



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Albert Balagso

**SUBJECT:** MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE CITY OF SAN JOSE AND THE EAST SIDE UNION HIGH SCHOOL DISTRICT

**DATE:** December 1, 2008,

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Approved  Date 12-2-08

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**COUNCIL DISTRICT:** 2, 4, 5, 7, 8  
**SNI AREA:** Mayfair  
KONA  
West Evergreen

## RECOMMENDATION

It is recommended that the City Council approve the attached Memorandum of Understanding (MOU) between the City of San Jose and the East Side Union High School District for the shared planning, development and operation of recreational facilities.

## OUTCOME

An approved MOU would establish a cooperative relationship between the City and the District and make public their desire to pursue opportunities for the shared development and joint use of recreational projects of mutual interest.

## BACKGROUND

In recognition of the shortage of sports fields, the San Jose City Council authorized the Department of Parks, Recreation and Neighborhood Services (PRNS) to conduct a community sports field study. During the data collection phase of that study, it was noted that there was a strong preference for the development of recreational amenities through partnerships.

Since that time, PRNS has been actively pursuing new partnerships for the development of sports fields with school districts. The Department's first success was a partnership with the San Jose Unified School District for the development of the Leland Sports Complex. This project added three artificial turf fields to the City's inventory and provided over 5,000 hours of community access during non-school hours. The proposed MOU between the City of San Jose and the East Side Union High School District seeks to build on the Leland model by expanding the notion of

shared development and joint use from a single project to multiple projects. It also seeks to provide a framework for a new vision of collaboration that will allow the City and the District to act collaboratively now and in the future. The purpose of this memorandum is to provide an overview of the MOU and to seek Council's approval of the document.

## **ANALYSIS**

The proposed MOU is enclosed as Attachment A. This document recognizes that the City and the District each have limited capital resources and intend to leverage those resources, where possible, to benefit the community and the District. It is important to note that the MOU does not obligate either party to enter into a particular shared development/joint use agreement at this point. Instead, it commits each party to explore the feasibility of projects of mutual interest and provides a framework for decision-making and collaborative planning.

To date, five projects have been identified as projects of mutual interest:

- 1) Construction of a lighted sports complex, with artificial turf, at Independence High School;
- 2) Construction of a lighted sports complex, with artificial turf, at Overfelt High School;
- 3) The rehabilitation of the Hillview Branch Library for use by the East Side Union School District and their partners as a digital arts and neighborhood center;
- 4) Evaluation of Independence High School as the site of a Large Family Aquatics Center; and
- 5) On-going lease of the pools at Santa Teresa High School and Silver Creek High School for use by the City's Aquatics program.

If the MOU is approved, the parties will negotiate individual shared development/joint use agreements for each of these projects. The goal is to complete the required negotiations, community input processes and environmental impact reports within two years for all five projects. To accomplish this, the MOU outlines a set of guiding principles and key provisions to be included in each shared development/joint use agreement. The first goal is to develop the sports complex agreement with East Side Union High School District by the end of FY 2008-09. In addition, the MOU establishes a decision-making structure that will include a Steering Committee and associated project subcommittees. This structure is similar to the structure established in the Leland agreement.

While much of the proposed MOU is based on the Leland agreement, it is important to note that this MOU creates an even broader spirit of collaboration and cooperation. The agreement with San Jose Unified School District was specific to the Leland site. The proposed MOU with East

Side Union High School District expands the concept of shared development from a single site to multiple projects across the District.

The MOU recognizes that the City has an interest in securing access to not only one site, but all eleven school sites within the District. It also recognizes that the District may, from time to time, may have an interest in City facilities for their use (i.e., re-use of the Hillview Library for a digital arts center). The proposed MOU provides for both of these interests. It also recognizes that there may be opportunities in the future for projects of mutual interests and provides a mechanism for those discussions as well.

The District has scheduled two community meetings to discuss the potential partnership with the City. The first was held on September 30 at Overfelt High School and the second took place on October 6 at Independence High School. City staff participated with the District in these community meetings. If the MOU is approved, staff will continue to work with District staff to ensure open communication regarding these projects.

The District's Board of Trustees unanimously approved the MOU on November 20, 2008.

### **CONCLUSION**

The proposed MOU between the City and the East Side Union High School District represents an exciting new spirit of collaboration. It provides a strategic framework for shared development and joint use that will enable the City and the District to better serve residents all across the east side of San Jose. In addition, it creates a new model that recognizes that the parties' interests are inter-mingled and best served by the leveraging of resources. Just as the Leland agreement established a new model for shared development for a single site, the proposed MOU with the East Side Union High School District seeks to establish a new model for multiple sites across a school district. This approach will provide consistency across school sites within a school district. In addition, it will help expedite negotiations as there are nineteen school districts within the city.

### **EVALUATION AND FOLLOW-UP**

If approved, it is a goal to have individual shared development and joint-use agreements presented to City Council for final approval within two years. The first priority is to develop the agreement for the sports complex with East Side Union High School District by the end of FY 2008-09.

**PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Two community meetings on the proposed partnership were held. The first took place on September 30, 2008 at Overfelt High School and the second meeting was held on October 6, 2008. The East Side Union High School District Board unanimously approved the MOU on November 20, 2008. This memorandum will be posted to the City of San Jose's website for the December 16, 2008 City Council Agenda.

**COORDINATION**

This memorandum has been coordinated with the City Attorney's Office.

**CEQA**

Not a project.

  
ALBERT BALAGSO  
Director  
Parks, Recreation  
and Neighborhood Services

Attachment: City of San Jose and ESUHSD MOU  
For more information, please contact Cynthia Bojorquez at 535-3581.

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN  
THE EAST SIDE UNION HIGH SCHOOL DISTRICT  
AND  
THE CITY OF SAN JOSE  
FOR THE SHARED DEVELOPMENT AND JOINT USE OF  
RECREATIONAL FACILITIES**

THIS MOU, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the CITY OF SAN JOSE, a municipal corporation of the State of California, ("City") and EAST SIDE UNION HIGH SCHOOL DISTRICT, a California Public School District ("District"), (here after collectively referred to as the "Parties").

**RECITALS**

A. Whereas, Section 10900 et. seq. of the Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, construct, improve, maintain and operate recreation complexes, including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums; and .

B. Whereas, Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public authority for the purpose of organizing, promoting and conducting of community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system; and.

C. WHEREAS, it is the responsibility of the City to plan, develop, construct, operate and maintain park and recreational land and facilities in the City of San Jose;

D. WHEREAS, it is the responsibility of the Board of Trustees of the East Side Union High School District to develop and deliver educational programs and provide the necessary facilities and sites for these programs; and,

E. WHEREAS, the Parties support sharing of publicly-funded facilities to maximize benefit to students and residents of the City of San Jose;

F. WHEREAS, the Parties have limited capital resources to invest in projects and intend to leverage those resources where possible to benefit the community and the District;

G. WHEREAS, both Parties intend to make an investments in the projects in the form of land, and/or contribution of funds, where available, including available bond funds, and

H. WHEREAS, the Parties agree that the foregoing Preambles shall form part of this MOU.

NOW THEREFORE IN CONSIDERATION of their mutual desire to cooperate in the shared use of City and school facilities the Parties agree as follows:

#### **SECTION 1 PURPOSES AND OBJECTIVES OF THE MOU**

A. The purpose of this MOU is to:

(1) Establish a common vision for collaboration between the City and the District in an effort to leverage resources; and

(2) To identify a common vision of priority recreational projects that may provide mutual benefit to the District and the City and to provide a general framework for the shared development and joint use of any projects that may move forward toward completion.

## **SECTION 2 DEFINITIONS**

A. In this MOU, unless there is something in the context that is inconsistent therewith the following terms shall be interpreted as having the following meanings:

(a) "MOU" means this Memorandum of Understanding including Schedules "A" and "B" that are attached to and form part of this MOU.

(b) "Board" means the Board of Trustees for the East Side Union High School District.

(c) "City" means the City of San Jose, a municipal corporation, and its successors and assigns.

(d) "Director" means the Director of the PRNS.

(e) "District" means the East Side Union High School District, a California Public School District.

(f) "City Manager" means the chief administrative officer of the City.

(g) "Superintendent" means the chief administrative officer of the East Side Union High School District.

- (h) "Council" means the City Council of the City of San Jose.
- (i) "Effective Date" means the \_\_\_ day of \_\_\_\_\_ 2008, or such other date as may be mutually agreed in writing by the City Manager and the Superintendent of the Board.
- (j) "Joint Use Agreement" means an agreement between the District and the City which sets forth the mutually agreed terms regarding shared investment, shared use and shared costs of operation and maintenance.
- (k) "Joint Use Facilities" means those facilities of mutual interest designated by the Parties and listed in Schedule "A" or such other facility which is covered by a Joint Use Agreement entered into by the Parties as contemplated by this MOU.
- (l) "Operating Guidelines" means the joint use guidelines created for the shared use of City and District Facilities as set out in Section 10.
- (m) "Parties" means the entities signing this MOU collectively and Party shall mean one (1) of the signatories.
- (n) "Principles" means those fundamental concepts, set out in Section 5 of this MOU that shall guide the actions and relations of the Parties as they work together to meet the needs of the residents of the City of San Jose, the District, and the students within the District.
- (o) "PRNS" means the Department of Parks, Recreation and Neighborhood Services of the City of San Jose.
- (p) "Sport Fields" means open space on City or Board land that has been developed to accommodate activities including, but not limited to, track and

field events, soccer, football, rugby, cricket, ultimate frisbee, baseball, tennis, basketball, softball/fastball, lacrosse, and slo-pitch.

(q) "User Group" means any either a school or community group who books the use of Joint Use Facilities.

### **SECTION 3 TERM**

3.1 This MOU shall be in force and effect as of the Effective Date and shall continue to be in effect until such time as it is terminated by the Parties in accordance with Section 3.2.

3.2 Either Party to this MOU may terminate this MOU without cause upon 90 days prior notice, provided that termination of this MOU shall not modify any Joint Use Agreement or other agreement entered into by the District and City prior to termination of this MOU. In the event of a conflict between the terms of this MOU and any Joint Use Agreement, the terms of the Joint Use Agreement shall control.

### **SECTION 4 SCHEDULES**

4.1 The following is the list of Schedules to this MOU:

Schedule "A" Joint Use Facilities

- A-1: City of San Jose Facilities
- A-2: School Board Facilities

Schedule "B"

Dispute Resolution Procedure

## SECTION 5 PRINCIPLES

5.1 The Parties agree that in entering into this MOU, they desire to apply the following principles with respect to the negotiation of shared investment and use of Joint Use Facilities:

ACCESS	Subject to available resources, the Parties will cooperate to make available their respective facilities for use by the other Party and by the community.
AUTONOMY AND ORGANIZATIONAL INTEGRITY	<p>The Parties each acknowledge that the parties have different missions and they shall use reasonable efforts to understand and honor each parties organizational cultures, mandates, budget and administrative process.</p> <p>Each of the Parties is an independent, autonomous entity and has the right to determine which of their facilities is best suited to be made available to place under Agreement as Joint Use Facilities based on what the Board and Council believe to be in the best interests of the people they serve.</p>
CONFLICT RESOLUTION	When difficulties arise between the Parties, the Parties shall work together to resolve such difficulties in a respectful way and with a spirit of cooperation and collaboration.
COOPERATION	The Parties shall work together to ensure that the rights of each are respected and that the Operating Guidelines are followed.
COMMUNICATION	The Parties will undertake ongoing dialogue, outreach, and communication with Parties, the community, and facility User Groups during the term of the MOU.
COSTS TO PARTIES	The parties shall use reasonable efforts to keep the costs as low as possible.

COLLABORATION FOR COMMUNITY BENEFIT	The Parties shall work together in a cooperative manner as partners, recognizing that the needs of the community for educational and recreational opportunities can best be achieved through a combination of their respective resources.
EQUITY OF DECISION-MAKING	There shall be equal authority among the Parties to the MOU with respect to decision making.
TRANSPARENCY AND OPENNESS	The Parties shall make available to each other such information as is necessary to ensure the Principles and Operating Guidelines of this MOU are being observed.

5.2 The Parties agree that the Principles set out in Article 5.1 will be considered when any Party enters into a sublease or other use agreement with another public or private entity for the use or development of facilities that may limit or otherwise negatively affect the feasibility of the potential projects identified in this MOU.

**SECTION 6 GOVERNANCE**

**Steering Committee**

6.1 To provide leadership and direction in following the Principles of the MOU as stated in Article 5, a Steering Committee will be established consisting of four (4) City representatives and four (4) District representatives. These representatives shall include senior staff members from each party with the goal that the Steering Committee consists of staff who can effectively oversee and administer this MOU.

Within 30 days after the Effective Date, the Director shall appoint members of the Steering Committee for the City and the Superintendent shall appoint members of the Steering Committee for the District. If more representatives of one Party are in attendance at a meeting of the Steering Committee, District and City shall nonetheless

have equal votes on any item put to a Steering Committee vote.

6.2 The Steering Committee may establish sub-committees as it sees fit, to address in a more focused manner, the planning and operational issues regarding, but not limited to, school use of City facilities as well as City and community use of District facilities, provided that District and City shall also have equal representatives and equal votes on any subcommittee.

6.3 The Steering Committee may establish, terminate, or change the scope of duties of any sub-committees created by it (provided that the scope is within the Steering Committee's own authority level).

6.4 All sub-committees shall report to the Steering Committee when requested to do so and in any event, at a minimum of at least annually.

6.5 The costs of staffing and administering this MOU, including the Steering Committee meetings, are to be shared fairly and equitably by the Parties.

#### **Responsibilities of the Steering Committee**

6.6 The Steering Committee is responsible for:

- (a) Interpreting the MOU;
- (b) Overseeing the cooperative efforts envisioned in the MOU;
- (c) Creating awareness of the MOU within their respective organizations;
- (d) Recommending amendments to the MOU;
- (e) Evaluating the effectiveness of the MOU annually;
  
- (f) Overseeing the subcommittees;
- (g) Evaluating the recommendation of feasibility of Joint Use Projects; and

(h) Evaluating the proposed joint investment and cost sharing for Joint Use Projects.

6.7 The Steering Committee shall meet on a quarterly basis, unless otherwise agreed by the Parties. The first meeting of the Steering Committee shall occur no later than 60 days after the Effective Date.

6.8. At the first meeting of the Steering Committee, the Steering Committee shall appoint a project-related subcommittee of the Steering Committee which shall meet within 60 days of the first Steering Committee meeting, to diligently investigate the feasibility of projects, the proposed joint investment and costs sharing of operations and maintenance of Joint Use Projects. If deemed feasible, the subcommittee will initiate the process for environmental review and other planning and design development actions, if applicable, within the first 12 months following the Effective Date. Each Party may appoint individuals as representatives to each subcommittee for individual sites and projects

6.9 The Steering Committee shall produce and present an annual report to the Parties and ensure that timely updates of accomplishments and activities are communicated.

6.10 The Steering Committee will ensure that the Joint Use construction and time allocation schedules attached to each Joint Use Agreement, as they may be mutually revised from time to time, are accurate and current on an annual basis.

6.11 Changes to policies or practices relating to this MOU or affecting the use of Joint Use Facilities shall be determined in consultation with the Parties.

## **SECTION 7 PROJECTS OF MUTUAL INTEREST**

The Parties intend this document to be used in strategic planning for possible joint use projects. Each Party's investment in any Joint Use Project shall be conditioned upon each Party receiving a guaranteed number of hours for such Party's use, which amount may vary from project to project depending upon the level of such Party's investment. The dates and times of use of specific facilities will be set forth in the applicable Joint Use Agreement and may be reviewed on an annual basis by the Steering Committee in accordance with terms of the applicable Joint Use Agreement, if any.

Before any party is obligated to construct an improvement project, the Parties shall complete environmental review and shall obtain community input on the proposed project. In addition, the Parties must enter into a separate Joint Use Agreement for any project which sets forth, among other things, the shared investment by the Parties in the project (which may be in the form of land and/or a contribution of funds), the period of use granted to each party and the method of calculating shared costs of maintenance and operation..

As of the date of this MOU and subject to the availability of funds, the Parties desire to initiate mutually acceptable preliminary planning, feasibility and design efforts for the following projects

A. The construction of a sports complex including lights and amenities at Independence High School to be more particularly described in a Joint Use Agreement between the Parties;

B. The renovation of sports fields at Overfelt High School that may include the renovation of the football stadium which may include an artificial lighted soccer field and track and two additional lighted soccer fields with artificial turf;

C. The rehabilitation of the Hillview Branch Library for use by the East Side Union School District and their partners as a digital arts and neighborhood center; and

D. The renovation and/or expansion of the Frank Fiscalini Swim Center as a large Family Aquatics Center.

E. Lease of the Pools at Santa Teresa High School and Silver Creek High School for community and City use during the summer months.

7.2 The projects identified in Section 7.1 represent the initial list of projects of mutual interest. The Parties agree that it is their intent to add to this list of potential projects as opportunities arise throughout the term of this MOU. If Joint Use agreements are negotiated between the Parties, those agreements shall be negotiated in accordance with the principles articulated in this MOU. This list is not intended to prevent the Parties from pursuing other mutually agreed upon opportunities.

7.3 The Parties again recognize the limitation of capital resources available to the Parties and intend to work together to leverage such resources to benefit the community and the District.

**SECTION 8 ELEMENTS TO BE INCLUDED IF PARTIES ENTER INTO SHARED DEVELOPMENT AND JOINT USE AGREEMENTS**

8.1 If the Parties enter into negotiations for Joint Use Agreements for projects, the following provisions shall be addressed in each agreement.

- a. Investment Contributed by the Parties
- b. Term of the Agreement
- c. Design and Construction
- d. Operations and Maintenance
- e. Hours of Operation and Allocated Use for each Party
- f. Fees and Reserves

- g. Ownership of the Facilities
- h. Amortization of Investment
- i. Relocation Rights
- j. Concessions and Permits
  
- k. Staffing
- l. Programming
- m. Education Code Provisions
- n. Partnership Evaluation
- o. Project Oversight
- p. Project Schedule
- q. Environmental Conditions
- r. Indemnification
- s. Insurance Requirements
- t. Damage and Destruction
- u. Condemnation
- v. Dispute Resolution and Default
- w. Elective Termination
- x. Assignment and Subletting
- y. Waiver
- z. Independent Contractor
- aa. Amendments
- bb. Surrender of Property
- cc. Time of Essence
- dd. Notices
- ee. Force Majeure
- ff. Entire Agreement
- gg. Partial Invalidity
- hh. Governing Law
- ii. Non-discrimination
- jj. Headings
- kk. Counterparts

- II. Exhibits for the following:
  - 1) Location and Description of the Project
  - 2) Summary of Time Allocation of the Parties
  - 3) Approved Estimate for Cost of Construction
  - 4) Project Scope
  - 5) Definition of Hazardous Materials
  - 6) Amortization Schedule
  - 7) Specific Insurance Requirements

## **SECTION 9 JOINT USE FACILITIES AND SPORT FIELDS**

If the District and City enter into a Joint Use Agreement, the Parties also may consider provisions substantially similar to the following provisions to be incorporated in those agreements. Furthermore, the Joint Use Agreement for each Joint Use Project shall set forth the number of guaranteed hours of use for each Party depending on each party's investment in such project and the times when use shall occur to the extent they differ from the standard operating guidelines set forth in Section 10.

### **9.1 Sport Fields**

- (a) Sports Fields shall be available to District and community User Groups,
- (b) City acknowledges that Sport Fields located on District Property, shall be reserved for school use during school operational hours, as defined in the Joint Use Agreement. After school operational hours, use of Sports Fields shall be shared by City programs, school User Groups, and community User Groups in accordance with Operating Guidelines in Section 10.

### **9.2 Facilities Owned by City**

The City shall make available to the District those City facilities identified as Joint Use Facilities on **Schedule "A"** for the purposes and on the terms set forth in the relevant Joint Use Agreement, if any. The City shall use reasonable efforts to inform District of City facilities located within the District boundaries that come available which could be used for educational or community use.

### **9.3 Facilities Owned by District**

(a) The District shall make available to the City those District facilities identified as Joint Use Facilities on **Schedule "A"**, for the purposes set forth in, and in accordance with, any Joint Use Agreement, if any, related to such facility.

## **SECTION 10 OPERATING GUIDELINES**

10.1 The Parties hereby intend to adhere to the Operating Guidelines set forth herein.

10.2 Each Joint Use Agreement shall outline the Operating Guidelines applicable to the facility or field subject to joint use.

10.3 Unless otherwise agreed to in the Joint Use Agreement, the time allocation of use shall provide District with priority use during school operating hours and with the City having priority use during weekends, school holidays, and evening hours. The Joint Use Agreement shall define "school operational hours", "weekend", "school holiday", and "evening hours" for each facility.

10.4 To retain the right to book and use facilities, User Groups must:

1. Meet the eligibility requirements set forth in the Joint Use Agreement;

2. Use the Facility for the eligible activity that the facility is intended, accepted, or approved;
3. Make booking request according to established procedures;
4. Respect the facilities they are using and the authority of the staff person in charge of the facility; and
5. Meet all requirements outlined for User Groups in the Joint Use Agreement.

10.5 To the extent possible the parties shall diligently coordinate the scheduling of the joint use facilities in accordance with the Steering Committee guidelines and recommendations so that duplicate bookings are avoided.

## **SECTION 11 INSURANCE AND INDEMNITY**

A. Neither DISTRICT, nor any officer, employee or agent thereof shall be responsible for any damages, loss, costs, or liability arising out of or occurring by reason of anything done or omitted to be done by CITY under or in connection with this Agreement. It is also understood and agreed that, as authorized by Government Code Section 895.4, CITY shall fully defend, indemnify and hold DISTRICT, its officers, employees and agents harmless from any claims, costs, loss, damages or liability arising out of or occurring by reason of anything done or omitted to be done by CITY under or in connection with this MOU.

B. Neither CITY, nor any officer, employee, or agent thereof, shall be responsible for any damages, loss, costs or liability arising out of or occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with this Agreement. It is also understood and agreed that, as authorized by Government Code Section 895.4, DISTRICT shall fully defend, indemnify and hold CITY, its officers, employees and agents harmless from any claims, costs, loss, damages or liability arising out of or occurring by reason of anything done or omitted to be done by DISTRICT under or in connection with this MOU.

C. This Section shall survive expiration or earlier termination of this MOU.

## **SECTION 12 DISPUTE RESOLUTION**

A. This MOU anticipates that the Parties will work together in good faith to achieve the intent of this MOU. In the event that a dispute arises as to the proper interpretation of the respective rights and responsibilities of the Parties under this MOU, or as to any other aspect of this MOU including shared development and Joint Use Agreements that shall be developed for projects of mutual interest, the Parties agree that they each will assign the appropriate individuals to meet and make good faith efforts to negotiate in order to arrive at a resolution of the dispute.

B. Operational issues will be addressed initially by administrative staff of the respective facilities. In the event that the administrative staff is unable to resolve an operational issue then such issue will be brought forward to the relevant sub-committee in a timely manner. In the event the sub-committee is unable to resolve the operational issue then such issue will be brought forward to the Steering Committee for final resolution. The decision of the Steering Committee regarding operational issues will be final and binding.

C. The Parties to this MOU agree that the Dispute Resolution Procedure outlined in **Schedule "B"** for non-operational disputes is the process that they intend to follow to resolve disputes.

## **SECTION 13 ADDRESS FOR NOTICES**

Any notices under this MOU given to the City and to the District shall be deemed to be sufficiently given if personally delivered or sent by prepaid registered mail addressed as follows;

**To the City at:**

Department of Parks, Recreation and Neighborhood Services  
200 E. Santa Clara Street, 9<sup>th</sup> Floor  
San Jose, CA 95113  
Attention: Director's office

with a copy to: Deputy Director for Community Resource and Development at the same address

**To the East Side High Union School District at:**

830 North Capitol Avenue  
San Jose, CA 95133  
Attention: Superintendent

with a copy to: Associate Superintendent of Facilities at the same address

or to any other address as may be designated in writing from time to time by the City and the District. Notice given by registered mail, if posted in the United States, shall be deemed to have been received on the fifth (5th) business day following the date on which such notice is mailed. In the event of a postal strike, notice may only be given by personal delivery.

**SECTION 14 SUCCESSORS**

14.1 The terms and conditions contained in this MOU shall extend to and be binding upon the respective heirs, executors, administrators, successors and assigns of the City and the District.

#### **SECTION 15 HEADINGS**

15.1 The insertion of headings is for convenience of reference only and shall not be construed so as to affect the interpretation or construction of this MOU.

#### **SECTION 16 FORCE MAJEURE**

If either party shall be delayed or prevented from the performance of any act required by this MOU by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, Hazardous Materials testing or remediation ordered by any governmental entity with authority therefore or other cause, without fault and beyond the reasonable control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

#### **SECTION 17 ENTIRE AGREEMENT**

This MOU, including the exhibits attached to this MOU, constitutes the entire agreement between the Parties respecting the use and occupancy of certain City and District owned recreational facilities and correctly sets forth the obligations of City and District to each other as of the Effective Date. Any agreements or representations not expressly set forth in this MOU shall be null and void.

#### **SECTION 18 PARTIAL INVALIDITY**

If any provision of this MOU is held by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions of this MOU shall remain in full force and effect and unimpaired by the holding. All laws, rules, requirements, and

regulations of the State of California applicable to school districts and the functioning, powers, and administration of school districts and school facilities, are deemed included in this MOU as if fully set forth to the extent they apply to the design, construction, administration, and operation of recreational facilities, and shall be complied with in the performance of this MOU and shall supersede any inconsistent provisions of this MOU.

#### **SECTION 19 GOVERNING LAW**

This Agreement shall be governed by and in accordance with the laws of the State of California. District shall use reasonable efforts to provide to City copies of such laws, rules, and regulations applicable only to school districts that affect City's use of the recreational facilities and shall use reasonable efforts to inform City of any changes to foregoing; provided however, the District shall incur no liability for any failure to inform the City of such laws. Each Party expressly agrees that the responsibility to educate itself and to comply with all laws, including Education Code provisions, relating to this MOU or any joint use agreement subsequently entered into with the District rests with each Party.

#### **SECTION 20 NONDISCRIMINATION**

Neither City nor District shall discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

#### **SECTION 21. NONBINDING EFFECT**

A. City and District understand and acknowledge that this MOU is not intended to set forth all of the material terms and conditions regarding District or City's intent to develop Projects or Recreational Facilities in the City.

B. This MOU is not intended to contractually bind City or District to any particular course of action. No legal obligation shall arise for City or District as a result of this

MOU, except the obligation to negotiate and act in good faith in any future negotiations or other activities or discussions between the Parties.

C. City retains absolute discretion in connection with City's requirement to consider any particular development proposal and related environmental analysis related development of a City Facility to determine to approve, deny, or condition any discretionary permit or other approval of City in connection with development of a City Facility. Without in any way limiting the foregoing, City and District expressly acknowledge and agree that City retains the power and ability to protect the public interest and promote the general welfare by ensuring that comprehensive and rational land use planning occurs within the City.

D. District retains absolute discretion in connection with District's requirement to consider any particular development proposal and related environmental analysis related development of a District Facility to determine to approve, deny, or condition any discretionary permit or other approval of District in connection with development of a District Facility. Without in any way limiting the foregoing, District and City expressly acknowledge and agree that District retains the power and ability to protect the public interest and promote the general welfare by ensuring that comprehensive and rational land use planning occurs on District property.

#### **SECTION 22 HEADINGS.**

The headings of the Sections in this Agreement are merely for the convenience of the Parties.

#### **SECTION 23 COUNTERPARTS.**

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same Agreement.

APPROVED AS TO FORM:

**CITY OF SAN JOSE,**

a municipal corporation

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Barbara K. Jordan  
Deputy City Attorney

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Lee Price  
City Clerk

**EAST SIDE UNION HIGH SCHOOL  
DISTRICT,**  
a California Public School District

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Signature

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Print Name

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

**Schedule A-1**

**JOINT USE FACILITIES IDENTIFIED AS OF MUTUAL INTEREST**

City of San Jose Facilities

Nothing herein is intended to commit any party to entering into a Joint Use Agreement for the following facilities, nor to prevent the Parties from entering into a Joint Use Agreement covering other facilities.

**City facilities within the East Side Union High School District territorial jurisdiction that are no longer in use and which the City intends to lease or sell or which are no longer needed for City purposes.**

The above list is not intended to be an exclusive list of facilities, and the Parties may add or subtract from the list in accordance with the Parties' needs.

**Schedule A-2**

**JOINT USE FACILITIES IDENTIFIED AS OF MUTUAL INTEREST**

District Facilities
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Nothing herein is intended to commit any party to entering into a Joint Use Agreement for the following facilities, nor to prevent the Parties from entering into a Joint Use Agreement covering other facilities.

**All schools and properties that have sports fields and/or sports facilities within the East Side Union High School District.**

The above list is not intended to be an exclusive list of facilities, and the Parties may add or subtract from the list in accordance with the Parties' needs.

**Schedule B**  
**DISPUTE RESOLUTION PROCEDURE**

The City and the District agree to use their best efforts to resolve any disputes arising between them with respect to this MOU as efficiently and cost effectively as possible.

At all relevant times, the City and the District shall:

- make bona fide efforts to resolve all disputes by amicable negotiations; and
- provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.

In the event of a dispute between the two or more of the Parties, not relating to operational issues, such dispute shall be resolved in accordance with this Schedule as set forth in the Continuum below.

1. In the event of dispute arising between the Parties to this MOU as to their respective rights or obligations under the MOU then such issues shall be handled in accordance with the following:

1.1. At all times, the Parties shall disclose relevant facts and information in a bona fide effort to resolve issues in a timely manner.

1.2. Should these efforts not resolve the dispute, the matter will be referred to the Steering Committee to determine the appropriate process/s from the following Continuum:

<b>Continuum for Appropriate Dispute Resolution (ADR)</b>			
1	2	3	
<b>DISCUSSION</b>	<b>NEGOTIATION</b>	<b>MEDIATION</b>	
<p>1. <b>Discussion:</b> Opportunity for the Parties in dispute to enter into discussions to discuss information, interpretation and understanding in an effort to resolve the dispute.</p>			
<p>2. <b>Negotiation:</b> Opportunity for the Parties, with the new understanding and information, to discuss the issues and work towards a collaborative resolution that meets all Parties' needs to the greatest possible degree given the circumstances.</p>			
<p>3. <b>Mediation:</b> Opportunity for the Parties to have an external third party facilitate a confidential interest-based without prejudice discussion to work towards a mutually satisfactory outcome.</p>			