

**AGREEMENT BETWEEN  
THE CITY OF SACRAMENTO AND NATOMAS UNIFIED SCHOOL DISTRICT  
FOR THE DEVELOPMENT AND CONSTRUCTION OF A  
4th R CHILD CARE CENTER FACILITY AT HERON SCHOOL**

This Agreement is made and entered into as of \_\_\_\_\_, 2006 (the "Effective Date"), by and between the CITY OF SACRAMENTO, a municipal corporation (hereafter referred to as "CITY"), and the NATOMAS UNIFIED SCHOOL DISTRICT, a (hereafter referred to as "DISTRICT"). The CITY and the DISTRICT may be referred to collectively as "Parties" or in the singular as "Party", as the context requires.

**RECITALS**

WHEREAS, each Party to this Agreement possesses the authority to acquire, construct, operate and maintain property for the purpose of providing recreational facilities to the public;

WHEREAS, the DISTRICT currently owns, maintains and will soon operate Heron School, a kindergarten through eighth grade public school and has space available on its site for the construction of a 4th "R" child care facility ("Facility") which would serve the educational and recreational needs of the community; and

WHEREAS, there is a desire for coordinated planning by the Parties to this Agreement in the design, construction, improvement, maintenance and operation of the Facility in order to obtain maximum benefit from the expenditure of public funds.

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

**1. TERM OF AGREEMENT.** The term of this Agreement shall commence on the Effective Date and shall terminate on the date of issuance of the Notice of Completion of this Facility, unless terminated earlier in accordance with Paragraph 10 herein.

**2. DESCRIPTION OF FACILITY.** The Facility will be located on the grounds of the DISTRICT's Heron School located at 5151 Banfield Drive, Sacramento, California, Assessor's Parcel Numbers 225-0040-025 and 225-0040-026. The description and scope of the Facility is shown as Exhibit "A" attached hereto and incorporated by reference. The estimated cost of the Facility is shown on Exhibit "B" attached hereto and incorporated by reference. The Parties intend that the Facility will be constructed as described in Exhibit "A" and Exhibit "B".

**3. PURPOSE OF FACILITY.** The purpose of the Facility will be to provide the parents and students of Heron School and the community with a child care choice for their school age children (K-8th grade). The Facility, in addition to supporting the DISTRICT's educational and recreational purposes, will be used by the CITY and the community for before- and

after-school and early-dismissal child care. The terms of such use shall be governed by a separate agreement entered into by and between the CITY and the DISTRICT entitled "Agreement Between the City of Sacramento and Natomas Unified School District for Operation and Use of a 4th "R" Child Care Center Facility at Heron School."

**4. CONSTRUCTION OF FACILITY.** The DISTRICT shall be solely responsible for the construction of the Facility and for entering into any and all agreements required for, and relating to, the construction of the Facility. The DISTRICT shall be responsible for complying with all Federal, State and local laws relating to the construction of school facilities including, without limitation, compliance with the Americans with Disabilities Act. DISTRICT shall be responsible for obtaining all necessary approvals and permits for construction of the Facility including, but not limited to, obtaining approval of the plans and specifications by the Division of the State Architect.

**5. SCHEDULE FOR COMPLETION OF FACILITY.** The Parties estimate the following schedule for the completion of this project:

August 1, 2006

Written Notification of Completion

The foregoing date is an estimate only, and the Parties acknowledge that uncertainties at the design and construction phases may cause these estimates to change. The DISTRICT will provide CITY with updates of progress during the construction period, at intervals of no less than two weeks.

**6. FUNDING RESPONSIBILITIES AND PAYMENT SCHEDULE.** Pursuant to the payment procedure and schedule described below, CITY shall pay to DISTRICT an estimated \$425,000 to offset the cost to construct the Facility. CITY shall make payment to DISTRICT within 14 calendar days of receipt of a written request from the DISTRICT's representative as follows:

- (a) Seventy percent (70%) of the estimated \$425,000 construction cost, in an amount not to exceed \$297,500, upon execution of this Agreement.
- (b) The remainder of the estimated construction cost, in an amount not to exceed \$127,500, upon receipt of the Facility's written Notification of Completion accompanied by an itemized accounting of all expenses incurred by the DISTRICT.

**7. INDEMNIFICATION / INSURANCE.** The Parties agree to be bound by the insurance and hold harmless provisions found in that certain agreement entitled "Memorandum of Understanding between City of Sacramento and the Schools Insurance Authority Hold Harmless and Indemnification Provisions" dated May 31, 2001, executed copies of which are on file with the CITY, the DISTRICT and Schools Insurance Authority.

**8. AGREEMENT AMENDMENTS.** No amendment to this Agreement shall be of any force or effect unless the same is in writing and executed by the Parties.

**9. ASSIGNMENT.** Neither DISTRICT nor CITY may assign or transfer this Agreement or any part thereof without the prior written consent of the other Party.

**10. TERMINATION**

(a) Prior to the issuance of the Facility's Notice of Completion, either Party may terminate this Agreement in the event of a material breach by the other Party. The Party alleging the breach shall give written notice thereof to the Party in breach, and the Agreement shall terminate unless the breach is cured within thirty (30) calendar days.

(b) If the Facility's plans and specifications require approval by the State Department of Education or the Division of the State Architect, this Agreement may be terminated by either Party in the event such approval is not obtained within one (1) year of execution of this Agreement. This Agreement shall also terminate in the event the Facility is not completed within two (2) years of execution.

(c) In the event this Agreement is terminated as provided in this Section 10, DISTRICT shall compensate the CITY for the value, as of the effective date of termination, of the Facility based on an independent appraisal. Such payment shall be made by the DISTRICT within sixty (60) calendar days of the effective date of the termination.

(d) Upon termination of the Agreement, CITY shall be entitled to remove any personal property owned by CITY and housed on the Heron site or otherwise dispose of such materials as mutually agreed upon in writing.

**11. NOTICES.** Notices and communication concerning this Agreement shall be sent to the following addresses:

CITY  
City of Sacramento  
David Mitchell  
Recreation Manager  
915 I Street, 5th Floor  
Sacramento, CA 95814

DISTRICT  
Natomas Unified School District  
Frank C. Harding, Jr.  
Director, Facilities and Planning  
1901 Arena Blvd.  
Sacramento, CA 95834

**12. BINDING AGREEMENT.** Each and every provision of this Agreement shall be binding and inure to the benefit of the successors in interest of the Parties.

**13. EXHIBITS.** All Exhibits hereto are incorporated herein.

**14. INTEGRATION.** This is an integrated Agreement containing all of the considerations, understandings, promises and covenants exchanged between the Parties.

**15. SEVERABILITY.** If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this

Agreement and the remaining parts shall remain in full effect as though such invalid or unenforceable provision had not been a part of this Agreement.

**16. GOVERNING LAW; VENUE.** This Agreement is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Agreement, the venue for any legal action shall be with the appropriate court in the County of Sacramento, State of California.

**17. AUTHORITY.** The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

**18. EFFECT OF RECITALS.** The Recitals and Exhibit(s) herein are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and the Parties acknowledge and agree that they are each bound by the same.

**19. CONFLICTS OF INTEREST.** No director, officer, official, representative, agent or employee of any Party shall have any financial interest, direct or indirect, in this Agreement.

**20. RIGHTS AND REMEDIES ARE CUMULATIVE.** Except as may be otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party or Parties.

**21. COOPERATION.** The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set out in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this Agreement.

**22. AMBIGUITIES NOT TO BE CONSTRUED AGAINST DRAFTING PARTY.** The doctrine that any ambiguity contained in a contract shall be construed against the Party whose counsel has drafted the contract is expressly waived by each of the Parties hereto with respect to this Agreement.

**23. NONLIABILITY OF OFFICIALS.** No officer, director, official, member, employee, agent, volunteer or representative of the Parties shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.

**24. THIRD PARTY BENEFICIARIES.** Nothing in this Agreement shall be construed to confer any rights upon any Party not signatory to this Agreement.

**25. NO JOINT VENTURE.** It is mutually understood that this Agreement is by and between independent contractors and is not intended to and shall not be construed as to create the relationship of agent, servant, employee, partner, joint venturer or association between or among the Parties. Except as specified in writing between the Parties, neither Party shall have the authority, express or implied, to either act on behalf of the other Party in any capacity whatsoever as an agent or bind the other Party to any obligation whatsoever.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date set forth above.

CITY OF SACRAMENTO,  
A Municipal Corporation

NATOMAS UNIFIED  
SCHOOL DISTRICT

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

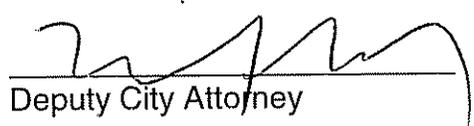
Title: \_\_\_\_\_

For Ray Kerridge, City Manager

\_\_\_\_\_  
Frank C. Harding, Jr.  
Director, Facilities and Planning

APPROVED AS TO FORM:

ATTEST:

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

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

## **EXHIBIT A**

Description of Facility/project scope:

Construction and placement of a 60' x 40' modular building to be permanently situated on parcels 225-0040-025 and 225-0040-026 at 5151 Banfield Drive at Heron School. Building will be set at grade. All site work and utility connections including water, sewer, electricity and fire alarm will be provided.

## EXHIBIT B

### Estimated Costs of Facility/project

City of Sacramento 4th R & NUSD  
New Building @ Heron School  
60' x 40'

#### ESTIMATED PROJECT BUDGET

Item	Estimate
<i>Construction Costs</i>	
Pads	\$ 35,000
Site Work	\$ 20,000
Buildings	\$ 220,000
Stucco / Painting / Trim	\$ 35,000
<i>Soft Costs</i>	
Architectural Fees	\$ 38,000
DSA Plan check (1.5%)	\$ 7,500
PM Fees	\$ 2,750
In Plant Inspection	\$ 2,500
Construction Testing	\$ 1,500
Cx Fee	\$ 2,000
DSA Project Inspection	\$ 5,000
Total Costs	\$ 369,250
Contingency @ 15%	\$ 55,388
Project Total	\$ 424,638