



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
November 28, 2006

Honorable Mayor and
Members of the City Council

Title: Agreement: McClellan Air Force Base Dock Annex

Location/Council District: 1601 Garden Highway / Council District 1

Recommendation: Adopt a **Resolution** authorizing the City Manager to execute a license, a copy of which is included as Exhibit A of attachment 2, authorizing the Grant Joint Union High School District to use the McClellan Air Force Base Dock Annex for park and recreational purposes under the terms and conditions contained in the license.

Contact: Janet Baker, Operations Manager

Presenters: None

Department: Parks and Recreation

Division: Administration

Organization No: 4511

Description/Analysis

Issue: In February 2001, the City of Sacramento submitted an application to the United States of America to acquire the McClellan Air Force Base Dock Annex ("McClellan Dock"); the acquisition of McClellan Dock is proposed to be completed through a separate agenda item on the November 28, 2006 calendar. Previously, the Grant Joint Union High School District ("Grant") entered into a license with the United States of America Department of the Air Force for the use of the McClellan Dock for educational purposes. The City wishes to allow Grant to continue to use the McClellan Dock for park and recreation purposes on the terms and conditions contained in the license included as Exhibit A to attachment 2 of this report.

Policy Considerations: Providing parks and recreation facilities is consistent with the City's strategic plan to enhance livability in Sacramento's neighborhoods by expanding park, recreation, and trail facilities throughout the City.

Environmental Considerations: This report concerns administrative activities that will not have a significant effect on the environment, and

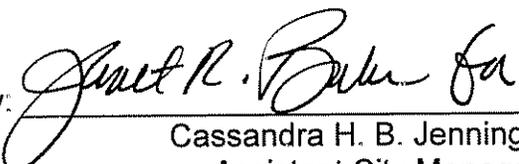
does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) [CEQA Guidelines Sections 15061(b)(3); 15378(b)(2)].

Commission/Committee Action: None

Rationale for Recommendation: Council authority is necessary for the City to enter into a licensing agreement with the Grant Joint Union High School District.

Financial Considerations: The Grant Union Joint High School District shall pay a license fee in the amount of one dollar (\$1.00) annually, for the use of the premises.

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

Approved by: 
Cassandra H. B. Jennings
Assistant City Manager

Recommendation Approved:

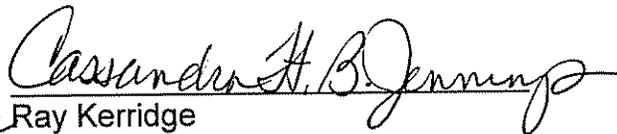

Ray Kerridge
City Manager

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ATTACHMENT 1

BACKGROUND

In 1995, the Defense Base Realignment and Closure Commission designated McClellan Dock for closure in 2001. As part of the base closure process, the City expressed its interest in the McClellan Dock by presentation to the McClellan Privatization Reuse Advisory Committee Planning Team as a recreation Public Benefit Conveyance. The McClellan Dock, located at 1601 Garden Highway, is envisioned in the National Park Service Reuse Plan as a public waterfront recreational area to be operated by the City of Sacramento. In 2001, the City submitted an application for surplus property to the National Park Service for the conveyance of the McClellan Dock for public park or recreation purposes.

In July 2003, Grant entered into a license with the United States of America Department of the Air Force for the use of the McClellan Dock for educational purposes. Pursuant to the 2001 application for surplus property, in August 2005, the City assumed operation of the McClellan Dock and desires to allow Grant to continue to use the Dock for park and recreational purposes. The complete license agreement outlining both the City's and Grant's responsibilities is shown in Attachment 2, Exhibit A of this report. In addition, the GJUHSD will enter into sub-lease agreements with the current other users of the facility including the Sea Scouts and the U.S. Coast Guard Auxillary. Those agreements are subject to review and approval by the City of Sacramento and the National Park Service.

RESOLUTION NO. 2006-

Adopted by the Sacramento City Council

NOVEMBER 28, 2006

**MCCLELLAN AIR FORCE BASE DOCK ANNEX LICENSING AGREEMENT
BETWEEN THE CITY OF SACRAMENTO AND THE GRANT JOINT UNION
HIGH SCHOOL DISTRICT**

BACKGROUND

- A. In 2001, the City submitted an application for surplus property to the National Park Service for the conveyance of the McClellan Air Force Base Dock Annex for public park or recreation purposes.
- B. In July 2003, The Grant Joint Union High School District entered into a license with the United States of America Department of the Air Force for the use of the McClellan Air Force Base Dock Annex for educational and recreational purposes. Pursuant to the 2001 application for surplus property, in August 2005, the City assumed operation of the McClellan Dock and desires to allow Grant to continue to use the McClellan Dock for park and recreational purposes.

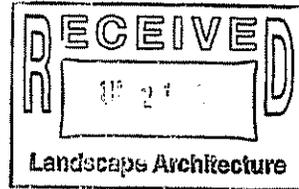
**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The City Manager is authorized to execute the license, a copy of which is attached hereto as Exhibit A, authorizing the Grant Joint Union High School District to use the McClellan Air Force Base Dock Annex for educational purposes on the terms and conditions contained in the license.

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Exhibit A – License Agreement

LICENSE



This License ("License") dated as of _____ is entered into between the City of Sacramento, a California charter municipal corporation (the "City") and The Grant Joint Union High School District or ("Licensee") for the McClellan Boat Dock.

RECITALS

WHEREAS, on or about July 8, 2003, the Grant Joint Union High School District entered into a license with the United States of America through the Department of the Air Force for the use of the McClellan Boat Dock for the purpose of broadening its education mission and other public purposes;

WHEREAS, in February 2001, the City filed an Application for Federal Surplus Property for Public Park or Recreation Purposes ("Application") with the United States of America through the National Park Service;

WHEREAS, pursuant to the Application, on or about August 13, 2005, the City assumed possession of the McClellan Boat Dock;

WHEREAS, pursuant to the terms of the license between the Grant Joint Union High School District and the United States of America through the Department of the Air Force, the license terminated when the City assumed possession of the McClellan Boat Dock;

WHEREAS, the City is agreeable to allow Grant Joint Union High School District to continue to use the McClellan Boat Dock for the purpose of broadening its education mission and other public purposes;

WHEREAS, the City and Grant Joint Union High School District desire to enter into a License for the McClellan Boat Dock on the following terms and conditions:

LICENSE

1. Definition of Licensee. For the purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, representatives and agents, and others acting under the Licensee's authority.
2. Use. The City hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress over the McClellan Boat Dock (the "Premises") more particularly described in the legal description attached hereto and included herein as Exhibit A for the purpose of Licensee broadening its educational mission.
3. Term. The grant of rights herein made to Licensee shall commence upon the execution of this Agreement by the parties and payment of the license fee and shall end when terminated by either party or as otherwise provided in this Agreement. Either party may terminate this Agreement, with or without cause, on ninety (90) days written notice to the other party.
4. License Fee. Licensee shall pay a license fee in the amount of one dollar (\$1.00), for use of the premises.
5. Quitclaim Deed. Licensee agrees to be subject to the terms of any Quitclaim deed executed by the United States of America in favor of the City for the Premises. Licensee agrees that any failure by Licensee or any sub-Licensee to

comply with the terms of any such Quitclaim Deed is a breach of the terms and conditions of this License.

6. Insurance.

A. During the term of this License, Licensee shall purchase at its sole cost and expense and maintain in full force the following insurance coverage:

(i) General Liability Insurance on ISO Form CG00011093 or an equivalent form, covering liability arising from premises, operations, independent contractors, personal injury, products completed, operations and liability assumed under any insured contract. The amount of the policy shall not be less than One Million Dollars (\$1,000,000), Single Limit Per Occurrence, issued by an admitted insurer, or insurers, with a Bests' rating of no less than A:VII, as defined by the California Insurance Code, providing that the City of Sacramento, its officers, employees, agents, and volunteers are to be named as "Additional Named Insured's" under the policy, and the policy shall stipulate that this insurance will operate as Primary Insurance and that no other insurance effected by The City, or other Named Insured, will be called on to contribute to a loss covered there under.

(ii) Worker's Compensation and Employer's Liability Insurance for all employees of Licensee shall be maintained in strict compliance with State laws. Employer's Liability Insurance limit shall be not less than One Million Dollars (\$1,000,000).

(iii) On all its personal property, Licensee's improvements, and alterations, in on, or about the Premises, a policy of standard fire and extended coverage insurance, with vandalism and malicious mischief endorsements, to the extent of one hundred percent (100%) of the full replacement value. The proceeds from any such policy shall be used by Licensee for the replacement of personal property or the restoration of Licensee's improvements or alterations.

B. Licensee shall furnish the City with certificate(s) of insurance and with original endorsements effecting coverage required by this Paragraph 6. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements are to be forward to the City's Risk Management Division, 915 I Street, Fourth Floor, Sacramento, CA 95814-2604, prior to the execution of this License. Failure to provide such certificate(s) and keep such certificate(s) updated will be considered a material breach by Licensee of this License and will be grounds for termination of this License. Said policies shall provide that no cancellation, change in coverage, or expiration by the insurance company or the insured shall occur during the term of this License without thirty (30) days' written notice to the City prior to the effective date of such cancellation or change in coverage.

- C. It is understood and agreed that approval of said policies shall in no way affect the terms and conditions of the indemnity and hold harmless clauses in this Agreement which shall remain in full force and effect.
- D. By requiring the insurance herein, the City does not represent that the coverage and limits will necessarily be adequate to protect Licensee and such coverage and limits shall not be deemed as a limitation on Licensee's liability under the indemnities granted to the City in this Agreement.
- E. Licensee agrees to waive all rights against the City and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the insurance maintained pursuant to this Paragraph 6.
- F. Notwithstanding the foregoing, Licensee may satisfy the insurance requirements pursuant to this Paragraph 6 through a policy of self-insurance. If Licensee ceases to maintain a plan of self-insurance with respect to any risk for which this License requires insurance, Licensee shall give written notice thereof the City and shall immediately comply with the provisions of this License relating to the policies of insurance required.

7. Indemnity.

- A. Licensee shall indemnify, defend and hold harmless the City, and the City's agents, servants, employees, contractors assigns, and volunteers from and against any and all claims, causes of action, suit, or damages (including attorney's fees, whether for outside counsel or the City Attorney, costs, and expenses incurred in connection therewith) for death or injury

to persons or for loss of or damages to property arising out of or in connection with the possession, use and/or occupancy of the Premises or the activities conducted under this License by Licensee, its agents, servants, employees, contractors, assigns, volunteers and Sub-Licensees or invitees.

- B. Licensee agrees to assume all risks of loss or damage to property and injury, or death to persons by reason of or incident to the possession, use and/or occupancy of the Premises, or the activities conducted under this License by Licensee its agents, servants, employees, contractors, assigns, volunteers Sub-Licensees or invitees. Licensee expressly waives all claims against the City for any such loss, damage, personal injury or death caused by or occurring as a consequence of such possession and/or use of the Premises or the conduct of activities or the performance of responsibilities under this License. Licensee further agrees, to the extent permitted by applicable law to indemnify, save, and hold harmless the City, its officers, agents, employees, and volunteers from and against all suits, claims, demands or action, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of the possession and/or use of the Premises or any activities conducted or services furnished in connection with or pursuant to this License by Licensee its agents, servants, employees, contractors, assigns, volunteers Sub-Licensees or invitees.

8. Utilities and Services. Licensee will be responsible for, and will require any Sub-Licensee to be responsible for, all utilities and janitorial services for the Premises without cost to the City. Utility services will be provided through meters, where physically feasible. Licensee will be responsible for grounds maintenance and building maintenance for the entire building. The Licensee will (or will cause any Sub-Licensee to) purchase, install, and maintain all such meters at its (or their) own cost and without cost and expense to the City. The Licensee will pay the charges for any utilities and services furnished by the City that the Licensee may require in connection with its use of the Premises. The charges and method of payment for each utility or service will be determined by the appropriate supplier of the utility or service in accordance with applicable laws and regulations, on such basis as the appropriate supplier of the utility or service may establish. It is expressly understood and agreed that the City in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Licensee. Licensee shall comply with all applicable provisions of the Sacramento City Code related to refuse, garbage storage, removal and collections. It is expressly understood by Licensee and any Sub-Licensee that the City is not required or obligated pursuant to this Agreement to make any repairs, improvements, alterations or upgrades to the Premises.
9. Taxes. Licensee shall, in addition to all other sums agreed to be paid under this License, pay to the County of Sacramento all personal property taxes which shall be levied against the personal property of the Licensee.

Licensee is also responsible for the payment of all real property taxes, levies and assessments levied upon the Premises including, but not limited to, possessory interest tax. Pursuant to Section 107.6 of the California Revenue and Taxation Code, there may be a possessory interest tax levied by virtue of this License.

10. Alterations.

- A. Licensee may not make any improvements, alterations, additions or changes to the Premises without first obtaining the City's prior written consent. Licensee shall request the consent by written notice to the City, accompanied by a complete set of written plans and specifications for the proposed work. As a condition to its consent to the alterations, the City may impose any requirements that it considers desirable to ensure that the alterations will be completed as proposed, and the costs paid when due, including, but not limited to, requiring a surety bond, a letter of credit, or other financial assurance.
- B. Licensee shall reimburse the City for the reasonable fees and costs of any architects, engineers, including City staff, or other consultants retained by the City to review the proposed alterations.
- C. Prior to construction, Licensee shall provide proof to the City that the insurance required under this License covers the construction or by a policy of builder's all risk insurance in an amount approved by the City.
- D. All alterations, signs, fixtures or equipment that may be installed or placed in or about the Premises from time-to-time shall become property of the

City upon installation without the requirement for reimbursement to the Licensee.

- E. Any alterations to the Premises without the prior written consent of the City shall be a breach of this License and, at the option of the City, shall cause a termination of this License.
- F. All work shall be performed in a good and workmanlike manner and shall substantially comply with all plans and specifications provided by City and shall comply with all applicable governmental permits, laws, ordinances, regulations and orders.

11. Restrictions on Use of Premises.

- A. Licensee shall not install (or permit its Sub-Licensee to install) any new drinking water or other wells in any location on the Premises without the prior written approval of the City.
- B. Licensee shall not conduct (or permit its Sub-Licensee to conduct) any subsurface excavation, digging, or other disturbance of the surface on the Premises without the provision of notice to and prior to written approval of the City in accordance with Paragraph 10. Requests for such approval will be made in accordance with Paragraph 10.
- C. Prior to beginning any Alterations, other construction or construction-related work, excavation, demolition, or restoration, the Licensee shall determine (or require any Sub-Licensee to determine) whether asbestos is present.

12. Liens and Mortgages. Licensee shall not engage in any financing or other transaction creating any mortgage upon the Premises; place or suffer to be

placed upon the Premises any lien or other encumbrance; or suffer any levy or attachment to be made on the Licensee's interest in the Premises. Any such mortgage encumbrance, or lien shall be deemed to be a violation of this condition and constitute a failure to comply with the terms of the License on the day of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

13. Insurance Hazards. No use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Premises, or cause a cancellation of any insurance policy covering said Premises, or any part thereof, nor shall Licensee sell, or permit to be kept, used, or sold, in or about the Premises, any article which may be prohibited by the standard form of fire insurance policies. Licensee shall, at its sole cost and expense, comply with any and all requirements, pertaining to the Premises, of any insurance organization or company, necessary for the maintenance of reasonable fire and public liability insurance, covering the Premises including all buildings and appurtenances.
14. No Warranties. The City makes no representation or warranty of any kind, express or implied, as to the suitability of the Premises for the specified use. The Licensee represents and warrants that it has independently made a full and thorough investigation and examination of the Premises and that it is entering into this License relying only upon facts ascertained from said independent investigation.
15. Right of Entry. The City reserves the right to enter the Premises at reasonable times to carry out any building management or business purpose in or about the

Premises. The City, at City's sole discretion, may make a detailed and formal inspection and evaluation annually to ensure compliance with this License by Licensee. Each such inspection will be followed by a report in writing with a copy given to the Licensee.

16. Default. The following shall constitute a default and breach of this License by the Licensee: The failure to comply with any provision of this License, where such failure to comply continues for ten (10) days after delivery of written notice thereof by the City to the Licensee. If, however, the time required to return to compliance exceeds the ten (10) day period, the Licensee shall not be deemed to be in default if the Licensee within such period shall begin the actions necessary to bring it into compliance with the License in accordance with a compliance schedule acceptable to the City.
17. Compliance with Law.
 - A. Licensee shall, at its sole cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to specific activity of Licensee on the Premises. The judgment of any court of competent jurisdiction, or the admission of Licensee in any action or proceedings against Licensee, whether the City be a party thereto or not, that Licensee has violated any such ordinance or statute in the use of the Premises shall be conclusive of the fact as between the City and Licensee.
 - B. Licensee represents, warrants and covenants that Licensee and any Sub-Licensee will remain in compliance with all applicable federal, state and local laws, ordinances and regulations (including consent decrees and

administrative orders) relating to public health and safety and protection of the environment ("Environmental Laws"), and that Licensee will not permit to occur any release, generation, storage disposal or treatment of any hazardous material as that term is defined in any of the Environmental Laws. Licensee shall immediately notify the City of any such release, generation, storage, disposal or treatment and Licensee shall take such necessary remediation measures at Licensee's expense to the complete satisfaction of the City. Licensee shall immediately notify the City of any complaints, citations, inquires or notices from any governmental entity relating to compliance with Environmental Laws. Licensee represents, warrants and covenants that all governmental permits relating to the use or operation of the Premises required by applicable Environmental Laws are and will remain in effect, and Licensee will comply with them.

18. Equal Rights and Nondiscrimination.
 - A. Licensee agrees that it shall not make any discrimination, distinction, or restriction on account of sex, color, race, religion, ancestry, handicap national origin, sexual orientation, or any other arbitrary basis contrary to the provisions of Section 51 of the Civil Code of the State of California which is incorporated herein by reference as if set forth herein in full or any City Ordinance prohibiting discrimination.
 - B. All provisions of Part 2.8 of Division 3 of Title 2 (Section 12900 through 12996) of the California Government Code (California Fair Employment and Housing Act) are hereby incorporated herein by reference as if set forth herein in full.

- C. The Licensee shall not discriminate in the employment of persons because of race, color, national origin or ancestry, religion, sex, handicap, age, or sexual orientation of such person.
19. Severability. The invalidity of any portion of this License shall not affect the remainder, and any invalid portion shall be deemed rewritten to make it valid so as to carry out as near as possible the expressed intention of the parties.
20. Assignment or Sub-License. Any sub-License granted by the Licensee shall be consistent with all of the terms and conditions of this License and shall terminate immediately upon the expiration of any earlier termination of this License, without any liability on the part of the City to the Licensee or Sub-Licensee. Any Sub-Licensee shall be deemed to have assumed all of the obligations of the Licensee under this License. The Sub-Licensee shall not relieve the Licensee of any of its obligations hereunder. Annually, within thirty (30) days of the anniversary date of this License, the Licensee shall provide to the City a list of Sub-Licensees, including names, addresses and phone numbers. Any assignment or subletting of any portion of the Premises, whether by operation of law or otherwise, without prior written consent of the City is void and shall be a breach of this License, and at the option of the City, shall terminate this License. Such consent shall be in the sole and absolute discretion or judgment of the City.
21. Notices. Any and all notices or demands by or from the City to Licensee or Licensee to the City shall be in writing. They shall be served either personally or by mail. If served personally, service shall be conclusively deemed made at the time of service. If served by mail, service of notices or demands all be

conclusively deemed made as of the time of deposit in the United States mail,
postage paid.

Any notice or demand to the City or Licensee may be give to:

THE CITY:

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

with a copy to
City of Sacramento
Facilities and Real Property Management
5730 24th Street, Bldg. 4
Sacramento, CA 95822
Attn: Facilities Manager

LICENSEE:

Grant Joint Union High
School District
13333 Grand Avenue
Sacramento, CA 95838
Attn: Dr. Larry M. Buchanan
Superintendent

with a copy to
Jacques Sterling Whitfield
District General Counsel

Any party hereto shall change the address for notice by giving written notice to
the other party according to this Section.

22. Attorney Fees. In any action or proceeding by either party to enforce this
License or any provision of this License, the prevailing party shall be entitled to
recover reasonable attorney fees, whether for outside counsel or the City
Attorney, and all other costs incurred.

23. Legal Effect. All obligations of Licensee are expressly made conditions of this License, any breach of which shall, at the option of the City, terminate this License.
24. Titles. The titles or headings to paragraphs shall have no effect on interpretation of provisions.
25. Successors. The provisions of this License shall apply to and bind the heirs, successors, and assigns of the parties.
26. Waiver. The failure of the City to enforce a provision of this License shall not be deemed a waiver for any purpose.
27. Entire Agreement. This License constitutes the entire agreement, and supersedes any prior written or oral agreements, between the parties with respect to the matters contained herein.
28. Time of the Essence. Time is of the essence in the performance of Licensee's obligations under this License.
29. Amendments. This License may be amended at any time by mutual agreement of the Parties in writing and signed by a duly authorized representative of each of the respective Parties hereto.
30. Governing Law. This License shall be governed by and construed in accordance with California law.

[SIGNATURES ON FOLLOWING PAGE.]

The parties have executed this License on the date first written above.

THE CITY:

LICENSEE:

CITY OF SACRAMENTO,
a municipal corporation

By: _____
CITY MANAGER

By:  _____

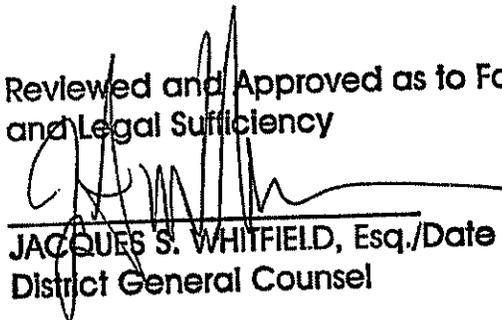
APPROVED AS TO FORM:

By: _____
CITY ATTORNEY

Attest:

By: _____
CITY CLERK

Reviewed and Approved as to Form
and Legal Sufficiency



JACQUES S. WHITFIELD, Esq./Date
District General Counsel

