

LICENSE AGREEMENT
CAMINO PABLO ELEMENTARY SCHOOL FIELD

THIS LICENSE AGREEMENT ("Agreement") dated _____, 2010 ("Effective Date") is made and entered into by and between the TOWN OF MORAGA, a municipal corporation ("Town"), and MORAGA SCHOOL DISTRICT("MSD").

RECITALS

WHEREAS, Town and MSD desire to maximize use of their public facilities.

WHEREAS, Town and MSD enter into this expanded partnership with good faith for a mutually beneficial outcome that results in a beneficial result for both parties and the community.

WHEREAS, Town and MSD wish to use this Agreement to assist and support each other in addressing the needs of both agencies specific to the Camino Pablo School fields improvements.

WHEREAS, California Education Code Section 10900 et seq authorizes cities and public school districts to organize, promote and conduct programs of community recreation to contribute to the attainment of general recreational and educational objectives for children and adults of the State of California.

WHEREAS, this Agreement is made in furtherance of the East Bay Regional Park District, Measure WW local grant program ("Measure WW"), which ultimately will provide up to \$737,587 worth of recreational improvements to Moraga.

WHEREAS, Town and MSD intend to adhere to the Measure WW grant requirements in fulfilling the terms and conditions of this Agreement.

WHEREAS, Town and MSD desire that MSD allow the Town to use the Property for the purposes and on the terms set forth herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. TERM AND LICENSE FEE

MSD hereby agrees that the Town shall have a non-exclusive license to enter and use the real property commonly referred to as the Camino Pablo Elementary School field located at 1111 Camino Pablo and described in Exhibit A attached hereto ("Property") for a term of twenty five (25) years, subject to the conditions set forth herein. The term of this ("Term") Agreement shall commence on the latest date of approval or execution by the parties ("Effective Date"). The license fee for the Term shall be \$1.00, payable by the Town to MSD on the Effective Date.

2. USE OF PROPERTY

A.The Town may enter onto and may use the Property for the following purposes:

i. Construction of improvements and operation of playing fields primarily for the not-for-profit use of young persons in organized and adult-supervised teams sports.

ii. Such other uses which are incident and directly related to the uses permitted herein.

B. Such uses described above shall be in accordance with the priority of use and scheduling covenants set forth herein.

C. In conformance with Measure WW guidelines, MSD shall retain the right to manage, direct, superintend, restrict, regulate, govern, administer and oversee the Property.

3. MAINTENANCE and UTILITIES

A. MSD shall be solely responsible for:

i. maintaining the Property and any improvements in a safe and sanitary condition and in good order and repair; and

ii. providing and paying for all utilities and services delivered to or for the benefit of the Property.

B. To the extent legally permissible, MSD retains the authority to charge user fees to the users to recover costs of maintenance, utility and services charges incurred by MSD for the benefit of the Property.

C. The Town and MSD acknowledge that costs associated with additional damages to turf, exceptional facility use, maintenance and custodial services to the Property beyond normal wear and tear (collectively, "Damage") shall be paid by the parties as follows. If such Damage arises from an MSD sponsored event or activity, the District shall be solely responsible for the cost to repair such Damage. If such Damage arises from Public Use or a Town sponsored event or activity, the cost to repair such Damage shall be charged to the group(s) whose activities caused such costs to be incurred, to the extent legally permissible. If for any reason such group(s) fail promptly to reimburse such costs in their entirety, the Town shall be solely responsible for the cost to repair such Damage. Notwithstanding the foregoing, if the Damage to the Property arises from unauthorized Public Use or a Town sponsored event or activity, and such Damage is covered by District's insurance as set forth below, Town shall be responsible for paying one hundred percent of District's insurance deductible (if any). If the Damage to the Property arises from an MSD sponsored event or activity, and such Damage is covered by Town's insurance as set forth below, District shall be responsible for paying one hundred percent of Town's insurance deductible (if any). In any event, the Property shall be repaired to substantially the same condition it existed prior to the date of such Damage, subject to the other party's reasonable satisfaction."

D. In the event that maintenance requirements for the improvements installed by the Town exceed the current maintenance levels provided by MSD (See Exhibit B), and MSD is not able to fully recover the cost of this increased level of maintenance from users of the Property, the Town and MSD shall meet and confer to determine if reductions in the maintenance level would be acceptable. If such reductions cannot be achieved to allow the additional maintenance level to be recovered from user fees, the Town will provide supplemental funding for such excessive costs or

otherwise provide for the increased maintenance level so that MSD achieves full recovery of its cost for the additional maintenance requirements.

4. PRIORITY OF USE; RIGHT TO ENTRY

A. During school hours, and times not specified in 4 B below, priority for use of the Property shall be for Moraga School District Activities.

B. Every Monday through Friday beginning at 3:30pm and all day Saturday and Sunday, the Property will be available for public use ("Public Use"). While the Property is available for Public Use, priority for such use shall be in the following order: (1) use by groups that are primarily (i.e. 50% or more) comprise of Moraga residents; (2) Town sponsored activities; and (3) School sponsored activities, and (4) any other use by members of the general public.

C. MSD will permit the Town and its agents reasonable access to the Property at all times that the Property is available for Public Use.

5. SCHEDULING

MSD shall be responsible for scheduling all reserved use of the Property. The scheduling shall be as follows:

A. All requests for Property use shall be submitted on MSD Facility Use Application forms.

B. Requests for Property use shall be processed through MSD permit processing office.

6. IMPROVEMENTS

A. Any improvements (the "Improvements") proposed by the Town to be constructed on the Property shall be subject to MSD's prior, written approval. In the event that the parties cannot agree on the Improvements, either party may terminate this Agreement upon thirty days notice to the other party.

B. The Town shall cause such improvements, if approved by MSD, to be constructed during the Term and at the sole cost and expense of the Town. Authorized representatives from the Town and MSD shall meet and confer prior to installation of any Improvements in order to establish scheduling and standards for performance and completion of work. Such agreed scheduling shall not interfere with MSD's use of the Property for school purposes.

C. All Improvements shall not be deemed complete and subject to the terms of Section 6.D of this Agreement until accepted by MSD, which acceptance shall not unreasonably be withheld.

D. Any and all Improvements placed or erected upon the Property, together with alterations and additions, shall be considered part of the Property and upon expiration or sooner termination of the Agreement, shall remain on the Property and become the property of MSD. MSD, at its own cost and expense and except as otherwise set forth in this Agreement will keep and maintain all Improvements to the Property that have been completed to the reasonable satisfaction of MSD in safe and sanitary condition and in good order and repair.

E. The Town shall: (i) promptly pay for all labor and services performed for, and materials used by or furnished to the Town with respect to the Improvements; and, (ii) indemnify,

defend and hold MSD, its elected and appointed officials, employees, agents, volunteers, and contractors from and against any liens, claims, demands, encumbrances or judgments created or suffered by reason of any labor or services performed for, materials used by or furnished to the Town or any contractor employed by the Town with respect to the Improvements; and, (iii) permit Landlord to post a notice of nonresponsibility in accordance with the statutory requirements of California Civil Code Section 3094 or any amendment thereof.

If the Town does not cause such lien, claim, demand, encumbrance or judgment to be released by payment or posting of a surety bond satisfactory to MSD in the amount of not less than one hundred fifty percent (150%) of the contested sum within ten (10) days after receipt by the Town of notice of such lien, claim, demand, encumbrance or judgment, MSD shall have, in addition to all other remedies provided in this Agreement and by law, the right but no obligation, to cause such lien, claim, demand, encumbrance or judgment to be released by any reasonable means, including payment of the claim giving rise to such lien, claim, demand, encumbrance or judgment after written notice to the Town pursuant to this Agreement. All sums and all reasonable expenses incurred by MSD in connection with such lien, claim, demand, encumbrance or judgment (including, without limitation, attorneys' fees and expenses), shall be payable to MSD by the Town within fifteen (15) days of receipt of an invoice from MSD.

7. MEET AND CONFER

TOWN and MSD shall meet annually, at a time, date and place mutually agreeable to both parties, to discuss and resolve issues regarding this Agreement and use thereunder of the Property, including but not limited to issues concerning user fees, operational issues, deficiencies and undue impacts.

8. INDEMNIFICATION

MSD shall defend, indemnify, and hold harmless the Town, its elected and appointed officials, employees, agents, volunteers, and contractors from and against any and all claims, demands, causes of action, liabilities, losses, damages, or expenses of any kind or nature, to the extent said claims, demands, causes of action, liabilities, losses, damages, or expenses arise from MSD's negligence or misconduct in connection with MSD's use of the Property.

The Town shall defend, indemnify, and hold harmless MSD, its elected and appointed officials, officers, employees, agents, volunteers, and contractors from and against any and all claims, demands, causes of action, liabilities, losses, damages, or expenses of any kind or ("Claims"), to the extent such Claims arise from: (i) the Town's negligence or misconduct in connection with the Town's use of the Property; (ii) the Public's Use of the Property during non-School sponsored events or activities; and/or (iii) a Town sponsored event or activity on the Property."

9. INSURANCE

Town and MSD shall each maintain in full force throughout the term of the Agreement, at each party's own expense, a policy of comprehensive liability insurance, which will insure Town and MSD against liability for injury or death of persons and damage to the Property, arising from Town's, the Public's Use and/or MSD's use under this Agreement. Each policy shall be for a coverage limit of not less than \$5,000,000 per occurrence for any one person injured or killed, and not less than \$5,000,000 for property damage, and shall be maintained on an occurrence basis. Town and MSD shall provide each other with a copy of their respective

policies, which shall include an endorsement that states that the policy may not be reduced or cancelled without ten business days prior written notice to the Town and MSD. Town shall be named as an additional insured on MSD's insurance, and a certificate of insurance from MSD shall be provided to the Town. MSD shall be named as an additional insured on Town's insurance, and a certificate of insurance from Town shall be provided to MSD. Both the Town and MSD may satisfy the insurance requirements set forth in this Section 9 through commercial insurance or through and by a joint powers authority as authorized pursuant to applicable law, including but not limited to California Government Code Section 6500.

10. AMENDMENTS

No amendment to this agreement shall be of any force or effect unless the same is in writing and executed by the parties hereto.

11. ASSIGNMENT

Neither MSD nor TOWN may assign or transfer this Agreement, or any part thereof, except with the prior written consent of the other party.

12. DEFAULT

In the event any party fails to perform any of the terms, conditions or covenants of this Agreement, such party shall be in default under this Agreement. Upon such default, the non-defaulting party may, in addition to other rights or remedies it may have, terminate this Agreement upon thirty-days prior notice to the defaulting party.

13. WAIVER OF BREACH

The waiver by either party of any breach of any provisions of this Agreement by the other party shall not constitute a continuing waiver or the waiver of any subsequent breach either of the same or of a different provision.

14. REMEDIES CUMULATIVE

No remedy afforded a non-defaulting party hereunder shall be exclusive, whether given by the terms of this Agreement or by law but shall be cumulative with and in addition to all remedies which on the Effective Date and hereafter are allowed by law and provided for in this Agreement.

15. ATTORNEYS FEES

In any action or proceeding which either party brings against the other to enforce its rights hereunder, the unsuccessful party shall pay all costs incurred by the prevailing party, including reasonable attorneys' fees, which amounts shall be a part of the judgment in said action or proceeding.

16. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement is binding on and shall inure to the benefit of the successors and assigns of each party.

17. INTERPRETATION

This Agreement shall be interpreted as though prepared jointly by both parties.

18. GOVERNING LAW; VENUE

This Agreement shall be construed and enforced in accordance with the laws of the State of California, without reference to choice of law provisions. Any legal actions seeking any relief under this Agreement or with respect to this Agreement shall be brought only in the Superior Court of the County of Contra Costa, State of California.

19. AUTHORITY

Each party executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity it purports to bind.

20. COUNTERPARTS

This Agreement may be executed in counterparts.

21. ENTIRE AGREEMENT

This Agreement sets forth all the agreements between the Town and MSD concerning the Town's use of the Property and there are no agreements either oral or written other than set forth herein.

22. NOTICES

Notices and communication concerning this Agreement shall be sent to the following addresses and either served personally or by prepaid, first class mail:

TOWN
Town of Moraga
Town Manager
329 Rheem Blvd.
Moraga, CA 94556

MSD
Moraga School District
Superintendent
1540 School Street
Moraga, CA 94556

Notice shall be deemed communicated within 72 hours from the time of mailing if mailed as provided in this section.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date set forth above.

MORAGA SCHOOL DISTRICT

TOWN OF MORAGA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved by the Governing Board
of the Moraga School District on

Approved by the Town Council
of the Town of Moraga on

_____, 2010

_____, 2010

APPROVED AS TO FORM FOR THE MORAGA SCHOOL DISTRICT:

APPROVED AS TO FORM FOR THE TOWN OF MORAGA:

LOZANO SMITH

MCDONOUGH, HOLLAND & ALLEN

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

SR084658.DOC

EXHIBIT A
(Property Description)

EXHIBIT B

(Current Maintenance Levels)