AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND THE SAN LEANDRO UNIFIED SCHOOL DISTRICT FOR THE RIGHT TO CONSTRUCT PARKING AREAS ON CITY LAND AT THE SAN LEANDRO SPORTS COMPLEX

This AGREEMENT is made and entered into on _____ of 2011 by and between the CITY OF SAN LEANDRO, a municipal corporation of the State of California ("**City**") and the SAN LEANDRO UNIFIED SCHOOL DISTRICT ("**District**"), together referred to as the "Parties."

RECITALS

WHEREAS, Section 10900 et seq. of the Education Code (the Community Recreation Act) authorizes cities and school districts to organize, promote and conduct programs or community recreation for the promotion and attainment of general educational and recreational objectives, and to construct, maintain and operate recreation centers, including outdoor playing fields;

WHEREAS, it is the policy of City and District to jointly undertake the development, installation, construction and maintenance of recreational facilities to reduce capital and operational costs to both governmental agencies; and

WHEREAS, attached to this Agreement and incorporated by this reference are Exhibit A, the shaded area of which depicts the location of the proposed new parking lot to be constructed by the District, and Exhibit B, the shaded area of which depicts the location where the District may construct certain improvements to create additional overflow parking (collectively, the Property).

NOW THEREFORE, in consideration of the covenants and conditions hereinafter set forth, and pursuant to the provisions of the Education Code described above, it is agreed as follows:

1. INCORPORATION OF RECITALS.

All the recitals above are true and correct and incorporated herein.

2. TERM.

The term of this Agreement ("**Term**") shall commence upon the District's issuance to the City of a Notice to Begin Access and shall continue until the completion of the construction of the parking area(s), but in no event for more than five (5) years, unless earlier terminated pursuant to the terms of this Agreement.

3. CONSTRUCTION AND RIGHT OF ENTRY.

District shall cause to be constructed and developed a parking area at the location depicted on Exhibit A and the District may improve the area depicted on Exhibit B to allow for overflow parking (the "**Work**"). District shall pay all required fees associated with the Work. District shall obtain the advance approval of City for the Work performed at the area depicted on Exhibit B. Any work in the area depicted on Exhibit A shall be in conformance with the plans approved by the Division of the State Architect.

A. Workmanlike Standard. The Work shall be performed in a good and workmanlike manner consistent with the standard of care and level of skill presently maintained by the practice of professionals in this locale; in compliance with all applicable federal, state and local laws, ordinances, rules and regulations, in a manner so as not to disturb the occupancy, business or quiet enjoyment of any other tenants or licensees of the Property; and in a manner so as to avoid harm to person(s) or the Property with the understanding that any construction work may create traffic, noise and dust associated with the Work. Where applicable, all Work at the site depicted on Exhibit B shall be completed to meet at a minimum the Standard Plans and Specifications of City.

B. Damage to City Property During Construction. Precautions must be taken by District to avoid interference with or damage to City's real and personal property. Equipment must not damage wire lines at, over or near the Property, as well as any other utilities or structures located thereon. District shall be liable for any damage to the Property, or any other property of City or City right-of-way, that occurs by its use of the Property, unless caused by the gross negligence or willful misconduct of City or its employees, agents or contractors. Any waste generated in the process of completing the Work, except pre-existing hazardous materials, will be the responsibility of District at District's sole cost and expense.

C. Access to Property. City hereby agrees and grants permission to District to enter the Property as may be necessary to perform the Work based on the covenants and conditions of this Agreement. The City reserves the right of its authorized officers, employees, agents or contractors, to enter into and access the Property at any time.

D. Relevant Laws. The District shall obtain and maintain any and all necessary permits from relevant agencies and comply with all current laws, ordinances, orders, rules, regulations and permits with respect to its performance of the activities relevant to this right of entry.

4. USE AND MAINTENANCE.

Subject to the limits herein stated, the right of entry granted herein is a right to enter onto the Property for the purposes of constructing and developing a parking

area. A separate agreement will be entered into between City and District that sets forth the terms regarding the use and maintenance of the Property.

5. INDEMNIFICATION.

To the fullest extent allowed by law, District shall defend, save, and hold City and its elected and appointed officers, officials, employees, agents and representatives (all of the foregoing, collectively the "**Indemnitees**") harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from the negligent or inadequate supervision of its contractors in the development of the Property.

6. RESOLUTION OF DISPUTES.

Any dispute arising out of the use of the Property shall be resolved by the City Manager and Superintendent of the District. In the event these two parties are unsuccessful in resolving any dispute, the Parties agree to submit the dispute to mediation.

7. NO WARRANTY OF SUITABILITY.

It is the District's election to undertake the Work. City makes no representations or warranties regarding the suitability, condition or fitness of the Property for the use.

8. TERMINATION.

Either Party may terminate this agreement, with or without cause, with sixty (60) calendar days written notice to the other Party.

9. NO INTEREST IN PROPERTY.

Nothing herein shall be deemed to create a lease or easement to any property, or to grant any interest in the Property other than a non-exclusive real property license to enter upon and use the Property, revocable as set forth herein.

10. ENVIRONMENTAL DISCLOSURE AND INDEMNITY.

Prior to the commencement of any Work, the City shall notify the District in writing regarding the presence of any Hazardous Materials (as defined in Exhibit C) or underground utilities located at the properties depicted on Exhibits A and B.

If, during construction, pre-existing hazardous substances are encountered by the District's contractor, all work shall cease in that area and the District shall promptly notify the City. Thereafter, the parties shall attempt to resolve how to remove or abate the condition in accordance with applicable law. If no agreement can be reached regarding the method of abatement or how that work shall be

funded, the District may cease work in the area where the condition is located and the City shall be responsible for the site.

District shall indemnify, defend (with counsel approved by the City) and hold the Indemnitees (as defined in Section 5) harmless from and against all Claims arising during the Term of this Agreement and resulting, arising, or based directly or indirectly in whole or in part, upon (i) the presence, release, use, generation, discharge, transport, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from the Property during the Term, where such actions or events were caused by the District or its agents, (ii) the failure of the District, the District's employees, agents, contractors, and subcontractors or any person acting on behalf of any of the foregoing to comply with Hazardous Materials Laws (as defined in Exhibit C), or (iii) the breach by the District of any of its covenants contained in this Section. The foregoing indemnity shall further apply to any contamination of any property or natural resources caused by the District or its agents arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws and shall include, without limitation, any Claims arising in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work ordered by a court or required by any federal, state, or local governmental agency or political subdivision. This Section shall survive the expiration or earlier termination of this Agreement.

11. NOTICE.

Notices herein required to be given or which may be given by either Party to the other shall be deemed to have been fully given when served personally on the City or District, or when made in writing and deposited in the United States mail, certified mail, return receipt requested, postage prepaid and addressed as follows:

To CITY: City of San Leandro
Engineering and Transportation Department
City Hall
835 E. 14th Street
San Leandro, CA 94577
Attn: Tara Peterson, Administrative Services Manager

To DISTRICT: San Leandro Unified School District
14735 Juniper Street
San Leandro, CA 94579
Attn: Michael B. Murphy, Director of Measure B & Bond Projects

12. MISCELLANEOUS.

A. Joint and Several Obligation. If more than one entity is designated in, or signatory to, this Agreement, the obligations hereunder imposed upon the District shall be joint and several; and the term the District as used herein shall refer to each and every of said signatory parties, severally as well as jointly.

B. Agreements. This instrument contains all of the agreements and conditions entered into and made by and between the parties with respect to the property and may not be modified orally, or in any manner, other than by an agreement in writing signed by all the parties hereto or their respective successors-in interest.

C. Conditions of Notice. Whenever, in this Agreement the approval or consent of a party is required, such approval or consent must be in advance, shall be in writing, and shall be executed by a person having the express authority to grant such approval or consent unless the terms of this Agreement specifically allow an oral approval or consent of a party.

D. Time of Essence. Time is, and shall be, of the essence for each term and provision of this Agreement.

E. Terms, Conditions and Covenants. Each and every term, condition, covenant and provision of this Agreement is and shall be deemed to be a material part of the consideration for the City's entry into this Agreement and any breach hereof by the District shall be deemed to be a material breach. Each term and provision of this Agreement performable by the District shall be construed to be both a covenant and a condition.

F. Headings. The headings of the several paragraphs and sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

G. Severability. In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the City or the District in its respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

H. Incorporation of Exhibits. All exhibits and addenda referred to herein, and any exhibits or schedules which may from time to time be referred to in any duly executed amendment hereto, are by such reference incorporated herein and shall be deemed a part of this Agreement as if set forth fully herein.

I. Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

J. Construction of Agreement. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

K. Choice of Law. This Agreement shall be construed by and in accordance with the laws of the State of California.

WHEREFORE, the Parties hereto have executed this Agreement as of the Effective Date.

CITY OF SAN LEANDRO

By: _____
Lianne Marshall, Interim City Manager

SAN LEANDRO UNIFIED SCHOOL DISTRICT

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____ (Richard D. Pio Roda)

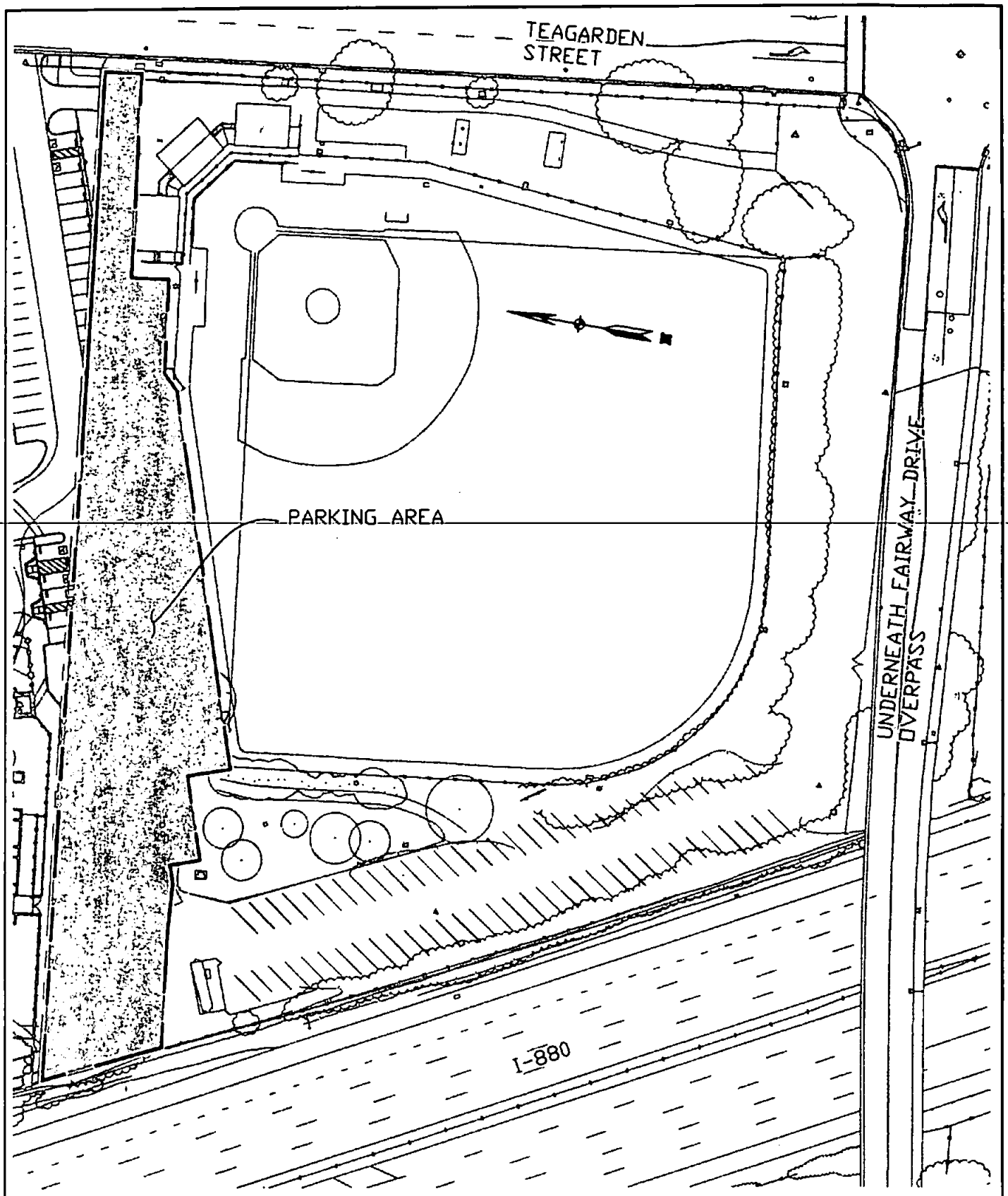
Its: Assistant City Attorney

ATTEST:

By: Marian Handa

Its: City Clerk

Exhibit A: Location of Parking Lot
Exhibit B: Location of Improvements for Overflow Parking
Exhibit C: Hazardous Material Definitions



CITY OF SAN LEANDRO

NO.	DATE	REVISION

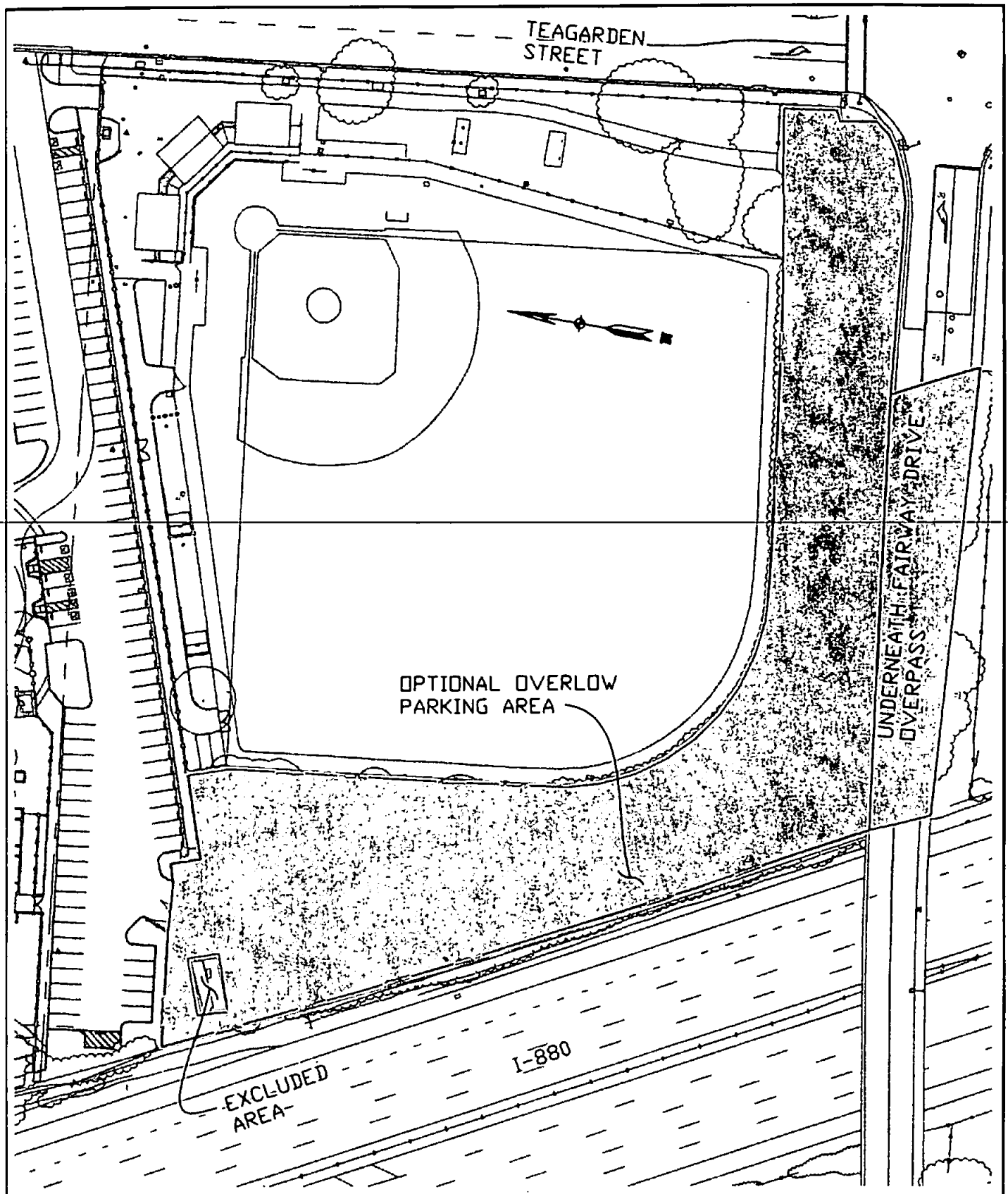
DESIGNED BY _____ DATE _____
DRAWN BY JKJ DATE 11/29/11
PROJECT MGR. KC DATE 11/29/11
TRANS ADMIN. _____ DATE _____
SENIOR ENGR. _____ DATE _____
APPROVED BY: _____ DATE _____
CITY ENGINEER, R.C.E. No. 34670

PLAT TO ACCOMPANY LAND USE AGREEMENT

EXHIBIT A

SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

SHEET 1 OF 1
JOB NO. _____
SCALE NTS
DWG. X CASE X



CITY OF SAN LEANDRO

NO.	DATE	REVISION

DESIGNED BY _____ DATE _____
DRAWN BY JKJ DATE 11/29/11
PROJECT MGR. KC DATE 11/29/11
TRANS ADMIN. _____ DATE _____
SENIOR ENGR. _____ DATE _____
APPROVED BY: _____ DATE _____
CITY ENGINEER, R.C.E. No. 34870

PLAT TO ACCOMPANY LAND USE AGREEMENT

EXHIBIT B

SAN LEANDRO, ALAMEDA COUNTY, CALIFORNIA

SHEET 1 OF 1
JOB NO. _____
SCALE NTS
DWG X CASE X

Exhibit C

Hazardous Materials Definitions

A. Hazardous Materials. As used herein, "**Hazardous Materials**" means any substance, material, or waste which is or becomes regulated by any local, state or federal authority, agency or governmental body, including any material or substance which is: (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law); (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act); (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory); (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances); (v) petroleum; (vi) friable asbestos; (vii) polychlorinated biphenyls; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20; (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901, *et seq.* (42 U.S.C. §6903); or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601, *et seq.*, as the foregoing statutes and regulations now exist or may hereafter be amended.

B. Hazardous Materials Laws. As used herein "**Hazardous Materials Laws**" means all federal, state and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, including without limitation, the laws, statutes and regulations cited in the preceding Section A, above, as any of the foregoing may be amended from time to time.

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