses (Fleet A) and sale to San José with San José's payment to Penske in the amount not to exceed \$4,407,508; and
 - b. Purchase Agreement between the City of San José and the City and County of San Francisco for the sale of Airport Shuttle Bus Fleet A for a total sales price of \$3,400,000.
2. Adopt the following 2011-2012 Appropriation Ordinance and Funding Sources Resolution amendments in the Airport Revenue Fund:
 - a. Increase the estimate for Earned Revenue by \$3,400,000; and
 - b. Increase the Reserve – Per Master Trust Agreement by \$3,400,000.

OUTCOME

By terminating the lease on 14 underutilized Compressed Natural Gas (CNG) shuttle buses from the Airport fleet and selling them to the San Francisco International Airport (SFO) for their use, the City will avoid additional unnecessary costs estimated at \$3,200,000 over the remaining three year term of the Lease Agreement.

April 30, 2012

Subject: Airport Shuttle Bus Reduction

Page 2

BACKGROUND

On June 19, 2007, the City Council authorized the negotiation and execution of an Agreement with Penske for 14 CNG shuttle buses to transport Airport customers between the parking facilities and the rental car center. The buses were delivered and put into service in 2008.

In August 2009, a Restated Agreement was entered into to add 10 CNG buses to be used with the new Consolidated Rental Car Center which was under construction. The new buses, with entry/exit passenger doors on both sides, were put into service in June 2010 as the new roadways and facilities began operation.

In June 2011, the new parking facilities were opened and the Long Term parking facility on the west side of the Airport was closed. The closure of this lot eliminated the need for a long bus route, thus eliminating the need for 14 busses that were driving this route. In addition, this was the only route that allowed buses to be used with entry/exit doors on one side of the bus.

In July 2011, Airport Staff initiated discussions with Penske about reducing the size of the fleet. Penske and the Airport conducted considerable outreach regarding the possibility of recovering part of the remaining lease payments by finding a buyer for the buses. This outreach led to SFO making an offer to purchase the buses.

ANALYSIS

The Airport pays a fixed rate of \$7,674.50 per month per bus for the fourteen CNG buses. It was determined that continuing the lease payments for buses that were not being used on a regular basis would be less advantageous than selling the buses at a subsidized fair market price to another public entity.

SFO is in need of buses to replace their aging fleet. They have offered to pay \$3,400,000 for all fourteen buses. Airport staff has determined that this is a fair offer based on the estimated fair market value of the vehicles and the level of interest that was shown during the outreach process. Penske has had difficulty in obtaining buyers for previous fleets of our Airport buses and has supported us in the efforts to sell these buses.

The City and Penske have negotiated an Addendum to the Lease Agreement whereby Penske would allow the early termination and sale of the 14 buses that comprise Fleet "A" with San José's payment to Penske of \$4,407,508. The City will sell the Fleet to the City and County of San Francisco for San Francisco International Airport (SFO) for a total sales price of \$3,400,000. San Francisco will pay all transfer fees and sales taxes. San José will use the proceeds of the sale together with the difference of \$1,007,508 to make the buy out payment to Penske.

The Airport recommends this sale because it will result in a net cost avoidance by terminating the remaining 39 month term and thus avoiding the monthly lease payments. If the City

continues to pay the monthly lease on the 14 buses, the total expenditure would be \$4,190,277. Early termination will cost the City \$1,007,508 for a net cost avoidance of \$3,182,769 over the remaining 39 month term of the lease. The transaction will occur within the last two weeks of May 2012.

The Airport will retain the 10 remaining buses leased from Penske and will continue to successfully service the two Airport bus routes.

The San Francisco International Airport has reviewed and approved the terms of the Agreement. The Airport Commission of the City and County of San Francisco has adopted a resolution authorizing the purchase of the vehicles.

EVALUATION AND FOLLOW-UP

This agreement allows the Airport to reduce its budgetary expenses while maintaining the customer service requirements for its passengers and tenants. It is anticipated that the savings as a result of the reduction in the shuttle bus lease costs in 2012-2013 will be approximately \$1,290,000. The Administration will bring forward recommendations for appropriation adjustments to reflect the savings as part of the approval of the 2012-2013 Budget.

POLICY ALTERNATIVES

Alternative: Not entering into this agreement with Penske and SFO to reduce the Airport shuttle bus fleet.

Pros: Not entering into the agreement would maintain the fleet at 24 buses, as well as the full requirement of the Airport to pay the almost \$4,200,000 remaining on the lease.

Cons: Avoidance of additional lease payments of \$3,182,769 over 39 months would not be realized and excess buses would need to be maintained, insured and safeguarded at additional expense.

Reason for not recommending: The buses are not necessary for customer service functions at the Airport and the savings from the Agreement will benefit the Airport budget condition.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council

or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memo will be posted on the City Council agenda for the May 22, 2012 City Council meeting.

COORDINATION

This memo has been coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

This Council item is consistent with Council approved 2012-2013 Budget Balancing Strategy Guidelines, #2, "Balance ongoing expenditure needs with ongoing revenues to ensure no negative impact on future budgets and to maintain the City's high standards of fiscal integrity and financial management".

COST SUMMARY/IMPLICATIONS

Funding for the early termination of the shuttle bus lease is available from one-time Airport savings. These savings are associated with the reduction of the lease period and other fixed maintenance costs; the renegotiated agreement with the Santa Clara County Valley Transportation Authority (VTA) approved by Council on August 16, 2011, which modified compensation; and the reduction in shuttle bus operator service hours which are managed to correspond to the peaks and valleys in Airport activity.

1. AMOUNT OF RECOMMENDATION:

Payment to Penske:	\$4,407,508
<u>Sales Payment from SFO:</u>	<u>\$3,400,000</u>
Remaining Lease Buy-out:	\$1,007,508

2. SOURCE OF FUNDING: Airport Maintenance and Operating Fund (#523)

FISCAL IMPACT: Cost for the term of the addendum is funded by existing appropriations and results in a net one-time cost of \$1,007,508, with total savings over the lease period in excess of \$3,100,000.

April 30, 2012

Subject: Airport Shuttle Bus Reduction

Page 5

BUDGET REFERENCE

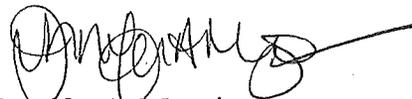
Fund #	Appn #	Appn. Name	RC #	Total Appn.	Amt. of Addendum	2011-2012 Adopted Operating Budget Page	Last Budget Action (Date, Ord. No.)*
523	0802	Airport Non-Personal/Equipment	405140	\$35,764,440	\$1,007,508	XI-3	11/29/11 Ord # 28998

CEQA

Not a Project, File No. PP10-066(e), Services that involve no physical changes to the environment.

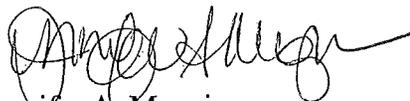
/s/ Kimberly B. Aguirre for
William F. Sherry A.A.E.
Director of Aviation

/s/
Julia H. Cooper
Acting Director of Finance



Jennifer A. Maguire
Budget Director

I hereby certify that there will be available for appropriation in the Airport Revenue Fund in the Fiscal Year 2011-2012 moneys in excess of those heretofore appropriated there from, said excess being at least \$3,400,000.



Jennifer A. Maguire
Budget Director

For questions please contact Bob Lockhart, Airport Operations Manager at 408-392-3514



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Julia H. Cooper

SUBJECT: SEE BELOW

DATE: April 30, 2012

Approved

Date 5/8/12

**SUBJECT: MERGED AREA REDEVELOPMENT PROJECT REVENUE BONDS,
SERIES 1996 A & B AND SERIES 2003 A & B – JPMORGAN LETTERS
OF CREDIT EXTENSION**

RECOMMENDATION

It is recommended that the City Council, acting as the Successor Agency to the Redevelopment Agency of the City of San José, adopt a resolution to:

- a. Authorize, subject to the approval of the Oversight Board, the execution and delivery of a Fifth Amendment to Reimbursement Agreements in substantially final form with JPMorgan Chase Bank, NA (“JPMorgan”), to extend the terms of the letters of credit relating to the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Taxable Revenue Bonds (Subordinate Tax Allocation), Series 2003A and 2003B (collectively, "2003 Bonds") and the Redevelopment Agency of the City of San José Merged Area Redevelopment Project Revenue Bonds (Subordinate Tax Allocation), Series 1996A and Series 1996B (collectively, "1996 Bonds");
- b. Authorize, subject to the approval of the Oversight Board, the execution and delivery of a Letter Agreement regarding fees and charges for the various letters of credit in substantially final form provided by JPMorgan under the Fifth Amendment to Reimbursement Agreements for the 1996 Bonds and the 2003 Bonds in the amount of 2.25% of the aggregate outstanding amounts of the letters of credit, depending on the underlying ratings of the Redevelopment Agency of the City of San José (the “Agency”);
- c. Authorize the Executive Officer of the Successor Agency to the Redevelopment Agency of the City of San José (“Successor Agency”) or her designee to take any actions and execute any and all documents necessary to complete this transaction.

OUTCOME

Approval of these recommendations will result in an extension of the letters of credit providing credit and liquidity support for the 1996 Bonds and 2003 Bonds from July 1, 2012 through July 1, 2013.

BACKGROUND

On January 24, 2012, the City of San José, pursuant to Resolution No. 76132, acknowledged its designation as the Successor Agency to the Redevelopment Agency of the City of San José (Successor Agency) as provided for in AB X1 26. On February 1, 2012, the Redevelopment Agency of the City of San Jose (the "Agency"), by operation of law, was dissolved, and a Successor Agency was established and began the process of winding down the affairs of the former Agency including the payment of enforceable obligations. The enforceable obligations include variable rate subordinate tax allocation bonds supported by letters of credit ("LOC") furnished by. Outlined below is the history of the indebtedness and agreements between JPMorgan and the Agency:

- June 1996 - The Agency issued the 1996 Bonds in an aggregate amount of \$59,000,000. In order to provide credit and liquidity support for the bonds, the Agency obtained an irrevocable direct-pay letters of credit issued by JPMorgan to support the payment of debt service on the bonds (credit component) as well as the payment of the purchase price of the bonds upon their optional or mandatory tender (liquidity component). In connection with the issuance and delivery of the LOCs, the Agency entered into a Reimbursement Agreement (the "1996 Agreement") with JPMorgan. The 1996 Agreement had an initial expiration date of June 27, 2001. JPMorgan extended the 1996 Agreement in 2001 and 2006 under the same terms.
- August 2003 - The Agency issued the 2003 Bonds in an aggregate amount of \$60,000,000. Payment of principal and interest on the bonds is supported by LOCs provided under a Reimbursement Agreement with the Agency (the "2003 Agreement"). The 2003 Agreement had an initial expiration date of August 27, 2006. In August 2006, JPMorgan agreed to extend the 2003 Agreement until August 27, 2009, under the same terms.
- July 31, 2009 - JPMorgan extended the 2003 Agreement through November 27, 2009, under the terms of an Amendment to Reimbursement Agreement. Which included two principal changes relating to the 2003 Agreement: 1) the annual fee would increase from 0.60% to 1.50% of the outstanding commitment amount and 2) the definition of the "Base Rate", which defines interest rates to be paid under various circumstances, including default, was changed to include a floor of 8.5%.
- November 27, 2009 - JPMorgan extended the 1996 Agreement and 2003 Agreement to November 26, 2010, under the terms of an Amendment to Reimbursement Agreements that amended both the 1996 Agreement and the 2003 Agreement. That Amendment to the

Reimbursement Agreements included the following basic terms:

- (1) The annual fee with respect to the 2003 Agreement increased from 1.50% of the outstanding commitment amount to 2.30%, subject to an increase of 0.15% for each downgrade of the Agency's senior tax allocation bond rating by either Moody's or Standard & Poor's (each, a "Rating Downgrade Event").
 - (2) The annual fee with respect to the 1996 Agreement increased from 0.45% of the outstanding commitment amount to 2.10%, subject to an increase of 0.15% for each Rating Downgrade Event.
 - (3) The Agency limited to issuing additional Senior Merged Area Redevelopment Project tax allocation bonds to a par size of not more than \$33,500,000.
 - (4) The Agency was required to reduce, by November 27, 2009, the aggregate amount of 2003 Bonds and 1996 Bonds to no more than \$100 million from the then outstanding amount of \$105.3 million. This was accomplished by directing the trustee of the Bonds to redeem approximately \$5,300,000 of outstanding Bonds.
- October 27, 2010 - JPMorgan and the Agency entered into the Second Amendment to Reimbursement Agreements (the "Second Amendment") extending the LOCs to November 25, 2011 and a Letter Agreement regarding fees and charges. The Second Amendment included the following terms:
 - (1) No new debt obligations, senior parity, or subordinate may be incurred by the Agency during the term.
 - (2) A Liquidity Reserve in the amount of \$5,000,000 was set aside as an added source of security for JPMorgan.
 - (3) The Agency would hire a real estate consultant to develop strategies designed to enhance the Agency's revenues and increase the value of its assets by December 31, 2010.

The Letter Agreement decreased the annual fee from 2.10% and 2.30% for the 1996 Bonds and 2003 Bonds, respectively, to 1.95% for all series. It also maintained the downgrade pricing provision increasing the fee by 0.15% for each Rating Downgrade Event.

Subsequent downgrades of the Agency in 2011 by Moody's Investor Service ("Moody's") and Standard & Poor's ("S&P") to "Baa1" by Moody's and "BBB" by S&P increased the annual fee to 2.25%.

- January 4, 2011 - JPMorgan and the Agency entered into the Third Amendment to Reimbursement Agreements (the "Third Amendment") amending the timeline for hiring the real estate consultant from December 31, 2010 to February 28, 2011.

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- March 9, 2011 - JPMorgan and the Agency entered into the Fourth Amendment to Reimbursement Agreements (the "Fourth Amendment") to primarily address uncertainty surrounding the then pending proposal to abolish redevelopment agencies in the State. In order to provide additional assurance to JPMorgan, the Agency pledged 18 properties to secure the bank's obligations. The Agency recorded a deed of trust against the 18 properties to secure these obligations.
- October 24, 2011 - JPMorgan delivered amendments to the LOCs directly to the Fiscal Agent, U.S. Bank National Association, providing an extension of the Stated Termination Dates of the LOCs from the existing Termination Date of November 25, 2011, to the current date of July 1, 2012, with no other change in terms.

ANALYSIS

Overview

In connection with the issuance of the 1996 and 2003 Bonds, the Agency obtained four LOCs as credit facilities from JPMorgan. The 1996 Bonds and 2003 Bonds are variable rate demand bonds with an approximate outstanding balance of \$94,000,000. The interest rates for these bonds are reset weekly by a remarketing agent. The Agency's remarketing agents are required to use their best efforts to remarket the bonds and, to the extent that bonds are not remarketed, the Agency's Fiscal Agent is authorized to draw on the credit facilities. The rate resets for the week ended May 1, 2012 were: 0.22% and 0.24% for the tax-exempt 1996 Bonds, 0.23% for the taxable 2003 Bonds and 0.24% for the tax-exempt 2003 Bonds. In addition the Agency is required to pay JPMorgan an annual commitment fee for each credit facility. That annual commitment fee is currently 2.25% on the aggregate outstanding amounts of letters of credit.

Under the Fiscal Agent Agreement, the Fiscal Agent is obligated to draw on the LOC to pay debt service on the Bonds, when due, and payments made by the Agency are used to reimburse JPMorgan for such draws on the LOC or, in the event a bank dishonors a draw on the LOC for whatever reason, to pay debt service on the bonds when due. Additionally, the Fiscal Agent is obligated to draw on the LOC to provide liquidity support in the event the bonds are subject to optional or mandatory tender for purchase and the remarketing agent is unable to find a buyer (i.e., a failed remarketing) or the bonds are not remarketed in the case of certain mandatory tenders.

The current LOC agreement between the Agency and JPMorgan expires on July 1, 2012. Staff has negotiated an extension through July 1, 2013. JPMorgan is requiring that the City in its capacity as Successor Agency execute a Fifth Amendment to Reimbursement Agreement (the "Fifth Amendment") with JPMorgan and enter into a Letter Agreement regarding fees.

Over the past three years, the market for letters of credit has changed dramatically in light of the global financial recession and disruption in the financial markets. As a result of these disruptions

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the universe of banks issuing letters of credit has contracted significantly and annual fees have increased due to the reduced supply. Continued concerns over the depressed levels of real estate prices and uncertainty surrounding uniform implementation of ABX126 has particularly affected the availability of letters of credit for California tax allocation bonds.

The forms of the proposed Fifth Amendment and the Letter Agreement will be posted to the agenda webpage on or about May 10, 2012 for the Council Meeting on May 22, 2012. Staff recommends that the Executive Officer of the Successor Agency or the Executive Officer's designees (the "Successor Agency Designated Officers") be authorized to execute these agreements as posted, subject to the approval of the Oversight Board of the Successor Agency with such modifications as the Successor Agency Designated Officer's determines to be desirable or appropriate, upon consultation with the City Attorney.

Fifth Amendment to Reimbursement Agreement

Pursuant to the Fifth Amendment, JPMorgan will extend the term of the LOCs through July 1, 2013. The annual fee payable for the LOC will remain at 2.25% of the commitment amount. The commitment is equal to the outstanding principal on the bonds plus 51 days of interest calculated at 12 percent (the "Commitment") for an estimated annual amount of \$2,300,000.

Under the Letter Agreement in the event that the long-term debt ratings of the Agency are upgraded or downgraded by one or more rating agencies, the annual commitment fee shall decrease/increase pursuant to the following table. In light of the Agency's current bond ratings, it is anticipated that the rate for the annual fee will be at Level 2. The fee is set based on the lowest rating of the two rating agencies.

<u>LEVEL</u>	<u>MOODY'S RATING</u>	<u>S&P RATING</u>	<u>FACILITY FEE RATE</u>
Level 1:	Baa1 (or higher)	BB+ (or higher)	2.10%
Level 2:	Baa2	BBB	2.25%
Level 3:	Baa3	BBB-	2.50%
Level 4:	Below Baa3	Below BBB-	3.00%

In connection with winding down the affairs of the former Agency, the Successor Agency is required to dispose of the assets and properties of the former Agency. As previously stated the Fourth Amendment pledged 18 properties to JPMorgan as security for payment of debt service under the existing LOCs. JPMorgan also allowed a second lien to be recorded on 17 of the 18 properties in favor of the County of Santa Clara as collateral for monies owed to the County. Schedule 1 of this memorandum lists the 18 properties. Of the 18 properties, 17 are assets owned by the Successor Agency and one is the property of the City (California Theater).

The proposed Fifth Amendment requires that as the Successor Agency sells these assets it shall apply no less than 100% of the proceeds of each such sale to the optional redemption of the 1996

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Bonds and/or 2003 Bonds as well as to the reimbursement of JPMorgan for draws made under the LOC to fund such optional redemptions. In addition the Agreement requires that, consistent with ABX126, the sale of the Successor Agency assets shall be done expeditiously and in a manner aimed at maximizing value and shall not encumber or otherwise modify the existing pledge of tax revenues supporting the bonds. The benefit of the application of sale proceeds to the reduction of principal on the bonds is assisting in reducing fees paid and debt service paid on the bonds. Additionally the \$5,000,000 Reserve Account established in the Second Amendment will be maintained. The Fifth Amendment also requires that all legal fees, disbursements and out of pocket costs incurred by JPMorgan be paid by the Successor Agency at closing.

Financing Team Participants

The financing team participants consist of:

Financial Advisor:	Ross Financial
Bond Counsel:	Jones Hall, A Professional Law Corporation
Letter of Credit Bank:	JPMorgan Chase Bank, N.A.
Bank Counsel:	White Case LLP
Fiscal Agent:	U.S. Bank, N.A.
Remarketing Agents:	Bank of America, N.A. (1996B, 2003B) Citigroup (1996A) JPMorgan Chase (2003A)

Financing Schedule

The current proposed schedule is as follows:

Council approval of amendments to financing documents:	May 22, 2012
Oversight Board approval:	May 24, 2012
Document closing (no later):	June 6, 2012

EVALUATION AND FOLLOW-UP

This memorandum presents the set of recommendations related to the City Council's, acting as the Successor Agency to the Redevelopment Agency of the City of San José, approval of various actions related to the 1996 Bonds and 2003 Bonds and requires no follow-up to the City Council.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public

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health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**

- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This action meets Criteria 1 above and will be posted on the City's website for the May 22, 2012 Council meeting.

COORDINATION

This report was prepared by the Finance Department in coordination with SARA and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Compensation for professional services (bond counsel, financial advisor and bank counsel) and other related costs will be paid from the FY 2012-13 appropriations for debt service and associated costs. These costs are estimated to be approximately \$25,000 for all these services. Any necessary budget adjustments resulting from the LOC extension will be brought back to Council at a future date.

CEQA

Not a Project, File No. PP10-066, Agreements/Contracts (New or Amended).

/s/ JULIA H. COOPER
Acting Director of Finance

For questions, please contact Julia H. Cooper, Acting Director of Finance, at (408) 535-7011.

Attachments

SCHEDULE 1

Pledged Properties

Site Description	Address
Marriot Hotel	301 S. Market Street
Westinghouse Site	292 Stockton Avenue
Parking Lot	Balbach/Almaden
Vacant Lot	501 Locust Street
Old Foxtail Bar Site	551 W, Julian Street
Hanchett Parking Lot	1343 The Alameda
Parking Lot	30 Eastwood Court
Plaza Hotel	96 S. Almaden Avenue
Two Fish	366 S. 1 st Street
Anti – Graffiti Office	501 Vine Street
Vacant Lot	75 Bassett Street
California Theatre ¹	345 S. 1 st Street
Miraido	280 Jackson Street
Mexican Heritage Retail	1770 Alum Rock Avenue
SJ Stage	490 S. 1 st Street
Old Fire #1	201 N. Market Street
Billy De Frank Center	938 The Alameda
Block 7 Theater (Camera 12)	201 S. 2 nd Street

¹ City Owned Property