

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
SACRAMENTO AND THE SACRAMENTO UNIFIED SCHOOL DISTRICT
REGARDING THE DESIGN AND CONSTRUCTION OF THE SCHOOL OF
SCIENCES AND ENGINEERING, POCKET LIBRARY, AND RELATED
IMPROVEMENTS

This Memorandum of Understanding (MOU) is made and entered into this _____ day of _____, 2007, by and between the City of Sacramento (City), a municipal corporation, and the Sacramento City Unified School District (District), a California public school district. The City and District may be referred to collectively as "Parties" or in the singular as "Party", as the context requires.

RECITALS

The City and the District have entered into this MOU with reference to the following facts and circumstances:

WHEREAS, the District desires to build a School of Engineering and Sciences (School) to be located on the District's Sojourner Truth School Park property (District Property) at the corner of Swale River Way and Gloria Drive in the Pocket area of Sacramento. The School will be a small public school with an eventual enrollment of approximately 500 students in grades 7 through 12;

Whereas, the District Property consists of two separate parcels, Assessor's Parcel Numbers 031-0020-057 and 031-0440-028, which total approximately 10.25 acres. The District Property is shown and identified in Attachment A;

WHEREAS, the construction of a public library in the City's Pocket-Greenhaven neighborhood was incorporated into the City's 1979 Pocket Area Community Plan. Furthermore, the Sacramento Public Library Authority (Library Authority) Facility Master Plan 2007-2025 recommends construction of a 15,000 square foot public library (Library) in the Pocket area;

WHEREAS, the City desires to build the Library in the Pocket area and to have the Library Authority operate the Library;

WHEREAS, the City's Sojourner Truth Park property (City Property) is adjacent to the District Property. The City Property consists of two separate parcels, Assessor's Parcel Numbers 031-0440-002 and 031-0020-058, which total approximately 3.3 acres. The City Property is shown and identified in Attachment A;

WHEREAS, a joint use library project to serve both the School and the neighborhood would be an efficient use of public space and funds and would enhance library services to the students and faculty and the community;

WHEREAS, Education Code section 10900 et seq. authorizes and empowers cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of public services which will contribute to the attainment of general recreational and educational objectives for children and adults in this State, including the provision of libraries, and to enter into agreements with each other for such purpose.

WHEREAS, the Parties agree that in order to achieve maximum flexibility and efficiency in the design and construction of both the School and the Library, the District will lease a portion of the District Property to the City, so that the Library may be constructed on that portion of the District Property and that shared athletic fields and parking lots should be constructed on portions of both the City Property and the District Property. The Parties' use of each other's property shall be governed by one or more separate agreements to be entered into between the Parties;

WHEREAS, there is a desire for coordinated planning by the Parties in the design and construction of the School, Library, shared athletic fields and parking lots in order to obtain maximum benefit from the expenditure of public funds;

WHEREAS, the District, using a competitive, qualifications-based selection process, has contracted with WLC Architects to prepare designs and specifications for the School, Library, and related improvements.

WHEREAS, joint use facilities will result in both economic and operational benefits for the Parties;

WHEREAS, the City and the District have a long tradition of working together on joint use projects for the benefit of the community;

WHEREAS, the governing bodies of both Parties have passed resolutions in support of the joint construction and operation of these facilities; and,

WHEREAS, subject to completion of all environmental review and receipt of all approvals required by the California Environmental Quality Act, the Parties desire to enter into the following additional agreements to further the purposes of this MOU which are described below for reference purposes only. The exact nature of these agreements and their attachments may change:

| AGREEMENT | PARTIES | ATTACHMENTS & DOCUMENTS INCLUDED |
|--|--|--|
| Ground Lease | City District | <ul style="list-style-type: none"> ➤ Attachment A: Description of Ground Lease Property ➤ Attachment B: Memorandum of Commencement Date |
| Construction Agreement & Lease-Leaseback | City District Builder – to be selected | <ul style="list-style-type: none"> ➤ Attachment A: Construction Agreement ➤ Attachment B: Site Lease ➤ Attachment C: Sub-lease ➤ Plans & specifications as noted in Construction Agreement |
| Memorandum of Understanding – Operations & Maintenance | City District Library Authority | |
| Access & Joint Use | City District Library Authority | |

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

Section 1. PURPOSE

The purpose of this MOU is to specify the obligations of the City and the District with respect to design, environmental review, construction, project management, and payment for all construction and improvements associated with the School, Library, athletic fields, and parking lots to be constructed on the City Property and District Property. The School, Library, athletic fields, parking lots, and related improvements may be referred to collectively as the “Improvements.”

Section 2. SITE MASTER PLAN 9

The Parties have jointly developed a conceptual site plan depicting the Improvements, known as Site Master Plan 9, which is attached as Attachment B. The Parties hereby adopt Site Master Plan 9 as the guiding conceptual plan for the design and construction of the Improvements.

Section 3. TERM; TERMINATION

A. This MOU shall be effective when it is signed by both Parties and, except as otherwise provided in this Section 3, shall remain in effect until the Improvements have been fully completed and accepted by the Parties or four (4) years, whichever occurs first.

B. Early Termination for Lack of Construction Funding; Notice. The Parties agree that City or District may determine, acting reasonably and in good faith, whether the funding each has available is sufficient to construct the Improvements. If District or City determines that such funding is not sufficient, then that Party shall provide written notice of such funding deficiency prior to award of the construction contracts to a builder and commencement of construction of the Improvements. Such a determination shall not be considered a breach or default of this MOU or of any representation or promise in it, but shall result in the automatic early termination of this MOU effective 30 days after written notice is given to the other Party by the Party who determines it has insufficient funding.

C. Notice of Sufficient Construction Funding. When City and District determine that sufficient funding has been received to construct the Improvements, then City and District agree to provide written notice of that fact to each other along with a proposed date for the commencement of construction.

D. This MOU shall terminate upon the occurrence of any of the following:

1. Required Approvals. In the event the Parties do not receive all approvals required by government agencies to construct the Improvements, including but not limited to approval of plans and specifications by the Division of State Architects and approval of the District Property as a suitable school site by the California Department of Education.

2. Award of Construction Contracts to Builder. In the event the Parties, acting in good faith, are unable to successfully negotiate and award a construction and lease-lease back agreement to a builder or builders to construct the Improvements.

3. Failure to Negotiate Satisfactory Ground Lease. In the event the Parties, acting in good faith, are unable to successfully negotiate and agree upon a ground lease from District to City, leasing a portion of the District Property for library construction.

4. The failure by any Party to observe or perform any of the covenants, agreements or conditions provided for in this MOU, where the failure continues for a period of 30 days after written notice from the non-defaulting Party to the defaulting Party (unless such failure cannot reasonably be cured within such 30-day period and the defaulting Party shall have commenced to cure the failure within the 30-day period and continues diligently to pursue a cure).

E. In the event this MOU expires or is terminated prior to the full completion and acceptance of the Improvements, the Parties agree to negotiate in good faith to reconstruct, re-design, or otherwise alter the athletic fields, or to otherwise negotiate satisfactory arrangements for joint maintenance and operation of the City Property and District Property in order to allow each Party full use and enjoyment of its real property.

Section 4. NOTICE

Except as specifically provided for elsewhere in this MOU, any communication required during the term of this MOU, including, without limitation, notice of termination, shall be deemed given when placed in the United States Mail, postage prepaid, and addressed as follows:

Notice to the City: Reina Schwartz, Director
 Department of General Services
 5730 24th Street
 Building One
 Sacramento, California 95822

 (916) 808-1888 (phone)
 (916) 399-9263 (fax)

Notice to the District: Tom Barentson
 Deputy Superintendent/CFO
 Sacramento City Unified School District
 5735 47th Avenue
 Sacramento, CA 95824
 (916) 643-9058

Any Party who desires to change its address for notice may do so by giving notice as described above.

Section 5. ENVIRONMENTAL REVIEW

District will act as lead agency for all environmental review and approvals required by the California Environmental Quality Act, other laws, or other governmental agencies. District will consult with City regarding preparation of the required review documents. The Parties shall divide the costs and payments for environmental review, including required mitigation measures, if any, as described in Section 8.

Section 6. PROJECT MANAGEMENT RESPONSIBILITY; SITE INSPECTION

District will oversee and direct all architects, consultants, and the builder or builders constructing the Improvements. District will assume day-to-day responsibility for overseeing and directing construction of the Improvements including, but not limited to, the following:

- A. Preparation and publication of design documents;
- B. Preparation and publication of construction plans and specifications;
- C. Submitting documents to the Division of State Architect for approval
- D. All communications with the California Department of Education related to site suitability;
- E. Providing notices to builder or builders;
- F. Handling all documents related to the District's project stabilization agreement;
- G. Keeping any records related to certified payrolls and labor compliance programs, if needed;
- H. Construction inspections and approvals;
- I. Review and approval of change orders and schedule changes;
- J. Request for information or clarification from builder or builders;
- K. Providing directions and instructions to builder or builders;
- L. Communications with all government agencies related to items such as off-site improvements, utilities, and transportation; and,
- M. Punch list preparation and completion.

Except as otherwise provided in this MOU, the Parties agree that District shall have the right to direct and control the builder or builders, architects, and environmental review consultants.

City shall have access to the City Property and District Property at all times during business hours to observe the development and construction of the Improvements. Any City representatives shall observe builder's directions and job site safety rules, and shall not hinder or obstruct construction in any way.

Section 7. REVIEW AND APPROVALS; CHANGE ORDERS; SCHEDULE CHANGES

A. Design Documents. District has contracted with WLC Architects to prepare designs and specifications for the Improvements. City may review and comment upon plans and specifications for the Library and related improvements, as well as the parking lots and athletic fields to be constructed on the City Property, and the City shall have final approval rights of those portions of the plans and specifications.

B. Library and Related Improvements. During construction, City shall have the right to propose, review, and approve or disapprove change orders and schedule changes related to the Library and related improvements. City shall pay for all change orders and schedule changes to the Library and related improvements. District will communicate City's instructions to builder or builders.

C. School and Related Improvements. During construction, District shall have the right to propose, review, and approve or disapprove change orders and schedule changes related to the School and related improvements. District shall pay for all change orders and schedule changes related to the School and related improvements.

D. Athletic Fields. During construction, City and District shall collaborate and agree on change orders and schedule changes related to the athletic fields. Once agreement is reached, District will instruct the builder or builders as to all change orders and schedule changes.

E. Shared Parking Lot. During construction, City and District shall collaborate and agree on change orders and schedule changes to the shared parking lot area. Once agreement is reached, District will instruct the builder or builders as to all change orders and schedule changes.

F. Art in Public Places. City shall be solely responsible for complying with the Art in Public Places program requirements set forth in Sacramento City Code Chapter 2.84 as they relate to the Library and the athletic fields and parking lots to be constructed on the City Property. As required by Sacramento City Code section 2.84.130, the Sacramento Metropolitan Arts Commission shall provide for the nature, selection, and placement of the artwork projects. In the event the Sacramento Metropolitan Arts Commission intends to place artwork in a location that conflicts with the School's

security and suitability as a school site, then the District shall engage in the expedited dispute resolution process provided in Section 14.

G. Change Order & Schedule Change Approvals. Time is of the essence with respect to construction of the Improvements. To minimize schedule delay and disruption, the Parties agree to process and approve any and all change orders or schedule changes promptly, and in any case within seven (7) working days of the date that a change order or schedule change request or communication is sent from District or City to the other Party.

If District's consultation or approval is required, communications related to change orders or schedule changes shall be sent to:

Jim Dobson
Director, Facilities and Planning
5735 47th Avenue
Sacramento, CA 95824
(916) 643-9230 (phone)
(916) 643-2575 (fax)

If City's consultation or approval is required, communications related to change orders or schedule changes shall be sent to:

Jeff Blanton, Associate Architect
Department of General Services
Facilities & Property Management
5730 24th Street
Building #4
Sacramento, California 95822

(916) 808-8423 (phone)
(916) 264-8337 (fax)

In the event a change order requires approval of the District's Board of Education or the City's City Council, the Parties agree to place the item for the Party's review and approval on the next regularly scheduled meeting or the next special meeting, if available.

H. Conflict in Change Orders or Schedule Changes. In no event shall one Party approve a change order or schedule change that causes conflict with or reduces the suitability or workability of the other Party's improvements. For example, District may not approve a change order to the School that partially blocks curb access to the Library as provided in the plans and specifications. If, in the other Party's good faith opinion, a proposed change order or schedule change shall cause such conflict or reduction in suitability or workability, City and District shall, upon written notice of the conflict, negotiate in good faith to reach an agreeable solution within the seven (7) working days

required to process a change order or schedule change. In order to effectuate the purpose of this Subsection H, a Party proposing a change order or schedule change, shall notify the other Party of the proposed change order or schedule change in the manner set forth in Subsection G, above.

I. Failure to Agree. In the event the Parties are unable to agree on a change order or schedule change related to the Improvements, the Parties agree to engage in the expedited dispute resolution process set forth in Section 14.

J. Final Direction. If the Parties are unable to reach agreement after the expedited dispute resolution process, then District shall direct the builder or builders in order to avoid schedule delay and disruption. City and District shall continue to attempt to negotiate a good faith resolution of the dispute.

Section 8. SHARED COSTS; CHANGES IN COSTS

A. Cost Estimates. The City and District intend to jointly contract with a builder or builders to construct the Improvements. The Parties have estimated the costs of construction, design, and related costs for the Improvements. These estimates are set forth in Attachment C.

B. Project Elements. The Parties intend that District and City divide the costs and payments to the builder or builders, architect, necessary environmental consultants, and required mitigation measures, if any, for each element of the Improvements in the proportions outlined in Attachment C. The Parties agree to make payment to the builder, architect, or consultant in the manner and at the times described in this MOU if the costs for each element of the Improvements vary from the estimates listed in Attachment C.

1. The Parties intend that District will be responsible for all costs of improvements related to the School and related improvements.

2. The Parties intend that City will be responsible for all costs of improvements related to the Library and related improvements.

3. The Parties intend to share the costs of improvements related to the athletic fields and the shared parking lot, as shown on Attachment B, in the proportions outlined in Attachment C.

C. Unforeseen Costs. If any unforeseen elements of cost arise that are not described either in this MOU, then District and City agree to negotiate in good faith to determine shared costs, using the proportions in Attachment C to determine each Party's responsibility.

Section 9. PROGRESS PAYMENTS

The Parties intend that City will make payments to District, and District will make payment to all builders, contractors and consultants related to the Improvements and as required by this MOU.

A. Payment to Builder or Builders. In order to ensure timely payment to the builder or builders of the Improvements, prior to commencing construction of the Improvements, City and District will negotiate a payment schedule allowing for timely progress payments. The Parties intend that City make payment to District in sufficient time to allow District to issue progress payments to builders.

B. Retention. City will include 10% retention in the progress payments to be made to District pursuant to this MOU. District will withhold 10% retention from any and all payments to a builder or builders, and will release retention payments, as required by the construction agreement entered into between the City, District and a builder or builders.

C. Payment to Architect & Environmental Review Consultants. District has contracted directly with architects and environmental review consultants for the Improvements. City agrees to make payment for architects and environmental consultants to District, in accordance with Section 8, at the District's direction, so that District can make timely payment to architects and environmental review consultants in the proportions set forth in Attachment C. Unless specifically called for in the District's agreement with an architect or environmental review consultants, no retention payments will be withheld by District from payments to these contractors and consultants.

D. Inspection and Audit. The Parties shall have the right to review, inspect, and audit all non-privileged documents and records in each other's possession related to the Improvements, in order to assure timely and accurate payment and cost sharing as described herein.

E. Failure to Make Payment. In the event that City fails to make a progress payment to District as called for by the agreed schedule within 30 days of the due date, District shall provide written notice to City of such failure. If City does not cure or correct such failure, or engage in the expedited dispute resolution process provided in Section 10, within 15 days of service of the notice, District may direct builder to cease work upon the Library Building and/or the Athletic Fields until such progress payment is made to District.

Section 10. OWNERSHIP OF BUILDINGS, FIXTURES, AND EQUIPMENT

The Parties desire to cooperate in the construction and operation of the School and Library, and agree to cooperatively use each other's property to maximize the community's enjoyment of these resources.

A. Upon completion and acceptance, City will own the Library and related fixtures.

B. Upon completion and acceptance, District will own all buildings, equipment and fixtures located in or and connected to the School.

C. With respect to the athletic fields and parking lots, upon completion and acceptance, the City will own any buildings, fixtures, and improvements located on the City Property, and District will own any buildings, fixtures, and improvements located on the District Property. Without regard to ownership, the Parties desire to have cooperative joint use of the athletic fields and parking lots; therefore, the use of these facilities shall be subject to the Joint Use MOU between the City and District dated November 30, 1999 (City Agreement # 99-226). City Agreement #99-226 is incorporated in full into this MOU and is attached as Attachment D.

Section 11. UTILITIES & TELECOMMUNICATIONS

The Improvements will include separate utilities including, but not limited to, natural gas, electricity, water, sewer, and telecommunications connections to the Library. Any plans and specifications for the Project shall describe and call for these separate utility connections.

Section 12. ASSESSMENTS

All assessments and other fees applied to the City Property and District Property, including but not limited to Sacramento Area Flood Control Agency fees, shall be apportioned to District and City in proportion to the relative number of square feet per first-floor building area, or per number of acres leased / possessed, according to how the particular assessment or fee is calculated.

Section 13. NAMING OF PROJECT AND SEPARATE ELEMENTS

With respect to naming parts of the project, City shall have all authority to name the Library, park area, and athletic fields, and the District shall have all authority to name the School.

Section 14. DISPUTE RESOLUTION

If the Parties are unable to agree on any item, change order, obligation, or other act called for by this MOU, then they agree to an expedited dispute resolution process.

A. Step 1 – Meet and Confer. City and District agree to meet within three (3) working days after one Party sends written notice that it believes the dispute resolution process to be necessary. Each Party shall send a representative sufficiently familiar with the Improvements, and with sufficient authority, to meet and confer and attempt

resolution. If the dispute or any portion of it remains following the meet and confer conference, the Parties will proceed to mediation.

B. Step 2 – Mediation. Within fifteen (15) days after the meet and confer session, the Parties will select a disinterested third party mediator and submit to non-binding mediation. The Parties shall complete the mediation process within thirty (30) days of the meet and confer conference, unless time is extended by stipulation of all Parties.

C. Step 3 – Arbitration or Civil Action. If the Parties are unable to reach agreement at mediation, they may agree to submit the matter to arbitration or commence a civil action as allowed by law.

D. District to Instruct Builder. In the event the Parties are unable to reach agreement on any payment, obligation, change order, schedule change, or other item related to construction that requires City approval, and the Parties have given any written notices that may be required and have engaged in dispute resolution pursuant to this Section 14, the Parties agree that District shall be entitled to direct the builder or builders in good faith in order to minimize schedule disruption or delay.

Section 15. WARRANTIES; HAZARDOUS SUBSTANCES

City and District make no warranties or representations to each other except as specifically provided in this MOU, or any other agreement between the Parties, including but not limited to warranties or representations related to the suitability of the City Property or District Property for construction of the Improvements, the adequacy or correctness of any environmental review conducted for the Improvements, nor the location of any hazardous substances or other materials that may require remediation. As of the date of signing this MOU, City and District have no actual knowledge of any hazardous substances located on the City Property or the School Property.

Section 16. INSURANCE AND INDEMNITY

The Parties incorporate, and agree to be bound by, the insurance and indemnity provisions of the Memorandum of Understanding between the City of Sacramento and the Schools Insurance Authority Regarding Hold Harmless and Insurance Provisions dated May 31, 2001 (City Agreement # 2001-050). City Agreement # 2001-050 is incorporated in full into this MOU and is attached as Attachment E.

Section 17. MISCELLANEOUS PROVISIONS

A. Relationship of Parties. The Parties agree that that their agents and employees in the performance of this MOU are not officers, employees, or agents of the other Parties.

B. No Joint Venture. This MOU shall not create between the Parties a joint venture, partnership, or any other relationship of association.

C. No Grant of Agency. Except as specifically provided for in this MOU, neither Party shall have authority, express or implied, to act on behalf of the other Party in any capacity whatsoever as an agent or to bind the other Party to any obligation whatsoever.

D. Entire Agreement. This MOU embodies the entire agreement of the Parties in relation to the scope of matters covered by this MOU, and no other agreement or understanding verbal or otherwise, exists between the Parties.

E. Further Actions. The Parties agree to execute and deliver any and all additional papers, documents, and other assurances and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of this MOU.

F. Modifications. No modification of or amendment to this MOU may be made except in writing and signed by all Parties, with ratification or approval by the governing body of each Party.

G. Severability. The invalidity of any provision of this MOU or its parts shall in no way affect the validity of any other provision(s).

H. Waiver. Waiver of any breach of, or default under, this MOU shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this MOU.

I. Section Headings. The section headings contained this MOU are for convenience only, and are not intended to define or limit the scope of any provision of this MOU.

J. Consent. A Party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such Party's consent to or approval of any subsequent act by another Party.

K. Assignment Prohibited. No Party may assign any right or obligation pursuant to this MOU. Any attempt or purported assignment of any right or obligation pursuant to this MOU shall be void and of no effect.

L. Ambiguities. The Parties have each carefully reviewed this MOU and have agreed to each term of this MOU. No ambiguity shall be presumed to be construed against either Party.

M. Counterparts. This MOU 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 MOU. Signatures transmitted by facsimile shall be deemed original signatures.

N. Authority. The people executing this MOU have the capacity and are authorized to execute this MOU as the representatives of their respective Party, and to bind their respective Party to the terms of this MOU.

O. Governing Law. This MOU shall be interpreted using California law.

P. Incorporation of Attachments. All attachments are incorporated into this MOU.

CITY OF SACRAMENTO ("City")

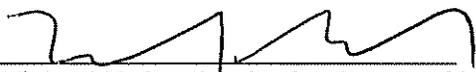
By: _____

Dated: _____

ATTEST:

City Clerk, City of Sacramento

APPROVED AS TO FORM:



Michael T. Sparks, Senior Deputy City Attorney
City of Sacramento

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
("District")

By: _____

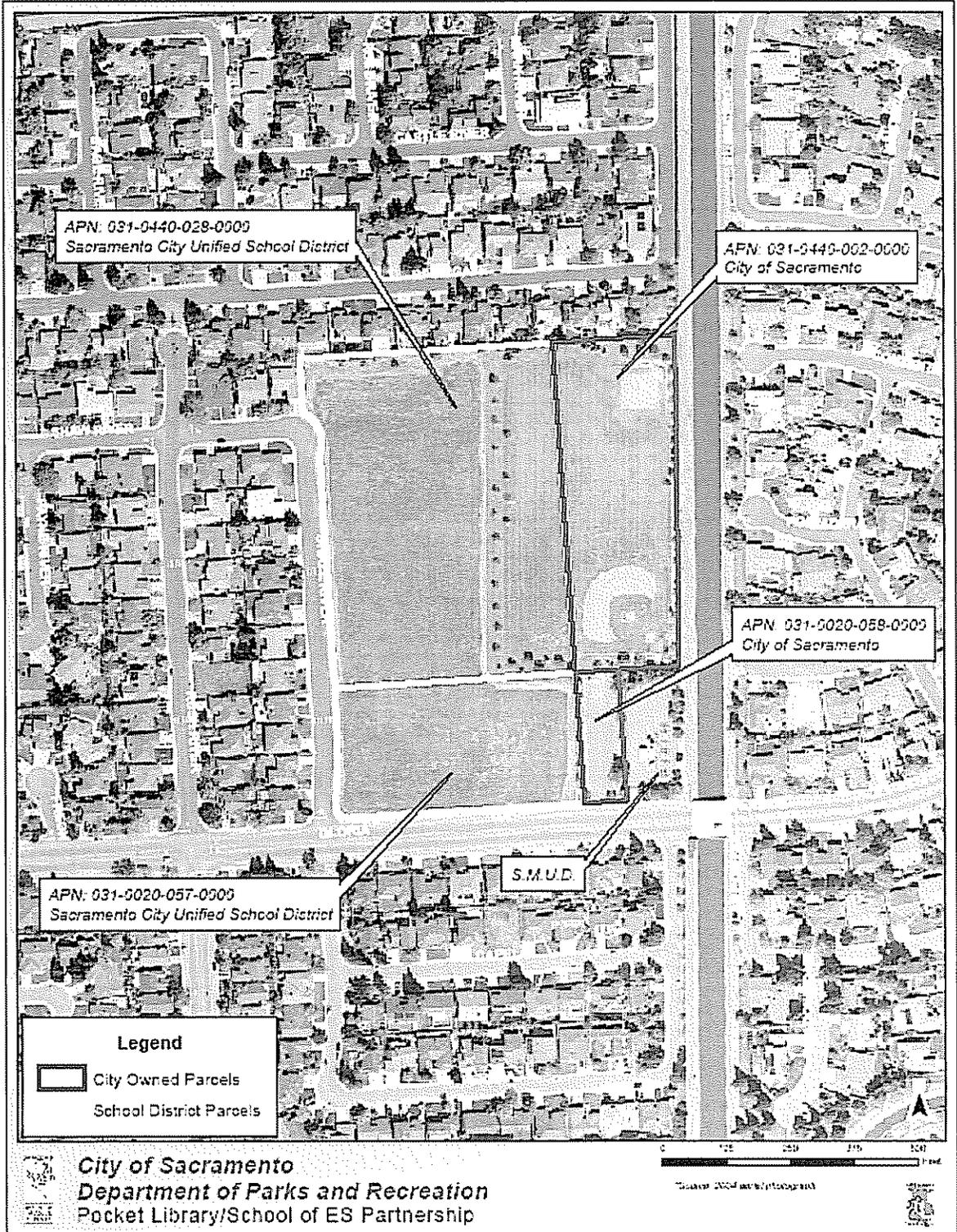
Dated: _____

APPROVED AS TO FORM:

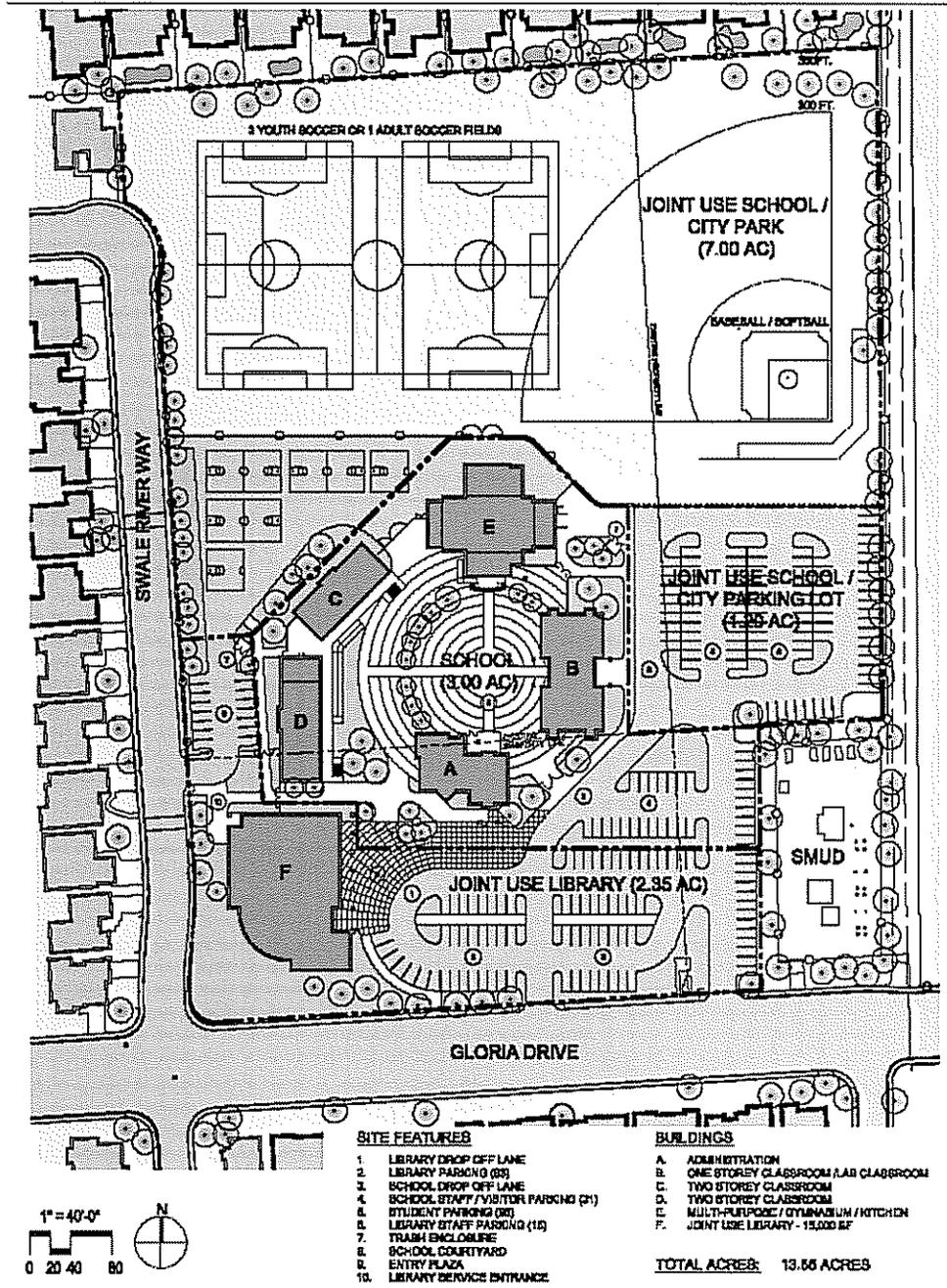
District Counsel, Sacramento City Unified
School District

ATTACHMENT A

Attachment A



ATTACHMENT B



April 8, 2007
 SACRAMENTO CITY UNIFIED
 SCHOOL DISTRICT and
 CITY OF SACRAMENTO

SITE MASTER PLAN 9 SCHOOL OF ENGINEERING AND SCIENCES



ATTACHMENT C

SUMMARY OF SHARED COSTS

| PROJECT ELEMENT | TOTAL | DISTRICT | | CITY | |
|----------------------------|---------------------|---------------------|------------|---------------------|------------|
| | | COST | SHARE | COST | SHARE |
| School Construction | 18,052,028 | 18,052,028 | 100% | 0 | 0% |
| Library Construction | 7,550,202 | 0 | 0% | 7,550,202 | 100% |
| Shared Parking Lots | 627,792 | 251,116 | 40% | 376,676 | 60% |
| Shared Playfield/Park | 1,899,766 | 759,906 | 40% | 1,139,860 | 60% |
| Shared Off-Site | 81,950 | 40,975 | 50% | 40,975 | 50% |
| CONSTRUCTION COSTS | \$28,211,738 | \$19,104,025 | 68% | \$9,107,713 | 32% |
| Architect Fees | 1,739,643 | 828,872 | 48% | 910,771 | 52% |
| Lease/Lease Back Fees | 1,452,130 | 1,016,491 | 70% | 435,639 | 30% |
| Other Fees | 430,000 | 301,000 | 70% | 129,000 | 30% |
| Furniture & Equipment | 400,000 | 400,000 | 100% | 0 | 0% |
| Contingency/Other | 1,494,344 | 844,178 | 56% | 650,166 | 44% |
| PROJECT SOFT COSTS | \$5,516,117 | \$3,390,541 | 61% | \$2,125,576 | 39% |
| TOTAL PROJECT COSTS | \$33,727,855 | \$22,494,566 | 67% | \$11,233,289 | 33% |

City Items/Direct Costs (\$3.4 million) not included in the above:

- CEQA Mitigation
- Library Interior Design
- Library Interior Furniture, Fixtures and Equipment
- Library Materials
- Library Start Up Costs
- Art in Public Places
- City Project Oversight

AGREEMENT

THIS AGREEMENT, dated November 30, 1999, is made and entered into by and between the

CITY OF SACRAMENTO, a municipal corporation,
hereinafter referred to as 'CITY',

And

SACRAMENTO CITY UNIFIED SCHOOL DISTRICT,
hereinafter referred to as 'SCUSD'

WITNESSETH:

WHEREAS, CITY and SCUSD desire to maximize use of their public facilities;

WHEREAS, CITY owns recreational facilities which it wishes to make available for use by SCUSD for activities that strengthen the education systems/programs in the community;

WHEREAS, SCUSD owns educational facilities which it wishes to make available for use by the CITY for recreational and important public purposes.

WHEREAS, Education Code Section 10900 et seq authorizes and empowers cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of public services which will contribute to the attainment of general recreational and educational objectives for children and adults of this State, and to enter into agreements with each other for such purpose.

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES, COVENANTS AND CONDITIONS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

1. TERM

The term of this Agreement shall commence on the date of execution set forth above and shall continue from year to year unless terminated by either party pursuant to the terms of Section 10 below.

CITY
AGREEMENT NO. 99-226

CITY
AGREEMENT NO. 99-226

ATTACHMENT D

2 USE OF FACILITIES

A. The term 'facilities' shall be used for the purposes of this Agreement to mean any place, structure, area, classroom or facility used for recreational/educational purposes, whether or not it is used primarily for other purposes. The terms of this Agreement shall apply to all recreational/educational facilities owned by CITY or SCUSD with the exception of those facilities listed on Exhibit 'A', a copy of which is attached and incorporated. Both parties agree to explore the possibility of some joint use access to those facilities listed on Exhibit 'A'.

B. CITY shall permit SCUSD to use its facilities and grounds with the necessary city equipment required for public and recreational purposes, without charge, as long as the use does not conflict with the regular conduct of park, recreation and public service activities. The first priority for use of CITY's facilities shall be activities sponsored in whole or in part by CITY; activities sponsored by SCUSD shall have next priority; activities sponsored by other entities, third priority.

C. SCUSD shall permit CITY to use its facilities and grounds, with the necessary SCUSD equipment required for public and recreational purposes, without charge, as long as use does not interfere with regular school activities, programs and other SCUSD uses. The District, in its complete discretion, shall determine the priority of use for its facilities. The following guidelines for priorities shall be considered in dealing with priority of use, except that no current user shall be completely displaced by the application of these guidelines without the availability of a viable alternative facility. First priority for use of SCUSD's facilities shall be regular and special school programs, PTA, parent activities, Healthy Start, summer school activities. Activities sponsored by CITY shall have next priority, in the following order: CITY sponsored and/or school connected youth programs (e.g. sports camps, START), other recreation activities scheduled by CITY.

D. Each party shall have the right to charge a reasonable fee to participants for participation in the recreational and educational activities sponsored by it at the other party's facilities.

E. Each party shall provide, at its own expense, any personnel necessary for the direction, supervision or safety of recreational and public activities sponsored by it at these facilities.

F. Each party shall provide all utilities necessary for use of the recreational/educational facilities owned by it.

ATTACHMENT D

G As feasible, SCUSD shall attempt to provide at CITY's expense adequate temporary office and storage space at SCUSD facilities for the regular conduct of CITY park, recreation and public service activities. As feasible, CITY shall attempt to provide at SCUSD's expense adequate temporary office and storage space at CITY facilities for the regular conduct of SCUSD business.

H. CITY or its agents shall enforce and abide by all SCUSD rules, regulations, ordinances and policies while directing activities on SCUSD facilities; SCUSD or its agents shall enforce and abide by all CITY rules, regulations, ordinances and policies while directing activities on CITY facilities. Each party shall provide copies of all relevant rules, regulations, ordinances and policies to the other party.

I. Pursuant to paragraphs B and C of this section, neither party shall charge fees for the other agency's use of the facilities. Necessary additional out-of-pocket expenses for costs related to the use of facility such as security, portable toilets, and extra clean up shall be the responsibility of the user agency. The user agency can provide its own security if the security plan meets the approval of the host agency.

J. Within reasonable limits, CITY and SCUSD staff will agree on custodial coverage so as to provide CITY, SCUSD and public usage with no cost to user. Activities will be scheduled in advance so that custodial support can be provided. A joint custodial services and supplies plan will be developed by both parties and revised semi-annually in conjunction with the semi-annual master calendar development described in Section 3.

The CITY and public uses shall cover costs associated with custodial coverage in situations where there is an 'extended burden'. An extended burden would be a custodial requirement that could not be covered through adjusting the current custodial support for the site, requires the paying of overtime or has collective bargaining implications.

K. Each agency shall maintain its facilities in good repair and provide day to day maintenance, utilities and custodial services and supplies, structural repair, and replacement or repair of major equipment. Costs associated with additional operations, exceptional facility use, maintenance and custodial services beyond fair wear and tear shall be set at a mutually agreed upon rate, to be assessed annually, except where an addressing Memorandum of Understanding Agreement containing different provisions exists between the City and District.

ATTACHMENT D

L. The CITY and SCUSD shall develop an emergency access policy so that designated CITY staff or SCUSD staff can open and close facilities if owning agency personnel are not available during the proposed use.

3. SCHEDULING OF FACILITIES

CITY shall be responsible for scheduling all reserved CITY use of SCUSD facilities during non-school hours for purposes sponsored by CITY. SCUSD shall be responsible for scheduling all reserved SCUSD use of CITY facilities for purposes sponsored by SCUSD. The scheduling shall be subject to the following terms and conditions:

A. CITY staff and SCUSD staff shall meet twice a year at prescheduled intervals to develop a master calendar for use of CITY and SCUSD facilities. Dates agreed to shall be finalized through issuance of a permit by the respective agency. In every use, the schedule shall be arranged so as not to conflict with recreation and school uses.

B. Both agencies shall designate staff to act as their Facility Scheduling Representative for purposes of submitting requests. Both agencies agree to maximize the twice annual calendaring process as identified in Paragraph A above to streamline and reduce the volume of staff requests for facility use between semi-annual calendaring meetings.

C. Requests for facility use shall be processed through each agency's central permit processing office. Each agency's central permit office will be responsible for verifying availability of that agency's facilities prior to approving a Facility Use Application.

D. All requests for CITY use of SCUSD facilities shall be submitted on SCUSD Facility Use Application forms. All requests for SCUSD use of CITY facilities shall be submitted on CITY Facility Use Application forms.

4. CANCELLATION OF RESERVED SPACES

A. CITY shall endeavor to provide SCUSD with a minimum of fourteen (14) calendar days notice when canceling approved uses of SCUSD facilities. SCUSD shall endeavor to provide CITY with a minimum of fourteen (14) calendar days notice when canceling approved uses of CITY facilities.

B. Once a permit is issued it shall not be canceled by the owning agency unless the facility is deemed unsafe or due to situations beyond control of owning agency. The using agency

ATTACHMENT D

shall be compensated for out of pocket expenses incurred prior to the date of cancellation if a facility date is canceled.

C. The owning agency shall make every good faith effort to locate an alternative site for the scheduled activity in the event of a cancellation.

5. IMPROVEMENTS TO PROPERTY

The CITY and SCUSD shall jointly identify resources and capital and equipment needs that will facilitate enhanced joint and public use. SCUSD and CITY shall develop a reasonable cost sharing agreement on those capital and equipment items that are directly related to and essential for joint and public use (e.g. shared costs for gym floor replacement, for replacement of basketball hoops, for repair of district swimming pools that are available to the public, to purchase storage and security devices to enable classrooms to be available for non school hour uses). The cost sharing agreement shall be based on the proportional usage of the facilities or equipment by each agency. The CITY's proportional use shall include the use of school facilities by the CITY. SCUSD's proportional use shall include the use of city facilities by SCUSD. The owning agency shall repair or replace those items mutually agreed upon by the two agencies. City's contribution to the cost thereof, shall be from a capital improvement designated for that purpose. Replacement of such equipment over time shall be by the owning agency in consultation with the other party.

The SCUSD and CITY agree to work with public members to seek community involvement in capital replacements (i.e., parent participation projects, private donations), if deemed appropriate by the CITY and SCUSD.

CITY may install sprinkler systems, turfing, playground equipment, fencing, and additional recreational equipment on SCUSD facilities provided such installation is not in conflict with school use and subject to advanced written approval of the Superintendent or his/her designee. SCUSD shall be responsible for all maintenance and repair of any CITY installed improvements upon completion of the project and approval and acceptance by SCUSD. Any such improvements shall become the property of SCUSD.

6. MEET AND CONFER

CITY and SCUSD shall meet on a quarterly basis, as mutually agreed, to discuss operational issues and correct deficiencies.

ATTACHMENT D

CITY and SCUSD each shall document any misuse of facilities by the other party on written incident reports, which shall be submitted to the other party within three (3) business days after the incident occurred, or the notifying party gains knowledge of such an incident. CITY and SCUSD shall provide written responses to all incident reports within five (5) business days of receipt. Action, which results from the incident reports, including reduction or cancellation of scheduled facility use, shall be by mutual agreement between CITY and SCUSD

7. INDEMNIFICATION

The parties agree to be bound by the terms of that certain Memorandum of Understanding between CITY and the Schools Insurance Authority, a true and correct copy of which is attached hereto and incorporated herein by reference as Exhibit B.

8. INSURANCE

A. During the term of this Agreement, SCUSD shall maintain a comprehensive liability insurance policy providing coverage for public liability, bodily injury and property damage.

B. During the term of the Agreement, CITY shall either be self-insured or maintain a comprehensive liability insurance policy providing coverage for public liability, bodily injury and property damage.

9. AGREEMENT AMENDMENTS

No amendments to this agreement shall be of any force or effect, unless the same is in writing and executed by the parties hereto.

10. ASSIGNMENT

Neither SCUSD nor CITY may assign or transfer this Agreement, or any part thereof, without the prior written consent of the other party.

11. TERMINATION

Either CITY or SCUSD may terminate this Agreement upon giving the other party at least ninety (90) days prior written notice.

12. NOTICES

Notices and communication concerning this Agreement shall be sent to the following addresses:

ATTACHMENT D

CITY

City of Sacramento
Recreation Manager
1231 I Street, Room 400
Sacramento, CA 95814

SCUSD

Sacramento City Unified School District
Asst Superintendent
520 Capital Mall
Sacramento, CA 95814

13. PRIOR AGREEMENTS

This agreement supersedes the prior agreement (City Agreement No. 81069) relating to joint use.

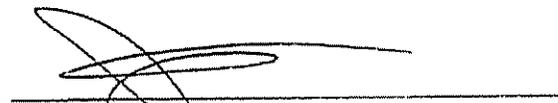
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the dates-set forth above.

CITY OF SACRAMENTO,
A Municipal Corporation

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT



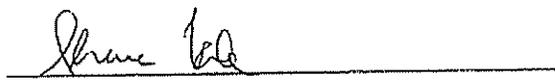
City Manager



Superintendent

APPROVED AS TO FORM:

APPROVED AS TO FORM:

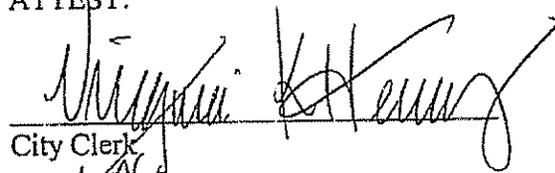


Deputy City Attorney



SCUSD Attorney

ATTEST:



City Clerk

CITY
AGREEMENT NO. 99-226

ATTACHMENT D

EXHIBIT A

FACILITIES NOT COVERED BY THIS AGREEMENT

1. **FACILITIES OWNED BY CITY**
Self-supporting facilities such as the Sacramento Convention Center and Memorial Auditorium, golf courses, marina, Sacramento Softball Complex, Camp Sacramento and city owned parking lots. Quasi-government facilities or facilities operated by non-profit organizations such as the Sacramento Zoo, Crocker Art Museum, Discovery Museum, History Archives, and City Cemetery.

2. **SCHOOL DISTRICT FACILITIES**
None.

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 4R 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. 2001-050

CITY
AGREEMENT NO. 2001-050 1

ATTACHMENT D

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

ATTACHMENT D

conditions of CITY property which arise out of the acts or failure to act by the CITY, its officers, agents or employees which are not created by a DISTRICT employee or District invitee.

CITY shall assume the defense of and indemnify and hold harmless DISTRICT from and against all actions or claims against DISTRICT, its officers, agents or employees from any and all loss, including attorneys' fees, sustained by DISTRICT 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 DISTRICT, its officers, agents or employees and except for actions or claims alleging dangerous condition of DISTRICT property which arise out of the acts or failure to act by the DISTRICT, its officers, agents or employees which are not created by a CITY employee or CITY invitee.

The indemnification provisions contained in this Agreement includes but is not limited to any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of either party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.

It is the intent of the Parties that where negligence or responsibility for injury or damages is determined to have been shared, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that party's negligence.

Each party shall establish procedures to notify the other party, where appropriate, of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification section. The Parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this agreement. Nothing set forth in this Agreement shall establish a standard of care for or create any legal rights for any person not a party to this Agreement.

The indemnity provisions of this Agreement shall survive the expiration or earlier termination of this Agreement.

INSURANCE

City Insurance. CITY, 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 or pooled insurance, if any. The CITY must provide an affidavit of self-insurance, if any.

ATTACHMENT D

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 forgoing 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.

ATTACHMENT D

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 forgoing 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.

ATTACHMENT D

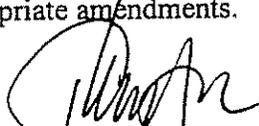
Term

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 hereof. 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

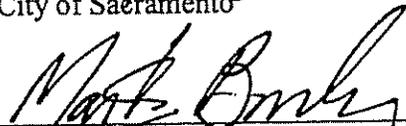
Amendments to this MOU may be made with the mutual written agreement from the participating parties. The MOU shall be periodically reviewed for consideration of appropriate amendments.



City of Sacramento

3/22/07

Date



Schools Insurance Authority

5/31/01

Date

APPROVED AS TO FORM:

ATTEST:


CITY CLERK



City of Sacramento

CITY
AGREEMENT NO. 2001-050

CITY
AGREEMENT NO. 2001-050

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 4R 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. 2001-050

CITY
AGREEMENT NO. 2001-050 1

ATTACHMENT E

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

ATTACHMENT E

conditions of CITY property which arise out of the acts or failure to act by the CITY, its officers, agents or employees which are not created by a DISTRICT employee or District invitee.

CITY shall assume the defense of and indemnify and hold harmless DISTRICT from and against all actions or claims against DISTRICT, its officers, agents or employees from any and all loss, including attorneys' fees, sustained by DISTRICT 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 DISTRICT, its officers, agents or employees and except for actions or claims alleging dangerous condition of DISTRICT property which arise out of the acts or failure to act by the DISTRICT, its officers, agents or employees which are not created by a CITY employee or CITY invitee.

The indemnification provisions contained in this Agreement includes but is not limited to any violation of applicable law, ordinance, regulation or rule, including where the claim, loss, damage, charge or expense was caused by deliberate, willful, or criminal acts of either party to this Agreement, or any of their agents, officers or employees or their performance under the terms of this Agreement.

It is the intent of the Parties that where negligence or responsibility for injury or damages is determined to have been shared, principles of comparative negligence will be followed and each party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that party's negligence.

Each party shall establish procedures to notify the other party, where appropriate, of any claims, administrative actions or legal actions with respect to any of the matters described in this indemnification section. The Parties shall cooperate in the defense of such actions brought by others with respect to the matters covered in this agreement. Nothing set forth in this Agreement shall establish a standard of care for or create any legal rights for any person not a party to this Agreement.

The indemnity provisions of this Agreement shall survive the expiration or earlier termination of this Agreement.

INSURANCE

City Insurance. CITY, 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 or pooled insurance, if any. The CITY must provide an affidavit of self-insurance, if any.

ATTACHMENT E

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 forgoing 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.

ATTACHMENT E

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 forgoing 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.

ATTACHMENT E

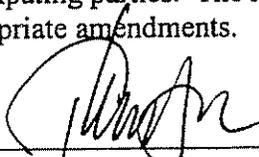
Term

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 hereof. 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.

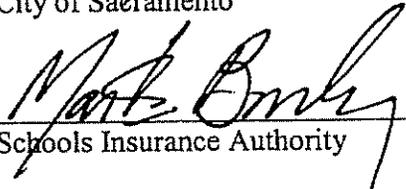
Amendments

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

3/22/07
Date

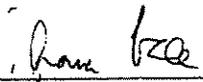


Schools Insurance Authority

5/31/01
Date

APPROVED AS TO FORM:

ATTEST:



City of Sacramento



CITY CLERK

CITY
AGREEMENT NO. 2001-050