



CITY OF LEMON GROVE

CITY COUNCIL STAFF REPORT

Item No. 4

Meeting Date: August 20, 2019

Submitted to: Honorable Mayor and Members of the City Council

Department: **City Manager's Office**

Staff Contact: Mike James, Assistant City Manager / Public Works Director

mjames@lemongrove.ca.gov

Item Title: Amendment to the Joint Use Agreement between the City of
Lemon Grove and the Lemon Grove School District

Recommended Action: That the City Council adopts a resolution (Attachment A) amending the joint use agreement between the City of Lemon Grove and the Lemon Grove School District.

Summary: Between October and November 2015, the City Council of the City of Lemon Grove (City) and the Board of Directors of the Lemon Grove School District (District) approved an amendment to the joint use agreement (JUA) for the use of the recreation facilities on the Lemon Grove Academy Middle School Campus.

The partnership between the City and District for cooperative joint use of recreation facilities on District property allows for community recreation use that would not otherwise be possible due to a lack of land for park use. The JUA allows for the priority scheduling of the facilities, first by the District, then by the City for recreation uses, and when not programmed by either party, the field will continue to be open for public use on Saturdays.

Since 2011, the City has partnered with a third party consultant to manage an adult **softball league at the District's softball field**. In **FY 2018-2019**, the City Council decided to no longer supplement the program and directed staff to eliminate the program with an effective end date of June 30, 2019.

This amendment updates the JUA to reflect the softball programs termination. Specifically, it removes all references to the softball field as an eligible area for the City to use and maintain. All other terms of the JUA will remain unchanged.

Environmental Review:

Not subject to review

Negative Declaration

Categorical Exemption, Section |

Mitigated Negative Declaration

Fiscal Impact: None.

Public Notification: None.

Staff Recommendation: That the City Council adopts a resolution (Attachment A) amending the joint use agreement between the City of Lemon Grove and the Lemon Grove School District.

Attachments:

Attachment A – Resolution

RESOLUTION NO. 2019 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE,
CALIFORNIA, APPROVING THE JOINT USE AGREEMENT BETWEEN THE
CITY OF LEMON GROVE AND THE LEMON GROVE SCHOOL DISTRICT FOR
THE USE OF THE RECREATION FACILITIES ON THE LEMON GROVE
MIDDLE SCHOOL CAMPUS

WHEREAS, in order to promote and provide for the health and general welfare for the people of Lemon Grove and to cultivate the development of good citizenship by an **adequate program of community recreation, CITY and DISTRICT (the “PARTIES”)** entered into a Community Recreation Agreement in June 1979; and

WHEREAS, cities and school districts are authorized by Chapter 10 of Part 7 of Division 1, Title 1 of the Education Code of the State of California (section 10900 et. seq.) to organize, promote, and conduct community recreation programs and to use school property for such purpose; and

WHEREAS, said governing bodies are authorized by Government Code of the State of California, Chapter 5 (section 6500 et. seq.) to enter into agreements with each other to promote the health and general welfare of the community and contribute to the attainment of education and recreation goals and objectives for children and adults within the community; and

WHEREAS, the Parties entered into a lease agreement in June 1982 for a community recreation center, constructed on the Middle School campus; and

WHEREAS, the Parties entered into a Joint Use Agreement in January 1985 regarding operation of existing and proposed facilities on the Middle School campus; and

WHEREAS, the Parties entered into a Joint Use Agreement on the 26th day of October 2004 and amended said Joint Use Agreement in October of 2015; and

WHEREAS, this Agreement supersedes the October 2015 Joint Use Agreement in its entirety; and

WHEREAS, when Facilities are not in use by the DISTRICT or by the CITY to promote the health and welfare of the community it is the intent of this Agreement to make Facility available for General Public Use under the management of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Lemon Grove, California hereby approves the Joint Use Agreement between the City of Lemon Grove and the Lemon Grove School District for use of the Recreation Facilities on the Lemon Grove Middle School Campus. |

Attachment A

PASSED AND ADOPTED on August 20, 2019, the City Council of the City of Lemon Grove, California, adopted Resolution No. 2019-_____, passed by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Racquel Vasquez, Mayor

Attest:

Shelley Chapel, MMC, City Clerk

Approved as to Form:

Kristen Steinke, City Attorney

**JOINT USE AGREEMENT BETWEEN
THE CITY OF LEMON GROVE AND THE LEMON GROVE SCHOOL DISTRICT**

THIS AGREEMENT made and entered into this ____th day of _____, 2019, by and between the **CITY OF LEMON GROVE** (hereinafter collectively called "CITY") and the **LEMON GROVE SCHOOL DISTRICT** (hereinafter called "DISTRICT") regarding the development, operation, and maintenance of outdoor recreation Facilities, described on Exhibit A hereof (hereinafter called "Facilities") on the Lemon Grove Academy Middle School campus, located at 7866 Lincoln Street, Lemon Grove, CA 91945-2542 (the "Middle School campus").

WITNESSETH

WHEREAS, in order to promote and provide for the health and general welfare for the people of Lemon Grove and to cultivate the development of good citizenship by an adequate program of community recreation, CITY and DISTRICT (the "PARTIES") entered into a Community Recreation Agreement in June 1979; and

WHEREAS, cities and school districts are authorized by Chapter 10 of Part 7 of Division 1, Title 1 of the Education Code of the State of California (section 10900 et. seq.) to organize, promote, and conduct community recreation programs and to use school property for such purpose; and

WHEREAS, said governing bodies are authorized by Government Code of the State of California, Chapter 5 (section 6500 et. seq.) to enter into agreements with each other to promote the health and general welfare of the community and contribute to the attainment of education and recreation goals and objectives for children and adults within the community; and

WHEREAS, the Parties entered into a lease agreement in June 1982 for a community recreation center, constructed on the Middle School campus; and

WHEREAS, the Parties entered into a Joint Use Agreement in January 1985 regarding operation of existing and proposed Facilities on the Middle School campus; and

WHEREAS, the Parties entered into a Joint Use Agreement on the 26th day of October 2004 and amended said Joint Use Agreement in October 2015; and

WHEREAS, this Agreement supersedes the October 2004 Joint Use Agreement in its entirety; and

WHEREAS, when Facilities are not in use by the DISTRICT or by the CITY to promote the health and welfare of the community it is the intent of this Agreement to make Facility available for General Public Use under the management of the City; and

WHEREAS, in the interest of providing the best recreational Facilities, through cooperation between the CITY and the DISTRICT, the PARTIES agree as follows:

1. DEFINITIONS

- A.** The term “DISTRICT Use” shall mean DISTRICT’s Educational Program and Related School Activities. For purposes of this Agreement, the “Educational Program and Related School Activities of the DISTRICT” shall mean “all components of the instructional program and any activity that is organized and administered by the DISTRICT, including but not limited to, athletic games/meets, drama, carnivals, DISTRICT community meetings, DISTRICT meetings, and requests from other schools within the DISTRICT.”
- B.** The term “CITY Use” shall mean CITY’s recreation programs and activities organized and administered by the CITY.
- C.** The term “General Public Use” shall mean unscheduled use by the general public which is not a programmatic activity of the DISTRICT or the CITY.
- C.** The term “Routine Maintenance” shall mean all routine and preventive maintenance necessary to maintain the Facilities and all fixtures in good condition and repair and in a clean, safe and sanitary condition.

2. TERM

The initial term of this Agreement shall commence on November 14, 2015, (the “Commencement Date”) and shall expire May 12, 2016 unless otherwise extended.

Option to Extend – If this Agreement has not been previously terminated at or prior to the end of the initial term, this Agreement may be extended by up to five (5) years at any time prior to its expiration with a written addendum attached to the Joint Use Agreement and signed and dated by both PARTIES.

3. FACILITIES COVERED

- A. Facilities covered in this Agreement are the ~~Softball Field~~, Open Fields (behind Recreation Center), Blacktop Courts (basketball and tennis), Recreation Center and Track. These facilities are all located at Lemon Grove Academy.

4. USE OF FACILITY

- A. The priority of use for Facilities shall be as follows:
- i. DISTRICT Use
 - ii. CITY Use managed by the CITY
 - iii. General Public Use
- B. DISTRICT will make Facilities available to the CITY for recreation activities at the Middle School campus during non-school hours and when the Facilities are not needed for DISTRICT use. During CITY-Use/sponsored events, parking will be permitted on DISTRICT property adjoining the Facilities.
- C. The permitted non-school uses are as follows with all PARTIES adhering to DISTRICT rules, regulations and protocols:
- ~~i. Softball Field – limited to formal programming run by either CITY or third party contracting with CITY. Third party must adhere to DISTRICT rules, regulations and protocols.~~
 - ii. Blacktop Courts – formal programming run by either CITY or third party contracting with CITY; to be open for General Public Use as per posted schedule.
 - iii. Track – formal programming run by either CITY or third party contracting with CITY; to be open for General Public Use as per posted schedule.
 - iv. Open Fields – open for General Public Use as per posted schedule.
- D. DISTRICT shall have priority use of the Facilities during school hours and when children are present on campus for afterschool programs and DISTRICT is also entitled to exclusive use at other times for Educational Program and Related School Activities. The DISTRICT

will use the facilities on days when students are present beginning at 7:00 a.m. and ending at 6:00 p.m.

- E. CITY shall have priority use at all other times, including evenings following student day, and weekends.
- F. The DISTRICT shall advise the CITY as soon as possible, but no less than thirty (30) days prior, with the exception of an emergency use, to the loss of use of any Joint Use Facility for the CITY's recreational activities.
- G. CITY shall furnish all personnel and supervisory staffing, and all materials, supplies, and equipment (personal property) required for conducting recreational programs/activities conducted or sponsored by the CITY.
- H. CITY use of DISTRICT Facilities shall be at no cost to the CITY, except as described elsewhere in the Agreement. However, CITY shall repair and maintain Facilities designated as "City Maintained" on Exhibit A. ~~CITY shall also conduct all maintenance of softball field, including irrigation, mowing and other landscape maintenance and shall pay utilities for field use.~~
- I. For the use of Facilities under the Agreement, CITY agrees to comply with all of the requirements of the Education Code of the State of California and other applicable laws or regulations, setting forth the limitations, requirements, and restrictions on the use of school Facilities.
- J. DISTRICT and CITY shall allow the use of the Facilities for scheduled General Public recreation and community activities and shall endeavor to make it available to the widest range of activities reasonably possible and for no other purpose. It is further agreed that recreation programs involving elementary age students shall first be operated on elementary facilities. Only when elementary facilities are not available will such programs be operated on the Middle School campus Facilities.

5. USE BY THIRD PARTIES

- A. During the time when each party has exclusive use of the Facilities under Section 4 above, such party shall have the authority to allow the use of the Facilities by third parties under the following requirement. Each party agrees to indemnify and hold the

DISTRICT and CITY harmless from acts of such third parties, their officers, agents and employees in their use of Facilities. To accomplish this provision, the DISTRICT and CITY shall maintain public liability and property damage insurance covering all third party users of the Facilities in an amount not less than \$1,000,000 and naming the DISTRICT and CITY as additionally insured.

B. All third party use of the Facilities shall be subject to all DISTRICT rules, regulations, and policies, including, but not limited to, execution of the DISTRICT'S standard Facilities Use Permit/Agreement and payment of the appropriate Facilities Use fees as applicable. The CITY and the DISTRICT agree that in providing access to the Facilities for use other than by the DISTRICT or the CITY, the following priorities for use shall be established:

- a. Activities for youth
- b. CITY adult programs and activities
- c. Other adult programs or activities

C. CITY will not permit non-recreational commercial enterprises or activities operated for private gain or profit to be conducted or operated on DISTRICT'S property without the DISTRICT'S express written consent.

6. SCHEDULE FOR GENERAL PUBLIC ACCESS

The following Facilities, accessed by entrances on School Lane and Kempf Street, are available for General Public Use from dawn until dusk on Saturdays:

- Field area directly behind Recreation Center
- Paved court areas including four tennis courts and four basketball courts
- 425 Meter Track

7. MAINTENANCE AND CUSTODIAL SERVICES

A. CITY shall repair and maintain Facilities designated "City maintained." CITY shall pay utilities for those Facilities designated "City maintained" as follows:

- ~~1) CITY shall conduct all maintenance of softball field, including irrigation, mowing and other landscape maintenance and shall pay utility bills for the softball field.~~

- 2) CITY shall conduct all maintenance of field and shall pay utilities for the field. DISTRICT shall repair and maintain and pay utilities for all other Facilities on the Middle School campus.
 - 3) CITY's repair and maintenance activities shall be scheduled outside of class hours (M-F 7:30 a.m. – 3:30 p.m.) unless otherwise agreed to by the PARTIES.
- B. Each Party shall provide its own custodial services for the Facilities, leaving Facilities clean and ready for the other Party's use. Particular attention shall be given to removing any trash and debris from the athletic fields after General Public Use and prior to DISTRICT Use or student arrival in the morning.
- C. Third parties contracting with the CITY to provide formal programming will continue to be responsible for maintenance and janitorial services associated with their use.
- D. Except as specified below (and subject to CITY's obligations specified in Subsection (4G) and (4I) above), DISTRICT shall be responsible for the following:
- All other maintenance and repair of the Facilities. CITY shall make reasonable efforts to notify the DISTRICT of any repair or maintenance observed to be needed. CITY and DISTRICT shall consult with one another regarding any significant maintenance/rehabilitation that may need to be made to the Facilities and any auxiliary Facilities covered hereunder and the unreimbursed impact that the CITY's use has contributed to such maintenance/rehabilitation requirements. Such consultations shall include good faith negotiations concerning possible CITY contributions towards maintenance/rehabilitation expenses.
- E. To maintain the condition of Facilities and playing fields downtime is required. Activities cannot be scheduled at the site during these maintenance periods. The DISTRICT shall be responsible for notifying the CITY of the estimated downtime maintenance schedule a minimum of 30 days in advance. In addition, the CITY shall be responsible for notifying the DISTRICT of the estimated downtime maintenance schedule a minimum of 30 days in advance for the fields that they manage.

8. SUPERVISION, SECURITY, RULES AND ENFORCEMENT

- A. The CITY and DISTRICT shall establish independent fees for all Joint Use Facilities. Fees may be charged by either Party for use of Facilities, events, and programs that are offered under this Agreement. These fees will be in accordance with the Civic Center Act (Education Code section 38130 et. seq.). All such users shall also be required by the DISTRICT to execute the DISTRICT's standard Facilities Use Permit/Agreement CITY's Facilities Use Application. Fees may be charged by either Party for events and programs as allowed by law, but only in an amount not to exceed the costs and expenses incurred by the Party for the conduct of the events and programs. All monies so charged and collected shall be the property of the collection Party.
- B. Phase One: CITY staff shall lock gates (one located at School Lane and one located at Kempf Street) to the Middle School campus field and track in the evenings as part of the park closing process that they already conduct. CITY shall provide daily early morning review of joint use field in order to ensure field area is clean and safe prior to arrival of students.
- C. DISTRICT staff shall unlock gates (one located at School Lane and one located at Kempf Street) in the morning.
- D. At such times that the CITY has priority use of the Facilities, CITY shall be responsible for the security of such Facilities, including closing the Facilities, checking the Facilities perimeters and securing any applicable alarms for the Facilities. The DISTRICT shall provide the CITY with the necessary keys and alarm codes (if applicable). The City shall keep such keys to the Facilities and alarm codes secure under procedures agreed upon between the CITY and the DISTRICT.
- E. The CITY shall train and provide an adequate number of competent personnel to supervise all activities on the DISTRICT's Facilities. The CITY shall enforce all of the DISTRICT's rules, regulations, and policies while supervising activities or programs on the DISTRICT's Facilities.
- F. No animals allowed on the DISTRICT's Facilities.

9. RESTITUTION AND REPAIR

The CITY shall be wholly responsible for repairing, remediating, or funding the replacement or remediation of any and all damage or vandalism to the Facilities that occurs during General Public Use hours.

10. DISAGREEMENTS

The CITY shall retain the right to disagree with any and all items of damage to buildings or equipment as identified by the DISTRICT, provided this disagreement is made within 10 days after a first notification.

- A. The CITY shall make any disagreement in writing to the DISTRICT by letter, facsimile, or email to the DISTRICT's designated employee. The CITY shall clearly identify the reasons for refusing responsibility for the damages. Failure to make the disagreement within the prescribed time period shall be considered as an acceptance of responsibility by the CITY.
- B. After proper notification, representatives of the CITY and of the DISTRICT, shall make an on-site investigation and attempt a settlement of the disagreement.
- C. In the event an agreement cannot be reached, the matter shall be referred to the City Manager and District Superintendent, or their designees, for resolution.
- D. The DISTRICT shall have the right to make immediate emergency repairs or replacements of property without voiding the CITY's right to disagree.
- E. In the event of any dispute between the Parties that is not resolved by informal discussions or negotiations, the Parties may mutually agree to resolve such a dispute through non-binding mediation. Any dispute not resolved by such mediation may, if mutually agreed upon, be submitted to binding arbitration.

11. LIABILITY AND INDEMNIFICATION

It is understood and agreed that all activities on school Facilities sponsored by the DISTRICT shall be supervised and conducted by the DISTRICT, and that all activities sponsored by the CITY, including General Public Use, pursuant to this Agreement, shall be supervised and conducted by the CITY. Each Party shall be responsible for said areas during their period of use, will bear the costs of all necessary supervising or teaching personnel during said period.

The DISTRICT shall hold harmless, defend and indemnify CITY, members of the City Council, and its officers, employees, and agents from all claims, and any and all losses, demands, damages (including costs and attorneys' fees), expenses, or causes of action, reason of any defective or dangerous condition of any ground, site, building, equipment, play areas, recreation Facilities, or other improvement located on the Middle School campus or sponsored by the DISTRICT. Further, the DISTRICT shall be responsible for any and all damages to property which is alleged to have arisen from DISTRICT use or sponsorship of Joint Use Facilities subject to this Agreement. However, the DISTRICT shall not be obligated to hold harmless, defend, or indemnify the CITY when the aforementioned claims arise from dangerous conditions resulting from CITY's own negligence. This indemnity shall survive the expiration or termination of this Agreement.

The CITY shall hold harmless, defend, and indemnify, the DISTRICT, members of its Governing Board, and its officers, employees, and agents from all claims, any and all action related to any injury to property or injury to or death of persons, received or suffered by reason of any defective or dangerous condition of any ground, site, building, equipment, play areas, recreation Facilities, or other improvement located on the premises leased or maintained by CITY, or participation in any activity carried out or sponsored by the CITY, operation of the CITY recreational programs upon the Middle School campus, by reason of its development and maintenance of the athletic fields on the Middle School campus, or its performance of its obligations under this Agreement. Further, the CITY shall be responsible for any and all damages to property which is alleged to have arisen from CITY use or sponsorship of Joint Use Facilities subject to this Agreement. However, the CITY shall not be obligated to hold harmless, defend, or indemnify the DISTRICT when the aforementioned claims arise from dangerous conditions resulting from DISTRICT's own negligence. This indemnity shall survive the expiration or termination of this Agreement.

12. INSURANCE

DISTRICT Insurance

- A. Liability Insurance – The DISTRICT shall, at its expense, at all times from and after the date hereof and during the term, maintain in full force a policy or policies of comprehensive liability insurance written by one or more responsible insurance companies licensed to do business in the State of California in amounts of at least a \$5 million combined single limit with respect to injuries and death occurring in one occurrence, including property damage coverage, which will insure CITY and DISTRICT against any liability for injury to

persons and property and death of any person or persons occurring in, on or about the Facility during such times that the Facility is available for DISTRICT use, or arising out of the DISTRICTS maintenance, use and occupancy thereof.

- B. Property and Other Insurance – the DISTRICT shall, at its expense, at all times from and after the date hereof and during the term, maintain on the Facility a policy of standard fire and extended coverage or all risk insurance, with vandalism and malicious mischief endorsements, to the extent of the full replacement cost of any such buildings and other insurable improvements located on or in the Facilities from time to time. The policy shall name as insureds the DISTRICT and the CITY, as their interests appear.

CITY Insurance

- A. Liability Insurance – CITY shall, at its expense, at all times from and after the date hereof and during the term, maintain in full force a policy or policies of comprehensive liability insurance written by one or more responsible insurance companies licensed to do business in the State of California in amounts of at least a \$5 million combined single limit with respect to injuries and death occurring in one occurrence, including property damage coverage, which will insure CITY and DISTRICT against any liability for injury to persons and property and death of any person or persons occurring in, on or about the Facility during such times that the Facility is available for CITY use, or arising out of the CITY's maintenance, use and occupancy thereof.
- B. Property and Other Insurance – CITY shall, at its expense, at all times from and after the date hereof and during the term, maintain on the Facility a policy of standard fire and extended coverage of all risk insurance, with vandalism and malicious mischief endorsements, to the extent of the full replacement cost of any such buildings and other insurable improvements located on or in the Facilities from time to time. The policy shall name as insureds CITY and DISTRICT, as their interests appear.

13. TERMINATION

Notwithstanding the duration of this Agreement, it may be terminated by

- A. Written mutual consent by the Parties; or

- B. Upon a showing of good cause, defined as a material breach of the Agreement's terms. Should either Party charge that a breach exists; the following steps to repair the breach shall apply.
- a. Written notice of breach, with one hundred eight (180) days to repair, shall be delivered by regular and Certified Mail.
 - b. If not repaired within one hundred eighty (180) days, a sixty (60) day written notice of cancellation shall be delivered by regular and Certified Mail.
 - c. The DISTRICT can terminate this Joint Use Agreement without cause by providing the CITY with ninety (90) days' written notice.

Both Parties shall make a good faith effort to repair any breach to the Agreement.

14. SEVERABILITY

If any provision of this Agreement is held invalid, void or unenforceable but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties.

15. AMENDMENT

The provisions of this Joint Use Agreement may be amended or modified only by mutual consent and written agreement of the respective Parties.

16. FUTURE FACILITY DEVELOPMENT AND IMPROVEMENTS OF JOINT USE AGREEMENT

- A. Permanent or temporary recreation amenities and structures may be constructed, modified, or improved by the CITY on DISTRICT property upon approval of DISTRICT. DISTRICT approval shall not be unreasonably withheld.
- B. The CITY agrees to consult DISTRICT as to the type and specifications of equipment and Facilities to be constructed, modified, or improved on DISTRICT property. Any structures to be constructed by the CITY shall meet all standards constructed in accordance with the requirements of the Division of the State Architect ("DSA") and the Office of Public School Construction ("OPSC") of the State of California. The CITY shall furnish to the DISTRICT all

plans and specifications for approval by the DISTRICT and other agencies as required by law. DISTRICT approval shall not be unreasonably withheld.

- C. The CITY agrees, prior to the construction of improvements on DISTRICT property, to consult with the DISTRICT on all construction schedules and shall grant site access to the CITY necessary for the construction of the improvements. Construction shall not interfere with the educational process of the DISTRICT.
- D. CITY construction of Facilities on DISTRICT property for City recreation purposes shall be at the CITY's sole cost.
- E. The DISTRICT may construct, modify, or improve the Facilities at any time.
- F. Prior to occupancy and use of new Facilities constructed by CITY on DISTRICT property, CITY and DISTRICT shall agree to a maintenance and use schedule satisfactory to both Parties.

IN WITNESS WHEREOF, the CITY, and DISTRICT have signed this Agreement at Lemon Grove, California.

LEMON GROVE SCHOOL DISTRICT

CITY OF LEMON GROVE

By: _____

By: _____

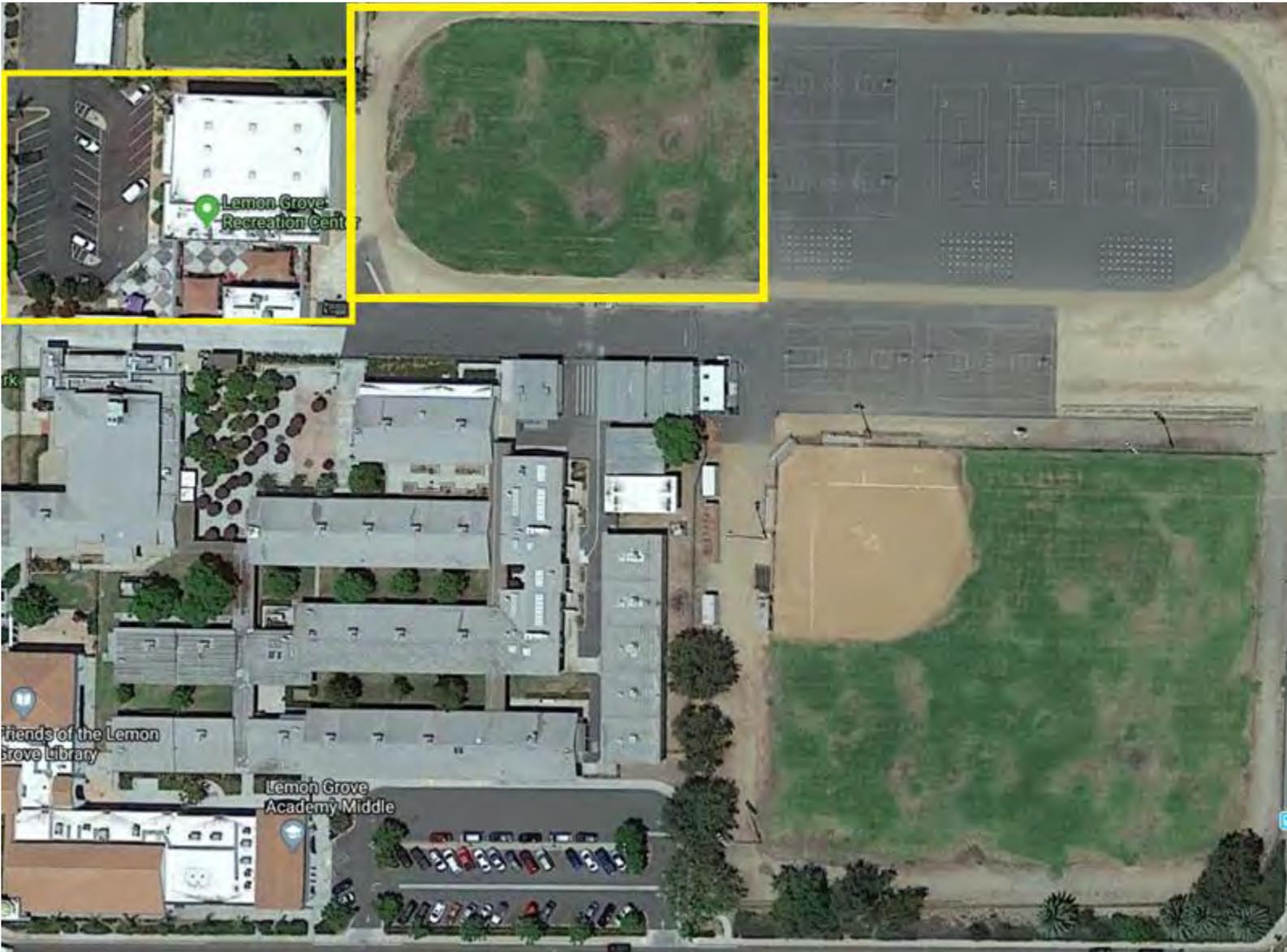
Name: _____, Superintendent

Name: _____, City Manager

Date: _____

Date: _____

Exhibit A



Note:

Yellow area is maintained by the City of Lemon Grove.

All other District property is maintained by the District.