

# APPROVED

MAY 17, 2017

## BOARD OF RECREATION AND PARK COMMISSIONERS

BOARD REPORT

NO. 17-119

DATE May 17, 2017

C.D. 13

### BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: WASHINGTON IRVING MIDDLE SCHOOL - AMENDMENT TO JOINT USE AGREEMENT AND DEVELOPMENT AGREEMENT WITH THE LOS ANGELES UNIFIED SCHOOL DISTRICT FOR THE RESTORATION OF THE MULTI-USE SYNTHETIC SPORTS FIELD AND RUNNING TRACK LOCATED WITHIN THE JOINT USE AREA OF THE CAMPUS CATEGORICAL EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO ARTICLE III, SECTION 1, CLASS 1(1,11d), AND CLASS 3 (6) OF THE CITY CEQA GUIDELINES (ALTERATIONS INVOLVING REMODELING WITH NEGLIGIBLE OR NO EXPANSION OF USE, DEMOLITION AND REMOVAL OF EXISTING ACCESSORY STRUCTURES AND CONSTRUCTION OF NEW ACCESSORY STRUCTURES)

|            |       |             |       |
|------------|-------|-------------|-------|
| *AP Diaz   | _____ | V. Israel   | _____ |
| R. Barajas | _____ | N. Williams | _____ |
| H. Fujita  | _____ |             |       |

  
\_\_\_\_\_  
General Manager

Approved ✓                      Disapproved \_\_\_\_\_                      Withdrawn \_\_\_\_\_

### RECOMMENDATIONS:

That the Board:

1. Approve a proposed project to restore the multi-use synthetic sports field and adjacent running track at Washington Irving Middle School (Project) estimated at Seven Hundred Twenty-Five Thousand, Five Hundred Dollars (\$725,500.00), to be performed by on-call, pre-qualified Department of Recreation and Parks (RAP) contractors, funded through Community Development Block Grant (CDBG) funds awarded to RAP in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00);
2. Approve a proposed Amendment to the Joint Use Agreement (JUA) between RAP and the Los Angeles Unified School District of Los Angeles County (District) for joint use of certain portions of Washington Irving Middle School (Campus), herein included as Attachment 1, to (i) address the restoration of the multi-use synthetic sports field and adjacent running track located within the joint use area of the Campus, (ii) document the use of the CDBG funding and incorporate associated grant requirements into the JUA, (iii) change the term of the original JUA from thirty (30) years to eight years from the date

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of completion of the Project, (iv) establish responsibilities for JUA area maintenance and Warranty enforcement if necessary, and (iv) incorporate three new sections into the JUA as further described in the Summary of this Report;

3. Approve a proposed Development Agreement, herein included as Attachment 2, between the City of Los Angeles and District, stipulating the terms and conditions for the restoration of the multi-use synthetic sports field and adjacent running track at the Campus, to be performed or caused to be performed by RAP at no cost to District through said CDBG funding;
4. Find that the proposed Project to restore the synthetic sports field and adjacent running track at Washington Irving Middle School is categorically exempt from the California Environmental Quality Act (CEQA), and direct RAP staff to file a Notice of Exemption;
5. Authorize the RAP Chief Accounting Employee to prepare a check to the Los Angeles County Clerk in the amount of Seventy-Five Dollars (\$75.00) for the purpose of filing a Notice of Exemption;
6. Authorize RAP staff to make necessary changes to the Amendment and Development Agreement to carry out the intent of the proposed actions of this Report, subject to the approval of the City Attorney;
7. Direct the Board Secretary to transmit the Amendment and Development Agreement to the Mayor in accordance with Executive Directive No. 3 (Villaraigosa Series), and concurrently to the City Attorney for review and approval as to form; and
8. Authorize the Board President and Secretary to execute the Amendment and authorize the General Manager or Designee to execute the Development Agreement upon receipt of the necessary approvals.

SUMMARY:

On June 4, 1998, a Joint Use Agreement (JUA) was executed between the City of Los Angeles (City) through the Department of Recreation and Parks (RAP), and the Los Angeles Unified School District (District), for joint use of an approximate 0.13-acre portion of Washington Irving Middle School (Campus), located at 3010 Estara Avenue in the community of Glassell Park. On March 2, 2000, the City entered into a Proposition K (Prop-K) Grant Agreement with the District for Prop-K funding in the amount of One Million, Three Hundred Seventy-Five Thousand, Seven Hundred Dollars (\$1,375,700.00), which the District used to develop a passive park referred to commonly as the "joint use area" within the School Campus, consisting of a picnic area and open green space (natural turf) with trees and adjacent restrooms located along the Fletcher Drive side of the Campus, and a multi-use synthetic sports field and adjacent running track located within the southeast area of the Campus, as depicted by the aerial map attached hereto as Attachment 3.

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The original JUA carried a term of thirty (30) years, which commenced on the date of the joint use project's completion on or about May 20, 2003; and established the current expiration date of May 20, 2033. Since completion of their development in 2003, the synthetic multi-use sports field and running track (collectively, "Field") have been heavily used by Campus students and the general public through RAP programming and permitting to third-party groups and organizations. Although approximately only fourteen (14) years of the 30-year JUA term has passed, it has been determined by RAP and the District that the useful life of the Field has elapsed. The Field is currently unusable due to worn and torn surface materials that present significant hazards to public safety. On August 27, 2014, the District issued written correspondence attached hereto as Attachment 4, informing RAP of the Field's condition and restricting any further athletic activities on the Field. At that point in response to the situation and various inquiries, complaints, and concerns expressed by the public and users of the Field to RAP, the District, and Office of the Thirteenth Council District Office (CD-13), RAP and the District began discussions to identify funding and determine necessary steps and the best manner in which to restore the Field for the benefit and enjoyment of the students and general public.

Through extensive discussions among RAP, the District, CD-13, the Bureau of Engineering Prop-K Group, and the Housing Community Investment Department (HCID), funding in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) was identified through the HCID-administered CDBG program to fund the restoration of the multi-use synthetic sports field and running track (referred to herein as "Project"). However, in order to not only address financial requirements associated with the proposed Project, the various agencies involved also discussed and determined what administrative and legal requirements associated with implementing the Project would need to be addressed considering the life of the Field had run out. Approximately nineteen (19) years still remain on the existing JUA, and the Prop-K Grant Agreement is also still in effect for nineteen (19) years as well. It was determined that the true life of a new synthetic surface field would need to be taken into account, which by normal industry standards for today's synthetic fields is approximately eight years, and that the existing JUA and Prop-K Grant Agreement would need to be amended to reflect the eight-year Field life span, along with other agreed upon terms and conditions such as ongoing maintenance, and to address any needed future Field restoration or repair, if necessary during the eight-year term. The Prop-K Grant Agreement between the District and City shall be amended by the Bureau of Engineering Prop-K Group (BOE), as RAP is not a party to the Grant Agreement. For purposes of transparency and confirmation of responsibilities between RAP and the District, it was determined that a Development Agreement would also need to be processed and executed, to clearly stipulate the terms and conditions for the restoration of the Field at RAP's expense and no cost to the District, in exchange for the District's ongoing maintenance of the JUA area(s).

With the Board's approval of the proposed Amendment to the existing JUA as proposed, the following actions will help to ensure the future enjoyment and benefit of students and the public at the Campus over the next eight years:

- In **Section 1 (Funding)**, reflect the City Council's approval and authorization on April 28, 2016 (CF 15-1041) to use CDBG funding in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00), along with additional City funding if necessary to be

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identified by CD-13, for the restoration of the Field at the Campus in accordance with the terms and conditions of the proposed Development Agreement between RAP and District;

- In **Section 3 (License and Term)**, reduce the number of remaining years of the term of the current JUA, from approximately 19 years to eight years, to coincide with an amendment to the Prop-K Grant Agreement between District and City, as well as with the anticipated life span of the proposed new Field;
- In **Section 6 (District Maintenance)**, establish future maintenance responsibilities for the District and RAP, which essentially entail the District being responsible for the day-to-day and annual maintenance of the Field for the eight-year term commencing upon completion of the Project, and RAP purchasing and providing to the District a synthetic surface grooming machine which the District will use to perform the required maintenance. Additionally, RAP will assign an eight-year warranty to the District for the AstroTurf materials used to restore the Field, and shall assist the District in exercising the warranty if necessary.
- Insertion of three new JUA sections, as follows:

**Section 22 - Identification of Project Eligibility/National Objection**, documents the use of Community Development Block Grant (CDBG) funding must be used for specific purposes to meet at least one of three national objectives, which in this case is the objective of activities benefitting low to moderate income persons.

**Section 23 - Use of Facilities and Improvements**, specifies that the Field will be used for recreational purposes throughout the eight-year term of the JUA and what the ramifications would be if use deviates from such purposes, and stipulates that certain reports regarding the use of the Field must be submitted to HCID by RAP and the District.

**Section 24 – Program Income**, stipulates that all revenues derived from Field operations, programs, or other sources, must be reported to HCID by RAP and the District.

### DEVELOPMENT AGREEMENT

The proposed Development Agreement memorializes the roles and responsibilities of the District and City during the construction phase of the Project only, as it specifically stipulates necessary approvals, use of funds, timelines, the contract award(s) process, and other construction related specifications. The Development Agreement expires upon completion of the Project.

The Project consists only of the restoration of the Field (multi-use synthetic sports field and running track) and provision of the grooming machine for the District's use in maintaining the

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Field once completed. Once the City completes the Field, the District is required to maintain the sports field and running track for a period of eight years following the City's issuance of a Certificate of Completion. As part of the District's ongoing maintenance obligation, RAP will assign an eight-year warranty to the District for the AstroTurf materials used to restore the Field, and shall assist the District in exercising the warranty if necessary. Given that this is a high priority project for CD-13, the Council Office has committed to identifying additional funding to complete the Project if necessary; however, such additional funding would only be required if unforeseen circumstances were to be encountered during the construction phase of the Project. Given that this is a basic synthetic field project, RAP staff does not anticipate any issues with the restoration of the Field. The Development Agreement does allow both parties to terminate the Agreement if issues arise that render the Project infeasible.

The Project has already been sent out for bid to RAP's on-call, pre-qualified contractors. The current cost estimate which already includes some monies for contingency purposes is less than the CDBG grant amount. The CDBG grant amount is Seven Hundred Five Thousand Dollars (\$750,000.00), and the current cost estimate for the Project is approximately Seven Hundred Twenty-Five Thousand, Five Hundred Dollars (\$725,500.00), which leaves an additional Twenty-Four Thousand, Five Hundred Dollars (\$24,500) available for unforeseen contingencies.

With the Board's approval of the Development Agreement, RAP staff will be authorized to proceed with the implementation of the Project through CDBG funding and if necessary, additional City funding to be identified by CD-13.

### ENVIRONMENTAL IMPACT STATEMENT

The proposed Project consists of modifications to existing facilities involving negligible or no expansion of use, of the removal of existing accessory structures and the construction of appurtenant structures. Therefore, RAP staff recommends that the Board determine that the Project is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to Article III, Section 1, Class 1 (1,11d) and Class 3 (6) of the City CEQA Guidelines. A Notice of Exemption will be filed with the Los Angeles County Clerk upon approval of by the Board. The Assistant General Manager of Recreational Services Branch and Superintendent of the Metro Region, along with the Office of CD-13, support the staff recommendations set forth in this Report.

### FISCAL IMPACT STATEMENT:

Approval of Amendment No. 1 to the Washington Irving Middle School JUA, and approval of the Development Agreement, shall have no impact on the RAP General Fund as Project costs will be paid through CDBG funding and additional alternate sources identified by CD-13 if necessary.

This Report was prepared by Joel Alvarez, Senior Management Analyst II, Partnership Division,

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with input from RAP's Planning Division and Contracts Section.

LIST OF ATTACHMENTS

- 1) Proposed Amendment No. 1 to Joint Use Agreement
- 2) Proposed Development Agreement
- 3) Aerial Site Map – Washington Irving Middle School
- 4) Los Angeles Unified School District Letter (dated August 27, 2014)

**This AMENDMENT No. 1 TO JOINT USE AGREEMENT BETWEEN THE CITY OF LOS ANGELES AND THE LOS ANGELES UNIFIED SCHOOL DISTRICT FOR THE JOINT USE OF WASHINGTON IRVING MIDDLE SCHOOL**

THIS AMENDMENT No. 1 to JOINT USE AGREEMENT, ("Amendment No. 1"), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE CITY OF LOS ANGELES, a municipal corporation, by and through its BOARD OF RECREATION AND PARK COMMISSIONERS, hereinafter called CITY, and the LOS ANGELES UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California ("LAUSD or the DISTRICT"). The CITY and LAUSD shall be collectively referred to herein as the "Parties".

**RECITALS**

This Amendment No. 1 is made with reference to the following facts and objectives:

A. LAUSD owns that certain real property located at 3010 Estara Ave, City of Los Angeles, County of Los Angeles, State of California, as more particularly depicted on Exhibit A attached hereto (herein "Land" or "Campus"). The Campus is occupied by Washington Irving Middle School.

B. The Parties entered into that certain Joint Use Agreement, dated June 4, 1998, concerning the Parties joint use of the Campus ("Joint Use Agreement"). Per the terms of the Joint Use Agreement, the CITY occupies a portion of the Land ("Joint Use Area") and shares the use of the Joint Use Area with the school.

C. The Parties entered into that certain Proposition K Grant Agreement, as amended, dated March 2, 2000 ("Grant Agreement") concerning the construction of a sports field and running track, consisting of an active play area including a multi-use natural turf sports field, outdoor lighting for safety and security and an ADA restroom adjacent to the active play area ("Proposition K Project") at the Campus.

D. A portion of the Proposition K Project, specifically, the sports field and running track are in need of restoration and LAUSD has determined that the sports field and running track are unsafe for use by students and the public and must be repaired and replaced. The CITY, through its Department of Recreation and Parks ("RAP"), has agreed to act as project manager for the repair and replacement of the sports field and running track at the Campus.

E. The restoration of the sports field and running track shall be paid for via a Community Development Block Grant ("CDBG") awarded to CITY and along with other CITY funding sources, if necessary.

F. The CITY, at its sole cost and expense, through the use of the aforementioned CDBG funds, intends to replace the all-weather turf sports field and running track (the "Project"), in accordance with the construction plans as defined in the Development Agreement between the Parties entered into concurrently with this Amendment No. 1.

G. Once the CITY completes construction of the Project, LAUSD agrees to maintain the entire Proposition K Project for a period of eight (8) years following the CITY's issuance of a certificate of completion for the Project. Maintenance obligations are contained in the Grant Agreement, as amended. Additionally, maintenance obligations are also listed in the Joint Use Agreement.

H. The CITY and DISTRICT desire to cooperate in establishing, jointly operating, and maintaining the Proposition K Project in order that the greatest public use for recreational activities will arise from the operation of the improvements (both existing and the new Project) for the benefit, education, amusement, convenience and enjoyment of the public.

I. The recitals contained in the Grant Agreement, as amended and the Joint Use Agreement are deemed incorporated herein as if set forth in full.

NOW, THEREFORE, for and in consideration of the covenants and conditions contained herein and the performance thereof, the Parties now desire to amend the Joint Use Agreement via this Amendment No. 1, to reflect the CDBG requirements and updated terms of use as follows:

1. **Section 1 FUNDING** of the Joint Use Agreement, is hereby amended to reflect the CDGB grant funding for the Project. All other aspects of the original Proposition K Project have been completed and only the funding for the Project (restoration of the sports field and adjacent running track) is at issue. Section 1 is amended and shall now read in part as follows:

The CITY has entered into grant agreements with the United States Department of Housing and Urban Development, pursuant to Title I of the Housing and Community Development Act of 1974, as amended, to address the community development needs of the CITY. City Council File Number 14-1382 dated May 15, 2015, approved the 41st Program Year Action Plan and authorized a total of Seven Hundred and Fifty Thousand Dollars (\$750,000) in CDBG funding (in the form of a service repayment loan) for the payment of Eligible Costs related to the Project. The Project, which is the subject of this Amendment No. 1, has been established by the CITY as one of the above-described programs, and has been approved by the Los Angeles City Council and the Mayor. The CITY shall provide \$750,000 in CDBG funds for the cost of the Project.

2. **Section 3 LICENSE AND TERM** of the Joint Use Agreement, is hereby amended to reflect the new term of the Grant Agreement service and maintenance period. Paragraph 2 of Section 3 shall now read as follows:

CITY'S rights to utilize the facilities shall be for a period of eight (8) years from the date of completion of the Project as approved by the City or accepted by the DISTRICT (the "Initial License Period"), and the Parties shall make reasonable efforts to extend the Initial License Period (the "Extended License Period(s)") by amending or supplementing this Agreement upon similar covenants and conditions set forth herein.

3. **Section 6 DISTRICT MAINTENANCE** of the Joint Use Agreement, is hereby amended to reflect the new service and maintenance. Section 6 is amended and shall now read in part as follows:

CITY represents it is purchasing synthetic turf from AstroTurf for the Project and as part of its purchase, CITY will receive a warranty of eight (8) years ("**Warranty**"). CITY shall assign the Warranty to LAUSD with the intention that LAUSD shall have the right to exercise said Warranty as if it was the original purchaser of the synthetic turf. CITY shall cooperate with and assist LAUSD in exercising the Warranty; provided, that if necessary, CITY shall take the lead on enforcing the Warranty and LAUSD shall cooperate with and assist CITY. CITY represents it has insurance that will cover the restored sports field in the event the useful life of the Project is less than eight (8) years. During the Eight (8) year period of said Warranty and insurance, should the field fail, the field would be restored, repaired or replaced, as necessary, to the original design specifications under the coverage of the Warranty and/or Insurance.. Should LAUSD change the specifications for synthetic fields, at its own volition, in any way including the type and/or density of the turf mat or the infill material, LAUSD shall be responsible for any additional costs to restore the field to the new specifications. However, should local, state or Federal codes change in any way that result in the need for revisions to the current specifications, the City shall be responsible for any additional costs not covered under Warranty and/or Insurance to bring the restored/repaired/replaced field to current code. . CITY represents it shall provide LAUSD with the machine necessary to groom and maintain the synthetic turf ("**Grooming Machine**"). The Warranty and Grooming Machine are part of the CDBG funding for the Project and will be provided to LAUSD at no cost and expense to LAUSD. LAUSD shall maintain the Project beginning on the date the Project is available for use and shall expire on that date eight (8) years after the Project is available for use.

4. A new Section 22 entitled **Identification of Project Eligibility/National Objection** shall be added. Section 22 shall read as follows:

22. IDENTIFICATION OF PROJECT ELIGIBILITY/NATIONAL OBJECTIVE:

This Project is eligible under 24 CFR 570.201 (c) et seq., Public Facilities and Improvements. All projects funded with HCDBG funds must meet one (1) of three (3) national objectives. This Project meets the national objective of activities benefiting low-moderate income ("LMI") persons under 24 CFR 570.208(a) as an area-wide benefit project affecting 57.36 percent LMI persons as indicated in the 2010 Census. Any fees charged for services or donations must not restrict or limit accessibility or services to low and moderate income individuals or families.

5. A new Section 23 entitled **Use of the Facilities and Improvements** shall be added. Section 23 shall read as follows:

23. USE OF THE FACILITIES AND IMPROVEMENTS:

The Parties recognize that it is in the best interest of all concerned that the restored facility be utilized for the intended purpose of providing services to City residents of primarily low and moderate income or limited clientele in accordance with Part IV, §570.208 of the Community Development Block Grant Rules and Regulations, and without regard to race, religion, national origin, ancestry, sex, and where applicable, to age, or physical handicap.

- A. LAUSD shall utilize the facility for recreational purposes.
  - a. The facility shall be utilized for such purpose(s) for a period of eight (8) years from the date of completion of the Project as approved by the CITY or accepted by the DISTRICT.
  - b. In the event that the facility is not utilized for its stated purpose and specified duration of time, as set forth above, the CITY shall be reimbursed the amount of the current fair market value of the property, less any portion thereof attributable to expenditures of non-grant funds expended on improvement to the property; and the CITY shall use these funds to reimburse the CDBG line of credit.
  
- B. RAP shall submit to the City of Los Angeles Housing + Community Investment Department (HCIDLA) on a quarterly calendar period the following information on the CITY approved report format - Quarterly Participant Report Form and a narrative report - which shall be due on the 10<sup>th</sup> day of the calendar month following the end of the preceding quarterly period:
  - a. The total number of clients served per quarter during the reporting period and the number served for each type of activity.
  - b. The types of services provided and dates of each, including any modifications in services provided. Photographs may optionally be included.
  - c. Status of any building upkeep or maintenance problems, that prevents or hampers the continuation of the aforementioned client services and, if any, a corrective action plan, including costs, tasks, and timetables.
  - d. Status of any program modifications previously approved in the aforementioned client services and, if any, a corrective action plan including tasks, costs, and timetables.
  
- C. Any modifications to the aforementioned use of the facility, and/or hours and days of operation must be reviewed and approved by the CITY prior to the implementation by LAUSD. In the event that the CITY determines that LAUSD has changed the use of the facility within the meaning of 24 CFR 570.505, to a use that the City has not approved in advance and in writing, the CITY may require LAUSD under 24 CFR 570.505(b) to pay the CITY an amount equal to the current fair market value of the Property, less any portion of that value attributable to expenditures of non-CDBG funds for the improvements to the Property.

6. A new Section 24 entitled Program Income shall be added. Section 24 shall read as follows:

24. PROGRAM INCOME:

- A. Program income is defined as income earned through the activities funded by this Agreement, as more fully defined in 2 CFR 200.80, 24 CFR 85.25 and 24 CFR 570.500(a). Program income includes, but is not limited to: grants; fees that duplicate

payments; average daily attendance (ADA) payments earned through program funded activities; and public or nonprofit agency revenues in excess of contract costs.

- B. Any program income received by the LAUSD or RAP must be reported to HCIDLA on the expenditure report, and must be either used towards the costs of operating the Project (the sports field and running track) or returned to the CITY in accordance with the CITY's written direction to RAP or LAUSD. If the Parties use program income, LAUSD and/or RAP shall maintain records in support of all earnings and expenditures relating to the use of those funds in accordance with City of Los Angeles record retention and audit requirements. The CITY shall monitor LAUSD and RAP's compliance with all program income requirements.
- D. LAUSD or RAP's failure to comply fully with program income requirements including any CITY Directives or regulations shall result in findings of disallowed costs.
- E. LAUSD shall, within 45 days of the expiration of this Joint Use Agreement, transmit to the City Treasury any, and all program income directly generated by grant funds provided by this Joint Use Agreement. Any program income on hand when the Joint Use Agreement expires, or received after the Joint Use Agreement's expiration, shall be paid to the CITY as required by 24 CFR 85.25 and 24 CFR 570.504.

7. **Full Force and Effect.** All other terms contained in the Joint Use Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1 to be effective as of the day and year set forth above.

THE CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners

LOS ANGELES UNIFIED SCHOOL DISTRICT OF LOS ANGELES COUNTY

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

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

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

APPROVED AS TO FORM AND LEGALITY

Dated \_\_\_\_\_, 2017

MICHAEL N. FEUER, City Attorney

By: \_\_\_\_\_  
Catrina M. Archuleta  
Deputy City Attorney

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 20\_\_ for reference purposes only, is made by and between LOS ANGELES UNIFIED SCHOOL DISTRICT, a school district duly organized and existing under the laws of the State of California ("LAUSD"), and CITY OF LOS ANGELES, a municipal corporation, acting by and through its Board of Recreation and Park Commissioners ("Developer" or "CITY"). The CITY and LAUSD shall be collectively referred to herein as the "Parties." The Parties enter into the Agreement with reference to the following facts:

RECITALS:

A. LAUSD owns that certain real property located at 3010 Estara Ave, City of Los Angeles, County of Los Angeles, State of California, as more particularly depicted on Exhibit A attached hereto (herein "Land" or "Campus"). The Campus is occupied by Washington Irving Middle School.

B. The Parties entered into that certain Joint Use Agreement, dated June 4, 1998 concerning the Parties joint use of the Campus ("Joint Use Agreement"). Per the terms of the Joint Use Agreement, the CITY occupies a portion of the Land depicted on Exhibit A ("Joint Use Area") and shares the use of the Joint Use Area with the school.

C. LAUSD and the City of Los Angeles, acting though the City Engineer, entered into that certain Proposition K Grant Agreement, as amended, dated March 2, 2000 ("Grant Agreement") concerning the construction of a sports field and running track, an active play area aka multi-use natural turf sports field, outdoor lighting for safety and security and an ADA restroom adjacent to the active park area ("Proposition K Project") at the Campus.

D. The all-weather turf sports field and running track located near the intersection of W. Ave 82 and Marguerite Street, was initially constructed by laying synthetic turf over asphalt and painted track area.

E. A portion of the Proposition K Project, specifically, the sports field and running track are currently in need of repair and replacement, and LAUSD has determined that the sports field and running track are unsafe for use by students and the public and must be repaired and replaced. The CITY, through its Department of Recreation and Parks ("RAP"), has agreed to act as project manager for the repair and replacement of the sports field and running track at the Campus.

F. The replacement of the sports field and running track shall be paid for via a Community Development Block Grant (“**CDBG**”) to CITY and along with other available funding sources, if necessary.

G. Once the CITY completes the replacement of the sports field and running track, LAUSD agrees to maintain the sports field and running track for a period of eight (8) years following the CITY’s issuance of a certificate of completion.

H. The CITY, at its sole cost and expense, though the use of the aforementioned CDBG funds, intends to replace the all-weather turf sports field and running track in accordance with the Construction Plans as defined below and approved by the Parties (“**Project**”).

I. The recitals contained in the Grant Agreement, and the Joint Use Agreement, as amended, are deemed incorporated herein as if set forth in full.

NOW THEREFORE, in consideration of mutual covenants, benefits and agreements hereinafter contained, LAUSD and CITY hereby agree as follows:

## ARTICLE I

### **PURPOSES AND APPROVALS**

The Parties agree that the conditions set forth in this Article I shall be satisfied prior to the commencement of Construction of the Project. Notwithstanding any provision in this Agreement if LAUSD and/or the CITY have not satisfied or waived the following conditions on or before \_\_\_\_\_, 20\_\_\_\_, this Agreement shall automatically terminate and neither party shall have any rights or obligations under this Agreement or rights to reimbursement of any costs of expenses incurred.

1.1 **Purposes**. The purpose of this Development Agreement is to memorialize the construction activity on Campus and clearly indicate the Parties roles and responsibilities as related to the construction of the Project. The Joint Use Agreement shall be amended concurrently with the execution of this Agreement and shall memorialize the Parties shared use of the Joint Use Area, LAUSD’s obligation to maintain the Project beginning on that date the Project is available for use, and the reduction of the Term of said agreement to eight (8) years beginning on the date of Completion of Project Construction, as defined below, which eight (8) year term is necessary to comply with requirements of Proposition K and CDBG funds. The Grant Agreement shall also be amended concurrently with the execution of this Agreement and shall memorialize LAUSD’s service and maintenance obligations with respect to the Proposition K Project, including the Project at issue in this Agreement, and reduction of the service and maintenance Term to eight (8) years beginning on the date of Completion of Project Construction, which eight (8) year term is necessary to comply with requirements of Proposition K and CDBG funds.

1.2 School Board Approval. The Board of Education of LAUSD (the "**School Board**") shall have approved the execution, delivery, and consummation of the transactions contemplated by this Agreement.

1.3 RAP Board Commission Approval. RAP's Board of Commission ("**RAP Board**") shall have approved the execution, delivery, and consummation of the transactions contemplated by this Agreement and the execution and delivery of the amendment to the Joint Use Agreement. The L.A. for Kids Steering Committee approved the Proposition K Grant Agreement and all amendments thereto.

1.4 Other Approvals. At its sole cost and expense, CITY shall have obtained and provided evidence to LAUSD of all necessary consents, permits and approvals required in order to commence the construction of the Project by law, rule or regulation applicable to the Project as if a public school district was constructing it including, without limitation, any necessary approvals by the California Department of Toxic Substances Control ("**DTSC**") all in a manner acceptable to LAUSD. LAUSD discloses it has been informed by the Division of State Architect ("**DSA**") that the Project, (replacement of the all-weather field and running track), does not require DSA approval, and the Parties shall treat the Project as a repair and replacement not requiring DSA approval.

1.5 Funding. CITY shall have provided evidence to LAUSD of adequate funding to undertake and complete the Project in accordance with the terms of this Agreement. CITY shall pay for construction of the Project and any necessary approval and/or permit fees that may be required. However, LAUSD shall pay for its own costs and expenses to review the Construction Plan as provided in Section 2.3.2 below and its inspection of the Project. LAUSD discloses it is not providing any funds for the Project and CITY understands that any use of Bond Funds for any portion of the Project will require compliance with several requirements not contemplated or addressed in this Agreement such as, but not limited to, LAUSD would be required to construct the Project and such construction would be required to comply with the Project Stabilization Agreement.

1.6 Approval of Plans. The Parties collectively shall have reviewed and approved the Construction Plans as provided in Section 2.3.2 below.

1.7 Bid. CITY shall complete the bid process for the Construction, as defined below, of the Project within 180 days from the execution of this Agreement, and further covenants and agrees that it will deliver the Project Schedule, as defined below, (which the parties will thereafter attach hereto as **Exhibit B**) and Cost of the Project to LAUSD within three (3) Business Days of CITY completing such bid process. For purposes of this Agreement, "**Cost of the Project**" means hard and soft costs to construct the Project.

## ARTICLE II

### CONSTRUCTION

2.1 Definition of Construction. For purposes of this Agreement, "**Construction**" or "**Constructing**" shall include, without limitation, (i) the delivery of any materials or supplies for the pre-construction, construction, and completion of the Project, (ii) demolition and/or renovation of any existing improvements on the Campus, (iii) any necessary preparation and grading of the Campus, (iv) bid procedures and retention of Architect and Contractor (each as hereinafter defined), (v) retention of all subcontractors, consultants, engineers and other professionals comprising the Construction Team (as hereinafter defined), (vi) construction of the Project, (vii) construction and installation of separate meters for water, electricity, gas, cable service, telephone and other utilities appropriate and necessary for the operation of the Project as separate from the school, and, if applicable, (viii) restoration or repair of landscaping or other damage from CITY's activities on the Campus.

2.2 Project Schedule. Subject to the Parties' satisfaction of the conditions in Article I, CITY shall commence and complete the Construction in accordance with the project schedule set forth in **Exhibit B** attached hereto (the "**Project Schedule**"), which LAUSD hereby approves, and shall complete such Construction pursuant to the Project Schedule (subject to extension for Force Majeure Delay (as hereinafter defined), but in no event later than the date that is three (3) years from the Execution Date of this Agreement.

2.3 Pre-Construction.

2.3.1 Personnel.

2.3.1.1 Architect and Contractor. Prior to the commencement of any construction CITY shall disclose to LAUSD its selection of architect ("**Architect**"), construction manager ("**Construction Manager**") and the general contractor or multiple prime contractors ("**Contractor**") for Construction, which Architect, Construction Manager Contractor, and subcontractors shall be licensed, in good standing and authorized to do business in the State of California throughout the Construction of the Project, and selected in accordance with the California Public Contract Code ("**Contract Code**"). Contractor shall be bonded for an amount no less than 100% of the total cost of Construction and the bond shall be in a form substantially similar to that Form of Payment and/or Performance Bond set forth in **Exhibit C** hereto (the "**Performance Bond**"), which Performance Bond shall be maintained throughout the Construction of the Project. Prior to commencement of Construction, CITY shall provide to LAUSD a true and accurate copy of the Performance Bond. LAUSD acknowledges that the Project being a CITY Project and CITY as another public agency shall use its Public Contract Code process to retain the aforementioned construction professionals as it deems appropriate in its discretion and LAUSD shall not require CITY to use construction professionals from LAUSD's pre-approved vendor list.

2.3.1.2 Construction Team. CITY shall disclose to LAUSD each subcontractor listed by Contractor in the bid(s) recommended for acceptance by CITY for Construction or substituted pursuant to the Subletting and Subcontracting Fair Practices Act

(Contract Code Section 4100 et seq.) (each, a "**Major Sub**" and collectively "**Major Subs**"), engineer, consultant and other professional retained for Construction (each, a "**Consultant**"). CITY shall, within 60 days following request by LAUSD, provide to LAUSD a list of all personnel, including Architect and Contractor, retained by CITY in connection with Construction (the "**Construction Team**") provided that in no event shall CITY be required to provide such list more than one time. CITY agrees to comply with California Labor Code ("**Labor Code**") Section 1771 in its retention of all members of the Construction Team.

2.3.1.3 **Labor Compliance.** CITY shall use its labor compliance program for this Project in accordance with applicable laws and shall be solely responsible and liable for said compliance.

2.3.1.4 **Contracts.** All contracts entered into by CITY related to Construction of the Project shall be collaterally assigned to LAUSD, and which assignment LAUSD may invoke without CITY's consent or the consent of the contracting party and without the payment of any fee whatsoever; provided, that LAUSD may only invoke such assignment after a Default by CITY hereunder and upon receipt of written notice of Default to LAUSD. This collateral assignment shall be provided in the form of a dual obligee rider which allows LAUSD to act as a co-obligee with CITY. In addition, CITY agrees that it shall competitively bid the general construction contract and any other contracts so required by applicable law, rule or regulation.

2.3.2 **Construction Documents.** The final construction drawings and specifications for the Project (the "**Construction Plans**") are identified on **Exhibit D** hereto. CITY has submitted the Construction Plans to LAUSD for LAUSD's review and approval pursuant to section 1.6 above. LAUSD shall incur the cost and expense of its review of the Construction Plans. As a result of LAUSD's review and approval of the Construction Plans, LAUSD shall incur no liability for the accuracy, completeness, conformance with law (including, without limitation, applicable building codes or the California Education Code) because it is not reviewing such Construction Plans for purposes of confirming any of the preceding factors.

2.3.3 **Permits; Compliance.** CITY, at its sole cost and expense, shall obtain all governmental permits, consents and approvals for the Project. LAUSD shall supply the CITY with any pertinent documents and/or assistance in seeking and obtaining permits. CITY shall obtain all other necessary permits, consents and approvals from all governmental agencies having authority over Construction and shall undertake all steps necessary to insure that Construction is accomplished in compliance with all applicable laws, rules and regulations and the requirements and standards of any insurance underwriting board, inspection bureau or insurance carrier insuring the Campus pursuant to this Agreement. If a permitting agency requires any construction or alternation to be done at a location on Campus or to any amenity or improvement on Campus beyond the footprint of the Project site (i.e. the sports field), LAUSD and CITY shall cooperate with one another in an effort to have such permitting agency rescind its decision or modify such decision in a manner that LAUSD and CITY

mutually agree is favorable; provided, that CITY shall not be required to construct the alteration or improvement required by the permitting agency and CITY may elect to cause such construction or alteration to occur at CITY's sole cost and expense or terminate this Agreement.

2.3.4 Fence. CITY shall, at its sole cost and expense, erect (to the reasonable satisfaction of LAUSD) a fence or other appropriate measure (the "**Fence**") to secure the Construction site from the other portions of the Campus and prevent access by non-Construction personnel and minimize risk of damage, destruction, injury or death, and as required in order to achieve the construction contemplated herein. Subject to the applicable law, the Fence shall be, at a minimum, eight (8) feet high and constructed so as to prevent ingress and egress except through locked gates. CITY shall provide or cause to be provided to LAUSD a set of keys for the gates.

2.3.5. Fingerprinting. Beyond erecting a fence, if there is a possibility that the Contractor's employees may come in contact with LAUSD students while working on the Campus. Pursuant to Education Code Section 45125.1, Contractor shall either conduct criminal background checks of all employees of Contractor assigned to the Project site, or shall certify that no employees who have been convicted of serious or violent felonies (as specified in Education Code Section 45125.1), will have contact with pupils, by utilizing the Certification Regarding Background Checks and the corresponding Exhibit G. If it is determined that Contractor must provide certification of employees, as part of such certification, Contractor must provide the CITY and LAUSD with a list of all employees providing services and Contractor shall not utilize any employees who are not included on the above-referenced list.

2.3.6 Commencement of Construction. Except as otherwise disclosed to LAUSD as of the date of this Agreement, CITY agrees that no Construction or delivery of materials related to the Project shall commence unless and until all necessary approvals and permits have been obtained, until the Fence has been completed to the reasonable satisfaction of LAUSD and until CITY has provided LAUSD at least ten (10) calendar days for LAUSD to post notices of non-responsibility or any other notices which LAUSD deems necessary for its proper protection. Notwithstanding the preceding sentence, CITY shall have commenced construction of the Project within six (6) months after approval all necessary approvals and permits have been obtained.

2.3.7 Intentionally omitted.

2.3.8 Acknowledgement from Construction Team. CITY shall secure from Architect, Construction Manager, and Contractor an executed statement acknowledging that the Project is not constructed by LAUSD and is not an LAUSD project, and that LAUSD is not responsible or liable for the Project.

2.3.9 Relocation of Certain Improvements. CITY shall have proposed and obtained LAUSD's prior written approval for the relocation, method and phasing of relocation

of all utilities (including, without limitation transformer boxes, lines, pipes, conduits and related equipment) in connection with the Project (whether serving the school or the Joint Use Area), which the City and LAUSD anticipate shall be underground within the fire lane. Thereafter, (a) the physical relocation of such utilities shall be commenced and completed by CITY pursuant to the time line approved by LAUSD, and (b) all such work shall be completed all at CITY's sole cost and expense.

## 2.4 Construction.

2.4.1 Construction by CITY. CITY, through its Construction Team, shall undertake Construction of the Project at its sole cost and expense through the use of CDBG funds. The CITY shall require the Construction Team to utilize all new materials (including new materials constructed from recycled materials) and supplies in building the Project (unless otherwise approved by the Parties in writing), conduct all work with respect to Construction in a good and workmanlike manner by properly qualified personnel and in accordance with all applicable laws, rules and regulations, and such work shall be diligently prosecuted to completion once commenced.

2.4.2 Limitations on Construction. CITY in good faith and using its commercially reasonable efforts shall endeavor to conduct and shall cause the Construction Team to endeavor to conduct all work with respect to Construction with as minimal impact as commercially practicable to any student instruction (or any other student activity) at the Campus.

2.4.3 Reports and Changes During Construction. CITY represents it has its own process and requirements for the construction of the Project and which its Construction Team is required to observe. CITY shall provide LAUSD with copies of the minutes of its meetings with its Construction Team as soon as reasonably possible after the conclusion of each meeting. The parties acknowledge that the Construction Plans may require changes during Construction, including, changes required by law or due to unforeseen circumstances. LAUSD typically requires any third party constructing on LAUSD property to provide LAUSD with notice of any material change and retains the right to review and approve any material change or order construction to stop until the material change is resolved to LAUSD's satisfaction. LAUSD will deviate from its typical requirements and will not require review and approval for any material change to the Construction Plans because CITY is a public agency, the Project is a CITY construction project, and CITY is solely paying for the construction of the Project; provided, that if any material change to the Construction Plans will result in a different configuration, location, orientation or materials for the Project or create unanticipated impacts to the Campus, CITY shall notify and provide LAUSD with sufficient information to review and approve such changes. For the purpose of this Article II a "material change" is a change or series of changes to the Construction Plans that singularly or cumulatively are reasonably estimated to (i) increase the Cost of the Project by five percent (5%) or more or (ii) increase the time to complete the project by sixty (60) days or more.

During the term of this Agreement, CITY shall promptly notify LAUSD in writing if its funding arrangements change and if such change affects CITY's ability to complete the Project.

2.4.4 Meetings and Inspections. LAUSD shall have the right, but not the obligation, to attend any and all on or off site meetings among the CITY, Contractor, Construction Manager and/or Architect to review the Project, its progress, scheduling and other related matters ("**Project Meetings**"). CITY shall notify LAUSD's project manager (currently Al Grazioli, or as otherwise designated by LAUSD) via electronic mail at least seven (7) days in advance of any regularly scheduled Project Meetings, and shall use reasonable efforts to give LAUSD at least 24 hours prior notice of any other Project Meetings. Further, LAUSD shall have the right, but not the obligation, to inspect Construction at any time during the progress thereof and CITY shall provide access to LAUSD. LAUSD shall be responsible to pay the costs and expense for its inspection of the Project. Neither LAUSD's right to make such inspections nor the making of such inspections, regardless of any assertions that such inspections amount to unauthorized supervision of Construction, or the supervision of Construction by LAUSD, shall operate as a waiver of any rights of LAUSD to require that Construction be accomplished with new materials (including new materials constructed from recycled materials, unless otherwise approved by the Parties in writing), and executed in a good and workmanlike manner in accordance with the Construction Plans in all material respects, and applicable law, rule or regulation.

2.4.5 Insurance. Prior to commencing any Construction or the delivery of any materials or supplies for the Project, CITY shall provide LAUSD with copies of certificates of the insurance required herein and in Article X below. At all times during Construction and until Completion of Construction (as hereinafter defined), CITY, at its sole cost and expense, shall provide and keep in force (i) "all risk" builder's risk insurance, including vandalism and malicious mischief, covering improvements in place and all material and equipment at the job site, (ii) evidence of workers' compensation insurance covering all persons employed in connection with the work in compliance with all applicable laws, rules and regulations, and (iii) the insurance coverage required in Article X below, such insurance to remain in full force and effect until such improvements have been completed and fully insured in accordance with Article X below.

2.4.6 Substantial Completion of the Project. Upon Substantial Completion (as hereinafter defined) of Construction of the Project, CITY shall provide written notice to LAUSD and LAUSD shall have the right, but not the obligation, to timely conduct an inspection to confirm Substantial Completion of the Project. For purpose of this Agreement, "**Substantial Completion**" or "Substantially Completed" shall mean that the applicable portion of the Project is physically and functionally complete in all material respects, in accordance with the applicable portions of the Construction Plans and all applicable laws, rules and regulations, except for any items that are unfinished, deficient or require correction in order to conform with the Construction Plans in all material respects (the "**Punch List Items**").

2.4.7 Completion of Project Construction. Upon completion of the Punch List Items, CITY shall provide a written Notice of Completion to LAUSD and LAUSD shall have the right, but not the obligation, to timely conduct an inspection of the Project. The City shall deem that Construction is complete only after (i) the Project is physically and functionally complete in all respects in material conformance with the Construction Plans and all applicable laws, rules and regulations, and is ready to be occupied and utilized in accordance with the terms of this Agreement, and that all Punch List Items have been successfully completed, and (ii) besides the City, if any other applicable governmental agency having appropriate jurisdiction over the Project has issued a certificate of occupancy or its equivalent (collectively, "**Completion of Project Construction**").

2.4.8 Liability. Each of the Parties to this Agreement is a public entity. In contemplation of the provisions of §895.2 of the Government Code of the State imposing certain tort liability jointly upon public entities, solely by reason of such entities being Parties to an agreement as defined by §895 of said Code the Parties hereto, as between themselves, pursuant to the authorization contained in §895.4 and §895.6 of said Code, will each assume the liability imposed upon it or upon any of its officers, agents or employees by law, for injury caused by negligent or wrongful act, or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of §895.2. To achieve the above-stated purpose, each party indemnifies and holds harmless the other party for all losses, costs or expenses that may be imposed upon such other party solely by virtue of said §895.2. The provisions of §2778 of the California Civil Code are made a part hereto as if fully set forth herein. Each of the Parties certifies that they have adequate commercial insurance or self-insured retention of funds to meet any obligation arising from this Agreement. The provisions of this paragraph survive expiration or termination of this Agreement.

2.4.9 Notice of Completion. Within fifteen (15) days after Completion of the Project Construction, CITY shall cause a Notice of Completion to be recorded in the office of the Recorder of Los Angeles in accordance with Section 9204 of the California Civil Code ("**Civil Code**") or any successor statute, and shall furnish LAUSD a copy thereof upon recordation.

2.4.10 Copy of Construction Plans. Upon Completion of Project Construction, CITY shall deliver to LAUSD one (1) set of copies of the Construction Plans with any field changes reflected thereon during the Construction on compact disc or other media specified by LAUSD within ninety (90) days following issuance of a certificate of occupancy or its equivalent. CITY shall also deliver to LAUSD a copy of any warranties relating to the Project and all improvements, equipment and systems therein.

2.4.11 Warranties, Maintenance Equipment. CITY represents it is purchasing synthetic turf from AstroTurf for the Project and as part of its purchase, CITY will receive a warranty of eight (8) years ("**Warranty**"). CITY shall assign the Warranty to LAUSD with the intention that LAUSD shall have the right to exercise said Warranty as if it was the original purchaser of the synthetic turf. CITY shall cooperate with and assist LAUSD in exercising the Warranty; provided, that if necessary, CITY shall take the lead on enforcing the Warranty and

LAUSD shall cooperate with and assist CITY. CITY represents it has insurance that will cover the repair and replacement of the Project in the event the useful life of the Project is less than eight (8) years. During the Eight (8) year period of said Warranty and insurance, should the field fail, the field would be restored, repaired or replaced, as necessary, to the original design specifications under the coverage of the Warranty and/or Insurance. Should LAUSD change the specifications for synthetic fields, at its own volition, in any way including the type and/or density of the turf mat or the infill material, LAUSD shall be responsible for any additional costs to restore the field to the new specifications. However, should local, state or Federal codes change in any way that result in the need for revisions to the current specifications, the City shall be responsible for any additional costs not covered under Warranty and/or Insurance to bring the restored/repaired/replaced field to current code. CITY represents it shall provide LAUSD with the machine necessary to groom and maintain the synthetic turf ("**Grooming Machine**"). The Warranty and Grooming Machine are part of the CDBG funding for the Project and will be provided to LAUSD at no cost and expense to LAUSD. LAUSD shall maintain the Project beginning on the date the Project is available for use and shall expire on that date eight (8) years after the Project is available for use. This provision shall survive the expiration or earlier termination of this Agreement.

2.5 Use of Project. CITY agrees that CITY shall have no right to use the Improvements until it has satisfied all of the following:

2.5.1 CITY has issued or obtained a certificate of occupancy or its equivalent for the Project, and a completed Essential Safety Checklist & Approval Form has been issued by the Office of Environmental Health and Safety ("**OEHS**");

2.5.2 Except for any Punch List Items and disputed claims, the Construction Team has released and waived all claims arising from the portions of the Construction of the Project that are complete, and all liens and encumbrances arising from the same have been discharged from the fee title as provided in Article IX; and

2.5.3 NOTE: Deleted City has 90 days to provide per 2.4.10

2.6 Failure to Complete Construction. In the event CITY fails to observe the Project Schedule or timely complete Construction of the Project, LAUSD shall have the right to pursue all rights and remedies available at law. In addition to the foregoing, CITY agrees LAUSD shall have the right, but not the obligation, to pursue the completion of Construction of the Project.

### ARTICLE III

#### **OWNERSHIP OF THE PROJECT IMPROVEMENTS**

All improvements of the Project on the Campus shall be owned by LAUSD; provided, further, that the land upon which the Project is situated shall at all times remain

the fee property of LAUSD. CITY shall execute and deliver any documentation required by LAUSD to evidence LAUSD's ownership of the improvements to the Project, and LAUSD shall have no obligation to pay for the improvements of the Project or provide any compensation to CITY. Except that LAUSD shall bear an ongoing obligation to maintain the Project from the date of Completion of Project Construction for a period of eight (8) years thereafter, which shall be known as the Service and Maintenance Period and, in addition, LAUSD shall be responsible for maintenance of the Project pursuant to the terms of the Joint Use Agreement, as amended. The Grant Agreement and Joint Use Agreement shall be amended and/or restated concurrently with this Agreement to reflect the new eight (8) year term consistent with Proposition K and CDBG requirements and the expected useful life of the Project. This Article III shall survive the expiration or earlier termination of this Agreement.

ARTICLE IV

**MAINTENANCE AND REPAIR**

During Construction, CITY, at its sole cost and expense and without cost to LAUSD, shall keep and maintain the construction area in good, clean, sanitary and safe condition and repair and in compliance with all laws, rules, and regulations applicable to a public school and LAUSD's standards, policies and bulletins. Nothing contained herein shall be construed as requiring LAUSD to make any repairs or to do any maintenance during the Construction of the Project; provided, that if circumstances arise which pose a risk to the health, safety or general welfare of its students on Campus, LAUSD may elect to make repairs or perform maintenance during the Construction of the Project so long as LAUSD shall first notify CITY and CITY shall pay LAUSD for its actual costs incurred.

ARTICLE V

**TERM**

The term of this Agreement shall commence on the Effective Date and shall expire upon the date of Completion of Project Construction, unless sooner terminated pursuant to the terms herein (the "**Expiration Date**"). Notwithstanding the preceding sentence, CITY covenants and agrees that it shall achieve Completion of Project Construction on or before three (3) years following the day CITY commences Construction of the Project.

ARTICLE VI

**CERTAIN COVENANTS**

From the Execution Date until the Expiration Date, in addition to any covenants set forth elsewhere in this Agreement, CITY agrees to the following:

6.1 Use of the Facilities and Improvements. The Parties recognize that it is in the best interest of all concerned that the repaired/rehabilitated facility be utilized for the intended purpose of providing services to City residents of primarily low and moderate income or limited clientele in accordance with Part IV, §570.208 of the Community Development Block Grant Rules and Regulations, and without regard to race, religion, national origin, ancestry, sex, and where applicable, to age, or physical handicap. This Project is eligible under 24 CFR 570, et seq., and meets the national objective of activities benefiting low- moderate income ("LMI") persons under 24 CFR 570.208(a) as an area-wide benefit project affecting 57.36 percent LMI persons as indicated in the 2010 Census. Any fees charged for services or donations must not restrict or limit accessibility or services to low and moderate income individuals or families.

6.2 Litigation. CITY shall not commence any litigation with respect to Construction or the Project or affecting LAUSD's interest in the Campus without first providing written notice to LAUSD.

6.3 Funding. CITY shall maintain adequate and acceptable funding arrangements in order for CITY to undertake the transactions contemplated by this Agreement and for CITY to complete Construction in accordance with the terms of this Agreement. Upon request by LAUSD, CITY shall provide to LAUSD evidence to LAUSD that all such funding arrangements are in place and that all such funding obligations are being fulfilled. Except as expressly provided pursuant to Article XV below, LAUSD discloses and CITY agrees that LAUSD has no obligation to provide any funding in the event CITY does not have sufficient funding to complete the Construction of the Project in accordance with the terms of this Agreement, or any obligation to complete Construction of the Project. LAUSD further discloses that if LAUSD provides any funds towards the Project, CITY shall be required to comply with LAUSD's Project Stabilization Agreement and the CHPS program, and CITY may be required to temporarily cease Construction until CITY establishes compliance with the Project Stabilization Agreement and the CHPS program.

## ARTICLE VII

### COSTS

CITY shall pay through CDBG funds and other available funding sources, if necessary, or cause to be paid: (i) all Costs of the Project; and (ii) all charges which are incurred by CITY or which may be a charge or lien against the Campus, including, without limitation, payments for insurance premiums, gas, electricity, wiring, heating, light, power, other utilities, security, trash removal, disposal and management of Hazardous Materials (as hereinafter defined) to the extent caused by CITY, interior cleaning and janitorial services, ground maintenance, landscaping, cable television, telephone, or other communications systems used, rendered or supplied upon or in connection with the Project, and any other charges, costs, obligations, liabilities, requirements and expenses which arise with regard to the Construction of the Project (collectively, "CITY Costs"), during the term of this Agreement. LAUSD shall not bear any

cost, or expense for the Construction of the Project. This Article VII shall survive the expiration or earlier termination of this Agreement.

## ARTICLE VIII

### LIENS AND STOP NOTICE CLAIMS

8.1. CITY shall not suffer or permit any liens or stop notice claims to stand against the fee title to the Campus that are directly related to and caused by the Projector against the Project, or any part thereof, by reason of any work, labor, services or materials done, or supplied, or claimed to have been done or supplied to CITY or anyone holding the Campus or the Project, or any part thereof, through or under CITY. If any such lien or stop notice claim shall at any time be filed against the Campus or the Project, CITY shall provide LAUSD written notice thereof as soon as notice of such lien, stop notice or action comes to the knowledge of CITY and shall cause the same to be discharged of record within 160 days after the date of the recordation of a notice of completion for the Project, by either payment, recorded release of lien or stop notice, recorded release bond deposit or bond, unless a bond therefore is already in effect or commencement of a lawsuit pursuant to Civil Code Section 8480, et seq. for a decree to release the property from the lien, or in the case of a stop notice, commencement of a summary proceeding pursuant to Civil Code Section 9500 et seq. or CITY's interpleader of funds subject to stop notice claims. If CITY is unable to discharge the lien or stop notice, CITY shall defend and indemnify LAUSD in any mechanics' lien or stop notice litigation filed in connection with the Campus or Project. The failure of CITY to discharge a lien recorded or stop notice filed on the Campus or the Project, or any part thereof, within 160 days after the date of recordation of a notice of completion for the Project and CITY's refusal to defend and indemnify LAUSD in any mechanics' lien or stop notice litigation filed in connection with the Project shall constitute a Default under this Agreement and any other agreement providing CITY occupancy and use of the Campus. Nothing in this Agreement shall imply any consent or agreement on the part of LAUSD to subject its fee estate in the Campus to liability under any mechanics' lien law or to any claimant as defined in Civil Code Section 8004.

8.2 If any such liens or stop notices are not so discharged within 160 days after the date of recordation of a notice of completion for the Project, LAUSD may, without notice to CITY, without waiving its rights and remedies based on such breach of CITY and without releasing CITY from any of its obligations, cause such liens or stop notices to be released by any means it shall deem proper, including payment in satisfaction of the claim giving rise to such lien. Promptly following notice by LAUSD, CITY shall, but no later than thirty (30) business days after CITY's receipt of LAUSD's notice, pay to LAUSD any sum paid by LAUSD to remove such liens, together with interest at the lesser of (a) the rate publicly announced from time to time by the largest (as measured by deposits) chartered bank operating in California, as its prime rate, reference rate or other similar benchmark rate, plus two percent (2%) or (b) the maximum rate then allowed by law (the "Interest Rate"), from the date of such payment by LAUSD, which Interest Rate shall commence as of the day LAUSD

makes payment in satisfaction of the claim giving rise to such lien or stop notices and shall continue until CITY has remitted full payment to LAUSD.

8.3 In addition to the foregoing, CITY shall assure that the Project is free of any stop notices filed by Contractor or any of Contractor's subcontractors. In the event any such stop notice is filed, CITY shall provide stop notice releases or stop notice release bonds for each and every stop notice on the Project, along with dismissals of any stop notice litigation. In the event a stop notice is filed with LAUSD, CITY shall provide LAUSD with a stop notice release or stop notice release bond. In addition, CITY shall defend and indemnify LAUSD in any litigation arising from a stop notice filed on the Project.

8.4 The provisions of this Article VIII shall survive the expiration or earlier termination of this Agreement.

## ARTICLE IX

### ENVIRONMENTAL ISSUES

#### 9.1 Hazardous Materials.

9.1.1 Definitions. As used in this Agreement, the following definitions shall apply: "**Environmental Laws**" shall mean all federal, state and local laws, ordinances, rules and regulations now or hereafter in force, as amended from time to time, in any way relating to or regulating human health or safety, or environmental evaluations of potential school sites or health care facilities, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the Hazardous Substance Account Act, California Health and Safety Code § 25300, *et seq.*, the Hazardous Waste Control Law, California Health and Safety Code § 25100, *et seq.*, the Medical Waste Management Act, California Health and Safety Code § 25015, *et seq.*, and the Porter-Cologne Water Quality Control Act, California Water Code § 13000, *et seq.*, Education Code § 17210, *et seq.*, and California Code of Regulations, Title 5 § 14010, *et seq.* "**Hazardous Materials**" shall mean any substance or material that is described as a toxic or hazardous substance, explosive material, radioactive substance, waste or a pollutant or contaminant or infectious waste, or words of similar import, in any of the Environmental Laws, and includes, but is not limited to, asbestos, petroleum or petroleum products (including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof), polychlorinated biphenyl, urea formaldehyde, radon gas, radioactive matter, medical waste, and chemicals which may cause cancer or reproductive toxicity. "**Release**" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including continuing migration, of Hazardous Materials into or through soil, air, surface water or groundwater in

violation of Environmental Laws. “**Known Environmental Conditions**” shall mean any Hazardous Materials that have been identified at, on, in, under or migrating to or from the Campus. “**Unknown Environmental Conditions**” shall mean Hazardous Materials that exist at, on, in, under or migrating to or from the Campus, that have not yet been discovered, regardless of where such Hazardous Substances are subsequently detected.

9.1.2 City Covenants. City shall not use, produce, process, manufacture, generate, treat, handle, store or dispose of any Hazardous Materials in, on or under the Campus or the Project, or use the Campus or the Project for any such purposes, or Release any Hazardous Materials into any air, soil, surface water or groundwater comprising the Campus or the Project, in each of the foregoing cases, in violation of any Environmental Laws. The City shall comply with all Environmental Laws applicable to the Campus or the Project, or the construction or use or occupancy thereof, or any operations or activities therein or thereon.

9.2. Hazardous Materials Claims. Each party hereto shall immediately advise the other party in writing of: (i) any written notices received by such party (whether such notices are from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of the violation or potential violation of any applicable Environmental Laws occurring on or about the Campus or the Project, (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened in writing pursuant to any Environmental Laws, (iii) any written notices received by such party of all claims made or threatened by any third party against any party, the Campus or the Project relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials relating to the Campus or the Project (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "**Hazardous Materials Claims**") and (iv) any party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Campus that could have a reasonable likelihood to cause the Campus or the Project or any part thereof to be subject to any Hazardous Materials Claims. Each party hereto shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

9.3 Indemnity by City. Except for LAUSD’s negligence, the CITY shall be solely responsible for, and shall indemnify, defend and hold harmless LAUSD and its School Board, staff, students, faculty and/or invited guests from and against, any claim, demand, lawsuit, loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, or storage of Hazardous Materials or the Release of Unknown Environmental Conditions by the City (including its general contractor, subcontractor, representative or owner) on the Campus or the Project in violation of applicable law during the term of this Agreement, including, without limitation: (i) claims of third parties (including governmental agencies) for injury or death to any person or for damage or destruction of any property, (ii) claims for response costs, clean-up costs, costs and expenses of removal and restoration, including fees of attorneys' and experts, and costs of determining the existence of Hazardous Materials and reporting same to any governmental agency, (iii) any and all other claims for expenses or

obligations, including attorneys' fees, costs, and other expenses, (iv) any and all penalties threatened, sought or imposed on account of a violation of any Environmental Law, and (v) all fees of any consultants, attorneys and engineering firms retained in connection with monitoring the Hazardous Materials; provided, however, that the foregoing indemnity shall not apply to any claim, demand, lawsuit, loss, damage, cost, expense or liability to the extent arising from (A) any act or omission on the part of the LAUSD, or the staff, faculty, and students or invited guests of LAUSD or any other party claiming through any of the foregoing (provided the same are acting in their official, professional or invited, as applicable, capacity), or (B) any Known Environmental Conditions so long as CITY has not caused the situation requiring cleanup, abatement or other remediation.

9.4 Removal of Hazardous Materials. To the extent the City is liable under Section 9.3 above and in connection with any Hazardous Materials remediation required in connection with the Project, the City, at its sole cost and expense, shall, with due care, in a safe manner and in accordance with all applicable laws, detain the spread of, ameliorate and remove from the Campus or the Project any Hazardous Materials contamination located on or beneath the Campus or the Project in violation of applicable law and shall monitor or cause to be monitored the levels of Hazardous Materials on, under or derived from the Campus and the Project or in the ground water in accordance with the terms and procedures required by any federal, state or local governmental agency having jurisdiction including, without limitation, any California Regional Water Quality Control Board, DTSC and the Environmental Protection Agency. Further, any and all such remediation shall be according to the following protocol: (1) any such abatement or remediation report, abatement work, and demolition work shall be performed by an LAUSD approved demolition, abatement or remediation contractor as applicable; (2) LAUSD's Facilities Environmental Technical Unit ("FETU") and OEHS shall review and approve any such abatement/remediation report in writing prior to the commencement of any abatement, demolition or removal work of the applicable materials or structures; and (3) FETU or OEHS shall review all such remediation work, and the City shall grant FETU and OEHS access to all reports, records and files as requested in connection with overseeing such remediation work, access to the Campus and Shared Use Area, and shall promptly respond to all inquiries of and request for information from FETU and OEHS regarding such remediation work.

## ARTICLE X

### INSURANCE; INDEMNITY

#### 10.1 CITY Insurance.

10.1.1 Insurance. At all times during the term of this Agreement, at CITY's sole cost and expense, CITY shall, as a covenant of this Agreement, provide and keep in force and effect:

10.1.1.1 All Risk Builder's Risk Insurance. "All risk" builder's risk insurance, including vandalism and malicious mischief, covering improvements in place and all

material and equipment at the job site. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than that specified in **Exhibit E**.

10.1.1.2 **Commercial General Liability Insurance**. Commercial General Liability Insurance on an occurrence basis against claims for personal injury, death and/or property damage occurring in or about the Campus or the Project with respect to the Construction thereof. Such insurance shall provide primary coverage without contribution from any other insurance carried by or for the benefit of LAUSD and its Board of Education, and CITY shall obtain blanket broad-form contractual liability coverage to insure its indemnity obligations herein. The minimum limits of liability shall be a combined single limit with respect to each occurrence in an amount of not less than that specified in **Exhibit E**.

10.1.1.3 **Fire and Extended Coverage**. Fire and hazard "all risk" insurance covering 100% of the full replacement cost valuation of the Project. Such insurance shall provide protection against any peril included within the classification "Fire and Extended Coverage", together with insurance against vandalism and malicious mischief. Such insurance shall contain (i) no coinsurance or contribution clauses and (ii) a Replacement Cost Endorsement.

10.1.1.4 **Workers' Compensation Insurance**. Workers' compensation insurance policies as required by law and Employer's Liability insurance in an amount not less than that specified in **Exhibit E**.

10.1.2 **CITY Insurance Policies**. All policies of insurance provided for herein shall be issued by insurance companies authorized to do business in California and rated in Best's Insurance Guide, or any successor thereto as having a "Best's Rating" of "A-" or better and a "Financial Size Category" of at least "VII" or better or, if such ratings are not then in effect.. All policies held by CITY in connection with this Agreement shall name CITY as the insured and LAUSD and the School Board as additional insureds, and shall provide that they may not be cancelled by the insurer for nonpayment of premiums or otherwise or be terminated or lapse of their own accord or by their own terms until at least thirty (30) days after written notice of the proposed cancellation upon all parties named in such policies as insureds. All insurance required to be carried by CITY shall contain a provision that no act or omission of CITY shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained. All public liability, property damage and other casualty policies shall be written as primary policies, not contributing with any other coverage which LAUSD or CITY may carry. CITY agrees that with respect to all such policies carried by or to be carried by CITY, CITY shall require its insurance broker to provide LAUSD with written notice whenever there are paid losses on CITY's insurance policies which result in a 20% or greater erosion of limits. Upon the Execution Date, and thereafter at least ten (10) days prior to the expiration date of such policy, CITY shall deliver to LAUSD copies of the policies for all the insurance required to be carried by CITY hereunder.

10.1.3 **Blanket Insurance.** Notwithstanding the foregoing, all of the insurance requirements set forth herein on the part of CITY shall be deemed satisfied if covered by a blanket insurance policy providing the coverage required by this Agreement.

10.2 **Waiver.** Except as otherwise provided in this Agreement or at law or equity, LAUSD shall not be liable for and CITY hereby waives all claims against LAUSD for damage to any property or injury, illness or death of any person in or upon the Campus or the Project arising at any time during the term of this Agreement, except the extent the same results from the gross negligence or willful misconduct of LAUSD or any party claiming through LAUSD. LAUSD shall not be liable for and CITY hereby waives all claims against LAUSD arising in any way due to, in connection with or related to, directly or indirectly, the Campus or the Project or any activities by CITY in, on or about the Campus, including the Construction of the Project, except the extent the same results from the negligence or willful misconduct of LAUSD or any party claiming through LAUSD.

LAUSD and CITY hereby agree and acknowledge that CITY is acting on its own behalf in constructing the Project and is not operating as an agent of LAUSD. Should LAUSD, through no fault of LAUSD, be named as a defendant in any suit brought against CITY in connection with or related to, directly or indirectly, CITY's Construction of the Project, CITY shall pay to LAUSD the costs and expenses LAUSD incurs in such suit, including without limitation, its actual professional fees such as appraisers', accountants' and attorneys' fees.

The provisions of this Section 10.2 shall survive the expiration or sooner termination of this Agreement.

**Self-Insurance.** Notwithstanding the foregoing provisions of this section to the contrary, City shall have the right to maintain the insurance required of this section through a program composed of any combination of self-insurance, risk retention, commercial insurance, risk transfer, and/or risk pooling authorized by California law, all at the City's sole option.

10.3 **Indemnification.** Each of the parties to this Agreement is a public entity. In contemplation of the provisions of Section 895.2 of the Government Code of the State of California imposing certain tort liability jointly upon public entities, solely by reason of such entities being parties to an Agreement as defined by Section 895 of said Code, the parties hereto, as between themselves, pursuant to the authorization contained in Section 895.4 and 895.6 of said Code, will each assume the full liability imposed upon it or upon any of its officers, agents or employees by law, for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement, to the same extent that such liability would be imposed in the absence of Section 895.2. To achieve the above-stated purpose, each party indemnifies and holds harmless the other party for all losses, costs, or expenses that may be imposed upon such other party solely by virtue of said Section 895.2. The provision of Section 2778 of the California Civil Code is made a part hereto as if fully set forth herein. Both City of Los Angeles Board of Recreation and Park Commissioners and Los Angeles Unified School District certifies that it has adequate commercial insurance or self-insured retention of funds to meet any obligation arising

from this Agreement. The provisions of this paragraph survive expiration or termination of this Agreement.

## ARTICLE XI

### **DEFAULT; REMEDIES**

11.1 **LAUSD's Default.** LAUSD shall not be in default of any of its obligations under this Agreement unless LAUSD fails to perform such obligations within a reasonable time, but in no event less than thirty (30) days, after written notice by CITY to LAUSD specifying wherein LAUSD has failed to perform such obligations; provided, however, that if the nature of LAUSD's default is such that more than thirty (30) days are required for its cure, LAUSD shall not be in default if LAUSD commences such cure within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

11.2 **CITY's Remedies.** In the event of any default by LAUSD as described in Section 11.1 above, subject to all applicable laws that may restrict remedies against a school district, including, but not limited to, restrictions within the Education Code, CITY's sole remedies under this Agreement are to pursue LAUSD for actual damages, including reasonable attorneys' fees and costs, resulting from LAUSD's default.

11.3 **CITY's Default.** The occurrence of any one of the following events shall be considered a "Default" of this Agreement by CITY:

11.3.1 **Costs.** The failure of CITY to pay or cause to be paid before delinquency any CITY Costs or other fees, charges, or payments due hereunder, or to observe or perform any of CITY's financial covenants and obligations hereunder.

11.3.2 **Construction.** The failure of CITY to construct the Project in accordance with the Construction Plans or to observe or perform any of its covenants and obligations hereunder pertaining to Construction.

11.3.3 **Project Schedule.** The failure of CITY to observe or perform any of its covenants and obligations hereunder pertaining to the Project Schedule, provided that the CITY shall be granted reasonable extensions to perform or alter the Project Schedule as needed.

11.3.4 **Liens.** The failure of CITY to discharge a lien recorded on the fee title to the Joint Use Area or on the Project, or any part thereof caused by CITY or any party claiming through CITY relating to Construction of the Project, or to observe or perform any of its covenants and obligations hereunder pertaining to liens on the Project.

11.3.5 **Insolvency.** The making by CITY of any general assignment or general arrangement for the benefit of creditors, or the filing by or against CITY of a

petition to have CITY adjudged a bankrupt or a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against CITY, the same is dismissed as soon as reasonably practical but in any event within 120 days), or the appointment of a trustee or receiver to take possession of substantially all of CITY's assets in the Project or on the Campus or of CITY's interest in this Agreement, where possession is not restored to CITY as soon as reasonably practical but in any event within 60 days, or the attachment, execution or other judicial seizure of substantially all of CITY's assets in the Project or on the Campus or of CITY's interest in this Agreement, where such seizure is not discharged as soon as reasonably practical but in any event within sixty (60) days.

11.3.6 Assignment. The actual or attempted assignment, transfer, mortgage or encumbrance, of this Agreement by CITY in violation of Article XII.

11.3.7 Failure to Perform. The failure of CITY to perform or observe any of CITY's covenants and obligations hereunder.

Notwithstanding anything to the contrary contained in this Agreement, LAUSD shall have no rights as a result of any Default until LAUSD gives thirty (30) days written notice to CITY specifying the nature of the Default. CITY shall then have the right to cure such Default, and CITY shall not be deemed in default if CITY cures such Default within thirty (30) days after receipt of notice of the Default; provided, however if the nature of the Default is such that it cannot be cured within said thirty (30) days, CITY shall commence the cure within said thirty (30) days and prosecute such cure with diligence to completion.

11.4 LAUSD Remedies. In the event of any Default by CITY, after the expiration of any applicable cure period provided herein to CITY, LAUSD may pursue any rights or remedies it may have at law, in equity (as applicable against a municipal corporation) or otherwise and the pursuit of any right or remedy shall not waive nor prohibit LAUSD from pursuing any other available right or remedy, including the following additional rights:

11.4.1 Right to Perform. LAUSD shall have the right, but not the obligation, to enter the Project or the Campus at all times for the purpose of performing any covenant or condition that CITY has failed to perform, at LAUSD's option. All costs incurred by LAUSD in so performing shall promptly be reimbursed to LAUSD by CITY, or the amount expended under any performance or surety bond as an administrative/management fee and interest at the Interest Rate, from the date such cost or expense is incurred by LAUSD following CITY's Default up to and including the date paid. In rendering such performance, LAUSD shall have the right to execute any agreements relating to Construction, or otherwise in connection with, the Campus and/or the Project. Any performance by LAUSD of CITY's obligations shall not waive or cure such Default.

11.4.2 Costs of Enforcement. LAUSD shall have the right to reimbursement from CITY promptly following demand by LAUSD for all costs and expenses incurred by LAUSD,

(whether or not legal proceedings are instituted), in enforcing the covenants and obligations of CITY under this Agreement.

## ARTICLE XII

### **ASSIGNMENT; USE AGREEMENT; ENCUMBRANCES**

12.1 Assignment by CITY. CITY shall not assign this Agreement or any rights and obligations hereunder without the prior written approval of LAUSD, which approval may be denied or conditioned in LAUSD's sole and absolute discretion.

12.2 Reserved.

12.3 Reserved.

12.4 Mortgage by CITY. CITY shall not execute a mortgage encumbering all or any portion of the right, title and estate of CITY in the improvements of the Project, without LAUSD's prior written consent which may be withheld in LAUSD's sole and absolute discretion. In the event a mortgage on the improvements of the Project is allowed, then such mortgage shall at all times be subject and subordinate to, and shall not affect or become a lien upon, LAUSD's fee estate in the Campus, and shall only encumber CITY's right, title or interest in the improvements of the Project.

12.5 Encumbrance. CITY shall not, without the prior written consent of LAUSD, encumber its interest in the improvements of the Project, or any part thereof, and if CITY fails to ensure that such encumbrance is subordinated to LAUSD's fee estate in the Campus and if CITY fails to comply with this Section 12.5, such failure shall be deemed to be an immediate Default hereunder.

12.6 Other. During Construction, any assignment, transfer, mortgage, encumbrance or use agreement of, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus granted by CITY to any person or entity shall be expressly subject and subordinate to all applicable terms and conditions of this Agreement. Any purported or attempted assignment, transfer, mortgage, encumbrance or use agreement of, or any license, concession, franchise or other permission to use the improvements of the Project or the Campus contrary to the provisions of this Article XII shall be void, constitute a Default under this Agreement, and, at the option of LAUSD, shall terminate this Agreement.

12.7 LAUSD Approval. Notice of any actual or proposed assignment, transfer, mortgage, encumbrance, use agreement or hypothecation of the improvements of the Project, the Campus or this Agreement shall be given by CITY to LAUSD, together with a copy of the proposed documentation thereof (including, in the event of an assignment, the

assumption document in which the assignee or proposed assignee agrees to assume all obligations of CITY under this Agreement), with all necessary and appropriate details for LAUSD to provide an approval. Any approval or disapproval by LAUSD under this Article XII is at LAUSD's reasonable discretion.

12.8 Costs. CITY shall reimburse LAUSD for LAUSD's costs incurred in conjunction with the processing and documentation of any actual or proposed assignment, transfer, mortgage, encumbrance, or hypothecation of the improvements of the Project, the Campus or this Agreement by CITY.

12.9 Assignment by LAUSD. Subject to applicable legal requirements, LAUSD shall have the right at any time and from time to time during the term of this Agreement to sell or assign all or any portion of its fee interest in the Campus; provided, however, that under no circumstances shall LAUSD assign all or part of the Campus to any entity separate from LAUSD's interests and obligations under this Agreement. Notice of any assignment or proposed assignment of this Agreement made in conjunction with such transfer shall be given by LAUSD to CITY at least sixty (60) days prior to such assignment or proposed assignment, together with a copy of the assumption document by which the assignee or proposed assignee agrees to assume all obligations of LAUSD under this Agreement.

### ARTICLE XIII

#### NOTICES

Any notice or communication required or permitted hereunder shall be given in writing, sent by (a) personal delivery delivered by a representative of the party giving such notice, or (b) overnight delivery by recognized overnight courier, or (c) United States mail, postage prepaid, registered or certified mail or (d) facsimile, addressed to the person(s) identified in Exhibit F or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable party sent in accordance herewith. Any such notice or communication shall be deemed to have been delivered either at the time of personal delivery actually received by the addressee or a representative of the addressee at the address provided above or, if delivered on a business day in the case of delivery service or certified or registered mail, as of the earlier of the date delivered or the date seventy-two (72) hours following the date deposited in the United States mail at the address provided herein, or if by telecopier, upon electronic confirmation of good receipt by the receiving telecopier. CITY and LAUSD hereby agree that notices may be given hereunder by the parties' respective counsel and that, if any communication is to be given hereunder by CITY's or LAUSD's counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Article XIII.

### ARTICLE XIV

## MISCELLANEOUS

14.1 LAUSD's Successors. In the event of any transfer of the fee title of or interest in the Campus, LAUSD shall be relieved, from and after the date of such transfer, of all liability for LAUSD's obligations hereunder thereafter to be performed, provided such transferee accepts and assumes all such liability in writing. The obligations contained in this Agreement to be performed by LAUSD shall, subject as aforesaid, be binding on LAUSD's successors and assigns only during their respective periods of ownership. Notwithstanding anything to the contrary contained in this Agreement, all indemnities set forth in this Agreement shall survive the expiration or earlier termination of this Agreement.

14.2 Intentionally omitted.

14.3 Captions. The captions and headings in this Agreement are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope of this Agreement or the intent of any provision thereof.

14.4 Choice of Law. This Agreement shall be governed and construed by the laws of the State of California.

14.5 Interpretation. This Agreement shall be deemed to be jointly prepared by both of the parties hereto, and any ambiguities or uncertainties herein shall not be construed for or against either of the parties hereto.

14.6 Further Assurances. LAUSD and CITY agree to execute all documents and instruments reasonably required in order to consummate the transactions contemplated under this Agreement.

14.7 Attorneys' Fees. In the event either party hereto should commence an action against the other to enforce any obligation set forth herein, the unsuccessful party shall pay to the prevailing party its cost of litigation or arbitration, including reasonable attorneys' fees.

14.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

14.9 Entire Agreement. This Agreement, the Grant Agreement, and the Joint Use Agreement, as amended, contain all of the agreements of the parties hereto with respect to the matters covered hereby, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the parties hereto.

14.10 Successors and Assigns. Subject to the provisions hereof relative to assignment and to Section 13.1 hereof, this Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, transferees, successors and assigns of the respective parties hereto.

14.11 Time Is of the Essence. Time is of the essence with respect to the performance or observance of each of the obligations, covenants and agreements under this Agreement. Except as otherwise provided herein, the parties agree that any matter that requires the approval or consent of a party under this Agreement, such approval or consent shall be given or withheld within thirty (30) days following request; provided, however, if the party fails to respond in such time period or if the party denies or disapproves the request and fails to specify in detail the reasons for such denial or disapproval, then the request shall be deemed disapproved.

14.12 Gender. As used herein, the neuter gender includes the feminine and the masculine, the masculine includes the feminine and the neuter and the feminine includes the masculine and the neuter, and each includes corporation, partnership or other legal entity when the context so requires.

14.13 Waiver. Either party hereto may waive the satisfaction or performance of any conditions or agreements in this Agreement which have been inserted for its own benefit, so long as the waiver is signed and specifies the waived condition or agreement and is delivered to the other party hereto. No waiver of any provision hereof shall be deemed a waiver of any other provision hereof. Consent to or approval of any act by one of the parties hereto shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act, nor shall any custom or practice which may develop between the parties in the administration of the terms hereof be deemed a waiver of, or in any way affect, the right of one of the parties to insist upon the performance by the other party in strict accordance with said terms.

14.14 Cumulative Remedies. No remedy herein shall be considered exclusive of any other remedy, but the same shall be cumulative and, shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Agreement may be exercised from time to time and as often as occasion may arise or as may be deemed expedient.

14.15 No Subordination. Nothing contained in this Agreement shall be deemed to subordinate LAUSD's interest in the Campus to the interest of CITY.

14.16 Severability. The invalidity or unenforceability of any provision of this Agreement as determined by a court of competent jurisdiction shall in no way affect the validity of any other provisions hereof.

14.17 Force Majeure. All time periods set forth in this Agreement shall be extended by one day for each day of Force Majeure Delay that occurs, but in no event shall the

Completion of Project Construction be extended by more than 365 days as a result of Force Majeure Delays. "Force Majeure Delay" shall mean any actual delays due to strikes, lockouts or other labor disturbance, civil disturbance, riot, sabotage, blockage, embargo, inability to secure materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body, severe or unusual shortages of material, supplies or labor, act of the legislature, lightning, rain, earthquake, fire, storm, hurricane, tornado, flood, washout, explosion, terrorist act, or any other cause outside of LAUSD's or CITY's reasonable control; provided, however, that, notwithstanding the foregoing, CITY shall in any event pay any sum of money required to discharge any lien if at any time the Campus, or portion thereof, or the Project, or any part thereof, shall be in danger of being foreclosed, forfeited or lost.

14.18 Reimbursement Charges. Notwithstanding anything to the contrary set forth in this Agreement, other than in the context of a default under this Agreement, the parties shall reasonably cooperate with each other to minimize any and all reimbursement obligations under this Agreement.

14.19 Entire Agreement; Incorporation. This Agreement contains all of the agreements of the parties hereto with respect to the Construction of the Project, and no prior agreements, oral or written, or understandings or representations of any nature whatsoever pertaining to any such matters shall be effective for any purpose unless expressly incorporated in the provisions of this Agreement. The provisions of this Agreement shall not be amended or altered except by an agreement in writing signed by both of the parties hereto. The terms and conditions of the Joint Use Agreement, as amended, and the Grant Agreement, as amended, shall apply to the use, maintenance and operation of the Shared Use Spaces identified in said agreements. The terms and conditions of the Exhibits attached hereto are incorporated herein by this reference thereto.

- Exhibit A: Site Plan showing Joint Use Area
- Exhibit B: Project Schedule
- Exhibit C: Form of Payment and/or Performance Bond
- Exhibit D: Construction Plans
- Exhibit E: Insurance Requirements
- Exhibit F: Persons Authorized to Receive Notice for CITY and LAUSD
- Exhibit G: Fingerprinting Requirements

14.20 Days. The word "days" as used in this Agreement shall mean and refer to calendar days unless expressly stated as business days and, due to budget cuts, shall not include any furlough day observed by LAUSD. If the time period for the performance of any act under this Agreement expires on a Saturday, Sunday or any other day in which banking institutions in the State of California are authorized or obligated by law or executive order to close ("**Holiday**"), the act in question may be performed on the next succeeding day that is not a Saturday, Sunday or Holiday.

14.21 Signatures. Each individual executing this Agreement on behalf of CITY represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of CITY, and that this Agreement is binding upon CITY in accordance with its terms. Each individual executing this Agreement on behalf of LAUSD represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of LAUSD and that this Agreement is binding upon LAUSD in accordance with its terms.

PROPOSED

IN WITNESS WHEREOF, LAUSD and CITY have executed this Agreement as of the dates set forth with the respective signatures.

LAUSD:  
LOS ANGELES UNIFIED SCHOOL DISTRICT,  
a school district duly formed and existing under the  
laws of the State of California

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:  
CITY OF LOS ANGELES,  
a Municipal Corporation  
Acting by and through its  
Department of Recreation and Parks

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Michael Shull  
Title: General Manager

APPROVED AS TO FORM:  
Michael A. Feuer, City Attorney

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

Date: \_\_\_\_\_

ATTEST:  
Holly L. Wolcott, City Clerk

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

Date: \_\_\_\_\_

EXHIBIT A

Site Plan

(see attached)

PROPOSED

EXHIBIT B

Project Schedule

PROPOSED

EXHIBIT C

Form of Performance Bond

**FAITHFUL PERFORMANCE BOND**

WHEREAS City of Los Angeles, a municipal corporation, hereinafter called Developer, and \_\_\_\_\_ hereinafter called CONTRACTOR, have entered into a Contract, which is incorporated by reference herein in its entirety, and identified as follows:  
dated \_\_\_\_\_  
for the Project known as \_\_\_\_\_  
located at \_\_\_\_\_  
Contract Amount \$ \_\_\_\_\_

NOW, THEREFORE, CONTRACTOR, as Principal, and \_\_\_\_\_ as Surety; are held and firmly bound to Developer, its successors and assigns in the amount set forth under the bond, for the payment whereof in the manner specified, the CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

**FAITHFUL PERFORMANCE BOND**

In an amount equal to One Hundred Percent (100%) of the above Contract Amount, the condition of this obligation is that if the CONTRACTOR shall in a workmanlike manner promptly, competently, and faithfully perform all of the terms and conditions of the Contract in strict conformity therewith, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety, for valued received, hereby stipulates and agrees that no adjustment to the Contract Amount and or Contract Times, alteration, additions and/or deletion to the terms of the Contract, or to the work to be performed thereunder, shall in anyway affect its obligations on the above bond, and it does hereby waive notice of any such change, adjustment, alteration, addition or deletion to the terms of the Contract Documents. The Surety hereby acknowledges and agrees that Developer may assign its rights herein to the State of California or any state agency providing funding or financing for the Project without the consent of Surety.

No final settlement between the Developer and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In case any suit is brought upon this bond, reasonable attorneys' fees shall be awarded to the prevailing party, only the amount thereof being within the Court's discretion. Attorneys' fees awarded against the Surety can exceed the penal sum of this bond.

Signed and sealed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CONTRACTOR

SURETY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Telephone No: \_\_\_\_\_  
Bond No: \_\_\_\_\_

Developer will obtain the following certification:

CERTIFICATION BY LOS ANGELES COUNTY CLERK'S OFFICE OR THIRD PARTY  
APPROVED BY LAUSD

I hereby certify:

1. The named Surety is currently certified by the State Insurance Commissioner as an admitted Surety Insurer and such authority is in full force and effect; and
2. (A) This office has on file the financial statement of the named surety for the period ending \_\_\_\_\_ showing capital and surplus not less than ten (10) times the Contract Amount, or (B) such other evidence reasonably acceptable to LAUSD.

EXHIBIT D

Approved Construction Plans

Please see attached.

The Construction Plans are also identified as:

PROPOSED

EXHIBIT E

Specific Information or Requirements

**Builder's Risk Insurance:** See Section 10.1.1 above.

For the total value of the Project, currently projected to be \$18,000,000

**Commercial General Liability Insurance:** See Section 10.1.1.1 above.

Minimum limit of not less than \$5,000,000 per occurrence, \$5,000,000 annual aggregate, and \$5,000,000 umbrella policy.

**Automobile Insurance:** See Section 10.1.1.3 above.

Minimum of \$1,000,000 per occurrence covering owned, hired and non-owned vehicles used by CITY.

**Worker's Compensation Insurance:** See Section 10.1.1.4 above.

Minimum of \$1,000,000 or that required by law, whichever is higher.

**Addresses for Notices:** See Article XIII

To CITY: Cathie M. Santo Domingo, P. E.  
Superintendent Planning, Construction, & Maintenance  
City of Los Angeles/Department of Recreation & Parks  
(213) 202-2668

and a copy to: Jimmy Newsom  
Senior Management Analyst  
City of Los Angeles/Department of Recreation and Parks  
6335 Woodley Avenue  
Van Nuys, CA 91406  
Office: 818-756-9294  
Fax: 818-908-9786

To LAUSD: Los Angeles Unified School District  
333 South Beaudry Avenue, Floor 23  
Los Angeles, CA 90017

Attn: Facilities – Al Grazioli  
Facsimile:

and a copy to:

Los Angeles Unified School District  
333 South Beaudry Avenue, Floor 23  
Los Angeles, CA 90017  
Attn: Office of General Counsel – Facilities Legal  
Facsimile: 213-241-8386

PROPOSED

EXHIBIT F

Persons Authorized to Receive Notice

CITY and LAUSD may change the persons identified in this Exhibit F at any time and at will by providing written notice to the other party.

CITY:

Cathie M. Santo Domingo, P. E.  
Superintendent Planning, Construction, & Maintenance  
City of Los Angeles/Department of Recreation & Parks  
(213) 202-2668

Jimmy Newsom  
Senior Management Analyst  
City of Los Angeles/Department of Recreation and Parks  
6335 Woodley Avenue  
Van Nuys, CA 91406  
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LAUSD:

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Title: Asset Management  
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EXHIBIT G

Fingerprinting Requirements

CONTRACTOR CERTIFICATION REGARDING BACKGROUND CHECKS

\_\_\_\_\_ certifies it has performed one of the following:

Pursuant to Education Code Section 45125.1, Contractor has conducted criminal background checks, through the California Department of Justice, of all employees providing services on LAUSD property, pursuant to the Development Agreement Between Los Angeles Unified School District and City of Los Angeles and its contract/purchase order with the City of Los Angeles dated \_\_\_\_\_, and that none have been convicted of serious or violent felonies, as specified in Penal Code Sections 1192.7(c) and 667.5(c), respectively.

As further required by Education Code Section 45125.1, attached hereto as Attachment "H-1" is a list of the names of the employees of the undersigned who may come in contact with pupils.

OR

Pursuant to Education Code Section 45125.2, Contractor will ensure the safety of pupils by one or more of the following methods:

The installation of a physical barrier at the worksite to limit contact with pupils. Continual supervision and monitoring of all employees of the entity by an employee of the entity whom the Department of Justice has ascertained has not been convicted of a violent or serious felony.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
[Name of Contractor/Consultant]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Washington Irving Magnet School  
3010 Estara Avenue, Los Angeles 90065**

Joint Use Area(s):

- 1) Park Area
- 2) Multiuse Synthetic Field (Project) Area



**MEMBERS OF THE BOARD**

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**LOS ANGELES UNIFIED SCHOOL DISTRICT**

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JOHN E. DEASY, Ph.D.  
SUPERINTENDENT OF SCHOOLS

August 27, 2014

Veronica Buenrostro  
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Department of Public Works, Bureau of Engineering  
1149 S. Broadway, Suite 860  
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Joel Alvarez  
City of Los Angeles  
Recreation and Park Partnerships  
3900 W. Chevy Chase Drive  
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**LOS ANGELES UNIFIED SCHOOL DISTRICT (LAUSD) WASHINGTON IRVING MIDDLE SCHOOL  
PROPOSITION K SYNTHETIC TURF SPORTSFIELD  
CONTRACT NO. C-99587**

This letter serves as the LAUSD'S notification to the Bureau of Engineering (BOE) and to the Department of Recreation and Parks (RAP), of athletic activities use restrictions on the synthetic turf multi-use field at Washington Irving Middle School which has a Joint Use Agreement with the City of LA under the Proposition K program.

As posted on the District's Office of Environmental Health & Safety (OEHS) website [http://www.lausd-oehs.org/fledoperations\\_listinspections.asp](http://www.lausd-oehs.org/fledoperations_listinspections.asp), the Corrective Action Notice restricts sports and athletic activities on the Irving Middle School's synthetic turf field until approved for re-use by the OEHS. LAUSD's Maintenance and Operations is currently working on a solution to the field conditions. We will keep you apprised of any corrective action plans and/or approval for re-use of the field.

Please contact Annette Henderson at (213) 241-4915 or by email at [annette.henderson@lausd.net](mailto:annette.henderson@lausd.net) if you have any questions. Thank you.

A handwritten signature in black ink, appearing to read "Shawn Atlow".

Shawn Atlow, Director  
LAUSD Facilities Legislation, Grants & Funding

C LAUSD Docs: Atlow  
C: Eileen Ma  
C: LAUSD Docs