

**Meeting Date:** 3/19/2013

**Report Type:** Consent

**Report ID:** 2013-00069

**Title: Agreement: Smythe Academy of Arts and Sciences Softball Fields Renovation Project**

**Location:** 2781 Northgate Boulevard, District 3

**Issue:** City funds to rehabilitate existing softball fields at Smythe Academy in Twin Rivers Unified School District requires Council approval.

**Recommendation:** Pass a Resolution: 1) authorizing the City Manager, or City Manager's designee, to execute a Memorandum of Understanding between the City of Sacramento and Twin Rivers Unified School District for Smythe Softball Fields; 2) establishing a new Capital Improvement Program (CIP) for the Smythe Academy of Arts and Sciences Softball Fields Renovation (L19271000) project; and 3) appropriating \$607,250 from the South Natomas Community Infrastructure Fund Contingency (SNCIF) to L19271000.

**Contact:** Mary de Beauvieres, Principal Planner, (916) 808-8722; J.P. Tindell, Park Planning and Development Manager, (916)-808-1955, Department of Parks and Recreation

**Presenter:** Not applicable.

**Department:** Parks & Recreation Department

**Division:** Park Development Services

**Dept ID:** 19001121

**Attachments:**

- 1-Description/Analysis
- 2-Background
- 3-Site Map
- 4-Resolution
- 5-Exhibit A (MOU)

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**City Attorney Review**

Approved as to Form  
Sheryl Patterson  
2/28/2013 9:17:36 AM

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**City Treasurer Review**

Reviewed for Impact on Cash and Debt  
Janelle Gray  
1/29/2013 10:57:56 AM

**Approvals/Acknowledgements**

Department Director or Designee: Jim Combs - 2/27/2013 11:31:53 AM



## Description/Analysis

**Issue:** The Smythe Academy of Arts and Sciences (Smythe Academy) is an elementary school (kindergarten through sixth grade) that is owned and operated by the Twin Rivers Unified School District (District). Smythe Academy is located at 2781 Northgate Boulevard in the South Natomas Community Plan Area (CPA9). Smythe Academy has six softball fields that were developed with assistance from the Natomas Girls Softball (NGS) organization. The fields are used by Smythe Academy students during school hours and by NGS teams after school hours. The fields are in poor condition and in need of renovation.

In 2002, the City of Sacramento (City) established the South Natomas Community Infrastructure Fund (SNCIF), Fund 2020, from June bond proceeds for capital improvement projects in the South Natomas Community Plan Area. The NGS and District have requested, and City has agreed to pledge, \$607,250 in SNCIF funds to the District to be used for the softball field renovation project. The renovated softball fields would serve South Natomas residents, which includes students at Smythe Academy and members of the NGS teams. Public access would be allowed only during non-school hours due to security concerns and disruption to school operations.

The District has no available funding to assist in the project's cost. While the SNCIF funds may not be sufficient to cover all of the project costs, the District will work with NGS to find additional funding and/or donated labor to complete the project, in the event the City's contribution is insufficient to cover all of the project costs.

Attached is the Memorandum of Understanding (MOU) between the City and the District outlining the terms and conditions for the Smythe Academy Softball Fields Renovation project. Per the terms and conditions of the MOU, the District will be responsible for the design, construction, operation and maintenance after renovation of the softball fields at Smythe Academy.

**Policy Considerations:** Funds in the South Natomas Community Infrastructure Fund (SNCIF), Fund 2020, may be used for capital improvement projects located within the South Natomas Community Plan Area (CPA9). Any use of SNCIF funds requires City Council approval.

Title IX is a federal law that requires gender equity for female sports programs that are operated by government-funded institutions. In 2004, the California State Legislature passed AB 2404, also known as the Gender Equity for Community Athletics bill, prohibiting local governments or special districts from discriminating against any person on the basis of sex or gender in the operation, conduct or administration of community athletic programs and activities, or in the allocation of parks and recreation facilities and resources that

support or enable these programs. AB 2404 became effective on January 1, 2005; local governments and special districts have until 2015 to comply.

On March 27, 2012, the City Council approved a Memorandum of Understanding (Agreement 2012-0280) for use of \$1.3 million in SNCIF monies to improve seven baseball fields at Rio Tierra Junior High School in the Twin Rivers Unified School District. The Rio Tierra fields are used by Rio Tierra students during school hours and by Natomas Youth Baseball teams, which are comprised primarily of boys, and the public after school hours. That project is currently underway. The provision of SNCIF monies to improve softball fields at Smythe Academy for use by Natomas Girls Softball complies with the law on gender equity.

The recommended actions require City Council approval per City Council Resolution 2012-185, Sections 4.1 and 10.2.

- 4.1 All appropriation changes (increases or decreases) in excess of \$100,000 to operating and capital budgets shall be approved by the City Council by resolution.
- 10.2 City Council approval is required for the establishment and/or cancellation (without completion) of a CIP.

**Economic Impacts:** These funds will contribute to the generation of part-time project related construction jobs in the City.

**Commission/Committee Action:** Not applicable.

**Environmental Considerations:**

**California Environmental Quality Act (CEQA):** The Environmental Services Manager has determined that the proposed project is exempt from CEQA under Section Numbers 15302(c) and 15303(e) of the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.). Exemption 15302(c) consists of replacement of existing facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination; and, Exemption 15303 (e) consists of construction of accessory structures. The fields will be renovated with no lighting added or bleachers installed that could increase capacity or generate additional noise or traffic.

**Sustainability Considerations:** Not applicable.

**Rationale for Recommendation:** This Memorandum of Understanding between the City and District would help facilitate the renovation of softball fields at Smythe Academy to serve the residents of South Natomas and Natomas Girls Softball.

**Financial Considerations:** Staff is asking for the City Council to authorize the City Manager, or City Manager's designee, to execute the MOU, establish a new capital improvement project for the Smythe Academy Softball Fields Renovation project, and appropriate \$607,250 in SNCIF funds to the project. The South Natomas Community Infrastructure Fund was established from June 2002 bond proceeds and the funds are available for use in the South Natomas Community Plan Area (CPA9) for capital improvement projects.

The City has agreed to contribute \$607,250 in SNCIF funds towards the cost of the Smythe Academy Softball Field Renovation project. The District has no available funding to assist in the project costs, but it will work with the Natomas Girls Softball organization to seek additional funding and donated labor to complete the project in the event the City's contribution does not cover all project costs. Per the MOU, the District agrees to maintain the fields upon completion of the project. Construction documents would be prepared during 2013 and construction would occur during early 2014 with completion no later than June 30, 2014. The SNCIF funds would be managed by the City with the District submitting for reimbursement copies of paid invoices for completed work.

**Emerging Small Business Development (ESBD):** No goods or services are being purchased as a result of this report.

## Background

Twin Rivers Unified School District (District) owns and operates the Smythe Academy of Arts and Sciences School located at 2781 Northgate Boulevard (Assessor Parcel Number 262-0202-025). The school is located on approximately 10.6 acres in the South Natomas Community Plan Area (CPA9) within the City of Sacramento. Smythe Academy serves students in the kindergarten through 6<sup>th</sup> grades.

Smythe Academy currently has six softball fields which were developed with assistance from Natomas Girls Softball (NGS). The fields are used by Smythe Academy students during school hours and by NGS teams after school hours. The softball fields are in poor condition and need to be renovated. The City desires to provide South Natomas Community Infrastructure Fund (SNCIF) funding to the District to improve the existing softball fields. The renovated fields would serve residents within South Natomas, which includes students at Smythe Academy and members of NGS teams. Public access would be prohibited during school hours due to security concerns and disruption to school operations.

The District has limited resources to maintain the softball fields so the District will work with the NGS organization to maintain the fields at Smythe Academy in consideration for obtaining first priority for use of the fields after school hours and on weekends by NGS teams. The City will have no maintenance responsibility for these fields.

The project scope includes soft costs, new grading, paving, domestic water, erosion control, and installation of landscaping and new irrigation systems. The District will prepare a Master Plan for the project to determine the scope of work and an estimate of the project costs, develop a project budget, and prepare the plans and specifications. The Master Plan, project costs, project budget, and the plans and specifications shall be subject to review and approval by the City's Parks and Recreation Director or a designee.





## **RESOLUTION NO. 2013-**

Adopted by the Sacramento City Council

### **APPROVING FUNDING FOR THE SMYTHE ACADEMY OF ARTS AND SCIENCES SOFTBALL FIELDS RENOVATION PROJECT (L19271000)**

#### **BACKGROUND**

- A. The South Natomas Community Infrastructure Fund (SNCIF), Fund 2020, is available for use for City capital improvement projects in the South Natomas Community Plan Area (CPA9).
- B. Twin Rivers Unified School District (District) owns and operates the Smythe Academy of Arts and Sciences Elementary School located at 2781 Northgate Boulevard (Assessor Parcel Number 262-0202-025). Smythe Academy currently has six softball fields which were developed with assistance from Natomas Girls Softball (NGS). The fields are used by Smythe Academy students during school hours and by NGS teams after school hours. The softball fields are in poor condition and need to be renovated.
- C. The Twin Rivers School District and Natomas Girls Softball have requested, and the City has agreed to provide, \$607,250 from the SNCIF to improve the existing softball fields subject to the terms of a Memorandum of Understanding between the City and the District. The renovated fields would serve residents within South Natomas, which include students at Smythe Academy and members of NGS teams. Public access to the fields would be limited to after school hours and weekends due to school security and operations concerns.
- D. The Environmental Services Manager has determined that the proposed project is exempt from CEQA under Section Numbers 15302(c) and 15303(e) of the CEQA Guidelines (Title 14 Cal. Code Reg. § 15000 et seq.). Exemption 15302(c) consists of replacement of existing facilities involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination; and, Exemption 15303 (e) consists of construction of accessory structures. The softball field renovations do not include the installation of lighting or bleachers.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager, or City Manager's designee, is authorized to execute a Memorandum of Understanding between the City of Sacramento and the Twin

Rivers Unified School District allocating funding to the Smythe Academy of Arts and Sciences Softball Fields Renovation project.

Section 2. A new Capital Improvement Program (CIP) is established for the Smythe Academy Softball Fields Renovation project as L19271000.

Section 3. That \$607,250 is appropriated from the South Natomas Community Infrastructure Fund Contingency (SNCIF), Fund 2020, to the Smythe Academy Softball Fields Renovation project (L19271000).

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Exhibit A – Memorandum of Understanding for Smythe Softball Fields



## MEMORANDUM OF UNDERSTANDING FOR SMYTHE SOFTBALL FIELDS

This MEMORANDUM OF UNDERSTANDING (“Agreement”) is made and entered into as of \_\_\_\_\_, 2013 (“Effective Date”) by and between the CITY OF SACRAMENTO, a municipal corporation (“CITY”), the TWIN RIVERS UNIFIED SCHOOL DISTRICT, a school district of the State of California (“DISTRICT”), which are collectively and individually referred to as “Parties or “Party as the context requires.

### RECITALS

A. Smythe Academy of Arts and Sciences (K-6<sup>th</sup>) - DISTRICT owns and operates the Smythe Academy of Arts and Sciences (K-6<sup>th</sup>) (“Smythe”) located at 2781 Northgate Blvd., Sacramento, California, 95833 (Assessor Parcel Number 262-0202-025), on approximately 10.6 acres of land located in the community of South Natomas within the City of Sacramento. Smythe serves students from kindergarten through 6<sup>th</sup> grade.

B. Bond Funds - The South Natomas Community Infrastructure Fund (“SNCIF”) was established from the June 2002 bond proceeds and the funds are available for use in the South Natomas Community Plan Area for capital improvement projects.

C. Natomas Baseball Complex - In April of 2007, CITY entered into a Memorandum of Understanding (“MOU”) and a Lease Agreement with Natomas Youth Baseball (“NYB”) to provide SNCIF funds for the construction of the Natomas Baseball Complex on CITY property in South Natomas referred to as “Opus Fields.” Due to the inability to secure additional funding for development of this complex, the MOU expired and the CITY and NYB mutually agreed to terminate the Lease Agreement.

D. Smythe Fields – Smythe currently has six softball fields which were developed with assistance from Natomas Girls Softball (NGS). These fields are used by Smythe students during school hours and by NGS teams after school hours. These fields are in poor condition and need to be renovated. CITY desires to provide SNCIF funding to DISTRICT for its use in improving these existing playfields (the “Smythe Softball Field Project” or “Project”). The renovated softball fields would serve residents within South Natomas, which includes students at Smythe and members of NGS teams; however, public access would be prohibited during school hours due to security concerns and disruption to school operations.

E. Project Costs - CITY has \$ 607,250 in SNCIF funds to pledge towards the cost of the Smythe Softball Field Project. This amount of funding may not be sufficient to cover all of the soft costs (design and project oversight) and the hard costs (construction) for such Project. DISTRICT has no funding available to assist in the costs of this Project. DISTRICT will work with NGS to seek additional funding and donated labor to complete the Project if the CITY’s contribution is insufficient to cover all of the Project costs. See attached Exhibit A, Schematic Cost Estimate.

F. Project Schedule - The schedule for undertaking this Project is uncertain because the scope of work has not yet been fully defined, the improvement plans and specifications need to be

prepared, and the construction work may not occur during the school hours because of student safety concerns and the disruption to school operations. The Project Schedule shall be attached to this Agreement as Exhibit C when it has been accepted by both Parties and is available in final form.

G. Field Maintenance - DISTRICT has limited resources to maintain the softball fields. DISTRICT will work together with NGS to maintain the fields at Smythe in consideration for obtaining first priority for use of the fields after school hours and on weekends by NGS teams.

H. State Law - Education Code section 10900 *et seq.*, authorizes and empowers cities and public school districts to cooperate with one another and with community nonprofit organizations for purposes of authorizing, organizing, promoting and conducting programs of community recreation to contribute the attainment of general educational and recreational objectives for children and adults of the State of California and to enter into agreements with such parties for such purposes.

NOW, THEREFORE, in consideration of the Recitals and the mutual commitments as hereinafter set forth, the Parties enter into this Agreement for the purpose of establishing each Party's rights and obligations with regard to the development, maintenance and use of the renovated baseball fields at Smythe Academy of Arts and Sciences as follows:

1. PROJECT SITE AND DESCRIPTION

DISTRICT has six (6) softball fields at its Smythe school property, as depicted in Exhibit B which is attached and incorporated herein by this reference (the "Project Site"). The Project scope for renovation of these fields would include: new grading for drainage, paving, domestic water, erosion control, landscape and new irrigation systems.

2. PREPARATION OF PLANS AND BUDGET

DISTRICT shall prepare conceptual design plans (the "Master Plan") for the Project to determine the scope of work in order to estimate the Project Costs, develop a Project Budget, and prepare the Plans and Specifications, as defined below. The Master Plan, Project Costs, Project Budget, and the Plans and Specifications shall be subject to review and approval by CITY's Director of Parks and Recreation or the Director's designee.

A. "Project Costs" shall mean and include those costs associated with contracts for the following services, as applicable to this Project:

- Project Construction
- Third Party Services
- Professional Services
- Plan Check Fees
- Inspections & Permitting
- Environmental Studies/Documentation
- Engineering Estimates

- CITY Project Administration
- Governmental Agency Fees

Project costs shall NOT mean or include costs for removal or relocation of any structure or portable building which may be located on the Project Site.

- B. “Project Budget” shall mean the Project Costs and the allocation of the CITY Grant (as defined below) and NGS’s donation of funds, materials and/or volunteer services, if any, for such costs. DISTRICT shall contribute the following in-kind services: preparation of the Master Plan and Project Budget, Project management, and use of DISTRICT’s land, maintenance, repair and control of the Project Site. The sources and uses of all funds pledged by CITY, DISTRICT and NGS towards the Project Costs shall be set out in the Project Budget. If the Project Costs will exceed the CITY Grant and all other available revenues, donations and in-kind services, then the Parties shall meet to determine whether there are any additional funds and/or if the scope of the Project can be modified as may be necessary so that construction of the Project can proceed. The final Project Budget shall be subject to review and approval by CITY before DISTRICT commences with the preparation of the Plans and Specifications.
- C. “Plans and Specifications” shall mean the construction drawings, technical specifications and contract provisions necessary for undertaking the work to construct the Project. The Plans and Specifications shall include all requirements applicable to DISTRICT for construction of the Project pertaining to improvement of public school property, including approvals by the Division of the State Architect, as well as all other applicable laws and regulations including, without limitation, the payment of prevailing wages, performance and payment bonds, compliance with the applicable provisions of the Americans With Disabilities Act, nondiscrimination in employment and contracting, insurance and indemnity provisions, and warranty obligations. The Plans and Specifications shall be subject to review and approval by CITY before DISTRICT issues the notice for invitation of construction bids.

### 3. CITY GRANT AND PAYMENTS

CITY agrees to provide funding (the “Grant”) in an amount not to exceed Six Hundred Seven Thousand Two Hundred and Fifty Dollars (\$607,250) to DISTRICT for the Project Costs. After CITY approval of the Master Plan and Project Budget and a determination that there are sufficient funds, donations and in-kind services to cover the Project Costs, CITY will disburse the Grant funds to the DISTRICT for the actual costs incurred by DISTRICT for the Project Costs on a cost reimbursement basis.

DISTRICT may invoice CITY not more frequently than once a month for the Project Costs incurred by DISTRICT. DISTRICT invoices shall include copies of all contracts, change orders, consultant invoices, contractor’s pay requests, labor compliance records, subcontractor invoices, permit fees, and other documentation as may be requested by CITY to verify the Project Costs incurred by DISTRICT. CITY shall make payment to DISTRICT within thirty (30) days from the date of CITY’s receipt of DISTRICT’s proper invoice.

4. PROJECT CONSTRUCTION

DISTRICT shall be responsible for entering into all contracts and any change orders and obtaining all required permits and approvals for the construction of the Project. In addition DISTRICT shall be responsible for coordination with NGS for the donation of any materials and volunteer labor for the Project construction. DISTRICT shall award the construction contract to the lowest responsive and responsible bidder. All work shall be performed in a good and workman-like manner, shall substantially comply with the approved Plans and Specifications, and shall comply with all applicable governmental permits, laws, ordinances, and regulations. CITY shall be permitted to inspect the construction work after providing prior notice to DISTRICT to verify compliance of the work with the approved Plans and Specifications.

5. PROJECT COMPLETION AND MAINTENANCE

Project construction must be completed, and all payments owed by CITY to DISTRICT must be invoiced by, no later than June 30, 2014. This date may be extended upon the mutual agreement of the Parties as evidenced in writing if DISTRICT is using all reasonable efforts to undertake and complete the Project construction work and additional time is needed to complete the work and submit invoices for payment.

6. PROPERTY OWNERSHIP AND CONTROL

This Agreement does not transfer or convey to the CITY any right, title, or interest in the Project Site. Nor does this Agreement create in the City any right, title or interest in any improvements constructed or installed on the Project Site in connection with the Project. The DISTRICT shall be solely responsible for the improvement, maintenance, repair, and control of the Project Site.

7. MAINTENANCE AND PUBLIC ACCESS

Upon completion of the Project, DISTRICT shall arrange for maintenance of the softball fields with NGS by the application of periodic seeding, fertilizer, and mowing once a month and maintaining the bases and pitcher's mound in good condition. DISTRICT will retain responsibility for irrigation and fence maintenance and mowing once a month during the school year. CITY shall have no responsibility for maintenance of the fields after the Project is completed.

Upon completion of the Project, the softball fields must be available for use by the general public as a recreation facility and open from dawn to dusk outside of normal Smythe school hours for a period of not less than ten (10) years. DISTRICT may provide NGS with the first right to reserve the fields for use by its teams for scheduled baseball games and practices so long as NGS assists DISTRICT in maintaining the fields as provided for in this Agreement. The provisions of this Section 7 shall survive the earlier termination of this Agreement after Project completion and shall be binding on the DISTRICT's lessees, assigns and successor entities and owners of the Project Site.

8. NAYLOR ACT WAIVER

CITY acknowledges that the DISTRICT develops and updates its Facilities Master Plan and the DISTRICT's future use of the Project Site could involve the sale of all or portions of the Project Site. CITY agrees that by entering into this Agreement, the DISTRICT does not intend to create future Naylor Act (Ref. California Education Code Sections 17485-17500) issues regarding CITY's right to acquire this parcel if the DISTRICT determines that it is surplus property. DISTRICT is willing to enter into this Agreement with CITY for community use of the Project Site under the express understanding that this Agreement will not create Naylor Act issues for the DISTRICT. Therefore, in consideration of DISTRICT's willingness to make its property available for public use under this Agreement and DISTRICT's agreement that the Project Site will be available for use by the general public for 10 years after Project completion, CITY hereby waives until June 30, 2024 any rights in the Project Site that may arise in the future under the Naylor Act.

9. MAINTENANCE AND INSPECTION OF RECORDS

During performance of this Agreement, and for a period of three (3) years after completing the Project construction, DISTRICT shall maintain all accounting and financial records related to the Project and this Agreement and shall keep and make such records available for inspection and audit by representatives of the CITY upon reasonable written notice.

10. INDEMNITY

To the fullest extent allowed by law, DISTRICT shall assume the defense of and indemnify and hold harmless CITY from and against all actions or claims against CITY, its directors, officers, agents and employees from any and all loss, including attorneys' fees, sustained by the CITY by virtue of any damages to any person, firm or corporation arising from the design, construction or use of the Project, except as to those responsibilities of the CITY arising from its sole and separate statutory and/or regulatory obligations to generally inspect or approve construction at the Project Site that would exist regardless of this funding agreement. The existence or acceptance by CITY of any of the insurance coverages described in this Agreement shall not affect or limit any of the CITY's rights under this Section, nor shall the limits of such insurance limit the liability of DISTRICT hereunder. The provisions of this Section 10 shall survive any expiration or termination of this Agreement.

11. INSURANCE

DISTRICT maintains property, liability (general liability, products liability, professional liability, automobile liability, and employment practices liability) and worker's compensation indemnity protection through Schools Insurance Authority, a California Joint Powers Authority. To the fullest extent of the DISTRICT's indemnity obligation, CITY, its directors, officers and employees, will be named as "additional covered members" under the Memorandum of Coverage with respect to claims arising from the design, construction or use of the Project, with such coverage provided on a continuing basis for the period of required community availability of the Project once completed, with a limit of liability of at least \$5 million per occurrence and in the aggregate, with such

indemnity protection further provided to the additional covered members on a “primary” basis. DISTRICT will also cause any professional services or construction agreement entered into by the DISTRICT with respect to the design or construction of the Project to include indemnity and “additional insured” coverage provisions running in favor of both the DISTRICT and the CITY, and their respective directors, officers, and employees.

12. INDEPENDENT CONTRACTORS

Each Party may assign employee(s) and volunteers to perform services to meet their respective obligations under this Agreement at their exclusive discretion and the services of such assigned employees and volunteers shall be at the sole expense of that Party. The assigned employees and volunteers personnel of each Party shall not be entitled to any benefits payable to employees of the other Party.

Each Party shall be solely responsible for the quality and accuracy of the work and services of its employees and volunteers, and the work and services of any contractors and consultants it may contract with to perform its respective obligations under this Agreement. Any review, approval, or concurrence therewith of the work and services by any other Party shall not be deemed to constitute acceptance or waiver by the other Party of any error or omission as to such work or service.

Except as expressly provided in this Agreement, each Party shall be solely responsible for their costs and expenditures to meet their respective obligations under this Agreement. No Party shall be liable to another Party to pay any such costs or expenditures without the prior written agreement of the other Party. DISTRICT shall be solely liable to any other third parties with whom it enters into contracts to effectuate the purpose of this Agreement, shall pay directly such third parties for all amounts owed, and shall indemnify, defend and hold harmless CITY from any liability to such third parties. CITY’s only liability with respect to amount DISTRICT may owe to such third parties shall be to make payment to DISTRICT for the allowable Project Costs incurred by DISTRICT.

Nothing in this Agreement is intended to or will be construed to create any contractual or other relationship, whether expressed or implied, of joint power, joint venture, partnership, principal-agent, independent contractor, or master-servant. Each Party is independent from the other Party and no relationship of employer-employee exists between the Parties hereto for any purpose whatsoever. Except as expressly provided in this Agreement, no Party shall have the authority, express or implied, to (i) exercise control over the activities of any other Party, (ii) act on behalf of any other Party in any capacity whatsoever as an agent, nor (iii) bind any Party to any obligations whatsoever.

13. NO THIRD PARTY BENEFICIARIES

This Agreement is for the sole benefit of the Parties hereto, their respective successors and permitted assigns. Nothing set forth in this Agreement is intended to benefit or create any legal rights to any person not a party to this Agreement.

14. WAIVER

Neither CITY's approval of the Project, nor grant of CITY funds for the Project, nor any acceptance by the CITY of the performance of DISTRICT, its contractors, subcontractors or agents, and their respective officers and employees under this Agreement, nor any waiver by CITY of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder. No waiver of any provision of this Agreement, and no consent to departure there from, by any Party shall be effective unless in writing and signed by the waiving or consenting Party, and no such waiver or consent shall extend beyond the particular concern and purpose involved as set out in the written waiver.

15. ASSIGNMENT PROHIBITED

This Agreement may only be assigned with the written consent of the non-assigning Party. Any purported assignment without such consent shall be void and of no effect. This Agreement shall be binding on the successors and authorized assigns of the Parties.

16. BINDING EFFECT

This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the Parties, subject to the provisions of Section 15, above.

17. TIME OF ESSENCE

Time is expressly declared to be in the essence of this Agreement.

18. TERM, TERMINATION AND SURVIVORSHIP

A. Term: This Agreement shall become effective as of the date first set out above that it is approved and shall continue in effect until the completion of construction of the Project, unless sooner terminated as provided herein. If Project is not completed by date specified in Section 5 and no extension is granted, then this Agreement shall terminate as of that date.

B. Termination: Any Party shall have the right to terminate their participation in this Agreement at any time by giving a written notice of termination to the other Party and specifying the effective date of termination. If this Agreement is terminated, DISTRICT shall be entitled to reimbursement of Project Costs incurred prior the date of the notice of termination if DISTRICT delivers to CITY copies of all writings, documents or reports prepared pursuant to this Agreement for which reimbursement is requested.

C. Survivorship: Notwithstanding the expiration or termination of this Agreement, the obligations as specified in Sections 7, 8, 9, 10, 11, 12 and 13 shall continue with respect to the construction, use and maintenance of the Project Site, unless this Agreement is terminated prior to commencement of Project construction.

D. Termination of Maintenance and Use Covenant: The District may terminate its on-

going obligations with regard to the covenant for the maintenance and use of the Project Site for the 10 year period as set out in Section 7 of this Agreement. In that event, DISTRICT shall reimburse CITY for a portion of the Grant on a pro-rata basis based on the period of time that the Project Site (after Project completion) was made available for public use divided by the 10 year term of the covenant, then multiplied by the amount of the Grant funds actually received by DISTRICT. This refund shall be paid by DISTRICT to CITY within thirty (30) days from the date of DISTRICT's written notice of termination of the maintenance and use covenant.

19. DISPUTES

The Parties shall attempt to resolve any disputes they may have in good faith, beginning with the Party Representatives listed in Section 20. Should they be unable reach resolution, they shall refer the dispute to the chairs of their respective governing boards. Should they be unable to reach resolution, they shall refer the dispute to non-binding mediation before a mutually agreeable mediator. If the Parties are unable to agree upon the mediator, the Parties will request appointment of a mediator by the American Arbitration Association. Each Party shall pay its own costs and be responsible to pay one-half of the mediator's costs. If a Party is not satisfied with the result of the mediation process, it then may file suit in a court of competent jurisdiction in Sacramento County.

20. REPRESENTATIVES AND NOTICES

All notices and orders that may be given under this Agreement may be served by first class mail or in person to addresses listed below or such address as either Party may provide to the other Parties in writing. Service shall be deemed complete upon deposit in the mail or upon delivery. The representatives for the Parties with respect to this Agreement are:

For DISTRICT: Joe Williams, District Interim Superintendent  
Twin Rivers Unified School District  
Physical Address:  
5115 Dudley Blvd., Bay A  
McClellan, California 95652  
Telephone: (916) 566-1744  
Facsimile: (916) 566-1784  
  
U.S. Mail Address:  
3222 Winona Way  
North Highlands, California 95660

For CITY: James L. Combs, Director  
City of Sacramento  
Parks & Recreation Department  
915 "I" Street, 5<sup>th</sup> Floor  
Sacramento, California 95814  
Telephone: (916) 808-8526  
Facsimile: (916) 808-7643

21. GENERAL PROVISIONS

- A. Conflicts: In the event of a conflict between this Agreement and any other agreement or understanding executed by the Parties relating to the same subject matter, whether executed prior or subsequent to this Agreement, the terms of this Agreement shall prevail and be controlling unless such other agreement expressly provides that it supersedes this Agreement.
- B. Severability: If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
- C. Captions: The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope, meaning or intent of this Agreement.
- D. Counterparts: This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- E. Ambiguities: The Parties have each carefully reviewed this Agreement and have agreed to each term of this Agreement. No ambiguity shall be presumed to be construed against any Party.
- F. Governing Law: This Agreement is executed in and shall be construed and governed in accordance with the laws of the State of California.

22. ENTIRE AGREEMENT; MODIFICATION

This document contains the entire agreement between the Parties concerning the Project and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by the Parties.

23. AUTHORITY

Each of the signatories to this Agreement represents that he/she is authorized to sign the Agreement on behalf of such Party and that all approvals, resolutions and consents which must be obtained to bind such Party have been obtained. The signatories hereby confirm that no further approvals, acts or consents are required to bind such Party to this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

**TWIN RIVERS UNIFIED SCHOOL DISTRICT,**  
a California public school district

By: \_\_\_\_\_  
Joe Williams,  
District Interim Superintendent

TRUSD Board Approval Date: \_\_\_\_\_

**CITY OF SACRAMENTO,**  
a municipal corporation

By \_\_\_\_\_  
James L. Combs,  
Director, Parks and Recreation Department

ATTEST:

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

APPROVED AS TO FORM:

By \_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

**SCHEMATIC COST ESTIMATE**

**WARREN CONSULTING ENGINEERS, INC.**  
 1117 WINDFIELD WAY, SUITE 110  
 EL DORADO HILLS, CA 95762  
 (916) 985-1870

**PROJECT: Smythe**  
 PROJECT: NO: 2765.1  
 FILE NO: 2765.e03.xls  
 USED BY: AT

DATE: January 15, 2013

<b>PHASE 1</b>				
<b>DESCRIPTION</b>	<b>QNTY.</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
<b>GRADING</b>				\$ 80,000.00
<b>STORM DRAINAGE</b>				\$ 60,000.00
<b>PAVING</b>				\$ 15,000.00
<b>DOMESTIC WATER</b>				\$ 15,000.00
<b>EROSION CONTROL</b>				\$ 15,000.00
<b>LANDSCAPE AND IRRIGATION</b>				\$ 125,000.00
			<b>TOTAL</b>	<b>\$310,000.00</b>
			15% Contingency	\$46,500.00
			<b>PHASE 1 GRAND TOTAL</b>	<b>\$356,500.00</b>
<b>PHASE 2</b>				
<b>DESCRIPTION</b>	<b>QNTY.</b>	<b>UNIT</b>	<b>UNIT COST</b>	<b>TOTAL COST</b>
<b>GRADING</b>				\$ 60,000.00
<b>STORM DRAINAGE</b>				\$ 40,000.00
<b>PAVING</b>				\$ 10,000.00
<b>EROSION CONTROL</b>				\$ 15,000.00
<b>LANDSCAPE AND IRRIGATION</b>				\$ 60,000.00
			<b>TOTAL</b>	<b>\$185,000.00</b>
			15% Contingency	\$27,750.00
			<b>PHASE 2 GRAND TOTAL</b>	<b>\$212,750.00</b>
<b>SOFT COST ESTIMATE</b>				
Engineering				\$17,000.00
Soils Testing				\$7,000.00
DSA plan check fees				\$2,500.00
DSA inspector				\$10,000.00
Bidding costs				\$1,500.00
			<b>Soft Cost Total</b>	<b>\$38,000.00</b>
			<b>GRAND TOTAL</b>	<b>\$607,250.00</b>

EXHIBIT B

