

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

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

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

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

RECITALS

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

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

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

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

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

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

1. TERM AND COMMENCEMENT

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

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

2. FACILITIES COVERED

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

3. HOURS OF OPERATION OF FACILITY

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

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

4. SCHEDULING USE OF FACILITY

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

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

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

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

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

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

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

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

5. OBLIGATIONS OF CITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. OBLIGATIONS OF FDC

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

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

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

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

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

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

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

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

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

7. IMPROVEMENTS

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

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

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1. Pest control, grading, top dressing, verticutting, sprinkler maintenance and irrigation controller upgrade and/or other measures as needed to meet playability standards of CITY utility fields. Scheduling of access to FACILITY by CITY and its agents, as well as review of procedures and methodology prior to onset of any work, shall be by mutual consent of both parties. FDC agrees to provide access to site as needed by CITY or its agents to perform work, which may include the use of heavy equipment. FDC further agrees to schedule no FDC use of FACILITY during rehabilitation period of three (3) months following completion of initial improvements.
2. CITY will remove or cause to be removed unutilized/abandoned equipment located on the property adjacent to the FDC fields and provide FDC approved fencing or screening suitable to provide a visual barrier between the FDC fields and the golf course storage site (see Exhibit A, Site Map).
3. CITY will provide access to FDC fields from golf course for heavy equipment and vehicles such as mowers, trash trucks, grading equipment, etc.

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

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

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

8. OTHER TERMS AND CONDITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S. Barbeques or other heat producing devices are prohibited.

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

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

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

9. LIABILITIES AND INDEMNIFICATION

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

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

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

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

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

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

10. ASSIGNMENTS AND SUBLEASE

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

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

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

11. NOTICES

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

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

If to CITY:

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

If to FDC:

Fairview Developmental Center
Costa Mesa, California 92626
Attention: Executive Director

12. TERMINATION

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

13. SEVERABILITY AND APPLICABLE LAW

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

14. AGREEMENT

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

15. WAIVER

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

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16. BINDING EFFECT

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

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

FDC:

CITY:

Fairview Developmental Center

City of Costa Mesa

By: _____

By: _____

(Insert typed name)
Manager

(Insert typed name)
Mayor

Dated: _____

Dated: _____

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

EXHIBIT B PROPOSED SITE IMPROVEMENTS BY CITY

Initial Term Site Improvements:

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

Other Non-permanent on-going initial term FACILITY Improvements:

Lockable portable rest rooms (located on City property) with screening/enclosure
3 cubic yard trash bin (if needed)

On-going FACILITY maintenance:

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

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

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

EXHIBIT C UTILITY COSTS

Method for Determining Fair Share Water and Electrical Usage Fees

FDC will provide an index for monthly water and electrical usage for this site based upon the past 24 months' billing cycles. From this an average monthly usage basis shall be established. If the amount of water and/or electricity used in any given month exceeds the average, City will pay the differential. If the usage is less than the average monthly usage, a credit shall be accrued forward to the next month in which an incremental increase is recorded and shall remain an accrual until increase differential exceeds credit.