



# City of Sacramento City Council

4

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 3/27/2012

**Report Type:** Consent

**Title:** Agreement: Water Service Agreement for the East Natomas Education Complex

**Report ID:** 2011-00704

**Location:** District 1

**Recommendation:** Adopt a Motion authorizing the City Manager or the City Manager's designee to execute a Water Service Agreement with the Twin Rivers Unified School District.

**Contact:** Dan Sherry, Supervising Engineering, (916) 808-1419; Robert Armijo, Senior Engineer, (916) 808-1411, Department of Utilities

**Presenter:** None

**Department:** Department Of Utilities

**Division:** Cip Engineering

**Dept ID:** 14001321

## Attachments:

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- 1- Description/Analysis
- 2- Background
- 3- Location Map
- 4- Unexecuted Agreement Coversheet
- 5- Exhibit A - WSA Figures
- 6- Exhibit A - Water Service Agreement with Twin Rivers Unified School District.pdf

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### City Attorney Review

Approved as to Form  
Joe Robinson  
3/15/2012 4:49:33 PM

### City Treasurer Review

Reviewed for Impact on Cash and Debt  
Russell Fehr  
3/8/2012 10:57:18 AM

### Approvals/Acknowledgements

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Department Director or Designee: Dave Brent - 3/15/2012 3:53:08 PM



## Agreement: Water Service Agreement for the East Natomas Education Complex

### Description/Analysis

**Issue:** The Twin Rivers Unified School District (TRUSD) and its predecessor Grant Joint Union High School District have partially constructed the East Natomas Education Complex (ENEC), outside the City limits and within the Panhandle area. City Code section 13.04.390 requires applications for water service to any area located outside the city limits to be approved by the City Council. The proposed agreement allows the City to serve water to the ENEC prior to annexation of the Panhandle, subject to the TRUSD's agreement to support future annexation of this area.

**Policy Considerations:** This action is consistent with the Council focus area of Sustainability and Livability. This action also is consistent with the City Manager's policy regarding water service outside City limits, which allows for retail water service to property adjacent to the City limits but within the City's Sphere of Influence, if consent to future annexation is provided and water service is approved by the City Council.

**Environmental Considerations:** The Agreement would provide for water service to a school that, upon annexation of the area to the City, would be required to obtain water service from the City. The pipeline to serve the site has been constructed from the terminus of Amazon Street and no physical changes to the environment would occur. Providing service to the site is consistent with the 2030 General Plan (Policy LU 1.1.8). Because there is a certainty that no physical changes to the environment would occur, and there would be no significant effects, approval of the agreement is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3).

**Sustainability:** Not Applicable

**Commission/Committee Action:** Not Applicable

**Rationale for Recommendation:** Approval of the proposed agreement will allow City water service to the School.

**Financial Considerations:** The proposed agreement requires all costs to be borne by the TRUSD.

**Emerging Small Business Development (ESBD):** Not Applicable

## Agreement: Water Service Agreement for the East Natomas Education Complex

### Background

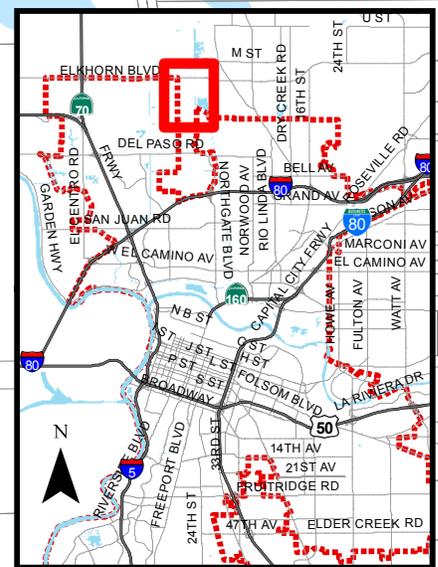
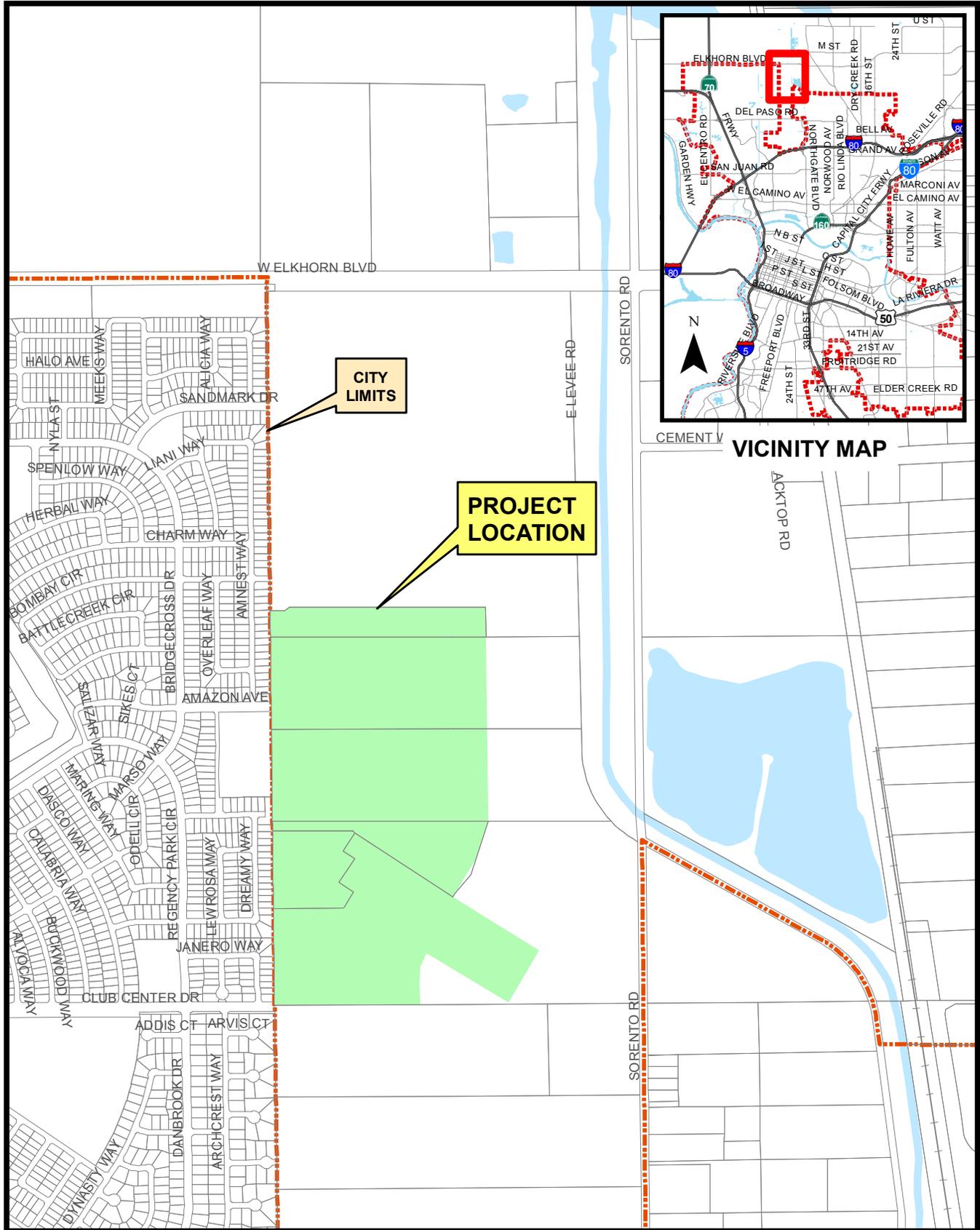
The Twin Rivers Unified School District (TRUSD) and its predecessor Grant Joint Union High School District have partially constructed the East Natomas Education Complex (ENEC). City Code section 13.04.390 requires applications for water service to any area located outside the City limits to be approved by the City Council.

It is anticipated that the 595-acre Panhandle area will be annexed into the City, but the timing is not certain. Approval of the agreement will allow the City to serve the 100-acre ENEC prior to annexation of the area that includes the ENEC. Among other provisions, the proposed agreement:

- Requires the TRUSD to design, construct and dedicate to the City the water distribution improvements needed to receive City water service; provided that the TRUSD must construct its own private irrigation system supplied by groundwater, unless otherwise agreed by the Director of Utilities.
- Requires the construction of any facilities by the TRUSD to comply with all applicable requirements of the Natomas Basin Habitat Conservation Plan, the Sacramento Metropolitan Air Quality Management District's air quality measures, any water quality measures enforced by Sacramento County or any other agency, and the cultural resources protection provisions of the Sacramento County General Plan Conservation Element.
- Requires the TRUSD to pay all applicable fees, rates and charges.
- Requires the TRUSD to support annexation, and allows the City to terminate water service if annexation is not accomplished within 6 years, provided that the City may agree to extend this time period.

The Local Agency Formation Commission (Resolution 1363) has approved (October 1, 2008) the provision of retail water service outside the City limits, pursuant to Government Code section 56133.

# LOCATION MAP





## Unexecuted Contract/Agreements

- The Unexecuted Contract/Agreement is signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract/Agreement (Public Project) is NOT signed by the other party, is attached as an exhibit to the resolution, and is approved as to form by the City Attorney.
- The Unexecuted Contract is NOT included as an exhibit to the Resolution because the Agreement(s) is with other another governmental agency and it is not feasible to obtain the other agency's signature prior to Council action (be they denominated Agreements, MOUs, MOAs, etc.); however, the City Attorney approves the forwarding of the report to Council even though the signed agreement is not in hand yet.
- The Unexecuted Contract is NOT included as an exhibit to the resolution because, due to special circumstances, and the City Attorney confirms in writing that it is okay to proceed with Council action even though the signed agreement is not in hand yet.

*All unexecuted contracts/agreements which are signed by the other parties are in the Office of the City Clerk before agenda publication.*

**LEGEND**

- PROPERTY LINE
- - - INCREMENT LINE
- LIMIT OF WORK LINE

**INCREMENT NOTES**

THE INCREMENT LINE IS NOT INTENDED TO DEFINE THE LIMIT OF WORK FOR THE PROJECT. HOWEVER, IT DOES SHOW THE PORTIONS OF THE SITE THAT NEED TO BE OCCUPIED BY THE FOLLOWING QUAYS:

- PHASE 1: SEPTEMBER 2009
- PHASE 2: SEPTEMBER 2010

**PARKING DATA**

NORTH LOT AT JUNIOR HIGH (VISITORS / STAFF)	
PARKING REQUIRED PER CODE	37 SPACES
STANDARD SPACES PROVIDED	122 SPACES
ACCESSIBLE SPACES REQUIRED/PROVIDED	5 SPACES (INCLUDING 2 VAN)
TOTAL PROVIDED	127 SPACES

EAST LOT AT HIGH SCHOOL (VISITORS / STAFF)	
PARKING REQUIRED PER CODE	159 SPACES
STANDARD SPACES PROVIDED	155 SPACES
ACCESSIBLE SPACES REQUIRED/PROVIDED	7 SPACES (INCLUDING 2 VAN)
TOTAL PROVIDED	159 SPACES

SOUTH LOT AT HIGH SCHOOL (STUDENT)	
PARKING REQUIRED PER CODE	377 SPACES
STANDARD SPACES PROVIDED	442 SPACES
ACCESSIBLE SPACES REQUIRED/PROVIDED	8 SPACES (INCLUDING 2 VAN)
TOTAL PROVIDED	501 SPACES

OVERFLOW PARKING AT HARD COURTS	
IN HARD COURTS	273 SPACES
ON HARD COURTS	302 SPACES
TOTAL PROVIDED	415 SPACES

TOTAL	
PARKING REQUIRED PER CODE	632 SPACES
TOTAL PARKING PROVIDED IN LOTS	787 SPACES
TOTAL ACCESSIBLE SPACES PROVIDED	21 SPACES (EXCEPT PER LOTS)
OVERFLOW PARKING PROVIDED	415 SPACES
TOTAL PROVIDED (INCL. OVERFLOW)	1,201 SPACES

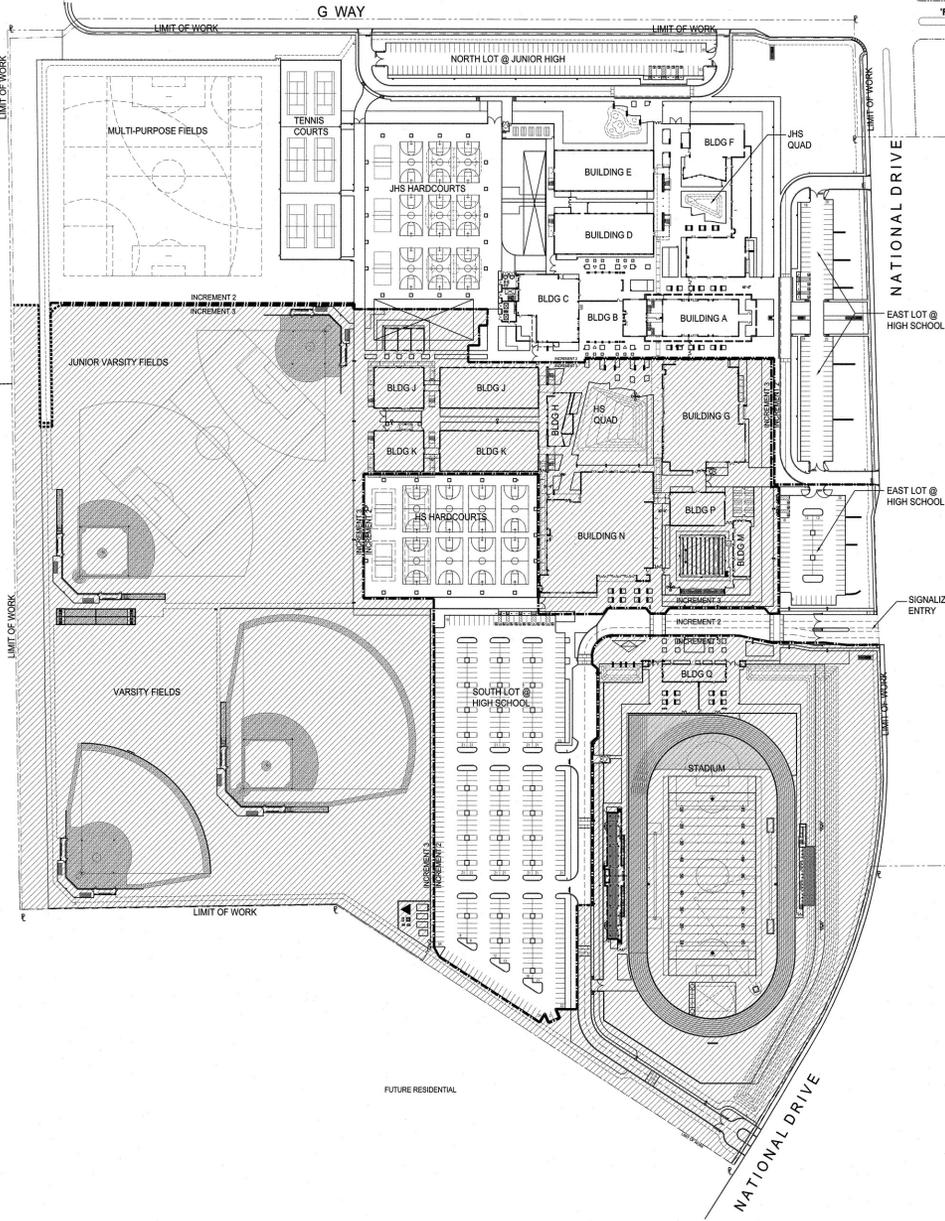


EXHIBIT A

The user of this plan warrants and shall warrant to the client that the information contained herein is true and correct to the best of their knowledge and belief. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.

The plans, details, and specifications shown on these drawings have been prepared by our office and represent our professional opinion. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities. The user shall be responsible for obtaining all necessary permits and approvals from the appropriate authorities.

**LPA**  
 1348 Eureka Road, Ste. 101  
 Roseville, California 95661



Architecture  
 Planning  
 Interior Design  
 Landscape Architecture  
 Graphics

P 916 | 772-4300  
 F 916 | 772-4330  
 E lpa@lpa.com  
 W www.lpac.com



**McCarthy**  
 2241 Douglas Blvd., Ste. 200  
 Roseville, CA 95661

P 916 | 786-3833  
 F 916 | 786-3234  
 E sac@mcCarthy.com  
 W www.mccCarthy.com

**EAST NATOMAS EDUCATION COMPLEX  
 INCREMENT 2**

5921 EAST LEVEE ROAD  
 SACRAMENTO, CA 95835

Developed for  
 GRANT JOINT UNION HIGH SCHOOL DISTRICT

REVISION	DESCRIPTION	DATE
REP RESPONSE		11.17.08
STATION REDEVELOPMENT		03.18.07
CONSTRUCTION DOCUMENTS		08.04.07
MOUSE - 50A SUBMITTAL		06.04.07
MOUSE - 50A APPROVAL		12.18.07



**SHEET KEY MAP**

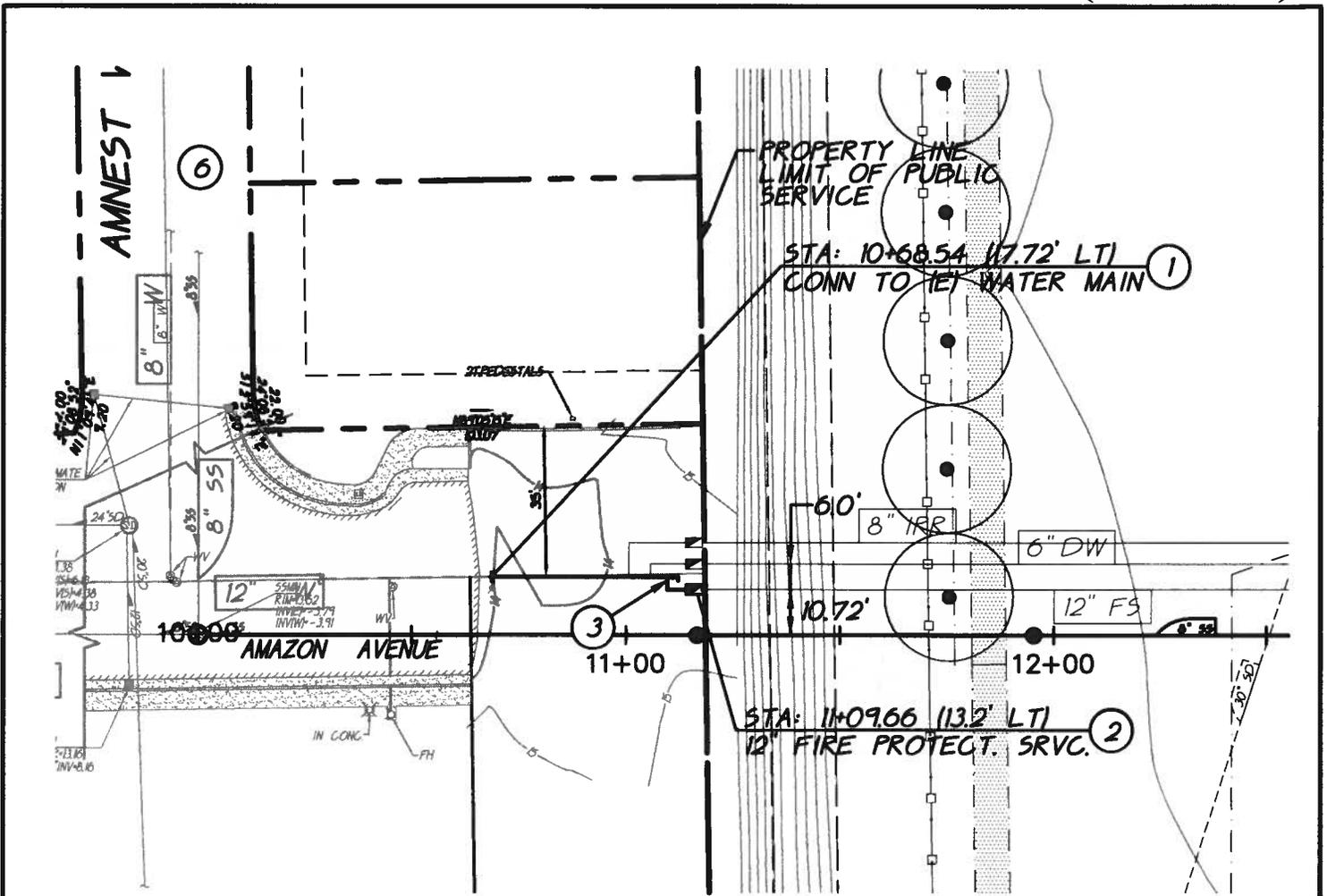
L1.002-1	L1.002-2	L1.002-3	L1.002-4
L1.002-5	L1.002-6	L1.002-7	L1.002-8
L1.002-9	L1.002-10	L1.002-11	L1.002-12
L1.002-13	L1.002-14	L1.002-15	L1.002-16
L1.002-17	L1.002-18	L1.002-19	L1.002-20

Job No. 04156.10  
 Date: DECEMBER 16, 2007  
 Drawn by: M.L.C.M.  
 Checked by: S.M.K.S.

**6 of 18**  
**OVERALL**  
**SITE PLAN**

L0.02-2

INCREMENT 2



○ CONSTRUCTION NOTES:

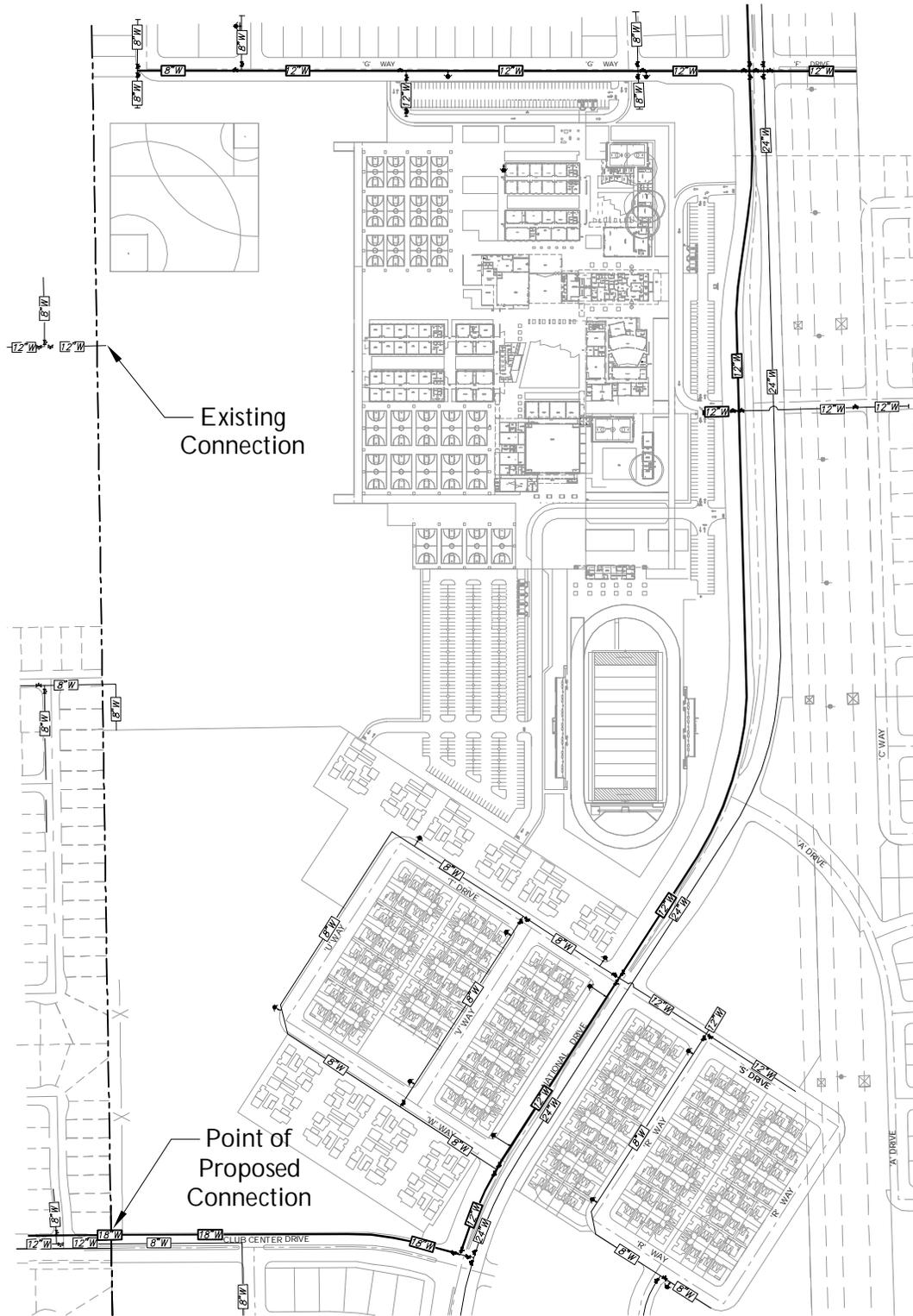
1. CONTRACTOR TO REMOVE EXISTING BLOW-OFF AND CONNECT NEW 12" WATER MAIN (49 LF) AFTER TESTING AND DISINFECTION. CONTRACTOR TO CONTACT CHUCK BARSUGLIA, 808-4024 FOR WATER MAIN SHUT DOWN.
2. STATION 11+09.66: 12" FIRE SERVICE. PLACE 12" TEE WITH 12" GATE VALVE AND INSTALL APPROVED DOUBLE CHECK VALVE ASSEMBLY AT POINT OF SERVICE PER CITY OF SACRAMENTO DETAIL W-510.
3. PLACE 4" BLOW-OFF AT END OF NEW 12" WATER MAIN.

APPROVED FOR TEMPORARY  
FIRE SERVICE ONLY

NOTE: PERMIT FROM RD1000 IS REQUIRED FOR ANY WORK DONE WITHIN RD100 RIGHT OF WAY.

EAST NATOMAS EDUCATIO COMPLEX		REFERENCE 2041198	
<b>WARREN CONSULTING ENGINEERS, INC.</b> 160 BLUE RAVINE ROAD, SUITE C FOLSOM, CA 95630 (916) 985-1870	5921 EAST LEVEE RD. FIRE SERVICE CONNECTION		JOB NO. 20411
			DATE 9-16-08
		SHEET <b>SHT.</b> SCALE 1" = 40'	

2041 1 98A



# "Proposed 12" Domestic Water Connection"

Exhibit "B" (Page 2)

## EAST NATOMAS EDUCATION COMPLEX

Club Center Drive to National Drive Along Frontage to 'G' Way





## AGREEMENT FOR WATER SERVICE (East Natomas Education Complex)

This Agreement for water service is entered into on \_\_\_\_\_, 2012, by and between the City of Sacramento, a charter municipal corporation (“City”) and the Twin Rivers Unified School District, a California unified school district (“Owner”).

### Recitals

- A. The City of Sacramento operates a water supply system that delivers surface water diverted from the Sacramento and American Rivers under the City’s water right permits and entitlements and groundwater pumped from City wells for municipal and industrial use to customers located within and outside of the City.
- B. Owner is the owner in fee of real property (“Owner’s Property”) located in the unincorporated area of Sacramento County, west of Sorento Road, south of Elkhorn Boulevard, and east of the City limit (APNs 201-0540-072, 201-0540-071, 201-0320-019, 201-0320-018, 201-0320-024), in Sacramento County, California Owner’s Property is more particularly described and depicted in **Exhibit A**, attached hereto and incorporated herein by this reference.
- C. Owner is planning to develop Owner’s Property by constructing Owner’s East Natomas Education Complex (“Owner’s Project”), and Owner requires retail water service for this purpose.
- D. Owner is requesting that the City provide retail water service for Owner’s Project from the City’s water supply system.
- E. Owner’s Property is located outside the current City limits, but is located within the City Sphere of Influence. The City’s policy for serving surface water diverted under the City’s water right permits outside the City limits provides that a property owner may receive retail water service for property located outside of the City but within the City’s Sphere of Influence if the property annexes to the City. The City’s policy also provides that, if approved by the City Council, execution of an appropriate consent to future annexation may fulfill this requirement.
- F. The Owner’s Property is anticipated to be included in a petition for annexation. Owner will support and cooperate fully with any petition for annexation that is filed that includes a provision to annex Owner’s Property to the City. However, because the Owner’s Project requires assurance of a reliable long-term water supply prior to the completion of annexation proceedings, Owner is requesting that the City agree to provide retail water service upon Owner’s execution of a consent to future annexation, as provided in this Agreement.
- G. The City owns and operates (1) a 12-in water distribution main at Amazon Ave and (2) a 12-in water distribution main located at Club Center Dr. (collectively referred to as the “City Distribution Mains”), as shown on Exhibit B, attached hereto and incorporated herein by this reference. It is anticipated that water service provided to

Owner's Property under this Agreement will be supplied from the City Distribution Mains.

- H. Because Owner's Property is located outside the current City limits, Owner understands and acknowledges that the City has no obligation to provide water service to Owner's Property, but the City may elect to provide water service to Owner's Property, if approved by the Sacramento Local Agency Formation Commission, pursuant to Government Code Section 56133, and approved by the Sacramento City Council, pursuant to Section 13.04.390 of the Sacramento City Code.
- I. Owner further understands and acknowledges that deliveries of City water to Owner's Property pursuant to this Agreement may consist of surface water diverted from the Sacramento and American Rivers under the City's water right permits and entitlements and/or groundwater pumped from City wells, consistent with any limitations applicable to the City's water right permits and entitlements.

NOW, THEREFORE, in consideration of the mutual obligations set forth herein, City and Owner agree as follows:

- 1. **Recitals Incorporated.** The above Recitals are incorporated by this reference as if fully set forth at this place.
- 2. **Water Service to Owner's Property.**
  - a. Owner shall design and construct, at no cost to City, the improvements (the "Improvements") specified on Exhibit B, to receive water from the City Distribution Mains and distribute this water on the Owner's Property for domestic and fire protection purposes. Unless the City Utilities Director (the "Director") agrees in writing to allow the Improvements to also include improvements to receive water for irrigation purposes, Owner shall design and construct, at no cost to City, a separate irrigation system supplied by a well or wells (hereafter collectively referred to as "Owner's Irrigation System"), to supply water for irrigation purposes on Owner's Property.
  - b. Owner's construction of the Improvements shall comply with: (1) all applicable avoidance and minimization measures set forth in the Natomas Basin Habitat Conservation Plan, including any requirements for pre-construction surveys, no-construction windows, and reporting to and consultation with the City and resources agencies; (2) all applicable air quality measures that are enforced by the Sacramento Metropolitan Air Quality Management District (SMAQMD); and (3) all applicable water quality measures applicable to the project that are enforced by the County of Sacramento or other agencies; and (4) provisions for protection of cultural resources in the event of unexpected discovery as set forth in County of Sacramento General Plan Conservation Element, Section VIII, Cultural Resources.

- c. Owner shall obtain all permits and other approvals required for construction of the Improvements and Owner's Irrigation System. The Improvements, except for the facilities designated on Exhibit B as public facilities (the "Public Improvements"), and Owner's Irrigation System, shall be private facilities and the City shall have no responsibility whatsoever for their operation, condition, maintenance or repair. In addition to all other applicable requirements, all work shall be performed in accordance with plans and specifications approved in writing by the Director, and any Director-approved changes thereto, and in strict conformity with the City's Standard Specifications for Public Construction, unless exceptions are approved by the Director. Such plans and specifications, upon approval by the Director or his or her designee, shall be deemed incorporated herein and made a part of this Agreement.
- d. Neither City, nor any officer, employee or agent thereof, shall be responsible to Owner for any claim, cost, damage or other liability occurring by reason of anything done or omitted to be done in connection with the design and construction of the Improvements and Owner's Irrigation System, and Owner hereby waives and releases any and all such claims, costs, damages or other liabilities. The foregoing waiver and release includes any claims arising under Section 1542 of the California Civil Code that Owner presently does not know or suspect to exist.
- e. City, its officers, employees and agents shall be allowed to enter the construction site and Owner's Property to inspect construction of the Improvements and Owner's Irrigation System whenever deemed necessary by City. Upon completion and testing of the Public Improvements, City shall inspect the Public Improvements and either (1) accept the Public Improvements as complete, or (2) identify any deficiencies to be corrected before the City will accept the Public Improvements as complete. Owner shall correct any deficiencies identified, and City thereafter shall inspect the Public Improvements and notify Owner whether such corrections are approved or disapproved. The Public Improvements shall become the sole and exclusive property of the City upon completion of construction, final inspection and testing, and final acceptance by City, after the correction by Owner of any deficiencies identified by City; provided that, as a precondition to final acceptance by City Owner shall take any and all actions necessary to insure that the Public Improvements are free and clear of all liens and encumbrances of any kind, and that the City is in possession of all rights, easements, approvals and/or permits necessary to operate, maintain and repair the Public Improvements upon final acceptance by City. Prior to final acceptance, the City shall have no responsibility for the Public Improvements.
- f. Upon completion of construction, Owner shall operate and maintain the Improvements and Owner's Irrigation System in good condition and repair, except for the Public Improvements that will be maintained and repaired by the City after final acceptance by City. If the Improvements or Owner's Irrigation System will cross property not owned by Owner, Owner shall obtain

private easement(s) that authorize the construction, location, operation, maintenance and repair of such Improvements or Owner's Irrigation System by Owner on such other property.

- g. After the Improvements and Owner's Irrigation System are completed and the Public Improvements have been accepted by City as provided above, all necessary easements are properly recorded, and in anticipation of the future annexation of Owner's Property to the City, the City shall provide retail water service from the City's water supply system to Owner's Property for domestic and fire protection purposes (and for irrigation purposes only if authorized by the Director as provided in subsection a, above), subject to (1) the provisions of this Agreement and all applicable provisions of the Sacramento City Charter and City Code (including without limitation Sacramento City Code Chapter 13.04), and (2) the same terms, conditions, requirements, rates, fees and charges as other customers receiving similar City water service outside of the City limits, except as provided otherwise in this Agreement.
- h. The Owner warrants and agrees, at Owner's sole cost, to remedy any defects in the Public Improvements arising from faulty or defective construction occurring at any time within one (1) year after final acceptance thereof by the City. In the event that Owner fails to commence the remedy of any and all such defects within ten (10) days after being notified of the defects in writing by City, or Owner fails to diligently perform such work once commenced, City shall have the right, but shall not be obligated, to repair or cause to be repaired such defects, and Owner shall pay to City on demand all costs and expenses incurred by City to repair or cause to be repaired such defects. Notwithstanding anything herein to the contrary, if any defects in the Public Improvements result in a condition that, in the City's sole and exclusive judgment, constitutes an imminent hazard to public health or safety, or to any person or property, City shall have the right to immediately repair or cause to be repaired such defects, with or without prior notice to Owner, and Owner shall pay to City on demand all costs and expenses incurred by City to repair or cause to be repaired such defects. Owner agrees that any unpaid costs described above may be included on Owner's monthly water service bill.
- i. If the Owner's Property is not annexed into the City within six (6) years after the effective date of this Agreement (hereafter referred to as the "Annexation Period"), City may terminate City water service to Owner's Property at any time thereafter upon providing Owner a written notice of termination not less than ninety (90) days prior to the date that water service is terminated. Notwithstanding the foregoing, City may extend the initial Annexation Period for additional periods of up to one year each by providing written notice of such extension to Owner. If the Owner's Property is not annexed into the City within such extended Annexation Period, if any, City may terminate City water service to Owner's Property at any time thereafter upon providing Owner a written notice of termination not less than ninety (90) days prior to the date that water service is terminated. The City's right to terminate water service under this subsection i., is in addition to any other rights City may

have to terminate or discontinue water service under this Agreement or applicable provisions of the Sacramento City Code, including without limitation, Sacramento City Code Chapter 13.04, Article V.

- j. If City water service to Owner's Property is terminated as provided for in compliance with the provisions of subsection i., above, Owner agrees for itself, its constituents, successors and assigns that: (1) Owner hereby consents in advance to such termination of water service; (2) Owner hereby acknowledges that the written notice provided under this Agreement is complete and adequate notice, and Owner waives the provisions of any statute, ordinance or regulation establishing different or additional provisions for providing notice prior to a termination of water service; (3) Owner shall be solely responsible for obtaining and providing any and all necessary water service to Owner's Property (including but not limited to such water as may be required for fire protection purposes) by developing, installing or otherwise obtaining water from other sources to serve the water supply needs of Owner's Property, in compliance with all applicable laws, ordinances, regulations or other governmental requirements; (4) The City, its officers and employees shall have no responsibility or liability for any claims, damages, costs or other liabilities arising directly or indirectly from the termination of water service as provided in this Agreement, and Owner hereby waives and releases any and all such claims, damages, costs or other liabilities; and (5) Owner shall defend, indemnify and hold harmless City, its officers and employees against and from any and all claims, damages, costs or other liabilities arising directly or indirectly from the termination of water service as provided in this Agreement.
- k. City's agreement to provide water service to Owner's Property as set forth herein also is contingent upon Owner's compliance with the provisions of this Agreement, and Owner agrees for itself, its constituents, successors and assigns, that City may terminate such water service upon written notice and without any liability whatsoever: (i) If Owner, its constituents, successors or assigns contest or breach any material provision of this Agreement or contest any waiver or consent provided pursuant to this Agreement; or (ii) If any provision of this Agreement is set aside or held to be unenforceable by a court of law. The foregoing rights and remedies are cumulative and in addition to any other rights or legal or equitable remedies that City might otherwise have.
- l. If Owner's Property is annexed to the City, water service to Owner's Property after the annexation is concluded shall be subject to all applicable provisions of the Sacramento City Charter and City Code (including without limitation Sacramento City Code Chapter 13.04), and subject to the same terms, conditions, requirements, rates, fees and charges as other customers receiving similar City water service inside the City limits.

### **3. Consent to Future Annexation.**

- a. In addition to the specific provisions set forth below, which specific provisions

are not intended to be a limitation on the generality of this subsection, Owner agrees for itself, its constituents, successors and assigns, that Owner will unconditionally support any petition filed that provides for the annexation of Owner's Property to the City.

- b. Owner, for itself, its constituents, successors and assigns, agrees to: (i) support any petition for annexation that includes annexation of the Owner's Property to the City; and (ii) take any and all actions, and execute immediately upon presentation any document, required to effectuate the annexation of the Owner's Property to the City as provided herein.
- c. Owner understands and agrees that an important component of this Agreement is Owner's advance consent to annexation of the Owner's Property to the City, in the form of an agreement not to contest or protest such annexation. Accordingly, Owner agrees for itself, its constituents, successors and assigns that it fully, finally and forever grants advance consent to, and waives and relinquishes any right it may have to protest or contest, any proposal for, or approval or implementation of, annexation of any area including the Owner's Property to the City.
- d. Without limiting the generality of the foregoing, Owner, for itself, its constituents, successors and assigns, specifically waives: (i) any provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Government Code sections 56000 et seq.), together with any associated provisions of the Sacramento Local Agency Formation Commission policies, standards and procedures, requiring Owner's consent to and/or allowing Owner to protest annexation of any area including the Owner's Property to the City; (ii) the provisions of any other statute designed to provide a protest or contest procedure in connection with annexation; and (iii) the provisions of any procedure in the Sacramento City Code designed to provide a protest or contest procedure in connection with annexation.
- e. Owner agrees that Owner shall be solely responsible for, and shall upon demand reimburse the City for, any and all costs incurred to comply with any condition(s) of annexation arising directly or indirectly from any claim by the Sacramento County Water Agency ("SCWA"), the Natomas Central Mutual Water Company ("NCMWC") or any other person or entity that this Agreement or the City's provision of water service under this Agreement constitutes a duplication of service within the meaning of California's Service Duplication Law (California Public Utilities Code §§ 1501 et seq.) or a taking of property without just compensation or otherwise constitutes an infringement of the rights or authority of SCWA, NCMWC or any other person or entity. Owner further agrees that any such costs may be included on Owner's monthly water service bill.

**4. Environmental Review/Development Approvals.** City water service shall not be provided to serve Owner's Project unless and until such project has been approved by Sacramento County and all other applicable governmental bodies in compliance with all applicable environmental laws and regulations, including without limitation

the California Environmental Quality Act, and Owner has obtained and complied with the terms and conditions of all other development approvals required for the Owner's Project, including without limitation the terms and conditions of this Agreement.

5. **Indemnity.** Owner shall fully indemnify and hold harmless, City, its officers, employees, and agents, and each and everyone of them, from and against all actions, damages, costs, liability, claims, losses, and expenses (including fees for staff attorneys and/or outside counsel reasonably incurred by City) of every type and description (collectively referred to as "Liabilities") to which any or all of them may be subjected, by reason of, or resulting from, directly or indirectly:(i) any act or failure to act by Owner, its agents, contractors or subcontractors, or their respective officers or employees, in connection with the design, construction, operation, condition, maintenance or repair of the Improvements; or, (ii) any allegation by SCWA, NCMWC or any other person or entity that this Agreement or the City's provision of water service under this Agreement constitutes a duplication of service within the meaning of California's Service Duplication Law (California Public Utilities Code §§ 1501 et seq.) or a taking of property without just compensation or otherwise constitutes an infringement of the rights or authority of SCWA, NCMWC or any other person or entity in violation of any common law, statute or regulation, or actionable in equity. In addition to the above, Owner shall, upon City's request, defend at its sole cost, with counsel approved by City, any action, claim or suit or portion thereof which asserts or alleges any such Liabilities.
6. **Term.** This Agreement shall become effective on the date that this Agreement is signed by Owner and by the City Manager and City Clerk (referred to herein as the "effective date"), and shall remain in effect as long as any of its provisions remain capable of performance, unless sooner terminated by written agreement of the parties. The provisions of Section 5, Indemnity, shall survive any termination of this Agreement.
7. **No Representation Regarding Annexation.** City makes no representation that Owner's Property will be annexed to the City, and no liability or obligation whatsoever shall be incurred by City by reason of any failure of such annexation to occur.
8. **Covenants Run with Owner's Land; Binding on Successors.** The parties agree that all of Owner's waivers and advance consents, and other agreements contained herein are covenants that run with the Owner's Property, in accordance with Section 1468 of the Civil Code, and the burdens hereof shall be binding upon all Owner's successors-in-interest. This Agreement shall be binding on and shall inure to the benefit of the parties, and their respective officials, employees, agents, successors, transferees and assigns, provided that this Agreement shall not be assigned by Owner without the written consent of the City, and any attempted assignment without such consent shall be void. City may record this Agreement in the Official Records of the County of Sacramento, California.

9. **Owner's Representations Regarding Ownership; Authority.** Owner certifies that it owns full legal title to the Owner's Property. Each individual executing this Agreement on behalf of a corporation, partnership or other entity represents and warrants to City that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.
10. **Owner Not Agent of City.** Neither Owner nor any of Owner's agents, contractors or subcontractors are or shall be considered to be agents of City in connection with the performance of any of Owner's obligations under this Agreement. Nothing in this Agreement shall be construed to create a joint venture, partnership or other relationship between Owner and City, other than City acting in its governmental capacity with respect to the provision of City water service from the City's public water system.
11. **Attorney's Fees.** If the services of any attorney are required by either party to secure the performance of this Agreement, or otherwise upon the breach or the default of either party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorney fees (for staff attorneys and/or outside counsel), costs, and other expenses, in addition to any other relief to which such party may be entitled.
12. **Governing Law.** This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California. The place where this Agreement is to be performed and its situs or forum will at all times be in the County of Sacramento.
13. **Waiver.** The waiver by any party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or a waiver of any subsequent breach of that or any other provision of the Agreement.
14. **Notices.** All notices authorized or required by this Agreement may be delivered personally, or sent in the United States mail, postage prepaid, and addressed to the respective parties as follows:

To City:            Director of Utilities  
                               City of Sacramento  
                               Department of Utilities  
                               1395 35<sup>th</sup> Avenue  
                               Sacramento, CA 95822

To Owner:        Superintendent  
                               Twin Rivers Unified School District  
                               5117 Dudley Blvd.  
                               McClellan, CA 95652

All notices will be deemed served on the day that they are personally served, or deposited, postage prepaid, in the United States mail. A party may change the above designations by providing notice thereof to the other party.

- 15. **No Third-Party Beneficiary.** This Agreement is not intended to, and shall not be interpreted as conferring, any benefit or right whatsoever upon any person or entity that is not a party hereto.
- 16. **Interpretation of Agreement.** The headings of the sections and paragraphs in this Agreement are inserted for convenience only, do not constitute part of this Agreement and will not be used in its construction. This Agreement is the result of the joint efforts and negotiations of both parties, and both parties agree that this Agreement will be interpreted as though each of the parties participated equally in the drafting and composition of this Agreement and each and every part hereof.
- 17. **Voluntary Agreement.** Owner agrees and specifically represents to City that it is fully aware of all of its legal rights relative to the agreements, waivers, and advance consent set forth above, having had the opportunity to be advised by its own independent attorneys. Having such knowledge and understanding of its rights, Owner has nevertheless voluntarily entered into this Agreement. Owner understands and acknowledges that the City is relying on the Owner=s representations contained in this Agreement in entering into this Agreement.
- 18. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between City and Owner concerning the subject matter contained herein. Any amendment to this Agreement shall be in a writing signed by both parties.

**CITY OF SACRAMENTO**

**OWNER:TWIN RIVERS UNIFIED SCHOOL DISTRICT**

By \_\_\_\_\_

By 

Title \_\_\_\_\_

Title Assistant Superintendent

Approved as to Form:

By \_\_\_\_\_

\_\_\_\_\_  
City Attorney

Title \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

*Attach Notary Certifications*

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Sacramento

On February 15, 2012 before me, Sharon D. Hally, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Alan Russell Colombo  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Sharon D. Hally  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Agreement for Water Service East Natomas Educational Complex

Document Date: February 15, 2012 Number of Pages: 12

Signer(s) Other Than Named Above: 3 - City Officials, City Attorney, City Clerk

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Alan Russell Colombo Signer's Name: NO other signer

Corporate Officer — Title(s): Assistant Superintendent  Corporate Officer — Title(s): \_\_\_\_\_

- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator

Other: Twin Rivers Unified School District Facilities Services

Signer Is Representing: Twin Rivers



- Individual
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

