

MERLO GYMNASIUM AGREEMENT

This Merlo Gymnasium Agreement ("AGREEMENT"), made and entered into in the City of Stockton, County of San Joaquin, State of California, this _____ day of _____, 2015 by and between the CITY OF STOCKTON, a municipal corporation of the State of California ("CITY"), and the TABLE COMMUNITY FOUNDATION (TCF), a California non-profit 501 (c) (3) Public Benefit Corporation, duly organized and recognized by the State of California; for the operation management and maintenance of Merlo Gym, located at 2021 Anne Street in Stockton, CA.

BACKGROUND

CITY is the owner of Merlo Gym ("Facility"). The Facility consists of an approximately 15,000 square foot "joint use" gymnasium, shared with the Stockton Unified School District. The gymnasium includes bleachers, wood flooring/regulation size basketball court, kitchen facilities, men's and women's restrooms, a gender neutral ADA restroom, lobby with reception counter, an office, two class rooms/community rooms with partitions, site lighting, landscaped areas, seven equipment storage areas, a janitorial room, a security system, paved and striped parking lot, field entrance gate, and maintenance gates ("Facility Improvements").

CITY desires to have a recreation facility with measurable programming goals and objectives, additional opportunity for special events on a regular basis, and an operator with vision and tangible community leadership skills will help the City address crime and poverty and improve the quality of life for residents. Accordingly, the City has determined that the mission of the Facility is to improve the quality of life of youth and adults by providing a local venue for recreational and educational family programming that supports and strengthens the community.

Table Community Foundation ("TCF") is a non-profit foundation which has agreed to manage the facility, provide services to the community, fundraise, implement a marketing strategy, and engage the community to understand and meet neighborhood needs.

CITY desires to engage TCF, and TCF desires to accept such engagement to promote, operate, and manage the Facility on behalf of the CITY, on the terms and conditions set forth herein. CITY will work cooperatively with TCF in order to ensure the use and enjoyment of the facility as contemplated pursuant to this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises, covenants and agreements herein contained the parties hereby agree as follows:

1. DEFINITIONS.

In addition to capitalized terms defined elsewhere in this AGREEMENT, the following terms have the meanings referred to in this Section 1:

"Annual Program Plan" means the TCF shall present, on an annual basis, a program operation plan for the City's review and approval. The purpose of this Annual Program Plan is to ensure Facility is used to its full potential and achieve the City's goal to serve the needs of the Community. The Annual Program Plan shall be received by October 31 of each year. At a minimum, the Plan shall include:

- A report on all Management policies in place;
- Narrative description of proposed use (day to day operations and schedule, listed hours of operation, a complete listing of activities, including classes, special events, community outreach programs, sporting events, facility rentals, clinics, community workshops, trainings, and other opportunities);
- Quarterly Report Format (identified goals, measurable objectives, program descriptions with categorized activity listings, monthly utilization data, demographic data, program implementation data);
- A Security Plan;
- A Summary Profit Loss Statement, including Budget vs Actual Expenditures and Revenue for the prior year of operations;
- An Annual Inventory of the Facility and equipment;
- A Finalized annual calendar of the prior year events and activities; and
- A Capital Improvement Plan (recommendations for capital improvements and capital equipment for 1 and 3 years).

“Agreement” means this operations, maintenance, and management agreement.

“Authorized Representative” means the person named by either party to be its authorized representative under this AGREEMENT who shall be the liaison for such part with the other party on all matters related to this AGREEMENT.

“Calendar” means the monthly calendar with contains 100% of all activities and events held and/or booked at the facility. This document shall be published monthly and amended at the end of the month to incorporate final changes to events calendar. On an annual basis, the City shall receive a final summary and detailed listing of all events at the complex.

“Capital Improvements” means any and all furniture, fixtures, machinery, equipment, either additional or replacement, having a per item original cost of \$5,000 or more and all building additions, alterations, renovations, repairs or improvements with a useful life of more than one year.

“CITY” means the City of Stockton, CA

“Concessions” means the business of selling food, merchandise, and beverages to patrons of the complex at or in connection with Events.

“City Events” means all revenue or non-revenue producing sports, entertainment, civic, and other activities sponsored by the City according to the terms of the agreement.

“ Director of Community Services” means the Director of Community Services of the City of Stockton, CA, or the Director’s designee.

“Event(s)” means all revenue or non-revenue producing sports, entertainment, civic, and other activities conducted at the Complex.

“Facility Use Agreements” means the rental agreement TCF prepares to be entered into by users of the facility.

“Fiscal Year” means a one-year period beginning July 1 and ending June 30.

“Laws” means all federal, state, local and municipal regulations, ordinances, statutes, rules, laws and constitutional provisions.

“Operating Expenses” means any and all expenses and expenditures of whatever kind or nature incurred by TCF directly or indirectly in promotion, operating, maintaining, and managing the facilities without limitation.

“Operating Revenue” means any and all revenues of every kind or nature derived by TCF directly or indirectly, from operating, management, promoting the complex. Operating Revenue may include: fees, sales, rental costs.

“Security Plan” means the security plan to be written and updated by TCF as a component of the Annual Plan due; submitted to City for review and acceptance.

“Quarterly Report” means a quarterly report written by TCF and approved by CITY which identifies goals, measurable objectives, program descriptions, categorized activity listings, activity usage data, demographic data, budget information, and expense/revenue projections. This report shall be established by mutual agreement and may be changed by mutual agreement.

“Shared Calendar” means the calendar managed by TCF and inclusive of all activities at the gym (including SUSD and City activities). This calendar will be updated and maintained on behalf of the City.

2. TERM AND TERMINATION

2.1 Term of Agreement

The parties hereto enter into this AGREEMENT for a term of three (3) years beginning on July 1, 2015 and ending on June 30, 2018 with two additional one year mutual options. The effective date of this AGREEMENT shall be July 1, 2015 regardless of the date of execution of this AGREEMENT; TCF agrees to and shall perform all of TCF’S obligations under this AGREEMENT.

- Initial Term of Agreement July 1, 2015 to June 30, 2018

Funding under this AGREEMENT will terminate without penalty at the end of the fiscal year in the event funds are not appropriated for the next fiscal year. If funds are not appropriated for a portion of the fiscal year, funding of this AGREEMENT will terminate without penalty, at the end of term for which funds are appropriated. If funds are not appropriated, TCF will be notified of related City Council action.

2.2 Mutual Options of Agreement

The parties agree that the AGREEMENT shall have two additional one (1) year mutual options. No later than January 15, 2018 (prior to the expiration of the initial term of this AGREEMENT), TCF shall provide a letter of intent to enter into the mutual option Year 1, and include any potential request financial assistance from CITY for that option, or shall advise CITY in writing that TCF intends to terminate its services at the expiration of the initial term of this AGREEMENT. If the AGREEMENT term is extended for Year-One mutual option, no later than January 15, 2019, TCF shall provide a letter of intent to enter into the mutual option Year 2, , or shall advise CITY in writing that TCF intends to terminate its services at the

expiration of the Mutual Option Year 1. If no such notice is received by TCF, the parties agree that this AGREEMENT shall terminate on the last day of the initial term of agreement.

- Year One Mutual Option 7-1-2018 to 6-30-2019
letter of intent received by January 15, 2018
- Year Two Mutual Option 7-1-2019 to 6-30-2020
letter of intent received by January 15, 2019

2.3 Termination of Agreement

Notwithstanding the term of AGREEMENT and extension options above, this AGREEMENT may be terminated without cause in the sole discretion of either party by giving at least two months (60 days) prior written notice to the other party of election to terminate this AGREEMENT. The Director of Community Services is hereby authorized to give written termination on behalf of the CITY.

3. COMPENSATION

3.1 Compensation

City will pay TCF in quarterly installments for the management, maintenance, and operation of the Facility as follows:

Year 1: (7-1-2015 through 6-30-2016)	\$ 85,000
Year 2: (7-1-2016 through 6-30-2017)	\$ 85,000
Year 3: (7-1-2017 through 6-30-2018)	\$ 85,000

As it is the intent of TCF to reduce or eliminate any CITY subsidy after three years of operation, there is no provision for subsidy in the mutual option terms.

3.2 Facility Revenue

TCF shall receive 100% of proceeds from all TCF related income producing activities associated with Facility, including but not limited to the following: rental fees, concessions (excluding CITY exclusive right to vending), fund raising, etc.). TCF shall report 100% of income related to Facility pursuant to Section 10.13 below.

4. MANAGEMENT, OPERATION AND STAFFING OF FACILITY

4.1 Management Responsibilities

TCF owes to CITY the duty to perform its obligations under this AGREEMENT and to conduct the management, operation, and maintenance of the Facilities at all times with integrity and good faith consistent with the wellbeing of the greater Stockton Community in a manner consistent with industry practices and all applicable laws, permits, and requirements. TCF shall follow policies and guidelines established by the CITY that are applicable to the operation and maintenance of the Facilities. TCF shall not enter into any material contracts which extend beyond the term of this AGREEMENT and any extensions thereto.

4.2 Booking and Scheduling

TCF is responsible for marketing, booking, and scheduling all non-school events held at the Facility. All activity, booking, and scheduled events shall be included in the monthly and annual calendar and online calendar.

4.3 Non Discrimination

In performing services under this AGREEMENT, TCF shall not discriminate in the employment of TCF employees or in the engagement of any subcontractors on the basis of race, color, religion, sex, marital status, national origin, ancestry, age or any other criteria prohibited by law.

4.4 New Hire, Recruitment, and Staffing Guidelines

TCF shall hire, supervise, and manage all personnel necessary for the management, operation, and maintenance of Facility and shall comply with CITY's administrative directive with respect to fingerprinting TCF employees and volunteers. Any individual who has been convicted of certain criminal offenses as set forth below, is not eligible to work or volunteer under this AGREEMENT.

TCF shall comply with the relevant portions of CITY's Administrative Directive HR-40 regarding who must be fingerprinted and what offenses or disqualifiers will prohibit an individual from working at Facility. TCF employees and volunteers, if applicable, are required to submit fingerprints in a manner authorized by the State of California Department of Justice. TCF and all applicable employees/volunteers shall submit fingerprints prior to the start of work pursuant to this AGREEMENT. TCF is responsible for all costs of fingerprinting and background check. Any individual who has been convicted of certain specified criminal offenses is not eligible to work at Facility. The disqualifying criminal convictions are as follows: Any of those offenses identified in City of Stockton Administrative Directive HR-40, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference, California Public Resources Code, Section 5164, except for those provisions contained in California Penal Code Sections 211, 215, 236, 240, provided, however, that any individual who has been convicted of violating Penal Code Section 211, 215, 236, or 240 may, in the sole discretion of the CITY, nevertheless be ineligible to work or volunteer at the Facility..

In addition, if any TCF employees assigned to work at the Facility are subsequently found to have a disqualifying conviction, TCF expressly agrees to remove those employee immediately from the Facility and take all necessary actions to ensure that they are not permitted to perform any further work under this AGREEMENT. Additionally, should any officers of TCF be subsequently found to have any of the disqualifying convictions set forth above, the contract may be immediately terminated by CITY at the CITY's sole discretion. TCF shall certify in writing to CITY before the first day of operation that neither the TCF Officers nor any of TCF's employees have been convicted of any of the specified disqualifying criminal offenses set forth above.

4.5 Relationship of Parties

Nothing contained in this AGREEMENT shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture of any nature between CITY and TCF or its agents, employees, or contractors. TCF shall not be considered a tenant, and shall gain no right to occupy facilities as a tenant or any other property right or interest in the Facility by virtue of this AGREEMENT. . In performing the obligations set forth in this AGREEMENT, TCF shall have the status of an independent contractor and neither TCF nor its officers, employees or agents shall be considered to be employees of CITY nor be entitled to any of the rights, benefits, or privileges of CITY employees, including but not limited to

medical, unemployment, or worker's compensation for any purpose. TCF by virtue of this AGREEMENT, has no authority or responsibility to exercise any rights or powers vested in CITY other than as expressly set forth herein. All persons working for or under the direction of TCF are its agents and employees and are not agents or employees of City and . Except as CITY may specify in writing, TCF shall have no authority to act as an agent of CITY or bind CITY to any obligation. Nothing in this AGREEMENT, either express or implied, is intended to confer upon any person or entity, other than CITY and TCF and their respective officers, directors, employees, and agents providing services under this AGREEMENT any rights, remedies, obligations or liabilities or by reason of this AGREEMENT.

4.6 Control

Neither CITY nor its officers, agents, or employees and/or volunteers shall have sufficient control over the conduct of TCF or any of TCF's employees, except as herein set forth herein and TCF shall determine the method, details and means of performing the work and services to be provided by them pursuant to this AGREEMENT. TCF expressly agrees not to represent that TCF or any of TCF's agents, servants, or employees, to be deemed the agents, servants, or employees of CITY

4.7 Operations and Permits

TCF shall at its sole expense, obtain and maintain in full force and effect throughout the Term of AGREEMENT and any extension thereto, any and all applicable permits and business licenses which may be required by any law, including administrative regulations and local ordinances, including without limitation, a CITY business license.

4.8 No Third Party Beneficiaries

No person or entity, other than TCF shall be deemed to be a third party beneficiary hereof.

5. PROMOTION OF FACILITY AND FACILITY ACTIVITIES

5.1 Cooperative Promotion

CITY and TCF will actively cooperate to promote the Facility and related educational and recreational programs, events, and activities. CITY will provide marketing assistance and information through CITY resources. CITY will communicate marketing deadlines and opportunities through CITY publications and social media.

5.2 Use of Logos

CITY may use TCF logo when advancing the purposes of this AGREEMENT with prior approval of each use by TCF. TCF may use CITY logos on flyers and marketing items in addition to TCF logo with prior approval of each use by the City Public Information Officer.

6. FACILITY REGULAR PROGRAMMING AND MONTHLY CALENDAR

6.1 Weekly Programming and Set Hours of Operation

TCF shall set and maintain a weekly programming schedule where Facility is open. Weekly hours shall be set in Program Plan, and reported in the Quarterly Report and Annual Report.

6.2 Reporting of Activities in Monthly Calendar

Monthly, TCF will submit a complete and accurate monthly report of all activities booked at the Facility in a manner agreeable to both parties. In addition, a final accounting of the month's activities shall be received within 10 days after the last day of the month.

6.3 Reporting of Quarterly Goals and Objectives

TCF will turn in quarterly reporting of goals, activities, and key performance measures quarterly, in a manner mutually agreeable to both parties.

6.4 Quarterly Meetings

TCF and CITY agree to meet quarterly to discuss issues of Facility operations, maintenance, and repair. Depending on any issues identified in the meetings, additional meetings may be schedule as necessary during the term of this AGREEMENT. Both parties acknowledge that additional meetings, over and above the quarterly meeting, may need to be schedule during each season for each year of the term of this AGREEMENT.

7. AGREEMENT AUTHORITY AND RESPONSIBILITIES

The following expenses are the responsibility of the identified parties below:

7.1 CITY Responsibilities

CITY shall have the sole responsibility for providing and paying for the following services:

1. Water, Sewer, Electric/Gas, and Garbage service
2. Pest Control
3. Exterior maintenance
4. Landscaping
5. Two phone lines
6. Maintenance and repairs not related to vandalism or lack of supervision
7. Security monitoring system
8. Weekly janitorial service (2 hours)

7.2 TCF's Responsibilities

TCF shall have the sole responsibility for providing and paying for the following services and equipment:

1. Telephone/communication and telecommunication equipment
2. Internet Service, including any additional wiring if needed
3. Computers and related services as needed to perform
4. Daily janitorial service
5. Cash registers
6. Daily Maintenance of Facility including to any maintenance and repairs related to vandalism and lack of supervision
7. Sport equipment, operational supplies and all equipment for business at Facility
8. Daily operation of scoreboard and sound system and performance of any equipment related repairs due to neglect, vandalism, or inappropriate use, handling, or storage

7.3 Utilities

CITY shall furnish TCF with electrical connections, adequate hot and cold water, adequate sewage facilities and appropriate drainage to permit activities in the normal and customary manner. The cost of monthly Facility utilities including gas, electric, sewer, water, storm drain, telephone shall be the responsibility of CITY. Cable, internet, satellite, and similar utilities shall be the responsibility of TCF.

7.4 Concessions

TCF and CITY will meet and discuss a plan for operations and supervision of any proposed concessions activity on site. The need, demand, nature, extent and supplies/vendor of such optional services shall

be determined at the sole discretion of the Director of Community Services or designee. Should any sponsorship agreements with beverage or food service companies, including sales clauses be considered, CITY and TCF will meet and confer prior to the execution of any agreement for the purposes of getting approval from the Director of Community Services, which approval shall not be unreasonably withheld. TCF shall also obtain prior written approval from CITY before any sale of food or beverages is conducted on site. No concessions equipment shall be installed without prior written permission from the CITY. CITY maintains the right to provide an exclusive vending agreement at the location. The sale or use of alcoholic beverages is strictly prohibited in Facility. Any concessions activity must not conflict with the Joint Use Agreement and Land Lease between the City of Stockton with Stockton Unified School District ("Joint Use Agreement") a copy of which is attached hereto as Exhibit 3 and Incorporated herein by reference. TCF shall provide copies of all related concession licenses for CITY review and approval prior to the commencement of any concession contract. It shall be the sole responsibility of TCF to ensure that all food and beverage products sold by TCF or its concessionaire(s) shall conform to all applicable federal, state and local laws, including the California Health and Safety Code, and other requirements.

7.5 Naming Rights

The CITY maintains the right to name the Facility in accordance with current or future CITY policies.

7.6 Possessory Interest

TCF recognizes and understands that this AGREEMENT may create a possessory interest subject to property taxation and that if such an interest is created, TCF shall be solely liable and responsible for the payment of any such property taxes levied.

8. FACILITY MAINTENANCE, MANAGEMENT, AND REAL PROPERTY

8.1 Acceptance of Condition of Facility

TCF accepts the Facility and all equipment provided by the CITY hereunder in their present 'as is' condition.

8.2 Joint Use Agreement and Lease with Stockton Unified School District

As set forth in Section 7.4 above, the Facility is subject to a primary use related to the Joint Use Agreement Stockton Unified School District ("SUSD"). Terms and conditions of the Joint Use Agreement By signing this AGREEMENT, TCF specifically acknowledges that pursuant to the Joint Use Agreement, the Facility provides SUSD primary access and first right of refusal for use of the Facility. It is expected that TCF will cooperatively support school use as the primary use pursuant to their terms of the Joint Use Agreement.

8.3 Notice of Cancellation of Facility Hours

If TCF must shut down Facility during regularly scheduled hours, TCF must send a press release to Community Services Department at least 72 hours in advance unless the closure is due to an emergency.

8.4 Janitorial Services, Maintenance, and Security of Facility

TCF shall be responsible for the safety and sanitary conditions of their use of the Facility and shall remedy without delay any defective, dangerous, or unsanitary conditions therein. In addition, TCF shall be responsible for the housekeeping of the facility and all adjacent areas, keeping them in a safe, clean, wholesome, and sanitary condition. TCF shall ensure that at all times during the term of this AGREEMENT that Facility shall be kept free of trash, garbage, and obstructions of any kind. And ensure

that all trash resulting from cleaning shall be placed in appropriate containers. Facility shall be kept in compliance with any and all applicable present and future laws relating to sanitation, public health, safety, or welfare or any general rules and regulations of any governmental authority in force now, or at any time, during the term of this AGREEMENT.

8.5 City Ownership

CITY shall retain ownership of Facility and adjoining real property. TCF shall not be considered a tenant, and shall gain no right to occupy facilities as a tenant or any other property right or interest in the facilities by virtue of this AGREEMENT.

8.6 TCF Improvements

TCF may propose or make recommendations to the Director of Community Services with respect to proposed additions or repairs to structures, or improvements to the facility to increase facility usage and service to the community. No TCF proposed improvements, temporary alterations, expansions, or changes may be made to the facility without prior written approval by the CITY and must follow any regulatory requirements and obtain any necessary approvals and permits. Any such improvement shall be at TCF's sole cost and expense and improvements shall be the property of TCF during the term of the AGREEMENT. Title to such improvements shall vest in CITY upon expiration or termination of this AGREEMENT.

8.7 Emergency Contacts TCF will provide CITY with emergency phone numbers of key staff and Board Members. TCF shall ensure that CITY representatives have the ability to communicate with said persons twenty-four hours a day when emergency maintenance or conditions occur.

8.8 Non Urgent and Emergency Maintenance

It shall be the responsibility of TCF to notify the Director of Community Services immediately of any urgent or emergency maintenance required, as provided by the CITY, to avoid harm to the interior and or exterior of the building, its contents, or other persons. If TCF fails to immediately notify CITY of urgent or emergency maintenance, TCF shall reimburse CITY for any costs related to TCF's failure to comply with this requirement. Including but not limited to, additional repair costs incurred because of delayed notification.

For non-urgent facility maintenance issues, TCF will utilize the City Work Order process for orderly management of facility issues. For urgent maintenance issues after hours, TCF may utilize the "Firecom" 24 hour line at (209)937-8341.

8.9 Signage

TCF agrees to submit all proposed signage, and or sponsorships to the CITY for review and approval. CITY maintains the sole right to deny logos, pictures, or other signage that fails to comply with existing CITY policies.

8.10 Security

TCF shall be responsible for determining the security needs of the Facility, arrange for security for all events at the Facility and for general Facility security when events are not in progress. Each year, TCF, CITY, and SUSD representatives shall meet and update a written security plan for events which will outline day to day security of the Facility. The security plan shall include both emergency and non-emergency procedures and protocols to be followed by TCF and or any contractor or Facility user. CITY has installed and shall maintain at its' sole expense and cost, a security system for the Facility.

8.11 Right of Entry, Keys, and Security Codes

Installation of locks and keys will be the responsibility of the CITY. TCF shall furnish a list of key holders and persons eligible for a security code to City Authorized Representative. Any changes to list must be communicated to City Representative within 24 working hours. TCF shall follow the City key policy. City shall maintain right to enter to inspect or repair the facility. Upon termination of AGREEMENT, TCF shall surrender all sets of keys to the Facility and any Facility Improvements, to CITY.

8.12 Vacation of Premises

TCF agrees to vacate the Facility at the termination of this AGREEMENT and failing to vacate as herein provided, agrees that CITY or its authorized agents, may enter upon the premises and remove all personal property and TCF improvements therefrom. In this event, TCF waives any and all claims for damages against CITY, its agents or employees. Nothing herein shall be deemed a waiver of rights of CITY to demand and obtain possession of the premises in accordance with the law in the event of a violation of TCF's part of any of the terms or conditions hereof.

9. FACILITY SPECIAL EVENTS, CITY EVENTS, AND PRIVATE RENTALS**9.1 City Events**

CITY shall have the ability to schedule seven (7) CITY activities at no cost to the City. City and TCF shall coordinate schedules, as appropriate. On the occasion that the CITY uses the facility for special events, CITY shall be responsible for performing the housekeeping of the area in a timely manner.

9.2 Facility Use Agreements

TCF shall be responsible for entering into Facility Use Agreements with all renters and users of the Facility for non-school activities. TCF shall be responsible for developing the form of each Agreement and complying with all requirements established by CITY Risk Services and contract compliance requirements for users of the Facility.

9.3 Prohibited Activities

As the Facility is a joint use facility with SUSD, the Facility is in an enhanced school zone. Accordingly, there is a zero tolerance policy for drugs, alcohol, weapons or tobacco. The following categories of products or activities are inappropriate for use at the Facility:

- Tobacco products without exclusion
- Alcohol products without exclusion
- Weapons
- Political parties and signage
- Pornographic media or related activities
- Possession or sale of drugs, pharmaceutical drugs, marijuana (including medical marijuana)

10 GENERAL PROVISIONS**10.1 Laws, Rules, Regulations, Licenses, Permits, and Special Uses**

TCF shall obtain own expense any and all permits and licenses which may be required by law or ordinance to operate the Facility as contemplated under this AGREEMENT. If any event is scheduled which expands beyond the use permit of the Facility and requires a special event permit, TCF will comply with all applicable state and local laws, including CITY's Special Events Permit Process and notify the CITY's authorized representative of such potential activity according to the policies and guidelines. All

users of the Facility shall be required to adhere to CITY, TCF, and the SUSD Joint Use Agreement policies, procedures, rules, and regulations now and hereafter adopted by CITY for use and control of the Facility. TCF shall have sole responsibility for enforcing all applicable rules and regulations and will be responsible for asking those individuals who are in violation of the rules to leave the premises.

10.2 Indemnity and Hold Harmless

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of contractor or its officers, agents, or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.

10.3 Tender of Claims

Pursuant to the obligation created by Indemnity clause above, TCF shall accept tender of any third party claim submitted to it by CITY as a result of TCF's obligation herein within 30 days of such tender.

10.4 Insurance Requirements

TCF shall not commence any services before obtaining, and shall maintain in force at all times during the duration and performance of this AGREEMENT, the policies of insurance specified in Exhibit 1, attached hereto and incorporated by this reference. For purposes of Exhibit 1, the word "Operator" shall mean TCF.

10.5 Assignment

TCF may not assign, transfer, or otherwise alienate its rights and obligations pursuant to this AGREEMENT, without written consent of the Director of Community Services.

10.6 Notices

All written notices and communication required to be given under the provisions of this AGREEMENT shall be delivered personally, or mailed and addressed as follows:

TO CITY:	Director of Community Services City of Stockton 605 N. El Dorado Street Stockton, CA 95219
PHONE	(209) 937-8257
FAX	(209)937-8663
TO COMMUNITY TABLE FOUNDATION:	Tyronne Gross, Founder Table Community Foundation 3201 W. Benjamin Holt Drive Suite #119 Stockton, CA 95219
PHONE	(209) 993-6241

10.7 Waiver

Any waiver by CITY of any obligation or condition in this AGREEMENT must be in writing. No waiver will be implied from any delay or failure by CITY to take action on any breach or default of TCF or to pursue any remedy allowed under this AGREEMENT or applicable law. Any extension of time granted to TCF to perform any obligation under this AGREEMENT shall not operate as a waiver or release from any of its obligations under this AGREEMENT. Consent by CITY to any act or omission by TCF shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for CITY'S written consent to future waivers.

10.8 Applicable Law, Resolutions of Disputes, Forum, and Attorney's Fees

This AGREEMENT shall be interpreted under and be governed by the laws of the State of California. Any lawsuit pertaining to any matter arising under, or growing out of, this AGREEMENT shall be instituted in San Joaquin County, California. If any claim at law or otherwise is made by either party to this AGREEMENT, the prevailing party shall be entitled to its costs and reasonable attorneys' fees.

10.9 Severability

The provisions of this AGREEMENT are severable to the extent that should any of its provisions or terms be declared void in whole or in part by operation of law or agreement of the parties, the remainder of the provisions or terms not expressly declared void shall remain enforceable and in full effect.

10.10 Integration and Modification

This AGREEMENT represents the entire integrated agreement between TCF and CITY and supersedes all prior negotiations, representations, or agreements, either written or oral between the parties and may be amended only by written instrument signed by TCF and the Director of Community Services, or designee.

All Exhibits and this AGREEMENT are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this AGREEMENT and the attached Exhibits, the terms of this AGREEMENT shall prevail.

10.11 Title of Parts and Sections

The Title of parts and sections of this AGREEMENT are for convenience only and shall not be deemed to be relevant in resolving any questions of interpretation or intent.

10.12 Language Construction

The Language of each and all paragraphs, terms and/or provisions of this AGREEMENT, shall, in all cases and for any and all cases and for any and all purposes, and in any way and all circumstances whatsoever, be construed as a whole, according to its fair meaning, and not for or against any party hereto and with no regard whatsoever to the identity and status of any person

10.13 Records, Audits, Reports

TCF shall keep true and correct records of all gross receipts operating revenue and expenditures and submit an annual report to the City by October 31 of each year of term. Records shall include all items reasonably necessary to verify TCF's annual Profit and Loss Statement. All records shall be kept for not less than five (5) years after delivery of required annual report. The CITY shall have the right, at reasonable time and from time to time after giving reasonable notice, to do any of the following: audit

records, cause an audit at CITY's expense, make abstracts from records, copy records, and examine all permits and licenses.

10.14 Condemnation

If the whole or any substantial part of the Facility shall be taken by any paramount public authority under the power of eminent domain, then this AGREEMENT shall be terminated as to such Facility from the day when the possession of that part shall be taken for said public purpose. All damages awarded for this taking shall belong to and be property of CITY, and all agreements pertaining to that sale. However, CITY shall not be entitled to any portion of the award made for loss of business installation or improvements belonging to TCF, if any.

10.15 Discretion of the CITY

CITY's execution of this AGREEMENT in no way limits the discretion of CITY in the permit and approval process in connection with any improvements by TCF.

10.16 Authority of Parties

Each individual executing this AGREEMENT on behalf of the respective Parties represents and warrants that he/she is duly authorized to execute this AGREEMENT on behalf of the respective Parties.

10.17 Non-Liability of City Officials

No member, official, employee or agent of CITY shall be personally liable to TCF in the event of any default or breach by CITY or for any amount which may become due to TCF or its successor or on any obligation under the terms of this AGREEMENT.

10.18 Law Abiding Conduct

TCF agrees that it will comply with all the applicable laws and ordinances, administrative regulations and orders of appropriate government authority in the conduct of its business and further agrees that CITY shall have the right to enter upon said premises at reasonable times for the purpose of inspection and ensure enforcement of this AGREEMENT and ordinances and laws governing TCF's use of Facility.

10.19 Conflict of Interest

TCF covenants that other than this AGREEMENT, TCF has no financial interest with any official, employee, or other representative of the City. TCF and its principals do not have any financial interest in real property, sources of income, or investment that would be affected in any manner of degree by the performance of TCF's services under this AGREEMENT. If such an interest arises, TCF will immediately notify CITY.

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AUTHORITY AND EXECUTION

The undersigned hereby represent and warrant that they are authorized by the parties to execute this AGREEMENT. This AGREEMENT may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts constitute one and the same instrument.

ATTEST:

CITY OF STOCKTON

BY: _____
BONNIE PAIGE
CITY CLERK, CITY OF STOCKTON

BY: _____
KURT WILSON
CITY MANAGER, CITY OF STOCKTON

APPROVED AS TO FORM:
JOHN LEUBBERKE
CITY ATTORNEY, CITY OF STOCKTON

PROFESSIONAL

BY: _____
CITY ATTORNEY

BY: _____
TYRONNE GROSS, FOUNDER
TABLE COMMUNITY FOUNDATION

Exhibit 1:
Insurance Requirements
(Merlo Gym Facility Operator)

Operator shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Operator's operation and use of the leased premises. The cost of such insurance shall be borne by the Operator.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal & advertising injury, and sexual abuse and molestation coverage, with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease. (for operators with employees).
3. **Property insurance** against all risks of loss to any tenant improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Operator maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Operator including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Operator's insurance (**at least as broad as ISO Form CG 20 10 11 85**).

Primary Coverage

For any claims related to this contract, the Operator's insurance coverage shall be primary insurance as respects the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers. Any insurance or self-insurance maintained by the City of Stockton, its Mayor, Council, officers, representatives, agents, employees, and volunteers shall be excess

of the Operator's insurance and shall not contribute with it. The City of Stockton does not accept primary endorsements limiting the Operator's insurance coverage to sole negligence.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

Waiver of Subrogation

Operator hereby grants to City of Stockton a waiver of any right to subrogation which any insurer of said Operator may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. Operator agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require the Operator to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

Verification of Coverage

Operator shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive the Operator's obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements, required by these specifications, at any time, for any reason or no reason.

Special Risks or Circumstances

City of Stockton reserves the right to modify these requirements at any time, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Certificate holder address

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N. El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

Maintenance of Insurance

If at any time during the life of the Contract or any extension, the Operator fails to maintain the required insurance in full force and effect, the CITY may terminate this Contract.

Subcontractors

If the Operator should subcontract all or any portion of the work to be performed in this contract, the Operator shall cover the sub-contractor, and/or require each sub-contractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of sub-contractor's insurance shall have the same impact as described above.

DRAFT

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

EXHIBIT 2

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE CITY OF STOCKTON	Directive No. HR-40	Page 1 of 9
	Effective Date: 4/7/14	Revised from: 8/1/95 3/1/00 8/30/04 7/24/06 4/14/08

I. PURPOSE

- A. To provide a uniform policy and procedure for the administration of the City of Stockton Mandatory Fingerprinting Program, in accordance with California Public Resources Code section 5164, California Education Code section 10911.5, California Penal Code sections 11105, 11105.3, 13300, and any other applicable state and federal laws.
- B. To ensure that the City of Stockton, as an agency receiving criminal history information, complies with the requirements of the State of California, Department of Justice, Division of Criminal Justice Information Services.

II. POLICY

All applicants, employees, interns, temporary agency employees, and volunteers who meet the following conditions shall be subject to fingerprinting.

- A. Employees Having Direct Contact With Minors. It is the policy of the City of Stockton to obtain criminal history information for all prospective, as well as current, full-time (including provisional and temporary), part-time, volunteer (including the San Joaquin County Alternate Work Program or any other community service or volunteer organization), and contractual employees in any department who have direct contact¹ with minors. This requirement shall be a condition of employment for all employees who have direct contact with minors.

The City of Stockton will not hire or retain any person or permit any person to volunteer his/her services to work with children in any department who has been convicted of certain criminal offenses (disqualifiers), as specified in California Public Resources Code section 5164.

¹ "Direct Contact" is defined in section II.B.

**CITY OF STOCKTON, CALIFORNIA
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Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE CITY OF STOCKTON	Directive No. HR-40	Page 2 of 9
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- B. Employees Performing Sensitive Duties. In addition, to implement Stockton Municipal Code Chapter 2.70, the City of Stockton will obtain criminal history information for all persons applying for positions that require the employee to:
1. Perform sensitive and/or fiduciary duties, such as handling public funds or confidential documents.
 2. Enter privately owned property, structures, or curtilages.
 3. Care for ill, injured, or incapacitated members of the public.
 4. Have access to a secure facility.
 5. Have direct contact with minors. "Direct contact with a minor" shall mean any of the following, in the course of paid or unpaid work:
 - a. The care, supervision, guidance, or control of a minor on any basis.
 - b. Close physical proximity to a minor on more than an "occasional" or "incidental" basis.
 - c. Talking face-to-face with or within eye contact of a minor on more than an "occasional" or "incidental" basis.

"Occasional" shall mean irregular or infrequent. "Incidental" shall mean occurring by chance or in isolation. If the job specifications for apposition requires contact with a minor on any basis, then the contact is neither "occasional" nor "incidental."
- C. The City of Stockton, in its discretion, may refuse to hire any person or permit any person to volunteer his/her services who has been convicted of any of the offenses (disqualifiers) specified in Appendix A of this policy.

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Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE CITY OF STOCKTON	Directive No. HR-40	Page 3 of 9
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- D. In making any employment or retention decision based upon a disqualifier, the Director of Human Resources shall consider, among other factors: the employment classification to which the person is applying or being certified, including its sensitivity; the nature and seriousness of the conduct; whether there is a rational relationship between the employment duties and the nature of the conduct; the circumstances surrounding the conduct; the recentness of the conduct; the age of the individual at the time of the conduct; and the presence or absence of rehabilitation or efforts at rehabilitation.
- E. Submission of fingerprints, as specified in the sections above, shall be a condition of employment.
- F. This policy shall not apply to one-day events or programs.
- G. This policy shall be administered by and is the responsibility of the Director of Human Resources.

III. PROCEDURES

- A. Administration of Criminal Offense Record Information (CORI).
 - 1. The Human Resources Department shall enter into an agreement with the California Department of Justice for the purpose of electronically exchanging criminal offender information. This information shall be accessible only to designated individuals in the Human Resources Department, and the affected computer terminal shall be located in a secure area to provide protection from unauthorized access. CORI shall be made available to the City Auditor and designated members of his/her staff for the sole purpose of performance audits in accordance with Stockton Municipal Code section 2.70.020(B).

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

EXHIBIT 2

Subject: FINGERPRINTING OF APPLICANTS, EMPLOYEES, INTERNS, TEMPORARY AGENCY EMPLOYEES, AND VOLUNTEERS APPLYING FOR AND HOLDING POSITIONS WITH THE CITY OF STOCKTON	Directive No. HR-40	Page 4 of 9
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- a. Security. Any questions regarding the release, security, and privacy of CORI shall be resolved by the Director of Human Resources.
 - b. Destruction. CORI shall be destroyed after the employment determination has been made, and copies of the CORI information will be destroyed in such a way that the employee's name can no longer be identified.
 - c. Dissemination. CORI shall be used only for the purpose for which it was requested; except that, the City Auditor shall have access to and shall examine CORI in connection with his/her duties under section 1501(d) of the City Charter.
 - d. Storage. CORI shall be securely maintained and accessible only to the Director of Human Resources or his/her designees and the City Auditor or his/her designees, who are committed to protect such information from unauthorized access, use, or disclosure.
 - e. Reproduction. CORI shall not be reproduced for secondary dissemination.
 - f. Subsequent Arrest Reports. Any Subsequent Arrest Reports for separated employees, volunteers, and contract personnel shall be immediately returned to the Department of Justice.
2. The Director of Human Resources and/or his/her designees who are involved in the administration of this policy, and the City Auditor and/or his/her designees who conduct performance audits, shall be fingerprinted and cleared by the Department of Justice prior to attaining access to CORI. Each employee given CORI access shall be fingerprinted and processed through the California Department of Justice. In addition, those employees shall execute a copy of the Employment Statement issued by the Department of Justice, which

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statement shall be maintained on file in the Human Resources Department.

- B. Fingerprint Procedures and Review of CORI. All applications for employment and requests to volunteer services, without exception, are to be made to the Human Resources Department.
1. All applicants for employment covered under this policy (as set forth in sections II. A and B, above), including part-time, volunteer, intern, temporary agency, and contract personnel, shall be provided with a fingerprint application and required to submit one set of fingerprints to the Department of Justice prior to the pre-employment physical examination. (Note: This requirement shall not apply to those concessionaires who contract with the Community Services Department solely to rent space to conduct their own business.)
 2. The applicant, volunteer, intern, temporary agency, or contract personnel shall hand-carry the fingerprint application, along with a valid California driver's license or identification card, to the Stockton Police Department Evidence Identification Section to complete the fingerprint process.
 3. Upon receipt of CORI, including Subsequent Arrest Information, the designated Human Resources employees shall review the information for any arrests or convictions for disqualifiers. If there are no disqualifiers, the clearance date shall be entered into the confidential database set up for this specific purpose. Upon the employee's separation from City service, the California Department of Justice shall be notified of the separation to ensure that Subsequent Arrest Notifications are no longer received.
 4. In the event CORI, including Subsequent Arrest Information, reveals disqualifiers, the Director of Human Resources shall evaluate the effect and potential effect of the employee's record of arrest on his/her position of employment, fellow employees, and the public in accordance with sections II.B.2, above; and shall take appropriate

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action to maximize public safety and minimize potential liability while respecting the rights of the employee or volunteer. No applicant for employment will be permitted to report for work until the Director of Human Resources, or his or her designee, has first determined from review of the CORI information that the applicant has no disqualifying convictions.

In addition, any employee, volunteer, intern, temporary agency or contract personnel who has direct contact with minors and for whom a disqualifier is subsequently revealed shall be subject to any one of the following actions:

- a. Transfer to a comparable position whose duties require no direct contact with children.
 - b. Reassignment to another department.
 - c. Placement back into a previously held position.
 - d. Termination.
5. The notice of rejection of application for employment or the notice of termination due to disqualifiers is the sole responsibility of the Human Resources Department. The Human Resources Department will immediately notify the Department of Justice that the affected applicant, employee, or volunteer has been rejected and that subsequent reports are not necessary.
 6. The appointing authority shall not make a hiring decision until after CORI has been received and reviewed by the Human Resources Department.
 7. The applicant, employee, or volunteer shall be responsible for reporting any conviction or arrest pending final adjudication to the Human Resources Department. If any conviction or arrest pending adjudication occurs while the employee or volunteer is working for the

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City, the employee or volunteer shall report that conviction or arrest to the Human Resources Department. Failure to report an arrest or conviction shall be grounds for disciplinary action, up to and including termination.

8. Employees transferring or promoting to positions covered under this directive shall have a right of reversion to a previously held position in the event subsequent arrest information reveals a disqualifier; EXCEPT THAT the City reserves its right to discipline an employee, up to and including termination, pursuant to the City Charter, Stockton Municipal Code, Civil Service Rules, collective bargaining agreements, and/or any applicable laws or regulations.

IV PENALTIES

- A. Misuse of CORI is a criminal offense, which may result in criminal or civil prosecution and may result in administrative action up to and including loss of access to information maintained by the Department of Justice and/or termination of employment, in accordance with City Charter sections 1201(a) and 1502, Administrative Directive No. HR-008, applicable memoranda of understanding, and/or the Civil Service Rules and Regulations.
- B. Any violation of this policy shall result in disciplinary action, up to and including termination from City service.

APPROVED:



KURT O. WILSON
CITY MANAGER

**CITY OF STOCKTON, CALIFORNIA
CITY MANAGER ADMINISTRATIVE DIRECTIVE**

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APPENDIX A

Convictions for which an applicant may be rejected, or for which refusal of certification for appointment, or termination of employment may result, are as follows:

Crimes Against Persons

- Murder (Penal Code § 187, *et seq.*)
- Voluntary manslaughter (Penal Code § 191.5, *et seq.*)
- Mayhem (Penal Code § 203, *et seq.*)
- Torture (Penal Code § 206, *et seq.*)
- Robbery (Penal Code § 211, *et seq.*)
- Assault and/or battery (Penal Code §§ 240, *et seq.*; 243, *et seq.*)
- Rape (Penal Code §§ 261-263; 269.)
- Kidnapping (Penal Code § 207, *et seq.*)
- Prostitution (Penal Code §§ 266-267)
- Lewd or lascivious acts (Penal Code §§ 288, 288.2)
- Indecent exposure (Penal Code § 314)
- Stalking (Penal Code § 646.9, *et seq.*)
- Registered sex offender (Penal Code § 290)
- Child abandonment (Penal Code § 271, *et seq.*)
- Contributing to the delinquency of a minor (Penal Code § 272, *et seq.*)
- Incest (Penal Code § 285)
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against persons.

Crimes Against Property

- Arson (Penal Code § 451, *et seq.*)
- Theft / Larceny (Penal Code § 484, *et seq.*)
- Burglary (Penal Code § 458, *et seq.*)
- Forgery (Penal Code § 470, *et seq.*)
- Embezzlement (Penal Code § 503, *et seq.*)
- Identity theft (Penal Code § 530.5, *et seq.*)

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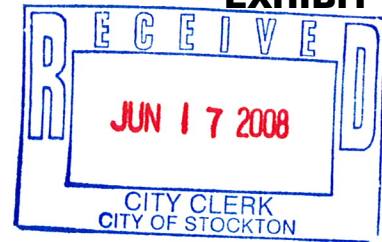
- Extortion (Penal Code § 581, *et seq.*)
- A criminal violation that is substantially similar in nature to any of the foregoing crimes against property.

Crimes Involving Controlled Substances

Any crime described in the California Uniform Controlled Substance Act (division 10, commencing with section 11350), except where consideration of such conviction for employment purposes is prohibited or otherwise limited by law per Labor Code § 432.8. Employers are prohibited from considering marijuana related convictions which are more than two (2) years old. Specifically, agencies may not consider marijuana related convictions for violations of subdivision (b) or (c) of section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of section 11360 of the Health and Safety Code, or section 11364, 11365, or 11550 as related to marijuana prior to January 1, 1976, or a statutory predecessor thereof.

Miscellaneous Crimes

- Perjury (Penal Code § 118, *et seq.*)
- Falsifying/Tampering with Evidence (Penal Code §§ 132-135.5)
- Falsifying public documents (Penal Code § 112, *et seq.*)
- Bribery (Penal Code §§ 68, 92, *et seq.*, 165)
- Money laundering (Penal Code § 186.9, *et seq.*)
- Bookmaking (Penal Code § 337a)
- Misappropriation of public funds (Penal Code § 424, *et seq.*)
- A criminal violation that is substantially similar in nature to any of the foregoing miscellaneous crimes.



JOINT-USE AGREEMENT
EDWARD C. MERLO INSTITUTE
OF
ENVIRONMENTAL TECHNOLOGY GYMNASIUM formally known as GARFIELD
SCHOOL SITE
BY AND BETWEEN
THE CITY OF STOCKTON AND THE STOCKTON UNIFIED SCHOOL DISTRICT

THIS JOINT-USE AGREEMENT (the "Agreement") as amended is entered into on 22nd day of April 2008, by and between the City of Stockton, a municipal corporation (the "City") and the Stockton Unified School District, a public school district duly organized and existing under the Education Code of the State of California (the "District") (collectively referred to herein as the "Parties" and individually as a "Party"). This Agreement shall supersede any and all agreements previous approved by either party for the Garfield School site.

RECITALS

WHEREAS, the City and District have determined that a need exists for a gymnasium facility and meeting rooms at Williams Brotherhood Park at 2040 S. Airport Way identified as San Joaquin County Assessor's parcel numbers 169-170-01, 02, 03 & 169-190-19 (the "Site");

WHEREAS, the Parties have agreed to apply for a joint use grant under the School Facility Program (SB 15) (the "Grant") to pay for the gymnasium facility (the "Project");

WHEREAS, in order to be approved for a Grant, Education Code section 17077.40 requires applicant school districts to demonstrate compliance with all of the following requirements:

- a. The school district has entered into a joint-use agreement with a government agency, public community college, public college or public university, or a nonprofit organization approved by the State Allocation Board.
- b. The joint-use agreement specifies the method of sharing capital and operating costs, specifies relative responsibility for the operation and staffing of the facility, and specifies the manner in which the safety of the pupils will be ensured.
- c. The joint-use agreement specifies the amount of the contribution to be made by the joint-use partner.
- d. The school district demonstrates that the facility will be used to the maximum extent possible for both school and joint-use purposes.
- e. The Project application qualifies for funding under paragraph (1) of subdivision (b) of Section 17077.40 and the school district has received all approvals necessary for apportionment under the Leroy F. Greene School Facilities Act of 1998.

- f. The Project qualifies for funding under paragraph (2) or (3) of subdivision (b) of Section 17077.40 and the school district has completed preliminary plans for the Project and has received State Department of Education approval of the plans.

WHEREAS, the Parties have agreed to collaborate to develop a plan to share usage of the Project;

WHEREAS, the City has agreed to be the joint-use partner and contribute the necessary matching funds for the Project in accordance with Education Code Section 17077.40(c);

WHEREAS, it is the desire of the Parties, upon the express terms and conditions set forth in this Agreement, to utilize the Project for the mutual benefit of each party;

WHEREAS, the Parties agree that the Project will be used to the maximum extent possible for joint-use purposes;

WHEREAS, it is the intent of the Parties to have the Project envisioned by this Agreement designed, constructed, maintained, and funded pursuant to the terms set forth herein;

WHEREAS, the Parties acknowledge and agree that this Agreement shall be contingent upon and effective only if the Grant is approved to construct the joint-use Project; and

WHEREAS, the Parties acknowledge and agree that this Agreement shall be contingent upon and effective only if the Project's appropriations are approved by the City Council of the City of Stockton City Council and the Governing Board of the District, respectively; and

WHEREAS, the Parties desire to define the method of sharing capital and operating costs, the relative responsibilities for the operation and staffing of the Projects, and the manner in which safety will be ensured with respect to the joint-use Project pursuant to the terms set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereto agree as follows:

- 1) PROJECT DESCRIPTION. The Project is a new 15,247 square foot gymnasium facility, housing a basketball court, bleacher seating for 500 persons, meeting rooms, dressing rooms, storage, office, catering kitchen, men's and women's restrooms designed to meet the needs of the District's students and the community. The gymnasium will include locker rooms and basketball court facilities.
- 2) CONSTRUCTION OF THE FACILITY. The City shall manage the construction of the Project. The City shall consult and request input from the District regarding the construction of the Project. All construction services are to be performed by a properly licensed architect, engineer, contractor, or inspector (including construction management services which shall be provided by a licensed contractor, architect or engineer), and shall comply with all public works labor requirements, including the payment of prevailing

wages. All contractors and subcontractors, and their employees and agents who enter onto the Site for any reason and at any time, shall submit or have submitted their fingerprints, without exception, as proscribed by Education Code section 45125.1.

3) METHOD OF SHARING CAPITAL AND OPERATING COSTS. The Parties will share capital and operating costs as follows:

a. Capital Costs.

1. The District will contribute the \$2,000,000 joint-use facilities apportionment that it receives under the Grant for the construction of the Project. The City will contribute matching funds for the construction of the Project. This Agreement is subject to adequate funding appropriations and approval of such appropriations by the City Council of the City of Stockton (the City) and the Governing Board of the Stockton Unified School District Board (District), respectively.

a) The District shall pay all Division of the State Architect (DSA) fees and Inspector-of-Record (IOR) costs out of to their \$2,000,000 contribution. The remaining funds shall be reimbursed to the City, within thirty (30) days of payment to the contractor, for each approved payment application.

b) Should the District request any changes following the award of the contract to the Contractor, the District shall pay for any and all of these changes and any related costs (DSA fees, IOR costs, architectural / engineering costs, construction management costs, and other associated fees or costs) and will reimburse the City for these approved change orders within thirty (30) days of payment to the Contractor and/or Consultant for each such change order. These payments will be in addition to the District's \$2,000,000 contribution for the joint-use facility.

2. In addition to the District's \$2,000,000 contribution for the joint-use facilities, the District will also reimburse the City for all costs associated with the reconstruction of Parking Lot "C" as shown on Exhibit B. These costs shall include the following: paving, curb and gutter, striping, lighting, fencing, entry gates, fencing, and lighting. The District will reimburse the City for this work within thirty (30) days of award of contract to the contractor, and within thirty (30) days of any subsequent payment to the contractor for approved change orders.

b. Operating Costs. Operational costs shall be allocated between the Parties based upon each Party's actual usage by percentage during the prior calendar quarter. These costs shall include general utility, electricity, natural gas, garbage, sewer, and water services. Natural gas and electricity costs will be pro-rated between the City and District.

4) Facility Maintenance. The District and the City shall share the responsibility for maintenance costs associated with the Project, including regular custodial, routine

upkeep, and normal preventive maintenance. The facility maintenance costs shall be allocated between the Parties based on each Party's actual use by percentage during the prior calendar quarter.

- 5) Renovation and Major Repairs. The District and the City shall share responsibility for the renovation and major repair costs resulting from the normal use and wear and tear that is to be expected in a facility of this type. The renovation and major repair costs shall be allocated between the Parties based on each Party's actual use by percentage. The Parties shall agree upon and approve the costs of any renovations and/or major repairs prior to the District undertaking such renovations and/or major repairs.
- 6) Activity/Use Staffing. Each Party to this Agreement shall be responsible for the staffing and supervision costs of their own scheduled and sponsored uses. The City and the District may jointly sponsor activities with the staffing costs of each such event to be shared by the Parties as may be jointly agreed prior to the activity.
- 7) Materials Acquisition. The Party requesting or requiring specific materials associated with its use of the Projects shall pay for such materials and their acquisition. The Parties may, however, agree to share the cost of such materials and their acquisition if both Parties will be using them.
- 8) OPERATION, STAFFING, AND SAFETY OF THE PROJECT. The following describes the Parties' relative responsibilities for the operation, staffing and safety of the Projects:
 - a. Operation. The City of Stockton will have sole responsibility for the operation and management of the Projects. The City of Stockton shall consult and request input from the Stockton Unified School District regarding the operation and management of the Project.
 - b. Hours of Operation.
 1. On or before September 1 of each year during the term of this Agreement, the District shall produce a calendar of events identifying the date, time and nature of School Related Activities (defined herein). The District shall provide the City with a copy of such calendar and shall use the Project facilities according to the calendar, subject to the terms and conditions described herein. The District shall be guaranteed use of the Project facilities for all scheduled academic, dramatic, musical, and athletic events scheduled thirty (30) days or more in advance of the event or as otherwise agreed upon. The City shall have first priority with respect to any unused time available within thirty (30) days of intended use, and third parties shall be scheduled on a first come-first serve basis after the City. The City may set reasonable fees to be charged to third parties for activities to be held at these facilities. It is understood that certain events

may require more than 30 days advance scheduling and the District will work with the City to maintain community access to these facilities.

2. The District shall have use of the Project facilities during all school days throughout the school year, typically during the hours of 8:00 a.m. to 3:00 p.m., excluding school holidays and vacations (the “Normal School Days”). In addition to Normal School Days, the District shall at all times have use of the Project facilities for school-related activities, events, and functions, including, but not limited to, after-school programs, school athletics, school club activities, parent/teacher association activities, school fundraisers, graduation ceremonies, and commencement activities (the “School Related Activities”).
 3. At all times other than during the Normal School Days and the scheduled School Related Activities, the City shall have the right to use the Project facilities and/or to contract with third parties that will use the Project facilities provided such use by third parties does not interfere with the District’s use of the Project facilities (the “City Use”). On or before September 15 of each year during the term of this Agreement, the City shall provide the District with a calendar that identifies the date, time and nature of the City Use of the Project facilities for the upcoming school year, which has been scheduled by the City as of that date (the “Scheduled City Use”).
 4. Within fifteen (15) days of receipt of a calendar from the City, which establishes the Scheduled City Use, the District shall prepare and provide the City with a master calendar for the Projects, which incorporate the Normal School Days, the scheduled School Related Activities, and the Scheduled City Use. The District and the City agree to cooperate in resolving any scheduling conflicts regarding the scheduled School Related Use and the Scheduled City Use and third party schedules. Notwithstanding this requirement, the earliest School Related Use or City Use scheduled pursuant to paragraph (i), above, shall take precedence in the event the Parties cannot agree to a resolution of a schedule conflict.
- c. Staffing. The District shall be responsible for hiring, training, and supervising the staff for the Project relating to the District’s use of the Project facilities. The City shall provide qualified personnel to supervise City-sponsored activities conducted in the Project facilities.
- d. Safety. The District shall be responsible for taking adequate safety measures to ensure the safety of District pupils utilizing the Project during Normal School Days and School Related Activities. The District shall provide sufficient staffing to support the activities at the Project facilities in order to ensure that the operation is maintained in a safe and secure manner.

1. The City shall be responsible for taking adequate safety measures to ensure the safety of the community utilizing the Projects during scheduled City Use. The City shall provide sufficient staffing to support the activities at the Project Facilities in order to ensure that the operation is maintained in a safe and secure manner.
- e. Access to Site. The City and the District reserve the right for their respective employees, agents, and members to enter the Site at any time for reasonable purposes during the construction of the Project. Prior to the issuance of keys to any third party, including contractors and subcontractors, the Parties shall each require said third party, contractor or subcontractor to acknowledge that he/she has been informed that California Penal Code Section 469 provides that any person who “knowingly makes, duplicates, causes to be duplicated, or uses,” or attempts to do same, or possesses any key to a public building, without authorization and with knowledge of the lack of such authorization, is guilty of a misdemeanor, and that said third party, contractor or subcontractor further specifically acknowledges that he/she shall be responsible for any such duplication or unauthorized use of said keys.
 - f. Use of the Project. The Project will be used to the maximum extent possible for joint-use purposes. To that end, the Project will be used for standard activities and made available to both the City and the District as described in subsection (b), above.
 1. No person or organization shall be permitted to use the Project where such use is inconsistent with provisions of the Education Code or the State of California, or inconsistent with education programs and activities of the City and the District, provided such programs and activities are in accordance with this Agreement. Any and all use of the Project is subject to supervision by the District during Normal School Days and School Related Activities and by the City during Scheduled City Use.
 - g. Damage to the Project. The City shall be responsible for any damage to District property, which is proximately caused by any City-sponsored activity being conducted at the Project facilities. The Project shall be jointly inspected by a City representative and a District representative on a regular agreed upon schedule to document the condition of the Project facilities and note pre-existing damages. The City shall notify the District if the Project facilities used by the City have been vandalized, damaged, is in need of repair, or presents a potential safety hazard for users.
 - h. Unlawful Activities; Concession and Vending Machines. No unlawful activity is permitted at the Project facilities. The sale, use, or consumption of alcoholic beverages or tobacco at the Project facilities is not permitted. Conduct inconsistent with the District’s and the City’s policies, including those prohibiting firearms and other weapons, is not permitted. The City shall not permit or license

any concession sales at or about the Project facilities, nor permit placing of vending machines at the Project facilities, without the prior written consent of the District. The District agrees that it will not unreasonably withhold its consent so long as the City and its licensees comply with the Federal and State nutrition guidelines for K-12 facilities. The City may set reasonable fees to be charged to the public and, while school is not in session, may operate food and beverage concessions or other sales and rental services as may be necessary or desirable for the convenience and enjoyment of the public.

- 9) PROJECT FACILITIES FUNDING. Project facilities funding is based upon the District's receipt approval of the Grant and the matching funds for fifty percent (50%) of the eligible costs under Education Code section 17077.40.
- 10) OWNERSHIP OF THE SITE, FACILITY, FURNISHINGS, AND EQUIPMENT. The underlying fee title to the land on which the Project will be constructed shall be held by the City, and the District shall hold a valid lease in accordance with School Facility Program Regulation 1859.22 (the "Lease"). The City shall own the Project (building and the improvements), and the District shall lease the land from the City pursuant to the Lease. The City and the District shall enter into the Lease prior to applying for the Grant. The proposed form of the Lease is attached hereto and incorporated herein as Exhibit "A." Personal property, trade fixtures, furnishings or equipment provided or paid for by the City or the District shall remain the property of the City or District, respectively.
- 11) TERM OF THE AGREEMENT. This Agreement shall commence upon execution by the Parties, and remain in effect until the expiration date specified in the Lease.
- 12) INDEMNIFICATION.
 - a. City agrees to indemnify, defend and save the District, its elected board, authorized agents, officers, representatives and employees harmless from and against any and all liability, loss, expense (including attorney's fees and other defense and court costs) or claims imposed for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising directly out of the intentional or negligent acts or omissions of the City, its agents, officers, representatives, employees, guests or users of the Projects: (a) as part of the City Use, including all City-sponsored activities being conducted by the City on this property; and/or (b) under or in connection with any obligation delegated to the City under this Agreement.
 - b. The District agrees to indemnify, defend and save the City, its elected boards, authorized agents, officers, representatives and employees harmless from and against any and all liability, loss, expense (including attorney's fees and other defense and court cost) or claims imposed for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage arising directly out of the intentional or negligent acts or omissions of the District, its agents, officers, representatives, employees, guests or users of the

Projects: (a) as part of the Normal school Days and/or School Related Activities, including all District-sponsored activities being conducted by the District on this property; and/or (b) under or in connection with any obligation delegated to the District under this Agreement.

- c. Each Party agrees to require all third party organizations that each Party authorizes to use the Project or enter the Site to execute a document stating the following:
 1. [Name of Organization] agrees to hold harmless, defend and indemnify the City and/or the District, their respective board members, agents, officers, employees and representatives against all actions, claims, or demands for injury, death, loss or damages, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss, or damage was solely due to the willful acts or omissions of the City and/or the District and/or their respective board members, agents, officers, employees and representatives), whenever such injury, death, loss, damage or claim is a consequence of or arises out of the use of or access to the Project facilities, by [Name of Organization] or its agents, officers, employees, representatives, guests or users of said Projects.
- 13) TORT LIABILITY. Government Code section 895.2 imposes certain tort liability jointly upon public agencies solely by reason of such public agencies being parties to an agreement as defined in Government Code Section 895. Therefore, the Parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, each assumes the full liability imposed upon it or any of its elected board, authorized agents, officers, representatives 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 Government Code Section 895.2. To achieve this purpose, each Party indemnifies and holds harmless the other Party for any loss, cost, or expense, including reasonable attorneys' fees that may be imposed upon or incurred by such other Party solely by virtue of Government Code Section 895.2.
- 14) INSURANCE
- a. General Insurance Requirements: Without limiting the indemnification provision and during the term of this Agreement, the Parties shall provide and maintain, and shall require their contractors and subcontractors to maintain, the insurance programs set forth in this Section. Each Party's insurance shall be (i) primary to and not contributing with any other insurance or self-insurance programs maintained by the other Parties, and (ii) provided and maintained at the Party's own expense.
 - b. Evidence of Insurance: Each Party shall provide a letter or certificate of insurance, or self-insurance, satisfactory to the other Parties prior to commencing

services under this Agreement. Such evidence shall identify this Agreement and the required coverage's, and provide that the other Parties receive written notice by mail at least thirty (30) days in advance of cancellation for all required coverage's.

- c. Insurer Financial Ratings and Self-Insurance: If commercial insurance is used, it shall be provided by an insurance company with an A.M. Best rating of not less than A:VII, or as otherwise mutually agreed to by the Parties. In lieu of commercial insurance, each Party shall retain the right to self-insure all or any portion of its insurance obligations herein.
 - d. Notification of Incidents, Claims or Suits: The Parties mutually agree to notify one another of any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against any of the Parties, and of any actual third party claim or lawsuit arising from or related to services under this Agreement.
 - e. Insurance Coverage Requirements: Each Party shall maintain the following insurance coverage:
 1. General Liability Insurance with limits of not less than the following, and naming the other Party as an additional insured:

a)	General Aggregate:	\$2 million
b)	Products/Completed Operations Aggregate:	\$1 million
c)	Personal and Advertising Injury:	\$1 million
d)	Each Occurrence:	\$1 million
 2. Automobile Liability Insurance with a limit of liability of not less than \$1 million combined single limit per occurrence for bodily injury and property damage. Such insurance shall include coverage for all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Agreement.
 3. Workers Compensation and Employers' Liability Insurance providing workers compensation benefits, as required by the State of California, and for which each of the Parties and/or their respective contractor and/or subcontractors shall be responsible. This insurance shall include Employers' Liability coverage with limits of not less than the following:

a)	Each Accident:	\$1 million
b)	Disease – policy limit:	\$1 million
c)	Disease – each employee:	\$1 million
- 15) ON-DISCRIMINATION. The Parties agree that in providing the Project facilities services and with respect to the hiring of staff and the selection and use of volunteers, all

persons will be treated equally and without regard to race, color, religion, ancestry, national origin, sex, age, sexual orientation, marital status or disability, and in compliance with all anti-discrimination laws of the United States of America and State of California.

- 16) REVIEW AND MODIFICATION PROCESS. The terms and conditions of this Agreement shall be reviewed jointly by the Parties annually during the term to determine that the services of the Projects continue to meet the needs of the public and the District's students. Each Party shall designate a representative as the contact liaison in connection with any and all issues pertaining to this Agreement. The City or the District shall each designate in writing to the other Party the identity of each liaison within ten (10) business days of the award of the Grant. The terms and conditions of the Agreement may be revised or amended in writing as may be necessary from time to time as mutually agreed by the Parties provided that any such amendment is consistent with the original intent of the Agreement and the requirements of the Grant.
- 17) EFFECTIVENESS OF AGREEMENT. The Parties agree that this Agreement shall be operative only if the application for the Grant funding is approved and received.
- 18) NOTICES.
 - a. Notice. All notices, requests, demands, or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:
 1. Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.
 2. First-class mail. When mailed first class to the last address of the recipient known to the Party giving notice. Notice is affected three mail delivery days after deposit in a United States Postal Service office or mailbox.
 3. Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.
 4. Overnight delivery. When delivered by overnight delivery, charges prepaid or charged to the sender's account. Notice is effective on delivery, if delivery is confirmed by the delivery service.
 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the Party giving notice. Notice is effective on receipt, provided that (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving Party delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non business day.

6. E-mail transmission. When sent by e-mail using software that provides un-modifiable proof (a) that the message was sent, (b) that the message was delivered to the recipient's information processing system, and (c) of the time and date the message was delivered to the recipient along with a verifiable electronic record of the exact content of the message sent.
- b. Addresses for purposes of giving notice are as follows:
- To: City of Stockton
City Manager's Office
425 N. El Dorado Street
Stockton, CA 95202-1997
Attn: Steven Pinkerton
Director of Redevelopment
Telephone: 209 937-8373
Facsimile: 209 937-7489
E-mail: Steve.pinkerton@ci.stockton.ca.us
- To: Stockton Unified School District
1944 El Pinal Drive
Stockton, CA 95205
Attn: Steven L. Breakfield, Director, Facilities & Planning
Telephone: 209 933-7045 ext. 2341
Facsimile: 209 933-7046
E-mail: sbreakfield@stockton.k12.ca.us
- c. Refusal, Unclaimed or Undeliverable Notice: Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the Party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.
- d. Changes: Any Party may change its address, telephone number, fax number, or e-mail address by giving the other Party notice of the change in any manner permitted by this Agreement.
- e. Timing: All notices, requests, demands, amendments, modifications or other communications under this Agreement shall be in writing. Notice shall be sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of delivery, facsimile transmission with written confirmation of receipt by recipient, or e-mail delivery with verifiable and un-modifiable proof of content and time and date of sending by sender and delivery to recipient. Notice is effective upon confirmed receipt by recipient or three (3) days after sending, whichever is sooner.

- f. Emergency Contact Numbers: The Parties will provide each other with after-hours emergency contact phone numbers of appropriate supervisory staff which shall be periodically update. Such lists will also include emergency contact numbers for other facilities that may be utilized in the event of a community emergency.

20) PARTY EMPLOYEES.

- a. City Employees: For purposes of this Agreement, all persons employed in the performance of services and functions for the City shall be deemed City employees and no City employees shall be considered an employee of the District nor shall such City employees have any District pension, civil service, or other status while an employee of the City.
- b. District Employees: For purposes of this Agreement, all persons employed in the performance of services and functions for the District shall be deemed District employees and no District employee shall be considered an employee of the City nor shall such District employees have any City pension, civil services, or other status while an employee of the District.

21) MISCELLANEOUS.

- a. Attorneys' Fees. In the event of a dispute under this Agreement, each Party shall bear its own attorneys' fees and costs.
- b. Mediation. In the event any dispute arising under the terms of this Agreement, the Parties shall meet and confer with the objective of resolving such disputes within seventy-two (72) hours of the request of either Party. If, within seven (7) calendar days, or such longer period as may be agreed upon by the Parties, the dispute cannot be resolved to the mutual satisfaction of the representatives to the Parties, the Parties shall mutually select a mediator, who is a respected professional with expertise in the area of the dispute, to facilitate the resolution of the dispute. If the parties are unable to agree on a mediator, the mediation shall be conducted in accordance with the then current commercial Mediation Rules of the American Arbitration Association. Absent written agreement of the Parties to the contrary, the mediation process shall be completed or terminated within forty-five (45) days of the initial request for mediation.
- c. Arbitration of Disputes. In the event that the Parties are unable to timely resolve the dispute through mediation, the issues in dispute shall be submitted to arbitration pursuant to California Code of Civil Procedure section 1280 et. seq., or its successor statute. For such purpose, an agreed arbitrator shall be selected, or in the absence of agreement, each Party shall select an arbitrator and those two arbitrators shall select a third. Discovery may be conducted in connection with the arbitration proceeding pursuant to California Code of Civil Procedure section 1283.05. The arbitrator, or three (3) arbitrators acting as a board, shall take such

evidence and make such investigation as deemed appropriate and shall render a written decision on the matter in question. The arbitrator shall decide each and every dispute in accordance with the laws of the State of California. The arbitrator's decision and award shall be subject to review for errors of fact or law in the Superior Court with a right of appeal from any judgment issued therein.

- d. Assignment. No Party shall assign this Agreement or any right or privilege any Party might have under this Agreement without the prior mutual written consent of all Parties hereto, which consent shall not be unreasonably withheld, provided that the assignee agrees in a written notice to all Parties to carry out and observe each applicable Party's agreements hereunder.
- e. Binding on Successors. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns.
- f. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.
- g. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- h. Entire Agreement, Waivers and Amendments. This Agreement incorporates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or part of the subject matter thereof. All waivers of the provisions of this Agreement must be in writing and signed by an appropriate representative of the Party to be charged. The waiver by either Party of any breach, term, covenant or condition contained in this Agreement shall not constitute a waiver of any subsequent term, covenant or condition contained herein. Any amendment or modification to this Agreement must be in writing and executed by all of the Parties hereto.
- i. Exhibits. All exhibits and attachments to which reference is made are deemed incorporated in this Agreement, whether or not actually attached.
- j. Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both Parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement.
- k. Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of

this Agreement, and (iv) entering into this Agreement does not violate any provision of any other agreement to which said Party is bound.

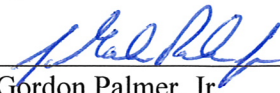
- l. Execution in Counterpart. This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all Parties are not signatories to the original or the same counterpart.
- m. Effect of Recitals. The Recitals and Exhibit(s) herein are deemed true and correct, are hereby incorporated into this Section as though fully set forth herein, and the Parties acknowledge and agree that they are each bound by the same.
- n. Conflicts of Interest. No director, officer, official, representative, agent or employee of any Party shall have any financial interest, direct or indirect, in this Agreement.
- o. Rights and Remedies are Cumulative. Except as may be otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by any Party of one or more of its right or remedies shall not preclude the exercise by it, at the same time or at different times, of any other rights or remedies for the same default or any other default by another Party or Parties.
- p. Provisions Required by Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon application of any Party the Agreement shall forthwith be physically amended to make such insertion or correction.
- q. Cooperation. The Parties acknowledge that it may be necessary to execute documents other than those specifically referred to herein in order to complete the objectives and requirements that are set out in this Agreement. The Parties hereby agree to cooperate with each other by executing such other documents or taking such other actions as may be reasonably necessary to complete the objectives and requirements set forth herein in accordance with the intent of the Parties as evidenced in this Agreement.
- r. Ambiguities Not to be Construed Against Drafting Party. The doctrine that any ambiguity contained in a contract shall be construed against the party whose counsel has drafted the contract is expressly waived by each of the Parties hereto with respect to this Agreement.
- s. No liability of Officials. No board member, officer, employee, agent, or representative of the Parties shall be personally liable for any amounts due

hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such board member, officer, employee, agent, or representative.

- t. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

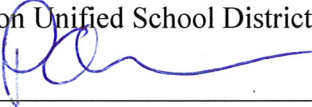
IN WITNESS WHEREOF, the City of Stockton and the Stockton Unified School District have entered into this Agreement as of the date first set forth above.

City of Stockton, a municipal
Corporation



J. Gordon Palmer, Jr.
City Manager

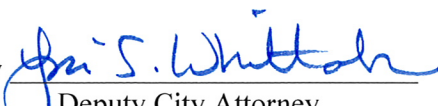
Stockton Unified School District:

By: 

Its: _____
Paul Disario
Chief Financial Officer

Approved as to form:

Richard E. Nosky, Jr.
City Attorney

By 

Deputy City Attorney

ATTEST.

CITY CLERK

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EXHIBIT "A"

Land Lease Agreement

LAND LEASE AGREEMENT

THIS AMENDED LAND LEASE (this "Lease") is made and entered into as of 22 day, April, 2008 by and between the City of Stockton, a municipal corporation ("Landlord") and Stockton Unified School District, a public school district duly organized and existing under the Education Code of the State of California ("Tenant"), as described in the following basic lease information. Landlord and Tenant hereby agree as follows:

ARTICLE 1--BASIC LEASE INFORMATION

1.1 Defined Terms. In addition to the terms that are defined elsewhere in this Lease, the following terms shall have the following meanings:

- (a) **LANDLORD: City of Stockton**, a municipal corporation
- (b) **LANDLORD'S ADDRESS:** 425 N. El Dorado Street
Stockton, California 95202
- (c) **TENANT: Stockton Unified School District**, a political subdivision of the State of California
- (d) **TENANT'S ADDRESS:** Stockton Unified School District
Attention: Steven L. Breakfield, Director,
Facilities & Planning
1944 North El Pinal Drive
Stockton, California 95205
- (e) **LAND:** Approximately 1.434 acres of land, described and depicted on Exhibit A attached hereto and incorporated herein by this reference, and 1.434 which are a part of a 5.00 acre parcel of real property owned by Landlord, known as Assessor's Parcel Numbers 169-170-01, 02, 03 & 169-190-19 ("Landlord's Property"), as shown on Exhibit B.
- (f) **PERMITTED USE:** The Land may be used for the purpose of constructing, operating and maintaining a gymnasium facility and meeting rooms for joint-use purposes by the Landlord and the Tenant, as described in the Amended Joint-Use Agreement – Edward C. Merlo Institute of Environmental Technology Gymnasium School Site by and between the City of Stockton and the Stockton Unified School District, dated April 22, 2008, (the "Joint-Use Agreement").
- (g) **TERM:** Forty (40) years, beginning on the Commencement Date and expiring on the Expiration Date.

- (h) COMMENCEMENT DATE: April 25, 2006
- (i) EXPIRATION DATE: The date that is 480 full calendar months after the Commencement Date.
- (j) ANNUAL RENT: \$1.00.
- (k) RENT COMMENCEMENT DATE: April 25, 2006
- (l) IMPROVEMENTS. The Gymnasium Facility

1.2 Exhibits. The following exhibits are attached to this Lease and are made part of this Lease:

Exhibit A: Description and Depiction of the Land

Exhibit B: Description of Landlord's Property

ARTICLE 2--AGREEMENT AND USE

2.1 Lease. Landlord hereby demises and leases to Tenant the Land, and Tenant shall lease the Land from Landlord, according to the terms and conditions of this Lease. The duration of this Lease will be the Term. The Term will commence on the Commencement Date, and will expire on the Expiration Date.

2.2 Use. Tenant shall use the Land only for the Permitted Use. Tenant shall not allow the Land to be used for any unlawful purposes. Tenant will not commit waste and will not create any nuisance or interfere with, annoy or disturb any other tenant of Landlord's Property. Tenant shall not erect signs or other improvements on the Land without the approval of Landlord, which approval shall not be unreasonably withheld or delayed. Tenant will keep and maintain the Improvements in good condition and repair. Tenant will keep the Land free from all trash, debris, and waste.

2.3 Delivery of Possession. Landlord will deliver possession of the Land to Tenant on the Commencement Date, "AS-IS" in its present condition. Tenant acknowledges that neither Landlord nor its agents or employees have made any representations or warranties as to the suitability or fitness of the Land for the conduct of Tenant's educational activities or as to the physical condition of the Land, nor has Landlord or its agents or employees agreed to undertake any alterations or construct any improvements to the Land.

2.4 Governmental Approvals. Tenant shall, at its sole cost and expense before the Commencement Date, apply for and obtain all licenses, permits, approvals, required by any local, state or federal governmental authorities for its use of the Land, including without limitation, all applications for zoning variances, zoning ordinances, building code variances, amendments, special use permits, and construction permits and other licenses and approvals necessary for the operation of Tenant's educational activities from the Land (collectively, the "Governmental Approvals"). Landlord shall cooperate with Tenant to obtain all necessary Governmental Approvals. Tenant understands and agrees that Tenant's right to use the Land is

contingent upon Tenant obtaining and continually maintaining in full force and effect all Governmental Approvals. In the event any Governmental Approvals issued to Tenant are canceled, expire, lapse, or are otherwise withdrawn or terminated by governmental authority so that Tenant will be unable to use the Land for its intended purposes, this Lease shall automatically terminate.

ARTICLE 3--RENT AND TAXES

3.1 Rent. Tenant shall pay the Annual Rent to Landlord as rent for the Land, on or before January 15 of each year during the term hereof following the Rent Commencement Date, as defined in Section 1.1(k), above. If the Rent Commencement Date occurs after January 15 of the first calendar year of the term, the first payment of Annual Rent shall be due on the Commencement Date. Annual Rent shall be delivered to Landlord, or to such other person, firm or place as Landlord may, from time to time, designate in writing, without deduction or offset, in lawful money of the United States of America. If the Term begins on a day other than January 15 or ends on a day other than January 14, then Annual Rent will be prorated.

3.2 Utilities. Tenant shall, at its sole cost and expense, arrange for electricity, water, gas, and other utilities necessary for Tenant's operations to be provided to the Land directly from such providers. Tenant shall be billed directly for the use of such services, and shall promptly pay the same when due. Landlord shall immediately pay its share of such costs to Tenant pursuant to the terms of the Joint-Use Agreement.

3.3 Taxes. Landlord shall be responsible for all real property taxes and assessments levied against the Land.

3.4 Possessor Interest. Tenant agrees and acknowledges that this Lease may create a possessor interest in the Land subject to applicable property taxation and that Tenant may be required to pay possessor interest taxes or property taxes levied on such interest. Tenant shall pay all such taxes, assessments, or charges; provided, however, Tenant shall have the right to contest in good faith any such taxes, assessments, or charges. In the event Tenant exercises its right to contest any tax, assessment, or charge against it, Tenant, on final determination of the proceeding or contest, shall immediately pay or discharge any decision or judgment rendered against it, together with all costs, penalties, charges, and interest.

ARTICLE 4--INSURANCE

4.1 Tenant's Insurance. At all times during the Term, Tenant will carry and maintain, at Tenant's expense, the following insurance in the amounts specified below or such other amounts as Landlord may from time to time reasonably request:

(a) bodily injury and property damage liability insurance, with a combined single occurrence limit of not less than \$2,000,000. All such insurance will be equivalent to coverage offered by a Commercial General Liability form including, without limitation, personal injury, death of persons or damage to property occurring in, on, or about the Land, and

contractual liability coverage for the performance by Tenant of the indemnity agreements set forth in this Lease;

(b) insurance covering the Improvements, and all of Tenant's equipment, and any other personal property owned by Tenant and located on or about the Land, in an amount not less than the full replacement cost. Property forms will provide coverage on a broad form basis insuring against "all risks of direct physical loss." All policy proceeds will be used for the repair or replacement of such property damaged or destroyed; and Tenant will be entitled to the remainder; however, if this Lease ceases, Tenant will in any event be entitled to any proceeds resulting from damage to Tenant's machinery, equipment, and other personal property;

(c) worker's compensation insurance insuring against and satisfying Tenant's obligations and liabilities under the worker's compensation laws of the state where the Land is located, including employer's liability insurance in the limits required by the laws of the state where the Land is located;

(d) if Tenant operates owned, hired, or non-owned vehicles on the Land, comprehensive automobile liability insurance, at a limit of liability not less than \$1,000,000 combined bodily injury and property damage;

(e) any additional insurance reasonably requested by Landlord.

4.2 Forms of the Policies. All such insurance shall be placed with insurers having an A.M. Best's rating of A:VII, or as otherwise mutually agreed to by the Tenant and Landlord. Certificates of insurance, together with copies of endorsements, when applicable, will be delivered to Landlord prior to Tenant's occupancy of the Land and from time to time at least 10 days prior to the expiration of the term of each such policy. All Commercial General Liability or comparable policies maintained by Tenant will list Landlord as an additional insured, entitling it to recover under such policies for any loss sustained by it. All such policies maintained by Tenant will provide that they may not be terminated nor may coverage be reduced except after 30 days' prior written notice to Landlord. All Commercial General Liability and property policies maintained by Tenant will be written as primary policies, not contributing with and not supplemental to the coverage that Landlord may carry. In lieu of commercial insurance, Tenant shall retain the right to self-insure all or any portion of its insurance obligations herein.

4.3 Waiver of Subrogation. Landlord and Tenant each waive any and all rights to recover against the other or against the officers, directors, shareholders, partners, joint ventures, employees, agents, customers, invitees or business visitors of such other party, for any loss or damage to such waiving party arising from any cause covered by any property insurance required to be carried by such party pursuant to this Article or any other property insurance actually carried by such party to the extent of the limits of such policy. Landlord and Tenant, from time to time, will cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all property insurance policies carried in connection with the Land or the contents of the Land.

ARTICLE 5--END OF TERM

5.1 Surrender. Upon expiration or earlier termination of this Lease, Tenant shall surrender the Land and Improvements to Landlord. Tenant will deliver the Land and Improvements in their condition as of the termination or Expiration Date. If within 15 days after the expiration or termination of this Lease, Tenant has not removed its personal property, Landlord may do so and Tenant shall reimburse Landlord for all actual expenses or costs for said removal. Tenant's obligations under this Section shall survive the expiration or other termination of this Lease.

5.2 Holdover. If, after expiration of this Lease, Tenant remains in possession of the Premises and continues to pay rent without a written agreement as to such possession, then such tenancy will be regarded as a month-to-month tenancy, terminable by either party upon 30 days' notice to the other, at a monthly rental, payable in advance, equivalent to the Annual Rent paid under this Lease divided by 12, and subject to all the terms and conditions of this Lease.

ARTICLE 6--REQUIREMENTS OF LAW

6.1 Compliance with Laws. For the purposes of this Section, "Applicable Laws" means all laws, statutes, ordinances and governmental rules, regulations, or requirements now in force or in force after the Commencement Date, the requirements of any board of fire underwriters or other similar body constituted now or after the Commencement Date, and any direction or permanent occupancy certificate issued pursuant to any law by any public officer or officers, as well as the provisions of all recorded documents affecting the Land. At its sole cost and expense, Tenant will promptly comply with Applicable Laws insofar as they relate to (a) Tenant's use, occupancy, or alteration of the Land; (b) the condition of the Land resulting from Tenant's use, occupancy, or alteration of the Land; or (c) alterations to the Land required as a result of Tenant's status under Applicable Laws.

6.2 Hazardous Materials.

(a) Tenant will not permit, use or conduct operations on or at the Land or manufacture, store, sell, use, dispose of, release, or discharge or permit the manufacture, storage, sale, use, disposal, release, or discharge of Hazardous Materials in any manner which violates Environmental Law or which causes there to be any liability under Environmental Law. Tenant will be solely responsible for and will defend, indemnify and hold Landlord its agents and employees harmless from and against any and all liability, claims, suits, actions, proceedings, damages, costs, and expenses, including, without limitation, attorneys' fees and costs, imposed upon or incurred by Landlord arising out of or in connection with a breach of the provisions of this Section or Tenant's introduction of Hazardous Materials to the Land. Tenant's obligations under this Section will survive the expiration or prior termination of this Lease.

(b) Mutual Obligations. Tenant will promptly notify Landlord of (i) any and all enforcement, cleanup, remedial, removal, or other governmental or enforcement cleanup or other governmental or regulatory actions instituted, completed or threatened pursuant to any Environmental Laws relating to any Hazardous Materials affecting any part of the Land; and (ii) all claims made or threatened by any third party against Tenant, or any part of the Improvements

relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials on or about the Land or any part of the Land.

(c) Environmental Assessments. Landlord may, from time to time during the Term, conduct such environmental assessments or tasks as Landlord deems necessary, provided that Landlord will give Tenant reasonable prior notice of its entry on the Land for such purposes and will cooperate in minimizing any disruption of Tenant's use of the Land as a result of such activity. Landlord will make available to Tenant copies of any reports or assessments so obtained by Landlord.

(d) For purposes of this Lease, "Hazardous Materials" means any explosives, radioactive materials, hazardous wastes, or hazardous substances, including, without limitation, substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801-1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901-6987; or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (collectively, "Environmental Law").

ARTICLE 7--DEFAULT

7.1 Events of Default. The following events are referred to, collectively, as "Events of Default" or, individually, as an "Event of Default":

(a) Tenant defaults in the due and punctual payment of the Annual Rent, and such default continues for 10 days after written notice from Landlord.

(b) Tenant breaches any of the other agreements, terms, covenants or conditions which this Lease requires Tenant to perform, and such breach continues for a period of 30 days after written notice from Landlord to Tenant or, if such breach cannot be cured reasonably within such 30-day period, if Tenant fails to diligently commence to cure such breach within 30 days after written notice from Landlord and to complete such cure within a reasonable time thereafter.

7.2 Replacement of Statutory Notice Requirements. When this Lease requires service of a notice, that notice shall replace rather than supplement any equivalent or similar statutory notice, including any notices required by California Code of Civil Procedure Section 1161 or any similar or successor statute. When a statute requires service of notice in a particular manner, service of that notice (or a similar notice required by this Lease) in the manner required by Section 11.4 shall replace and satisfy the statutory service of notice procedures, including those required by California Code of Civil Procedure Section 1162 or any similar or successor statute.

7.3 Landlord's Remedies. If any one or more Events of Default set forth in Section 7.1 occurs then Landlord has the right, at its election:

(a) To terminate this Lease, in which case Tenant's right to possession of the Premises will cease and this Lease will be terminated as if the expiration of the Term fixed in such notice were the end of the Term. If this Lease is terminated, Landlord will be entitled to recover from Tenant: (i) the unpaid rent that had been earned at the time of termination; (ii) the unpaid rent that had been earned at the date of the judgment awarding damages to Landlord (the "Date of Judgment"); (iii) the unpaid rent for the balance of the Term of this Lease after the Date of Judgment; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result from that failure. The amount referred to in clauses (i) and (ii) is computed by allowing interest at the highest rate permitted by law. The amount referred to in clause (iii) is computed by discounting the amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award.

(b) To reenter and take possession of the Premises, expel Tenant and remove the effects of Tenant, using such force for such purposes as may be necessary, without being liable for prosecution, and without prejudice to any remedies for arrears of Annual Rent or other amounts payable under this Lease. Landlord shall have the remedy described in California Civil Code Section 1951.4, which provides that, when a Tenant has the right to sublet or assign (subject only to reasonable limitations), the Landlord may continue the Lease in effect after the Tenant's breach and abandonment, and recover rent as it becomes due. Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may enforce all of Landlord's rights and remedies under this Lease, including the right to recover all rent as it becomes due.

(c) To cure any event of default and to charge Tenant for the cost of effecting such cure, including without limitation reasonable attorneys' fees and interest provided that Landlord will have no obligation to cure any such event of default of Tenant.

7.4 Remedies Cumulative. Landlord's rights hereunder shall be in addition to, and not in lieu of, every other right or remedy provided for herein or now or hereafter existing at law or in equity by statute or otherwise, including, but not limited to injunctive relief, specific performance and damages. The exercise or beginning of exercise by Landlord of any one or more rights or remedies, provided herein or now or hereafter existing at law or in equity by statute or otherwise, shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise. All such rights and remedies shall be considered cumulative and nonexclusive.

ARTICLE 8--LANDLORD'S DEFAULT

8.1 In the event of any default by Landlord in the performance of its obligations under this Lease, Tenant will deliver to Landlord written notice of such default.

If Landlord fails to cure such default within 10 business days after written notice of such default (the "Cure Period"), Tenant shall have the right, in its sole discretion, to exercise such self-help measures as may be reasonably necessary to cure Landlord's default. Landlord shall reimburse any costs and expenses incurred by Tenant to cure such default upon demand.

Whether or not Tenant exercises its self-help right, rent shall be abated from the date following expiration of the Cure Period until the date the specified default is cured by Landlord.

If Landlord fails to cure any default within 30 days after receipt of notice of such default, Tenant shall have the right to terminate this Lease, without penalty, upon notice to Landlord, such termination to be effective as of the termination date designated on Tenant's termination notice.

ARTICLE 9--EARLY TERMINATION

9.1 Tenant will have the right to cancel this Lease, effective at any time, upon 90 days' prior written notice to Landlord ("Tenant's Notice"). Tenant's Notice may be given at any time, so long as it is given at least 90 days prior to the date of termination set forth therein. Upon Tenant's compliance with the terms of this Article, Article 5 of this Lease, and Tenant's payment of all amounts owed to Landlord under this Lease, to the date of termination, this Lease will terminate as of the date of termination set forth in Tenant's Notice and neither Landlord nor Tenant will have any further rights or obligations under this Lease, except with respect to those matters in this Lease which expressly survive the termination of this Lease.

ARTICLE 10--OPTION TO RENEW

10.1 Tenant will have the option to renew the term of this Lease for one, 15-year period, subject to the further provisions of this Section.

(a) Tenant must exercise the option with respect to the Renewal Term, if at all; by giving notice of exercise ("Tenant's Notice") to Landlord on or before the date that is 60 days prior to the then applicable Expiration Date. Tenant will have no right to renew the term of this Lease if Tenant's Notice is not timely delivered or if there is an Event of Default under this Lease at the time Tenant's Notice is delivered or on the then applicable Expiration Date.

(b) The Renewal Term will be on the same terms and conditions as this Lease, except Annual Rent, which shall be negotiated in good faith by the Landlord and Tenant.

(c) Within 20 days after receipt of Tenant's Notice, Landlord will submit to Tenant in writing a proposed rental rate (the "Proposed Rate") for the Renewal Term and provide Tenant with appropriate documentation supporting Landlord's determination of the fair market rental rate. The parties shall have 30 days after Tenant's receipt of the Proposed Rate within which to negotiate in good faith and agree upon the Annual Rent for the Renewal Term. Notwithstanding the foregoing, if the rental rate for the Renewal Term is not acceptable to Tenant, in Tenant's sole determination, Tenant shall have the right to revoke its Tenant's Notice, in which case the Lease shall not be extended in accordance with Tenant's Notice, but shall instead expire on the then applicable Expiration Date.

ARTICLE 11-- GENERAL

11.1 Quiet Enjoyment. So long as Tenant performs all covenants and obligations contained in this Lease, Landlord warrants quiet enjoyment of the Land by Tenant; provided that

Landlord, its agents or representatives, and any other person authorized by Landlord, may enter upon the Land for the purpose of inspecting the Land and to exhibit the Land to prospective purchasers or lenders. Any entry onto or inspection of the Land shall not constitute eviction of Tenant in whole or in part.

11.2 Condemnation. In the event of a condemnation or other taking by any governmental agency of all or a portion of the Land necessary for Tenant's operation of its business thereon, this Lease will terminate on the date the condemning authority takes possession of the Land. Any such condemnation award shall be paid to Landlord, except that Tenant will have the right to assert a separate claim for moving expenses, business interruption, and leasehold improvements paid for by Tenant. Tenant shall assert no claim for loss of "bonus value." For the purpose of this Section, "bonus value" shall mean the value attributable to the fact that the rental rate that Tenant is obligated to pay under this Lease is less than the fair market rate of the Land as defined herein.

11.3 Liens. Tenant will keep the Land free and clear of all mechanics' liens and other liens on account of work done for Tenant or persons claiming under Tenant.

11.4 Notices. All notices and other communications required or permitted under this Lease shall be in writing and shall be given (a) by United States first class mail, postage prepaid, registered or certified, return receipt requested; (b) by hand delivery (including by means of a professional messenger service); or (c) by delivery from a nationally recognized overnight delivery service that routinely issues receipts, which notice shall be addressed to the party to whom such notice is being given, at their address set forth in Section 1.1 above. Any such notice or other communication shall be deemed to be effective when actually received or rejected. Either party may by similar notice given change the address to which future notices or other communications shall be sent.

11.5 Effect of Sale. A sale, conveyance or assignment of Landlord's interest in the Land will operate to release Landlord from liability from and after the effective date of such sale, conveyance or assignment upon all of the covenants, terms and conditions of this Lease, express or implied, except those liabilities which arose prior to such effective date, and, after the effective date of such sale, conveyance or assignment, Tenant will look solely to Landlord's successor-in-interest in and to this Lease. This Lease will not be affected by any such sale, conveyance or assignment, and Tenant will attorney to Landlord's successor-in-interest to this Lease, so long as such successor-in-interest assumes Landlord's obligations under this Lease from and after such effective date. Any such transfer or transfers of title or conveyances shall not disturb Tenant's rights under this Lease so long as Tenant is not in default under this Lease.

11.6 Estoppels Certificates. From time to time, within 10 days after receipt of written request by Landlord, Tenant will execute, acknowledge and deliver to Landlord a certificate certifying (a) that this Lease is unmodified and in full force and effect or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the date and nature of each modification; (b) the date, if any, to which Annual Rent and other sums payable under this Lease have been paid; (c) that no written notice of any default has been delivered to Landlord which default has not been cured, except as to defaults specified in said certificate; (d)

there is no Event of Default under this Lease, except for defaults specified in said certificate; and (e) such other matters as may be reasonably requested by Landlord. Any such certificate may be relied upon by any prospective purchaser or existing or prospective mortgagee or beneficiary under any deed of trust of the Land. Tenant's failure to deliver such a certificate within such time will be conclusive evidence of the matters set forth in it.

11.7 Inspection. Landlord reserves the right to enter, at any time, the Land to inspect the same.

11.8 Time of the Essence. Time is of the essence for each and every provision of this Lease.

11.9 No Waiver. The waiver by either Landlord or Tenant of any agreement, condition, or provision contained in this Lease will not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition, or provision contained in this Lease.

11.10 Brokers. Landlord and Tenant respectively represent and warrant to each other that neither of them has consulted or negotiated with any broker or finder with regard to the Land. Each of them will indemnify the other against and hold the other harmless from any claims for fees or commissions from anyone with whom either of them has consulted or negotiated with regard to the Land.

11.11 Authority. Tenant and the party executing this Lease on behalf of Tenant represent to Landlord that such party is authorized to do so by requisite action of the board of directors, or partners, as the case may be, and agree, upon request, to deliver to Landlord a resolution or similar document to that effect.

11.12 Governing Law. This Lease will be governed by and construed pursuant to the laws of the State of California.

11.13 Captions. The captions of the various Articles and Sections of this Lease are for convenience only and do not necessarily define, limit, describe or construe the contents of such Articles or Sections.

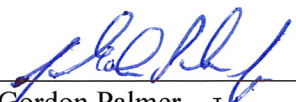
11.14 Severability. If any provision of this Lease proves to be illegal, invalid or unenforceable, the remainder of this Lease will not be affected by such finding, and in lieu of each provision of this Lease that is illegal, invalid or unenforceable, a provision will be added as a part of this Lease as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

11.15 Entire Agreement; Amendment. This Lease contains the entire agreement between Landlord and Tenant. No amendment, alteration, modification of, or addition to the Lease will be valid or binding unless expressed in writing and signed by Landlord and Tenant.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals as of the day and year first above written.

LANDLORD:

City of Stockton, a municipal Corporation



J. Gordon Palmer, Jr.
City Manager

TENANT:

**Stockton Unified School District,
a political subdivision of the State of California**

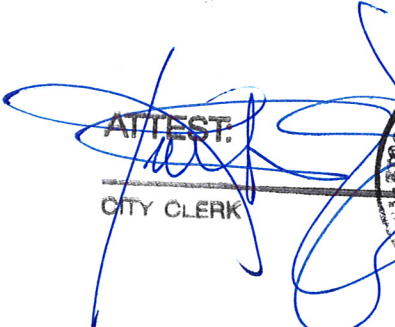

By: _____
Its: _____
Paul Disario
Chief Financial Officer

Reviewed as to form:

**RICHARD E. NOSKY
CITY ATTORNEY**

By 

Deputy City Attorney


ATTEST:

CITY CLERK



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Exhibit A
Landlord's Property

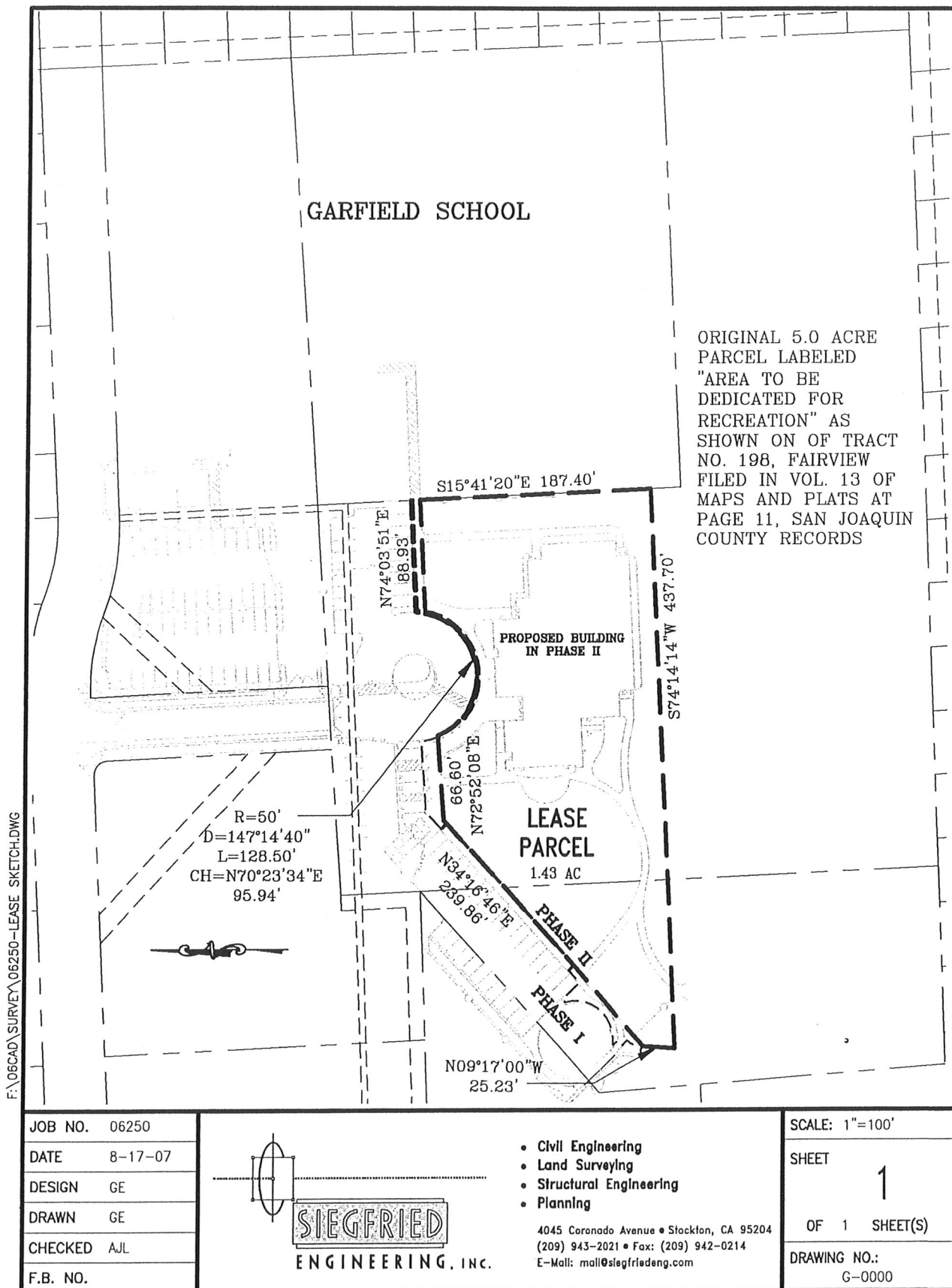


Exhibit B
School Site

