

Meeting Date: 2/18/2014

Report Type: Consent

Report ID: 2014-00117

Title: Lease Agreement: 4th "R" Child Care Program

Location: 5735 47th Avenue, District 6

Issue: The Parks and Recreation Department's 4th "R" Child Care Program has been leasing office space since 2002 at the headquarters building of the Sacramento City Unified School District at 5735 47th Avenue. The current lease has expired and the lease has continued on a month-to-month basis and the 4th "R" Child Care Program has negotiated a new five-year lease. The lease may be terminated with six months' notice. Staff recommends that City Council approve and authorize the execution of the new lease through June 30, 2018. No General Fund support is required.

Recommendation: Pass a Motion 1) authorizing the City Manager or City Manager's designee to execute a five-year lease with Sacramento City Unified School District for office space for the 4th "R" Child Care Program at 5735 47th Avenue in a total amount of \$433,496; and 2) authorizing the City Manager or City Manager's designee to execute such additional documents and to take such additional actions as necessary to implement the lease.

Contact: Elizabeth Anderson, Operations Manager, (916) 808-6076; Alan Tomiyama, Recreation Manager, (916) 808-8958, Department of Parks and Recreation

Presenter: None

Department: Parks & Recreation Department

Division: 4th R

Dept ID: 19001621

Attachments:

1-Description/Analysis

2-Background

3-Agreement: Sacramento City Unified School District

City Attorney Review

Approved as to Form

Sheryl Patterson

2/4/2014 9:08:05 AM

City Treasurer Review

Reviewed for Impact on Cash and Debt

Russell Fehr

1/29/2014 12:53:50 PM

Approvals/Acknowledgements

Department Director or Designee: Jim Combs - 1/31/2014 12:26:06 PM

Description/Analysis

Issue Detail: The Parks and Recreation Department's 4th "R" Child Care Program has been leasing office space since 2002 at the headquarters building of the Sacramento City Unified School District at 5735 47th Avenue. The current lease has expired and the lease has continued on a month-to-month basis and the 4th "R" Child Care Program has negotiated a new five-year lease. The lease may be terminated with six months' notice. Staff recommends that City Council approve and authorize the execution of the new lease through June 30, 2018. No General Fund support is required.

Policy Considerations: The recommendation in this report will ensure the 4th "R" Child Care Program's ability to consistently provide school age child care through partnerships and collaborations to maximize facility utilization.

Economic Impacts: None

Environmental Considerations: This project is exempt from the California Environmental Quality Act (CEQA) under Section 15301(a) of the CEQA Guidelines. This Section addresses the lease of space within an existing public structure involving no expansion or renovation of an existing space.

Sustainability: The approval of the lease is not applicable to the goals, policies and targets of the Sustainability Master Plan or the 2030 General Plan.

Commission/Committee Action: None

Rationale for Recommendation: Since the 4th "R" Child Care Program began in 1986, its administrative operations have been housed in leased space. In 2002 the operations moved to the new headquarters building of the Sacramento City Unified School District. When the building was being designed, the school district requested that 4th "R" lease space in the building.

The 4th "R" program operates at 19 elementary schools, 11 of which are on Sacramento City Unified campuses. Being housed in the school district's headquarters building has helped facilitate a close working relationship with the school district, both for the 4th "R" program and for other Parks and Recreation programs. In addition, the school district has available space and has encouraged the City to continue its lease arrangements.

Financial Considerations: No General Fund dollars are used in the delivery or management of the 4th "R" program. Over the five-year term of the lease the maximum payment to the school district is \$433,496. The initial rental rate is \$1.45 per square foot, for which the school district provides all utilities, maintenance, repairs and janitorial services without pass-through to the City. The lease rate falls within market parameters for buildings of comparable size, condition and location. Funding will continue to come from the 4th "R" Fund (6012). The 4th "R" program is a fee-based, self-sufficient program. No new funds or fund appropriation is required.

Local Business Enterprise (LBE): LBE requirements are not applicable for leases.

Background

The 4th "R" administrative offices currently occupy 4,985 square feet at this location.

With rent increases beginning in the third year, the monthly rate would increase from \$1.45 to \$1.64 per square foot over the five years. The maximum rent that could be paid under the proposed lease is \$433,496 for the five-year term.

**LEASE AGREEMENT BETWEEN
THE SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
AND THE CITY OF SACRAMENTO
(Serna Education Center, 5735 47th Avenue)**

This lease, dated _____, 2014, is between the Sacramento City Unified School District, a political subdivision of the State of California, hereinafter referred to as "Lessor," and the City of Sacramento, a municipal corporation, hereinafter referred to as "Lessee."

RECITALS

- A. Lessor is the owner in fee simple and entitled to possession of that certain real property situated at 5735 47th Avenue in the City of Sacramento, and
- B. Lessee desires to lease a portion of the building comprised of 4,985 square feet office space for five (5) years. Office space may be a combination of private offices and cubicle space. Lessee intends to use the leased premises as administrative offices for its 4th "R" School-Age Child Care program.

AGREEMENTS

Section 1. Demise and description of property: Lessor hereby leases to Lessee and hereby hires from Lessor, on and subject to all terms, covenants, and conditions hereinafter set forth, 5,885 square feet of office space in a portion of the building located at 5735 47th Avenue, Sacramento, California. Said portion of 5735 47th Avenue is hereinafter referred to as the "Premises," which is depicted in Exhibit "A" and incorporated into this Agreement.

Section 2. Quiet possession: Lessor agrees to and shall on the commencement date of the term of this Lease as hereinafter set forth, place Lessee in quiet possession of the Premises and shall secure it in the quiet possession thereof against all persons lawfully claiming the same during the entire Lease period.

Section 3. Term: The term of this Lease shall be for a period of five (5) years, hereinafter called the "Lease Term" commencing on November 1, 2013, and terminating on June 30, 2018, unless otherwise sooner terminated in accordance with the provisions of this lease. Either party may terminate this Lease prior to the expiration date by providing at least six (6) months' written notice to the other party.

Section 4. Negotiation of a Successor Lease: If six (6) months prior to the expiration of this Lease, Lessor determines, in its sole discretion, that it will not need to use the Premises for its own purposes, Lessor and Lessee may enter into negotiations for a successor lease. If the parties have not reached agreement on a successor lease at least three (3) months prior to expiration of this Lease, the Lease shall terminate at the end of its term and Lessor shall have no further obligation to negotiate a successor lease with Lessee.

Section 5. Rent: Lessee agrees to and shall pay to Lessor at 5735 47th Avenue, Sacramento, CA, 95824 or at such other place as Lessor shall from time to time in writing designate, as rent for the Premises, the amount set forth below for the applicable period:

Period	Square Feet	Rate Per Sq Ft	Lease Per Month	Lease Per Year
Nov. 1, 13 to Jun. 30, 14	4,985	\$1.45	\$7,228.25	\$57,826.00
Jul. 1, 14 to Jun 30, 15	4,985	\$1.45	\$7,228.25	\$86,739.00
Jul. 1, 15 to Jun 30, 16	4,985	\$1.58	\$7,876.30	\$94,515.60
Jul. 1, 16 to Jun 30, 17	4,985	\$1.61	\$8,025.85	\$96,310.20
Jul. 1, 17 to Jun 30, 18	4,985	\$1.64	\$8,175.40	\$98,104.80
Total over five years				\$433,495.60

Rent shall be due on the first (1st) day of the month. Rent will be calculated at the current rate times the number of square feet for that month. Lessor agrees to send a billing to Lessee on or before the fifteenth (15th) day of each month during the term of this Lease indicating the amount due for the next succeeding month. This billing shall be mailed to Lessee at the following address:

4th "R" School-Age Child Care
 City of Sacramento
 5735 47th Avenue
 Sacramento, CA 95824
 Attn: Alan Tomiyama

Section 6. Utilities, maintenance, taxes and assessments: Lessor shall provide the Premises with hot and cold water, heat, air conditioning, ventilation, gas and light, with no additional rental or cost to Lessee, except as set forth below. Additionally, during the term of this Lease, all costs of ownership, management, operation, maintenance, cleaning and repair of the Premises, including standard janitorial service, shall be the responsibility of Lessor. Lessor shall pay for or otherwise arrange for the payment of all costs and expenses required to perform its obligations hereunder. Lessor shall pay all real property taxes, special taxes and assessments on or attributable to the Premises, if applicable. Lessee shall during the term hereof pay all charges for telephones and computers, including installation charges, used in or on the Premises.

Section 7. Use of premises: The Premises shall be used for the purpose of providing offices for 4th R School-Age Child Care administrative staff of the City of Sacramento and for uses normally incident thereto and for no other purpose without the prior consent of the Lessor.

Section 8. Signage: Lessor shall provide signage for the Premises which will be the standard signage used throughout the facility.

Section 9. Waste, nuisance, unlawful use prohibited: Lessee shall not commit, or suffer to be committed, any waste on the Premises, nor shall it maintain, commit, or permit the maintenance or commission of any nuisance on the Premises or use the Premises for any unlawful purpose.

Section 10. Lessor's and Lessee's duties to repair: Lessor shall put the Premises into the condition fit for Lessee's occupation by the commencement of this Lease, and shall repair all subsequent dilapidations thereof which may render them untenable, except that Lessee shall repair all deteriorations or injuries to the Premises occasioned by its want of ordinary care or greater degree of culpability.

Section 11. Untenability: "Untenable" within the context of Section 10 means that the premises substantially lack any one or more of the following affirmative standard characteristics:

- (a) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors.
- (b) Plumbing facilities which conform to applicable law in effect at the time of installation, maintained in good working order.
- (c) A water supply approved under applicable law, which is under the control of Lessee, capable of producing hot and cold running water, or a system which is under the control of Lessor, which produces hot and cold running water, furnished to appropriate fixtures and connected to a sewage disposal system approved under applicable law.
- (d) Heating and cooling facilities which conform to applicable law at the time of installation, maintained in good working order.
- (e) Electrical lighting, with wiring and electrical equipment which conform to applicable law at the time of installation, maintained in good working order, and capable of supporting in a reasonable manner, Lessee's electronic and related equipment.
- (f) Building, grounds, and appurtenances at the time of the commencement of the Lease in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin, and all areas under control of Lessor kept in every part clean, sanitary, and free from all accumulations of debris, filth, rubbish, garbage, rodents, and vermin.
- (g) Lessor shall provide appropriate serviceable trash receptacles and be responsible for the clean condition and good repair of such receptacles under its control.
- (h) Floors, stairways and railings maintained in good repair.
- (i) Elevator(s) maintained in good repair and operating order at all times except for down time required for routine maintenance required by law.

Section 12. Destruction of premises:

- (a) In the event of a total destruction of the Premises, this Lease shall terminate and the parties hereto shall thereafter be released from all obligations thereafter accruing hereunder, provided, however, that Lessee shall be liable to Lessor for all damages resulting from such destruction caused by Lessee's want of ordinary care or the want of ordinary care of his agents, servants, or employees. As used herein, "total destruction" means any destruction reasonably requiring more than ninety (90) days to repair.
- (b) In the event of a partial destruction of the Premises, Lessor agrees to and shall, at its sole cost and expense, forthwith on receiving written notice from Lessee to do so, rebuild or restore to the condition the Premises were in immediately prior to the partial destruction, provided, however, that Lessee shall be liable to Lessor for all damages resulting from such partial destruction caused by Lessee's want of ordinary care or the want of ordinary care of its agents, servants, or employees. As used herein "partial destruction" is any destruction other than a total destruction as hereinbefore defined. Lessee shall not be liable for any rent hereunder from the time of such destruction until the Premises are restored by Lessor as herein provided and rent accruing during such period shall be deducted from the total rent herein reserved. Such rent shall be calculated on the basis of a thirty (30) day month. In the event that Lessee should continue to use the Premises after such destruction during the period of restoration by Lessor, it shall be liable only for a proportion of the rent reserved during such period to be based on the extent to which the destruction and restoration interfere with the business carried on by it on the Premises, as mutually determined by Lessor and Lessee. Lessor shall not be obligated to replace any of Lessee's personal property which may be damaged or destroyed.

Section 13. Alterations, fixtures and improvements:

- (a) Lessee shall not make any structural or exterior alterations to the Premises without the written consent of Lessor to do so. Lessee at its cost shall have the right to make, with prior written consent of Lessor, nonstructural alterations to the interior of the Premises that Lessee requires in order to conduct its business on the Premises. In making any alterations that Lessee has a right to make, Lessee shall comply with the following:
 - (1) Lessee shall submit reasonably detailed final plans and specifications and working drawings of the proposed alterations and the name of its contractor at least fifteen (15) business days before the date it intends to commence the alterations.
 - (2) The alterations shall not be commenced until two (2) business days after Lessor has received notice from Lessee stating the date the installation of the alterations is to commence so that Lessor can post and record an appropriate notice of non-responsibility.

- (3) The alterations shall be approved by all appropriate government agencies, and all applicable permits and authorizations shall be obtained before commencement of the alterations.
 - (4) All alterations shall be completed with due diligence in compliance with the plans and specifications and working drawings and all applicable laws, including, but not limited to, the Americans with Disabilities Act.
 - (5) Non-discrimination. Lessee, in performing under this Lease, shall not discriminate against any qualified worker, employee, or applicant, vendor or vendee or any member of the public, because of disability, race, creed, color, religion, age, sex or national origin, nor otherwise commit an unfair employment practice. Lessee agrees that such a non-discrimination clause shall be incorporated into all contracts entered into with suppliers of materials or services, contractors or sub-contractors, and all labor organizations furnishing skilled, un-skilled and craft-union skilled labor, or any others who may perform any such labor or services in connection with this Lease.
- (b) All alterations, improvements, additions, or fixtures, other than trade fixtures not permanently affixed to realty, which may be made or installed upon the Premises by either of the parties and that in any manner are attached to the floors, walls, or ceilings, shall be the property of Lessor, and at the termination of this Lease, shall remain upon and be surrendered with the Premises as part of the Premises, without disturbance, molestation, or injury; provided, however, Lessee may remove trade fixtures, if Lessee repairs any damage to the Premises caused by such removal. However, Lessor can elect within thirty (30) days before expiration of the Lease Term, to require Lessee to remove any alterations that Lessee has made to the Premises. If Lessor so elects, Lessee at its sole cost shall restore the Premises to the condition as it existed at the commencement of the Lease Term or as it later existed as of the conclusion of the Lessor's alterations made in accordance with Section 13 (a) of this Lease, usual wear and tear excepted, or as otherwise permitted or required by this Lease, and except for reasonable use and wear, before the last day of the Lease Term. However, any floor covering that may be cemented or otherwise affixed to the floor of the Premises shall be and become the property of Lessor.

Section 14. Hazardous Materials: Lessee shall not keep or maintain any Hazardous Substances, other than ordinary cleaning supplies and waste, on or in the Premises without Lessor's prior written approval. Lessee shall promptly give notice to Lessor of any Hazardous Substance dispersal or spill, or Hazardous Materials claim, of which it is aware. Lessee shall indemnify and hold Lessor harmless from any and all claims, costs, damages, penalties or liabilities arising out of Lessee's use or release of any Hazardous Substances at, in or on the Premises. The term "Hazardous Substance" as used in this Lease shall mean any products, substances, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the premises, is either (a) potentially injurious to the public health, safety or welfare and environment of the premises, (b) regulated or monitored by any governmental

authority, or (c) a basis for liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include, but not be limited to, hydrocarbons, MTBE, petroleum, gasoline, crude oil, or any products, by-products, or fractions thereof.

Section 15. Indemnification: Lessor and Lessee have previously entered into an Indemnification and Insurance Agreement for joint use of facilities. This Agreement is incorporated by reference herein as Exhibit B. In the event that Exhibit B ceases to be in effect for any reason during the Lease Term, the parties agree to continue to abide by its terms and conditions.

Section 16. Assignment and subletting: Lessee shall neither assign this Lease nor sublet the Premises without first obtaining the written consent of Lessor to do so, provided, however, that Lessor shall not arbitrarily or unreasonably refuse to grant consent to such assignment or subletting, and provided further that consent to one assignment or subletting by Lessor shall not be deemed a consent to any subsequent assignment or subletting. Any assignment or subletting without the consent of Lessor shall be void and shall, at the option of Lessor, terminate this Lease. There shall be no assignment or subletting to a for-profit entity or organization.

Section 17. Lessee's Default: The occurrence of any of the following shall constitute a default by Lessee:

- (a) Failure to pay rent when due, if the failure continues for five (5) business days after notice has been given to Lessee.
- (b) Abandonment and vacation of the premises (failure to occupy and operate the premises for fifteen (15) consecutive business days shall be deemed an abandonment and vacation).
- (c) Failure to perform any other material provision of this Lease if the failure to perform is not cured within thirty (30) days after notice has been given to Lessee. If the default cannot reasonably be cured within thirty (30) days, Lessee shall not be in default of this lease if Lessee commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

Notices given under this paragraph shall specify the alleged default and the applicable Lease provision, and shall demand that Lessee perform the provisions of this Lease or pay the rent that is in arrears, as the case may be, within the applicable period of time, or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Lessor so elects in the notice. The purpose of the notice requirements set forth in this paragraph is to extend the notice requirements of the unlawful detainer statutes of California.

Section 18. Holding over: Should Lessee hold over the Premises after the term of this Lease, it will be a tenant by sufferance at a daily rental rate based on an amount twice the monthly rent paid by Lessee immediately prior to Lessee's hold over divided by 30 ("Holdover Rent").

Section 19. Notices: Any and all notices or demands by or from Lessor to Lessee, or Lessee to Lessor, shall be in writing. They shall be served either personally or by mail or by fax machine. If served personally, service shall be conclusive deemed made at the time of service. If served by mail, service shall be conclusive deemed made 48 hours after the deposit thereof in the United States Mail, postage prepaid, addressed to the party to whom such notice or demand is to be given. If served by fax machine, service shall be conclusive deemed made at the time the receiving party shall confirm to the sender delivery thereof.

Any notice or demand to Lessor may be given unto it at the following address:

Sacramento City Unified School District
Contracts Office
5735 47th Avenue
Sacramento, CA 95824

Any notice or demand to Lessee may be given unto it at the following address:

City of Sacramento
Department of Parks and Recreation
915 I Street, 5th Floor
Sacramento, CA 95814

Section 20. Attorney's fees: If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

Section 21. Severability: The unenforceability, invalidity or illegality of any provision of this Lease shall not render the other provisions unenforceable, invalid or illegal.

Section 22. Captions: The captions of this Lease shall have no effect in its interpretation.

Section 23. Entire agreement; California law: This Lease agreement contains the complete Agreement between Lessor and Lessee and no supplement, amendment, or other commitment will be binding unless in writing and signed by both parties. This Lease shall be construed and interpreted in accordance with the laws of the State of California.

Section 24. Waiver: The waiver by either party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or condition or any subsequent breach of the same or any other term, covenant, or condition contained herein.

Section 25. Entry by Lessor: Lessee shall permit Lessor and Lessor's agents to enter the Premises at all reasonable times for any of the following purposes: to inspect the Premises; to maintain the Premises; to make repairs to the Premises as Lessor is obligated to or may elect to make; to maintain, make repairs, alterations, or additions to any portion of the building in which the Premises are located; to post notices of nonresponsibility for alterations, additions or repairs undertaken by Lessee; to show the Premises to prospective Lessees during the final 180 days of the

Lease; to install, use and maintain pipes, ducts, conduits, wires, and appurtenant meters and equipment included in the Premises whether located within or without the Premises. Lessor may exercise this right of entry without any abatement of rent to Lessee for any loss of occupancy or quiet enjoyment of the Premises unless Lessor is negligent or acts with willful disregard of Lessee's business interest when making this entry.

Section 26. Americans with Disabilities Act: Lessor represents and warrants that Lessor is delivering the Premises free of violations of the Americans with Disabilities Act ("ADA").

Section 27. Mutual Drafting: This Lease shall be deemed to have been prepared by Lessor and Lessee. The Lease and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

Section 28. Execution in Counterparts: This Lease may be executed in counterparts so that signatures appear on separate signature pages. A copy, or an original, with all signatures appended together shall be deemed a fully executed Lease. Signatures transmitted by facsimile shall be deemed original signatures.

continued on next page

IN WITNESS WHEREOF, the parties have executed this Lease on the date set forth opposite their respective names:

**LESSOR: SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,
a political subdivision of the State of California**

Ken A. Forrest, Chief Business Officer Date _____

APPROVED AS TO FORM:

Counsel for Sacramento City Unified School District

**LESSEE: CITY OF SACRAMENTO,
a municipal corporation**

By: _____ Date: _____
Print Name: _____
Title: _____
For: John F. Shirey, City Manager

APPROVED AS TO FORM:



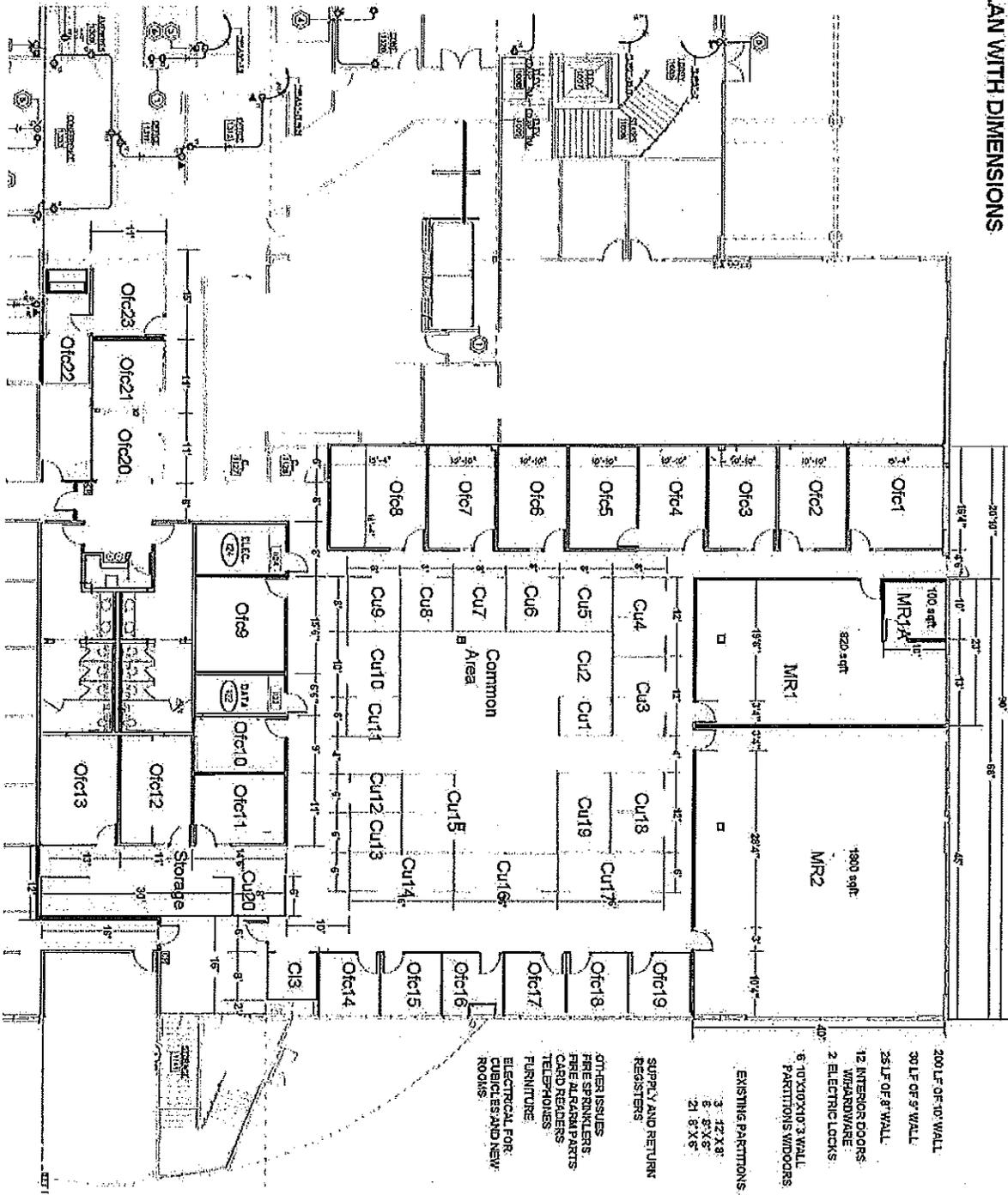
Sheryl Patterson, Senior Deputy City Attorney

ATTEST:

City Clerk

EXHIBIT "A"

FLOOR PLAN WITH DIMENSIONS



Room	Area (SF)	City	4th R
MR1	820		820
MR1A	100		100
MR2	1800	1800	
Ofc1	250		250
Ofc2	177		177
Ofc3	177		177
Ofc4	177		177
Ofc5	177	177	
Ofc6	177	177	
Ofc7	177	177	
Ofc8	250	250	
Ofc9	224.75		224.75
Ofc10	130.5		130.5
Ofc11	159.5	159.5	
Ofc12	209		209
Ofc13	247	247	
Ofc14	107	107	
Ofc15	107		107
Ofc16	97	97	
Ofc17	107		107
Ofc18	107	107	
Ofc19	107		107
Ofc20	121		121
Ofc21	121	121	
Ofc22	140	140	
Ofc23	139	139	
Cu1	48	24	24
Cu2	80		80
Cu3	96	48	48
Cu4	96	96	
Cu5	64	64	
Cu6	64	64	
Cu7	64	64	
Cu8	64	64	
Cu9	64		64
Cu10	80	40	40
Cu11	48	24	24
Cu12	48	24	24
Cu13	48	24	24
Cu14	96	96	
Cu15	288		288
Cu16	96	96	
Cu17	96	96	
Cu18	96	48	48
Cu19	96	48	48
Cu20	48	48	
CL1126	60		60
CL1127	60		60
CI3	64	32	32
Cubicle Common Area	576	288	288
Hallways	1844	922	922
Storage	408	204	204
Total	11097.75	6112.5	4985.25

EXHIBIT "B"

Memorandum of Understanding
City of Sacramento
Schools Insurance Authority
Hold Harmless and Indemnification Provisions

Introduction

The City of Sacramento (hereinafter the City) is a public entity which enters into contractual agreements and Memorandums of Understanding (MOU) with California public school districts (hereinafter districts). Such agreements include but are not limited to agreements for processing parking tickets, providing programs such as arts programs and other educational or youth oriented programs including the AR program, purchase of meals, joint use of facilities, City use of district facilities, district use of City facilities, and City provision of police services.

The Schools Insurance Authority (hereinafter SIA) is a joint powers authority which provides programs to cover its member school districts' general liability (including automobile liability), property and workers compensation exposures. SIA member districts (hereinafter SIA districts) in Sacramento County include Arcohe Union School District, Center Unified School District, Del Paso Heights School District, Elk Grove Unified School District, Elverta Joint School District, Folsom Cordova Unified School District, Galt Joint Union Elementary School District, Galt Joint Union High School District, Natomas Unified School District, North Sacramento School District, Rio Linda Union School District, River Delta Unified School District, Robla District, Sacramento City Unified School District, the Sacramento County Office of Education, and the San Juan Unified School District. Many SIA districts enter into contractual agreements and MOUs with the City. Such agreements include but are not limited to agreements for processing parking tickets, the City providing programs such as arts programs and other educational or youth oriented programs, the sale of meals to the City, joint use of facilities, City use of district facilities, district use of City facilities, and City provision of police services.

Purpose

There is a need to reduce litigation costs between the City and SIA districts when both are named as defendants, in tort lawsuits arising out of their contractual agreements, Memorandums of Understanding and other joint activities. When two or more public entities are named defendants, each determines their respective litigation position, which can result in claims and counter claims between them. These actions increase claim and legal costs, consume large amounts of staff time and may result in the plaintiff playing the parties against each other.

The parties to this agreement are resolved to utilize equitable hold harmless indemnification language in the contractual agreements and MOU between the city and SIA districts and to minimize disagreements arising out of said hold harmless and indemnification provisions.

CITY
AGREEMENT NO. 2001-0501

In addition, the parties to this MOU are resolved to reduce litigation expenses through a coordinated program for handling tort claims and the subsequent lawsuits filed against the City and SIA districts which arise out of their contractual agreements, Memorandums of Understanding and other joint activities

Agreement

The City and SIA agree to use the hold harmless language outlined in the Hold Harmless Agreement section of this MOU in contractual agreements and MOUs between the City and SIA districts with the exception of the districts' use of Memorial Auditorium and the Sacramento Convention Center. For use of the Sacramento Convention Center, other hold harmless language may be used and the districts will be given the option of purchasing through the City, special events coverage covering the district's use of the Memorial Auditorium and Sacramento Convention Center. The cost of the special events coverage shall be added to the district's cost for using the Memorial Auditorium or Sacramento Convention Center. SIA shall recommend that SIA districts purchase the special events coverage

When a third party claim is made against the City or an SIA district or an incident is disclosed that may lead to a claim, the initially involved entity determines if other entities may also be included in subsequent litigation. The knowledgeable entity then apprises the other entities and investigations are shared

Using the results of the investigations, the City and SIA will discuss the potential liability of the parties pursuant to the applicable hold harmless and indemnification clauses before cross-actions are filed. All reasonable efforts will be made to reach consensus on each parties' respective responsibilities under the hold harmless and indemnification language of the agreement. Such efforts shall be made prior to the filing of any cross actions. If consensus is reached on the liability issues, a joint defense strategy and cost sharing arrangement may be agreed to.

Best efforts will be used in assessing liability apportionment between the parties, but it is understood that this MOU does not bind the parties without the consent of all the involved parties.

Hold Harmless Agreement

INDEMNIFICATION

DISTRICT shall assume the defense of and indemnify and hold harmless CITY from and against all actions or claims against CITY, its officers, agents or employees from any and all loss, including attorneys' fees, sustained by CITY by virtue of any damages to any person(s), firm or corporation who may be injured by or to any property that may be damaged arising out of the performance of this agreement, except for actions or claims alleged to have occurred in full, or in part, as a result of active negligence by the CITY, its officers, agents or employees and except for actions or claims alleging dangerous

A. Comprehensive General Liability

A policy with a minimum limit of not less than \$2,000,000 combined single limit for bodily injury and property damage, providing at least all of the following minimum coverages:

- 1) Premises Operations
- 2) Blanket Contractual
- 3) Personal Injury

B. Workers' Compensation and Employers' Liability

A policy written in accordance with the laws of the State of California and providing coverage for any and all employees of the CITY.

- 1) This policy shall provide coverage for Workers' compensation (Coverage A) with statutory limits.
- 2) This policy shall also provide coverage of \$100,000 Employers' Liability (Coverage B).

C. Comprehensive Business Auto (Only used when applicable to agreement)

A policy with a minimum of not less than \$2,000,000 combined single limit for bodily injury and property damage. Coverage shall be applicable (without deductibles) to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this agreement.

D. Special Provisions

The foregoing requirements as to the types and limits of insurance coverage to be maintained by CITY, and any approval of said insurance by the DISTRICT, or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CITY pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

District Insurance. DISTRICT, at its sole cost and expense and for the full term of this Agreement shall obtain and maintain at least all of the following minimum insurance requirements. All or a portion of the required insurance may be satisfied through the use of a self-insurance program. The DISTRICT must provide an affidavit of self-insurance, or pooled insurance, if any.

A. Comprehensive General Liability

A policy with a minimum limit of not less than \$2,000,000 combined single limit for bodily injury and property damage, providing at least all of the following minimum coverages:

- 4) Premises Operations
- 5) Blanket Contractual
- 6) Personal Injury

B. Workers' Compensation and Employers' Liability

A policy written in accordance with the laws of the State of California and providing coverage for any and all employees of the CITY.

- 3) This policy shall provide coverage for Workers' compensation (Coverage A) with statutory limits
- 4) This policy shall also provide coverage of \$100,000 Employers' Liability (Coverage B)

C. Comprehensive Business Auto (Only used when applicable to agreement)

A policy with a minimum of not less than \$2,000,000 combined single limit for bodily injury and property damage. Coverage shall be applicable (without deductibles) to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this agreement.

D. Special Provisions

The foregoing requirements as to the types and limits of insurance coverage to be maintained by DISTRICT, and any approval of said insurance by the CITY, or its insurance consultant(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by DISTRICT pursuant to this Agreement, including but not limited to, the provisions concerning indemnification.

All insurance requirements shall be met by all parties prior to the commencement of any of the activities required of the parties under this Agreement.

Severability

Should any portion, term, condition, or provision of this MOU be determined by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or to be otherwise rendered unenforceable or ineffectual, the remaining portion, terms, conditions, and provisions shall not be affected thereby.

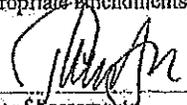
Term

The terms of this MOU shall commence upon signature by all parties authorized to enter into this MOU by approval of their respective governing body and shall automatically be renewed thereafter from fiscal year (July to June 30) to fiscal year unless any participating party gives written notice of termination. Any participating party may terminate this MOU in thirty (30) days upon written notification to terminate the agreement with or without cause.

No waiver, alteration, modification, or termination of this MOU shall be valid unless made in writing and signed by the authorized Parties herof. In the event of a conflict between this MOU and any other agreement or understanding executed by the Parties relating to the same subject matter, whether executed prior or subsequent to this MOU, the terms of this MOU shall prevail and be controlling unless such other agreement expressly provides that it supersedes this MOU.

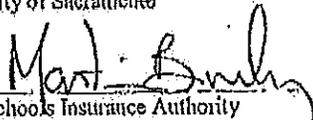
Amendments

Amendments to this MOU may be made with the mutual written agreement from the participating parties. The MOU shall be periodically reviewed for consideration of appropriate amendments.



City of Sacramento

3/22/01
Date

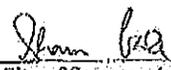


Schools Insurance Authority

5/31/01
Date

APPROVED AS TO FORM:

ATTEST:



City of Sacramento



CITY CLERK