

**City/School Committee**

Councilmember Ruth Atkin, Co-Chair  
 School Board Member Pat Hooper, Co-Chair  
 Councilmember Jennifer West,  
 Councilmember Kurt Brinkman  
 Councilmember Nora Davis  
 Councilmember VACANT  
 School Board Member Joshua Simon  
 School Board Member Miguel Dwin  
 School Board Member Melodi Dice  
 School Board Member Cheryl Webb  
 Student Member Marcus Howard  
 Student Member VACANT

**AGENDA****City/School Committee**

Regular Meeting of the Advisory Committee

Special Meeting of the Emeryville City Council and Emery Unified School District Board of Trustees

**April 7, 2011 - 5:30pm**Emery Secondary School, 1100 47<sup>th</sup> Street, Emeryville, CA

All Advisory Committee meetings are noticed as Special City Council and School District Board of Trustees Meetings so that any or all of the City Council or School District Board of Trustees may attend and participate in the Advisory Committee's deliberations. However, actions taken by Advisory Committees are not official actions of the City Council and School District Board of Trustees but must be ratified at a regular City Council and School District Board of Trustees Meeting. All writings that are public records and relate to an agenda item below which are distributed to a majority of the City/School Committee (including writings distributed to a majority of the City/School Committee less than 72 hours prior to the meeting noticed below) will be available at the Information Counter, 1333 Park Avenue, Emeryville, California during normal business hours (9am to 5pm, Monday through Friday, excluding legal holidays).

- I. Roll Call
- II. Public Comment
- III. Approval of 2/3/11 minutes
- IV. Information Items
  - A. MOU #1 Budget Update (Miller – 10 mins)
  - B. Discussion of Youth on civic committees (Miller – 5 mins)
  - C. Report from COC (Brian Carver – 5 mins)
  - D. ECCL project overview and update (Miller/Kim – 10 mins)
- V. Action Items
  - A. ECCL Policies for City/Schools Committee – 2<sup>nd</sup> and 3<sup>rd</sup> Readings (Sugiyama – 15 mins)
  - B. MOU #2 discussion and recommendation (Miller – 10 mins)
- VI. Staff Comments
- VII. Committee Member Comments
- VIII. Adjournment

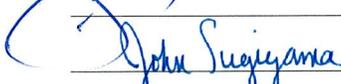
**FURTHER INFORMATION** may be obtained by contacting Melinda Chinn, City/School Committee Secretary, at (510) 596-4314

Dated: 4/1/2011

Post on: 4/1/2011

Post until: 4/8/2011


 \_\_\_\_\_ F Karen Hemphill, City Clerk


 \_\_\_\_\_ John Sugiyama, EUSD Superintendent

All documents are available in alternative formats, on request. In compliance with the Americans with Disabilities Act, a person requiring an accommodation, auxiliary aid or service to participate in this program should contact the sponsoring department at (510) 450-7813 or ADA Coordinator as far in advance as possible, but no later than 72 hours before the scheduled event. The best effort to fulfil the request will be made.

Dominique B. Burton, ADA Coordinator  
 City of Emeryville 1333 Park Avenue Emeryville, CA 94608  
 Direct Line: 510.596.4380, Facsimile: 510.596.3724, TTY Relay: 711 [dburton@ci.emeryville.ca.us](mailto:dburton@ci.emeryville.ca.us)

City/School Committee  
Action Minutes +  
2-3-11

1. Roll Call
  - a. City Council: West, Davis, Atkin
  - b. School Board: Simon, Dwin, Dice, Webb, Hooper
  - c. Student: Howard
  - d. City Staff: Turner, Chinn, Laven
  - e. School Staff: Sugiyama, Miller, Stewart, Kim
    - i. Excused: Brinkman
2. Public Comments
  - a. Eugenia Bowman from Emery Ed Foundation reported that Bayer Healthcare Pharmaceuticals has committed to a 3-year, \$90,000 stem program in partnership with Cal State East Bay to improve science, engineering, mathematics, etc in the Emeryville school district. Also, the incoming Target retail store in Emeryville, even though it is not open, has already committed to donate \$15,000 to Anna Yates Reading Program.
3. Minutes
  - a. Motion to approve minutes by Davis with correction below, seconded by Dice. West noted the correct spelling of new Goldman School intern's name is Homayra Yusufi. Passed without exception.
4. Information Items
  - a. Recap of Community Engagement and Outreach Planning
    - i. Kim reported that on a document handed out highlighting the community engagement that is scheduled. Many city, school, and other activities have been documented to reach out about the future ECCL work. In particular, the Emeryville Yes We Will celebration, the Lighthouse Community School tours and local meetings, youth outreach, and work with other outside organizations and initiatives. Steve Kelly, from the Nexus Group, has reported on the web 2.0 tools that will be launched in the near future.
      1. Davis noted that we need to engage the business community, which is 60 percent of the community.
      2. The Committee debated if emerycenter.org sounds like a shopping center. The Committee recommended that the COC should rename the domain name of this website.
  - b. Report on Emeryville's City/School/Business Delegation Trip to Washington, D.C.
    - i. Sugiyama reported that a group of leaders, including Delores Turner, Ruth Atkin, Miguel Dwin, and Joshua Simon, went to Washington, D.C. to lobby on behalf of Emeryville. The group

met with Diane Feinstein, Barbara Boxer, Barbara Lee and also staff at the Departments of Education, Transportation, Environmental Protection Agency, Energy as well as several Congressional Committees. Dwin reported that the leaders were happy that Measure J passed and the new community school will be built. The EPA was very interested in the sustainable community project and its potential for being a green facility, in which they would like to assist us in this process. Atkin added that the staffers in the Senators offices were the same as previous years and they noted that no other community is able to bring together a unity of business, school and city leaders. This year marked the first year meeting with the Department of Energy, but they were not interested in Emeryville besides their national labs, so there is potential for Townsend to find the right staff people to meet with in the future instead of those not as interested to meet with the group. Turner noted that it was humbling and awesome to work with our federal government and she feels there are more opportunities to fund our youth. Sugiyama noted that these trips usually bring in hundreds of thousands of dollars for Emeryville.

- c. Goldman School's Project for Emeryville – Graduate Student Introduction
  - i. Kim introduced the Goldman School of Public Policy, Homayra Yusufi. Ms. Yusufi's background is in educational policy. Homayra has worked with Oakland Unified School District to increase outcomes in continuation school internships. Homayra is in the beginning stages of the Emeryville work and is looking forward to meeting the staff, committee, and furthering this project.
- d. MOU Budget Update
  - i. Miller noted that the original MOU will get us through June of 2011. The Committee should note the new sub-line items that give more detail on the budget of the MOU. The unencumbered funds will be encumbered by the next meeting as contracts are being ratified in the next month.
    - 1. Davis asked if staffing needs adjustment, or will it carry us through the end of June? Miller noted that the staffing is correct, but other line items still need updating and that will happen by the next meeting.
- e. ECCL Policies for City/School Committee
  - i. Sugiyama reviewed the Sustainability and Equity Policies and noted that the policies take into account the request for shortened policies. West read the policies out loud for the public. Below are the comments recorded for changes for the second reading:
    - 1. A typo was noted in the Sustainability policy by West.
    - 2. Hooper read the Precautionary Principle so that the public is aware of what that means.

3. The Committee requested staff check that the Precautionary Principle is the same as the School Boards adopted language and that the principle be added in full to the policy as it is short.
  4. West asked if the school has an ‘Environmentally Preferred’ policy? Sugiyama noted that it is a policy, but not always practically enforceable. West also noted the City does not have this policy yet for environmentally preferred purchasing.
  5. Atkin asked if the policy of ending racist and classist practices are still a part of the school board’s vision and if so, should it be in here directly? The Committee did not come to an agreement on this point.
  6. The Committee requested that ‘age’ and ‘religious belief’ be added to the second paragraph of the Equity Policy.
  7. Atkin asked that in the second bullet point of Equity, the Policy should include ‘interconnected’. She also noted that last bullet point should note ‘interconnectivity’ and thinks this should be somewhere in this document.
  8. Under Equity, sexual or gender identification should be listed. The Committee agreed.
- f. Review of Applications for Citizen Oversight Committee
- i. Sugiyama summarized the process of the rankings. City Council and School Board members ranked applicants in the many categories. The Committee will note that some people are in multiple lists, that people who received no score are not shown on this ranking list, and that students are not shown at this point, but seven have shown interest and would receive sufficient support and training to move forward as part of the COC. The Board will need to proceed with choosing a COC by February 28, 2011.
    1. Davis commended those who helped find a record candidate pool to choose from for the COC.
    2. Simon noted that the talent that applied for the COC was exceptional and it will be a good problem to choose 17 people from 32 great applicants.
    3. West also thanked staff for the good work. She also wanted the School Board to consider age, gender, race, ethnicity, geographic location, and all other factors are accounted for during the final selection.
    4. John Schuman noted that the process was fair as an applicant and he looks forward to learning the outcome of who is on the committee.
    5. David Martinez and Matt Johnson also introduced themselves as candidates that were in attendance at this City/School Committee meeting.

6. Webb noted that some of the people could be asked to serve in other capacities and West noted the same for the City.

## 5. Action Items

- a. Election of the 2011 City-School Committee Co-Chairs
  - i. West thanked the committee for electing her to co-chair and that it has been a pleasure serving this committee.
  - ii. Davis moved to nominate Hooper and Atkin to be the next year's co-chairs, seconded by Dwin, without exception.
- b. ECCL Policies for City/School Committee – 2<sup>nd</sup> Reading
  - i. Sugiyama noted that staff took the comments of the committee from the previous meeting and made the necessary adjustments.
    1. Community Engagement
      - a. Davis moved to approve the item, Simon seconded.
      - b. Roll call vote:
        - i. Ayes: West, Simon, Davis, Atkin, Dwin, Dice, Webb, Hooper, Howard
        - ii. Nays/Abstained: None
          1. Motion passes 9-0
    2. Sustainability
      - a. Davis so moved, Simon seconded, without exception
    3. Partnerships
      - a. Simon moved approval, Dais seconded, without exception.

## 6. Staff Comments

- a. Stewart noted 350 people attended the “Emeryville Yes We Will” event, which will help establish a foundation of public to see projects through to end. She also would like to ask community to look out for community express, a community school e-newsletter.
- b. Kim noted a special board meeting study session on K-12 location will be held on Monday, February 7<sup>th</sup>. Parents, teachers, and students will share experiences, benefits, challenges of attending a K-12 community school. Contact Hayin at 601-4979 for more information.

## 7. Committee Comments

- a. Atkin noted the great drawings around the Atrium for this meeting and congratulated the students on the work for Art is Education month.
- b. Simon noted an upcoming Dad's Club meeting to plan the Valentine's Day Fundraiser will occur on February 8<sup>th</sup> from 5:30-8:30pm.
- c. Sugiyama noted that on February 9<sup>th</sup>, 6:00-9:00pm, the Relay for Life Kick-Off Event will take place at the gymnasium in the Emery Secondary School.
- d. Howard noted that on March 12<sup>th</sup>, the ESS Senior Class will host its \$45 Crab Feed that benefits a Costa Rico field trip, prom, capoeira, etc.

e. West noted that the hip-hop performers and Capoeira groups were incredible at the Emeryville Yes We Will event.

8. Adjournment

a. 7:03pm

## MOU Increment 1: ECCL Actual Expenditures as of March 31, 2010

			2010-2011			
		MOU	Year-to-Date	2009-2010	Currently	Balance
Object	Description	Budget	Actual	Actual	Encumbered	Unencumbered
2000-3999	Staff (teachers) Stipends	15,000.00	11,992.49	0.00	0.00	3,007.51
	ECCL Staff salaries and benefits	470,000.00	248,950.55	110,000.00	82,877.85	28,171.60
4300	Supplies	10,000.00	2,203.88	1,560.48	360.72	5,874.92
5200/5600	COC Events	25,000.00	6,514.60	0.00	0.00	18,485.40
5200/5800	Other Events	25,000.00	2,313.66	4,897.78	0.00	17,788.56
5825	Youth Engagement	50,000.00	0.00	0.00	48,000.00	2,000.00
5825	Townsend Public Affairs	62,500.00	22,500.00	30,072.44	7,500.00	2,427.56
5825	Lapkoff and Gobalet	15,000.00	7,500.00	5,000.00	0.00	2,500.00
5825	School Facility Consultants	55,000.00	4,079.02	15,677.50	12,753.48	22,490.00
5825	The Lew Edwards Group	65,000.00	22,221.33	37,192.67	1,586.00	4,000.00
5825	Murdoch Walrath and Holmes	22,500.00	0.00	5,004.48	15,000.00	2,495.52
5830	Prof'l/Consulting, SPICE facilitators	90,000.00	56,738.50	15,000.00	9,961.40	8,300.10
5830	Collaborative Strategic Plan Resources	15,000.00	0.00	0.00	0.00	15,000.00
5830	Goldman School Stipend	10,000.00	2,500.00	0.00	5,000.00	2,500.00
5830	Web Resource & Communications	15,000.00	1,075.00	0.00	925.00	13,000.00
5845	Legal Fees	70,000.00	32,335.29	14,636.56	5,394.93	17,633.22
5870	Printing	12,000.00	332.29	0.00	0.00	11,667.71
5900	Postage	3,000.00	0.00	0.00	0.00	3,000.00
6140	Preliminary Site Testing (ex.: geotech)	25,000.00	0.00	12,252.03	0.00	12,747.97
6210	Architectural Fees	615,000.00	186,352.30	316,705.57	107,442.13	4,500.00
6240	Environmental Studies (CEQA prelim.)	25,000.00	0.00	0.00	0.00	25,000.00
6260	Builder Pre-Construction Fees	0.00	0.00	0.00	0.00	0.00
6270	CDE/Agency Fees	5,000.00	0.00	0.00	0.00	5,000.00
6297	Contingency	100,000.00	0.00	0.00	0.00	100,000.00
6298	Reserve	0.00	0.00	0.00	0.00	0.00
	<b>Totals, MOU Inc. 1 (12/09-06/11)</b>	<b>1,800,000.00</b>	<b>607,608.91</b>	<b>567,999.51</b>	<b>296,801.51</b>	<b>327,590.07</b>

ECCL Warrants  
February 1 to February 28, 2011

Check Number	Date Paid	Payee	Description	Amount
225379	3/3/2011	MKTHINK	Architectual Pre-Design Services	37,346.84
225380	3/3/2011	School Facility Consultants	Consulting Services	85.00
225861	3/8/2011	Roy Miller	Lighthour School Expenses	670.40
225874	3/8/2011	Yusufi, Homayra	Goldman School Intern	2,500.00
225851	3/8/2011	Bui, Chris	Spice facilitation Services	2,883.00
226169	3/10/2011	Shamrock Office Solutions	Color Printer Cartridges	543.32
226170	3/10/2011	Townsend Public Affairs	Lobbying Services	2,500.00
226683	3/15/2011	The Glen Price Group	Spice facilitation Services	618.75
Transfer	3/18/2011	Child Nutrion Funds	Catering	250.00
227524	3/22/2011	Office Depot	Office Supplies	289.91
227534	3/22/2011	School Facility Consultants	Consulting Services	1,875.00
227541	3/22/2011	Spitzack, Brandon	Spice facilitation Services	2,050.00
227520	3/22/2011	Kingsley Bogard Thompson	Legal Services	24,659.47
227523	3/22/2011	MKTHINK	Architectual Pre-Design Services	<u>76,050.00</u>
		Total		152,321.69

City of Emeryville and the Emery Unified School District  
City/Schools Committee Policy # 2100  
**Equity<sup>1</sup>**

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The City Council of the City of Emeryville and the Board of Trustees of the Emery Unified School District, who together comprise the City/Schools Committee, believe that the diversity of the Emeryville community enriches the learning and recreational experience for all. Further, City/Schools recognize that the ability of children to learn, families to thrive, and adults to succeed is affected by surrounding social, health and economic conditions. The sustainability of the community as a whole is dependent on our collective strength, and our active commitment to building the relationships and practices to interrupt historic and traditional divides and inequalities.

It is the philosophy of the City/Schools Committee that every member of the Emeryville community, regardless of gender identity, sexual orientation, age, special needs, or social, ethnic, religious, language or economic background, has a right to:

- High-quality educational, recreational, and civic experiences that challenge individuals to achieve to their fullest potential.
- A safe, nurturing, and interconnected environment necessary for learning and recreation, and community involvement.

Accordingly, the City/Schools Committee (or their designees) shall proactively and intentionally:

- Examine local equity and access in education, recreation and public service.
- Promote the equitable distribution of opportunity and access to learning, recreation, and community.
- Provide opportunities to enhance the intellectual, financial and social resources for all members of the Emeryville community, especially those most vulnerable.
- Prioritize strategies and programs that support closing the achievement and opportunity gap.
- Support and preserve innovative practices that challenge and confront social, economic, and political inequalities.

Adopted by the City/Schools Committee on \_\_\_\_\_.

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<sup>1</sup> **Diversity challenges inequality and inspires social justice.** (PCL Guiding Principle)

City of Emeryville and the Emery Unified School District  
City/Schools Committee Policy # 2000  
**Sustainability<sup>1</sup>**

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The City Council of the City of Emeryville and the Board of Trustees of the Emery Unified School District, who together comprise the City/Schools Committee, are committed to the long-term sustainability and strength of community resources – inclusive of strengthening and protecting our collective social, financial, and environmental assets.

Accordingly, the City/Schools Committee (or their designees) shall proactively:

- Emphasize opportunities for resource regeneration and sustainability throughout city and school joint policy goals and practices.
- Promote public-use practices that demonstrate highest and best use of public facilities, services, and resources.
- Establish sustainable development and resource management as part of institutional operations, planning, capital construction and program practices.
- Prioritize joint city and school district strategies that:
  - Demonstrate frugal and creative use to conserve natural resources, and reduce the impact of public use operations on the environment.
  - Consider initial cost, long-term potential cost savings, quality and performance, health impacts, and environmental considerations.
  - Strive to prevent harm as the best method of environmental and community protection. When an activity raises threats physical or social harm to individuals or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically.<sup>2</sup>
  - Support regular community and inter-organizational dialogue to promote exchange of information and data, to reduce or eliminate programmatic redundancies and other negative effects of independent and isolated planning.
- Support community sustainability and regeneration by investing in the development of human and social capital to ensure broad access to education, health care, recreation, and economic opportunity for all members of the Emeryville community.

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<sup>1</sup> ***Innovation sustains and regenerates relationships.*** (PCL guiding principle)

<sup>2</sup> Adapted from the *Earth Charter* ([http://en.wikipedia.org/wiki/Earth\\_Charter](http://en.wikipedia.org/wiki/Earth_Charter)), *US Green Building Council and Healthy Building Network*, and the *Science and Environmental Health Network* (see: [Wingspread Statement on the Precautionary Principle 1998](#)). As aligned to EUSD Board Policies **#3510 BP Green School Operations** and **#5030 E Student Wellness**.

*DRAFT, 03/30/11*

Adopted by the City/Schools Committee on \_\_\_\_\_

**MEMORANDUM OF UNDERSTANDING  
INCREMENT 2**

***EMERYVILLE CENTER OF COMMUNITY LIFE***

THIS MEMORANDUM OF UNDERSTANDING, INCREMENT 2 (“MOU #2”) is entered into this first (1st) day of July, 2011, by and among the CITY OF EMERYVILLE, a municipal corporation (“City”), the EMERYVILLE REDEVELOPMENT AGENCY, a public body, corporate and politic (“Agency”), and the EMERY UNIFIED SCHOOL DISTRICT (“District”). City, Agency and District are sometimes referred to herein individually as a “Party,” and collectively as the “Parties.”

**RECITALS**

- A. The Parties to this MOU #2 were also parties to a previous Memorandum of Understanding (“MOU #1”) regarding the Emeryville Center of Community Life (the “Project”), at 1100 47<sup>th</sup> Street, Emeryville, California (the “Premises”) dated November \_\_\_\_, 2009.
- B. Two purposes of MOU #1 were to: (1) revise the scope of the Project; and (2) analyze and make a decision about placement of a bond measure on the November, 2010 ballot (the “Bond Measure”).
- C. The Bond Measure passed and, therefore, the parties now desire to enter the second increment of Project planning, design, and performance of related tasks.
- D. The Recitals contained in MOU #1 are hereby incorporated by reference.
- E. Eight primary goals to be accomplished pursuant to this MOU #2 are to: (1) obtain all necessary agency approvals for the Project; (2) complete approved plans and specifications; (3) begin the process of spelling out the respective parties’ rights and obligations regarding funding, maintenance and use of the Project; (4) address other issues which necessarily will arise up to, and until, completion of all necessary agency approvals and construction of certain portions of the Project; (5) provide for interim housing during the pendency of construction of the main portion of the Project (the “Main Project”); (6) complete renovation and retrofitting of the Emery Secondary School gymnasium; (7) complete the analysis required by the California Environmental Quality Act; and (8) engage the community and youth regarding the Project. This phase of the Project shall be referred to as “Increment 2.”
- F. The District, Agency and City have chosen a Project Architect, a Lease-Leaseback Builder (the “Contractor”) and an Environmental Consultant. The Parties acknowledge and understand that the District has or will enter into all contracts necessitated as a result of this MOU #2, including those which are appurtenant to the tasks set forth in Exhibit C (as later defined).

- G. The phases of the Architect’s work include, by way of illustration and not limitation: (1) pre-design work; (2) schematic design; (3) design development; (4) construction document preparation; (5) obtaining approval from governing entities; (6) negotiation with the Contractor; (7) construction contract administration; and (8) project closeout and occupancy. This MOU #2 is intended to cover work associated with phases (1) through (5) in their entirety and portions of phases (6) through (8).
- H. The intention of the Parties, throughout this process, is to focus on the key City / School Committee Policies which were approved by that Committee on February 3, 2011 and April 7, 2011. By way of illustration, and not limitation, these include: (1) partnerships; (2) wellness; (3) equity; (4) community engagement; and (5) sustainability. To the extent that additional policies are approved by the Committee in the future, those too shall be followed.
- I. The Parties now desire to enter into this MOU #2 to set forth their respective roles and responsibilities in connection with the continued planning of, and work related to, the Project.

**AGREEMENT**

NOW, THEREFORE, THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:

- 1. Incorporation of Recitals and Exhibits. The Recitals set forth above, as well as those contained in MOU #1, and all defined terms set forth in such Recitals and in the introductory paragraph preceding the Recitals, and the Exhibits attached hereto, are hereby incorporated into this MOU #2 as though set forth in full.
- 2. Term. The term of this MOU #2 shall commence on the date first set forth above and, unless extended or earlier terminated as provided herein, terminate upon the earlier of: (a) June 30, 2014; or (b) receipt of all required agency approvals on the Main Project which would allow the Parties to subsequently negotiate a contract with a Contractor and to commence construction on the next phase of the Main Project (the “Term”).
  - a. Annual Meetings. The Parties shall meet not less than annually to discuss the functioning to date of this MOU #2, and to discuss potential amendments, improvements and changes to its terms. Any such amendments, improvements or changes shall be made subject to Section 21 below.
  - b. Next Memorandum of Understanding / Potential Term Extension. The parties acknowledge their obligation to enter into a memorandum of understanding for the next increment of the Project (“Increment 3”), which will take the Main Project through construction and into closeout and occupancy. The MOU for Increment 3 shall be referred to herein as “MOU #3.” However, the parties also acknowledge and agree that, in the event that the District has not completed issuance of bond proceeds sufficient to fund the District’s portion of the Main Project (due to insufficient District-wide assessed valuation) prior to the deadlines

discussed in this Section 2, then the parties shall continue the term of this MOU #2 until that point in time when sufficient assessed value has accrued to allow the District to issue those bonds. However, once all agency approvals are obtained, and once the District has sufficient assessed valuation to issue the next issuance of bonds (collectively, the “Conditions Precedent”), the parties shall negotiate in good faith a successor MOU #3 that shall take the Main Project through construction and into closeout and occupancy.

3. Purposes of Project. The District, City and Agency wish to work together as partners to create a connected community with access to a place where schools, community services, arts and recreation programs are integrated to serve all of the community. In furtherance of this objective, the Parties desire to provide programs and services which, among other things: (a) represent “best practice” and hold high academic, social and professional expectations; (b) embrace collaborative governance structures; (c) reflect a commitment to support innovation to end racist and classist practices; (d) belong to each and every City citizen and create a sense of family within the community; (e) enhance the quality of life for all community members; and (f) promote regeneration of social, financial and physical assets as part of a long-term planning process.

4. Budget and Funding Issues.

a. Budget. The Parties agree to contribute the following amounts (the “Budget”) during the Term of this MOU #2:

(1) *District:* Not more than Twenty-Five Million Dollars (\$25,000,000.00) (the “District Portion”).

(2) *City/Agency:* Not more than One Million Dollars (\$1,000,000.00) (the “City/Agency Portion”).

The Budget is further described in Exhibit A, attached hereto.

b. Other City / Agency Funding. Although not necessarily part of the Budget for MOU #2 expenses, the City / Agency hereby commit the following amounts to the overall Project budget:

(1) *Lease Extension:* The City hereby commits Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00) for extension of the existing 2002 Lease Agreement between the City and the District, as further set forth in Section 10.a(2) below. Of this amount, One Million Dollars (\$1,000,000.00) shall be paid as part of the "Deposit" pursuant to Section 4.c below (the “First Lease Extension Amount”), and the remaining One Million Two Hundred Fifty

Thousand Dollars (\$1,250,000.00) shall be paid prior to or upon execution of MOU #3.

- (2) *MOU #3 Expenses:* The City/Agency shall contribute an additional Nineteen Million Nine Hundred Fifty Thousand Dollars (\$19,950,000.00) for MOU #3 expenses for work on the Project (which will include, in addition to the scope of work in this MOU #2, entering into a contract for the Main Project with the Contractor and commencement and completion of construction of the Main Project), upon the execution of MOU #3.

A table setting forth the Parties' respective overall funding obligations, through completion of construction of the Project, is attached hereto as Exhibit B.

- c. Deposit. The City and / or Agency shall deposit the City / Agency Portion (\$1,000,000), and the First Lease Extension Amount (\$1,000,000), which together total two million dollars (\$2,000,000), in the District's Project Account within twenty (20) business days of closing of the sale of Measure J, Series A Bonds.
- d. Expenditure of Budget Funds. The District Portion and City / Agency Portion of the Budget funds shall be withdrawn from the Project Account and expended exclusively for those items set forth in the Scope of Work and Budget, as defined in Section 5 below. For this MOU #2, all such expenditures shall be made on a *pari passu* basis in accordance with the amounts deposited by District on the one hand, and the City / Agency (MOU Portion) on the other, pursuant to both MOU #1 and this MOU #2 (approximately 90.5% District / 9.5% City/Agency). The Parties acknowledge that: (1) the calculation of the *pari passu* basis in the previous sentence excluded the First Lease Extension Amount set forth in Section 4.b(1) above; and (2) notwithstanding the previous statement, the District may utilize some or all of the First Lease Extension Amount for the Project Budget.
- e. Interest. Interest earned on the funds shall be held in the Project / Reserve Account and shall be tracked on a *pari passu* basis, as set forth in subsection (d) immediately above.
- f. Monthly Reports. The District shall provide monthly reports of the Project Account financial status, including all deposits and expenditures. These monthly reports shall go first to the Citizen's Oversight Committee, and then to the City / Schools Committee. The monthly reports shall comply with the City's requirements for financial tracking. The funding and expenditures shall be tracked, and reported, on a *pari passu* basis, as set forth in subsection (d) above.
- g. Insufficient Budget Allocations. If, during the Term of this MOU #2, the Parties determine that a Budget allocation is insufficient to complete all tasks and items

set forth in the Scope of Work (as defined in Section 5 below), then the matter shall be handled consistent with the process set forth in Section 9 below, followed with action by the City / Schools Committee and subsequent actions by the District Board and the City Council, as required in Section 9 of this MOU #2.

- h. FEMA Grant. The City is in the process of formalizing a FEMA grant, which the Parties intend to utilize to partially fund seismic upgrades of the existing gymnasium on the Project site. Due to the terms of the grant, the gymnasium upgrade will commence prior to beginning general construction on the Main Project, and the Parties acknowledge same. The FEMA grant amount will be in addition to the City / Agency Portion set forth in Section 4.a(2) above.
- i. Other Funds. The parties will work independently and jointly (as appropriate) to pursue and obtain any and all other available sources of funding for the Project. By way of illustration and not limitation, these include:
  - (1) State funding for Project site improvement and development (District);
  - (2) Proposition 84 Parks and Recreation grant funding (City); and
  - (3) Funding related to joint use of portions of the Project (both parties).

If new and / or additional funding over and above the Budget is obtained, those funds shall go toward funding the Scope of Work defined below (and in accordance with Subsection (d) above), rather than be utilized to expand the Scope of Work. Specifically, any such additional funds shall be utilized to reduce and/or offset the District “Measure J” funds and the City/Agency’s “RDA” funds.

5. Scope of Work, Schedule and Budget Allocation

- a. Scope of Work and Budget. The items for which the Budget shall be utilized, and the allocation thereof, are listed on Exhibits A and C, attached hereto (the “Budget” and “Scope of Work”). Any proposed changes to the Scope of Work and / or Budget shall be subject to the process set forth in Section 9 below. The Scope of Work and Budget may include and list “no-cost” items as well (*e.g., pro bono* consultant activities).
- b. Schedule. A timeline for major Project scope milestones is attached hereto as Exhibit D (the “Schedule”).

6. Selection and Award of Third Party Contracts. All architect, consultant and contractor agreements, including the work scope and fee schedule for same, shall be subject to review and approval by the City Manager/Agency Executive Director, City Attorney / Agency General Counsel, District Superintendent and District’s General Counsel. All such contracts shall be executed between District and the third-party contractor.

- a. The Parties acknowledge that, for Increment 3, the District cannot execute a construction contract with the Contractor for the Main Project (other than a Preliminary Services Agreement) unless and until it possesses the necessary District-wide assessed valuation to issue, and has in fact issued, the full value of the Bond necessary to fund the District's portion of the Main Project.
7. Joint Planning and Program Development. Throughout the term of this MOU #2, on not less than a monthly basis, there will occur joint planning and program development activities and discussions between the District, City and other third parties (as appropriate), and these activities shall be partially funded by the Budget, as set forth in Section 4 and Exhibit A.
8. Project Permitting and Approvals. The District acknowledges that: (a) the City has specific/general plan and local zoning authority; and (b) the Project shall comply with those requirements. The City and the Agency acknowledge that all other aspects of Project approval and permitting (as well as potential partial funding) lie with the California Department of Education ("CDE") and other State agencies, including, but not limited to, the Division of the State Architect ("DSA"), the Office of Public School Construction ("OPSC"), and the Department of Toxic Substance Control ("DTSC"). Although the City Building Department may have input into the aspects of the Project which are outside of its control, it shall not have the ability to place any ultimate requirements upon the Project with respect to such aspects. To the extent that City municipal ordinances exist which do not overlap with, are not in conflict with, and are not counter to CDE, DSA, OPSC and/or DTSC regulations and oversight responsibilities (*i.e.*, issues related to aesthetics), such ordinances shall be complied with to the extent possible.
9. Project Management. The Parties understand and acknowledge that, in order for the work associated with this MOU #2 to move forward smoothly, efficiently, and effectively, there must exist a clear process and defined lines of authority. For purposes of overseeing the Project, the parties designate Roy Miller as the project manager ("Project Manager").

The Project Manager's authority and obligations shall fall into the following three categories:

- a. Daily Decisions. These are the types of day-to-day decisions which can be made without input or ratification by the respective Board or Council. By way of illustration and not limitation, these include: (1) items or changes which cost less than Fifteen Thousand Dollars (\$15,000.00); (2) contracts which would not require ratification by the District Governing Board; (3) changes which do not impact the Schedule; (4) changes which do not impact the Scope of Work; (5) intra-Budget (*i.e.*, line item) transfers of amounts of less than Fifteen Thousand Dollars (\$15,000.00); and (6) other contract administrative functions.

- b. Sign-Off Decisions. These decisions must be approved in writing by the District Superintendent and City Manager prior to implementation. By way of illustration and not limitation, these include: (1) items or changes exceeding a cost of Fifteen Thousand Dollars (\$15,000.00), but less than Fifty Thousand Dollars (\$50,000.00); (2) changes which impact the Schedule in a manner that a cost increase of between Fifteen Thousand (\$15,000.00) and Fifty Thousand Dollars (\$50,000.00) is anticipated; (3) intra-Budget (*i.e.*, line item) transfers of amounts of between Fifteen Thousand Dollars (\$15,000.00) and Fifty Thousand Dollars (\$50,000.00); and (4) changes which impact the Scope of Work in a manner that a cost increase of between Fifteen Thousand Dollars (\$15,000.00) and Fifty Thousand Dollars (\$50,000.00) is anticipated.
- c. City/Schools Committee Decisions. These decisions must be approved by the City/Schools Committee prior to implementation. By way of illustration and not limitation, these include; (1) items or changes exceeding Fifty Thousand Dollars (\$50,000.00); (2) changes which impact the fundamental purposes of the Project (set forth in Section 3 above); (3) the use of contingency and/or reserve funds (as established); (4) changes which impact the Schedule in a manner that a cost increase of greater than Fifty Thousand Dollars (\$50,000.00) is anticipated; (5) intra-Budget (*i.e.*, line item) transfers of greater than Fifty Thousand Dollars (\$50,000.00); (6) changes which impact the Scope of Work in a manner that a cost increase of greater than Fifty Thousand Dollars (\$50,000.00) is anticipated; and (7) any changes or revisions to the Project contingency and/or Project reserve.

The Parties acknowledge that the examples listed of each type of authority are likely not comprehensive, and as the work pursuant to this MOU #2 progresses, the Parties shall meet and confer regarding additions or modifications to the list.

The Parties also acknowledge that the Project Manager will coordinate all communications regarding the Project, and these communications and coordination activities will be funded by the Budget, as set forth in Section 4 and Exhibit A.

10. Ownership of Project and Components. The Parties acknowledge that the conceptual design of the Project is being revised as of the date of this MOU #2, and therefore it is impossible at this point to identify the distinct components and structures which will be contained within and which will be part of the Project. However, the Parties do acknowledge the following:
  - a. Project Site.
    - (1) *District Ownership:* The Premises upon which the Project will sit are currently, and shall continue in perpetuity to be, owned by the District.
    - (2) *City's Portion:* The City and District entered into a Lease Agreement on October 15, 2002 (the "Lease Agreement"), whereby the City paid One Million Five Hundred Thousand Dollars (\$1,500,000.00) to utilize certain

portions of the Premises (the “First City Portion”). That Lease Agreement also gave the City the option to construct a recreation center on another portion of the Premises (the “Second City Portion”). The Lease Agreement is attached hereto as Exhibit G, and the First City Portion and Second City Portion are legally described on “Exhibit A” thereto. The Parties acknowledge and agree that the First City Portion and Second City Portion are not appropriately placed, shaped or currently utilized in a manner to allow for placement of the City’s portion of the Project thereon. However, the Parties cannot currently identify what portion of the Premises the City will ultimately utilize for the Project. One purpose of the work of this MOU #2 is to develop the data and design information that will enable the Parties to identify those portions. Therefore, the Parties wish to extend the term of the Lease Agreement. Accordingly, attached hereto as Exhibit H is an Addendum to the Lease Agreement (“Addendum”). By way of illustration, and not limitation, the Addendum:

- i. increases the lease term to ninety-nine (99) years;
  - ii. increases the rental amount by Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00). Payment of these amounts shall be as set forth in Section 4.b(1) above, and as set forth in Exhibit H hereto.
- b. New City Park. The Parties also acknowledge and agree that, by virtue of their joint involvement in the Project, a new city park will be constructed on the Premises leased by the City, said premises being: (1) the same area as the playfield for the Project; and (2) part of the Main Project Scope of Work.
- c. Structures and Improvements. Although the parties cannot at this point in time identify all components of the Project, as the conceptual design of the Project progresses, the Parties anticipate being able to identify three primary types of components:
- (1) Facilities and spaces whose primary and dominant user will be the District;
  - (2) Facilities and spaces whose primary and dominant user will be the City; and
  - (3) Facilities and spaces which will be shared.

The City shall have an ownership interest only in the second category listed above.

As the facilities and spaces are developed and identified throughout the term of this MOU #2, the parties shall, at an appropriate point in time, designate each as one of the three types set forth above.

The parties will, in good faith, as the plans and specifications continue and materialize, as construction commences and continues on the Increment 2 Components associated with this MOU #2, and as the facilities and spaces are categorized pursuant to this Section 10.c., negotiate and enter into joint-use maintenance and operations agreements for the Project: (a) to address the joint-use and maintenance obligations for the Increment 2 Components; and (b) to address joint-use and maintenance obligations for the remainder of the Main Project, prior to execution of the construction contract with the Contractor for Increment 3 (construction, occupancy, and closeout of the Main Project). These agreements will address, by way of illustration and not limitation:

- (1) The uses and division of property in the Project.
- (2) The parties' respective obligations regarding utilities and maintenance.
- (3) Insurance and indemnity obligations.
- (4) Schedules related to shared use.
- (5) Day-to-day operational issues.
- (6) Furniture, fixtures and equipment.
- (7) A safety plan, as required by Assembly Bill 1080 (to be funded by this MOU #2).

11. Community Engagement. The Parties have a collective desire to promote opportunity and access to programs for all members of the Emeryville community. To that end, the Parties intend to engage in proactive outreach to youth, families, community members, and staff to obtain their input on the Project. The parties acknowledge that the City / Schools Committee has adopted a policy addressing community engagement which is attached hereto as Exhibit E, and the activities conducted pursuant to this MOU #2 shall be consistent with the adopted policy. The City / Schools Committee, after incorporating input from the Citizens' Oversight Committee, shall give direction to the City Manager, District Superintendent, Director of Community Services and the Project Manager, who will orchestrate community engagement efforts consistent therewith. All community engagement activities shall be funded by the Budget, as set forth in Section 4 and Exhibit A.

12. Citizen's Oversight Committee. The Citizen's Oversight Committee ("COC") has adopted a set of bylaws which are attached hereto as Exhibit F. The COC's activities pursuant to this MOU #2 shall conform with those bylaws, as well as all applicable

statutory obligations. The COC's activities shall be orchestrated by the Project Manager, and funded by the Budget, as set forth in Section 4 and Exhibit A.

13. Governance. During the term of this MOU #2, the parties will meet in good faith to discuss whether a governance structure to oversee the Project, once completed, is needed and if so, what form that governance structure might take. Unless and until such a decision is made, it is the intent of the Parties that the City / Schools Committee shall maintain oversight authority for the activities pursuant to this MOU (except as otherwise provided herein), and it is also the intent of the Parties to continue in such a manner through MOU #3. With respect to the Lease Agreement and Addendum (as discussed in Section 10.a(2) above, and as further set forth in Exhibit G and Exhibit H hereto), the existing operational relationship between the District and City shall continue to exist and to govern the day-to-day issues with respect to those documents.
14. Resolution of Disputes. Any disputes arising under this MOU #2, including those arising pursuant to the Addendum (which is attached hereto as Exhibit H), shall be submitted as follows:
  - a. The dispute first shall be submitted to the City Manager and District Superintendent for good-faith efforts at resolution.
  - b. If the City Manager and District Superintendent cannot reach resolution, then the matter shall be submitted to the City / Schools Committee for final decision, which shall be transmitted to the Parties once made.
15. Insurance. The City, District and Agency shall each maintain commercial general liability insurance in the amount of Two Million Dollars (\$2,000,000.00) combined single limit to protect the City, District and Agency and their respective officers, agents, and employees against claims for bodily injury, death or property damage arising from the performance of their respective obligations hereunder and participation in the activities described in this MOU #2. The form of such insurance shall be satisfactory to the City, District and Agency and may include self-insurance at levels acceptable to the Parties. Each Party's policy or policies shall name the other Parties as additional insureds.
16. Mutual Indemnification. Each Party agrees to indemnify, defend, and hold harmless the other Parties, and their respective officers, agents and employees from and against any and all liabilities, claims, or losses, including reasonable attorneys' fees, to the extent caused by, or arising out of, the indemnifying Party's negligent acts or omissions or willful misconduct pursuant to this MOU #2. The terms of this Section 16 shall expressly survive the termination or expiration of this MOU #2.

17. Effectiveness of MOU #2; Termination. This MOU #2 shall become effective immediately upon execution by all Parties and shall remain effective throughout the Term, unless earlier terminated by mutual written agreement of the Parties, which may only occur in the following four (4) circumstances:
- a. if funds are wholly unavailable to construct the Main Project; or
  - b. if the parties cannot agree on final design of the Main Project; or
  - c. if the City or the Agency or the District cease to exist; or
  - d. if changes in law negatively impact the Agency's ability or capacity to remain involved in the Project, including by way of illustration and not limitation, impact on legal ability and/or capacity or funding ability and/or capacity.

If the decision is made to terminate this MOU #2, then the District shall give written notice of such termination, within five (5) business days of transmittal or receipt of written notice of termination, to all contractors who are under contract for tasks pursuant to this MOU #2. Once the District has closed out those contracts, consistent with the terms contained therein, the District will return the City's share of the unexpended City / Agency Portion. Nothing herein shall prevent the District from continuing with any or all contract(s). However, if the District chooses to proceed with any contract(s), it shall still be obligated to return funds to the City as if it had proceeded to terminate and close out the contracts pursuant to this Section 17.

With respect to rental payments made pursuant to the Addendum, the provisions contained therein shall govern upon termination of this MOU pursuant to this Section 17.

18. Notices. All notices required under this MOU #2 shall be made in writing and sent to the Parties at their respective addresses specified below, or to such other address as a Party may designate, by written notice delivered to the other Parties in accordance with this Section 18. All such notices shall be sent by: (a) personal delivery, in which case notice is effective upon delivery; (b) overnight courier, in which case notice shall be deemed delivered upon receipt, as evidenced by a record of delivery; or (c) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, as evidenced by a transmission report reflecting the accurate transmission thereof, provided that a duplicate copy of the faxed notice is promptly delivered by United States mail (first-class with postage prepaid). Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a non-business day.

City: City Manager  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608  
Fax: (510) 596-4389

with a copy to: City Attorney  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608  
Fax: (510) 596-3724

Agency: Executive Director  
Emeryville Redevelopment Agency  
1333 Park Avenue  
Emeryville, CA 94608  
Fax: (510) 596-4389

with a copy to: Agency Counsel  
Emeryville Redevelopment Agency  
1333 Park Avenue  
Emeryville, CA 94608  
Fax: (510) 596-3724

District: Superintendent  
Emery Unified School District  
4727 San Pablo Avenue  
Emeryville, CA 94608  
Fax: (510) 601-4913

with a copy to: Paul G. Thompson  
Kingsley Bogard Thompson LLP  
50 Iron Point Circle, Suite 110  
Folsom, CA 95630  
Fax: (916) 932-2510

19. Applicable Laws. The Parties shall comply with all applicable statutes, ordinances, laws, rules, regulations and requirements under Federal, State, County, City and other local authority applicable to the terms and conditions of this MOU #2. Without limiting the generality of the foregoing, the Parties acknowledge that the proposed Project is a “public work,” as defined by Section 1720 of the California Labor Code, and all workers employed in the construction of the Project shall be paid prevailing wages in accordance with Section 1770, *et seq.* of the Labor Code.
  
20. Limitations of this MOU #2. By execution of this MOU #2, the Parties are not committing to or agreeing to undertake any acts or activities requiring the subsequent

independent exercise of discretion by the Parties or any department thereof, other than as specifically set forth and agreed under this MOU #2. Except as otherwise expressly set forth herein, nothing in this MOU #2 shall be deemed to require the City, District or Agency to enter into any further memorandum of understanding or any other contract or agreement unless such contract or agreement is acceptable to each Party in its sole discretion.

21. Amendments to this MOU #2. This MOU #2 shall only be modified in writing by an amendment signed by all Parties.
22. Assignment. This MOU #2 shall not be assigned by any Party.
23. Governing Law; Venue. The interpretation, validity and enforcement of this MOU #2 shall be governed by and construed under the laws of the State of California, excluding its conflict of laws rules. Any suit, claim or legal proceeding of any kind related to this MOU #2 shall be filed and heard in a court of competent jurisdiction in Alameda County, California. This MOU #2 shall be construed in accordance with the laws of the State of California, and venue for any action under this MOU #2 shall be in Alameda County, California.
24. Authority to Enter into this MOU #2. The individuals executing this MOU #2 on behalf of the City, the District and the Agency each represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU #2.
25. Waiver. Waiver of a breach or default under this MOU #2 shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provisions of this MOU #2.
26. Severability. If any provision of this MOU #2 or the application of any such provision shall be held by a court of competent jurisdiction to be invalid, void or unenforceable to any extent, the remaining provisions of this MOU #2 and the application thereof shall remain in full force and effect and shall not be affected, impaired or invalidated.
27. Interpretation. As used in this MOU #2, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word “including” shall be construed as if followed by the words “without limitation.” This MOU #2 shall be interpreted as though prepared jointly by all Parties.
28. Entire Agreement; Counterparts. This MOU #2 contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This MOU #2 may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have executed this MOU #2 as of the date and year first above written.

“CITY”  
CITY OF EMERYVILLE, a municipal corporation

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

Approved as to Form:

By: \_\_\_\_\_  
Michael Biddle, City Attorney

“AGENCY”  
EMERYVILLE REDEVELOPMENT AGENCY,  
a public body

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

Approved as to Form:

By: \_\_\_\_\_  
Michael Biddle, Agency Counsel

“DISTRICT”  
EMERY UNIFIED SCHOOL DISTRICT

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

Approved as to Form:

By: \_\_\_\_\_  
Paul G. Thompson, District Counsel

**EXHIBIT A  
TO  
MEMORANDUM OF UNDERSTANDING  
*INCREMENT 2***

**BUDGET**



**EXHIBIT B**  
**TO**  
**MEMORANDUM OF UNDERSTANDING**  
*INCREMENT 2*

**FUNDING OBLIGATIONS**  
**FOR OVERALL PROJECT**

**Exhibit B**

Emeryville Center of Community Life (ECCL)

**MOU #2, Summary of Funding Contributions**

	<u>Pre MOU #1</u>	<u>MOU #1</u>	<u>MOU #2</u>	<u>Notes re: MOU #2</u>	<u>Total through MOU #2</u>	<u>MOU #3</u>	<u>Notes re: MOU #3</u>	<u>Agency Funding Contribution</u>
<b>City of Emeryville/ RDA</b>	\$450,000.00	\$1,350,000.00	\$1,000,000.00	For MOU #2 expenses	\$3,800,000.00	\$19,950,000.00	For MOU #3 expenses	\$25,000,000.00
			\$1,000,000.00	For partial payment of Emery Secondary School lease extension		\$1,250,000.00	For remainder payment of Emery Secondary School lease extension	
<b>Emery Unified School District</b>	\$0.00	\$450,000.00	\$25,000,000.00	Measure J, Bond Series A	\$25,450,000.00	\$69,550,000.00	Measure J, Bond Series B and C	\$95,000,000.00
<b>Subtotals</b>	\$450,000.00	\$1,800,000.00	\$27,000,000.00		\$29,250,000.00	\$90,750,000.00		
<b>Project Total</b>								\$120,000,000.00

**EXHIBIT C  
TO  
MEMORANDUM OF UNDERSTANDING  
*INCREMENT 2***

**SCOPE OF WORK**

**Exhibit C**  
**MOU #2, Scope of Work**

Emeryville Center of Community Life (ECCL)

**ECCL Activity Strands**

**A. Facilities Development**

1. Facilities Development: Emery Secondary School Site Activities
  - A) ECCL New Facilities
  - B) Existing Gym Renovation
  - C) Interim Housing for Grades 9-12
  - D) Wellness Programs Relocations
  - E) Marina School Programs Relocations
  - F) Environmental Analysis and Mitigation Measures
  - G) Facilities Improvements Preceding ECCL
  - H) F&E
  
2. Facilities Development: Anna Yates Elementary School Site Activities
  - A) Parent Resource Center
  - B) Improvements to Add Grades 7 and 8
  - C) F&E
  - D) New Education/Community Services Use after Grades k-8 Move to ECCL
  
3. Facilities Development: Ralph Hawley Elementary School Site Activities
  - A) Piedmont Lease
  - B) Pre-natal to Pre-k Uses after Piedmont Lease
  - C) New Education/Community Services Use after Piedmont Lease
  
4. Facilities Development: City of Emeryville Recreation Center Site Activities
  - A) Replacement of Existing Modular Structures
  - B) Emery Unified School District Offices Relocation
  - C) Relocation of Facilities on this Site to ECCL
  - D) New Use after Opening of ECCL

**B. Relationship Development**

1. Relationship Development: Engagement Activities
  - A) Staff
  - B) Youth
  - C) Community
  
2. Relationship Development: Program Development Activities
  - A) Collaborative Strategic Planning
  - B) Research and Analysis
  - C) Assessment and Evaluation

**Exhibit C**  
**MOU #2, Scope of Work**

Emeryville Center of Community Life (ECCL)

**C. Project Supports**

1. Project Support Activities
  - A) Communications and Chronicling
  - B) Financing and Funding
  - C) MOU and Governance
  - D) Community Cohesion
  - E) Policy Research and Development
  - F) Project Management
  - G) Development of Assessment and Evaluation Protocols for ECCL work

Clarifications to the Activity Strands noted above

Section A: Facilities Development

A.1.A. Main ECCL Project Phases:

- 1) Conceptual Design
- 2) Schematic Design
- 3) Design Development
- 4) Construction Documents
- 5) Agency Approvals

A.1.B. ESS Gym Renovation:

- 1) Conceptual Design
- 2) Schematic Design
- 3) Design Development
- 4) Construction Documents
- 5) Agency Approvals
- 6) Construction Contract Negotiation
- 7) Construction Administration
- 8) Move-in and start of Project Closeout

A.1.C. ESS Interim Housing for Grades 9-12:

- 1) Conceptual Design
- 2) Schematic Design
- 3) Construction Documents
- 4) Agency Approvals
- 5) Construction Contract Negotiation
- 6) Construction Administration
- 7) Move-in and start of Project Closeout

A.1.F. Coordination of Environmental Analysis as required for facilities projects listed above and administration of work associated with any mitigation measures required by the Environmental Analyses

**Exhibit C**  
**MOU #2, Scope of Work**

Emeryville Center of Community Life (ECCL)

A.1.G. Facilities Improvement Projects preceding ECCL (development and management)

Design, Document, Construct, and Move-in

A.1.H. and A.2.C. Selection, acquisition, and installation of Furnishings and Equipment (F&E) as required for facilities projects listed above

A.2.A. Interim Housing provisions for the Family Resource Center and Wellness Center

Design, Document, Construct, and Move-in

A.2.B. Alterations to Anna Yates to accommodate Grades 7 and 8:

Design, Document, Construct, and Move-in

A.4.B. EUSD Office Relocation (possibly to the Rec. Center):

Design, Document, Construct, and Move-in

**Section B: Relationship Development**

B.1. Development, Coordination, and Administration of ECCL Project Engagement activities including:

1) Staff:

Collaborative Strategic Planning  
Staff Fellows Program  
Program Development (Personalized Pathways, Project-based learning, collaborative programming, leadership development, etc.)  
Staff Cohesion Program  
Events

2) Youth:

ECCL Youth Council  
Youth Fellows Program  
Internships and Mentorships  
Events

3) Community:

City/Schools Committee (EUSD School Board + Emeryville City Council)  
Citizens Oversight Committee (COC)  
Community Fellows Program  
Community Cohesion Program  
Events

**Section C: Project Supports**

C.1.A. Development and coordination of Communications and Chronicling activities associated with the ECCL Project

**Exhibit C**  
**MOU #2, Scope of Work**

Emeryville Center of Community Life (ECCL)

C.1.B. Funding, financing, and budget development and management for the ECCL Project

C.1.C. Development and coordination of MOU's, Contracts, and Governance activities associated with the ECCL Project

C.1.E. Research and Development for the ECCL Project (policy development partnerships with Goldman School, Center for Cities and Schools, etc.)

C.1.F. Agency (DSA, CDE, OPSC, DTSC, City of Emeryville Planning) review coordination for the ECCL Project plus

Selection and management of construction testing and inspection persons and activities for the ECCL Project plus

Consultant coordination activities for the ECCL Project (legal, funding advocacy, bond sales, geotechnical, site surveys, state agency advocacy, demographics, etc.) plus

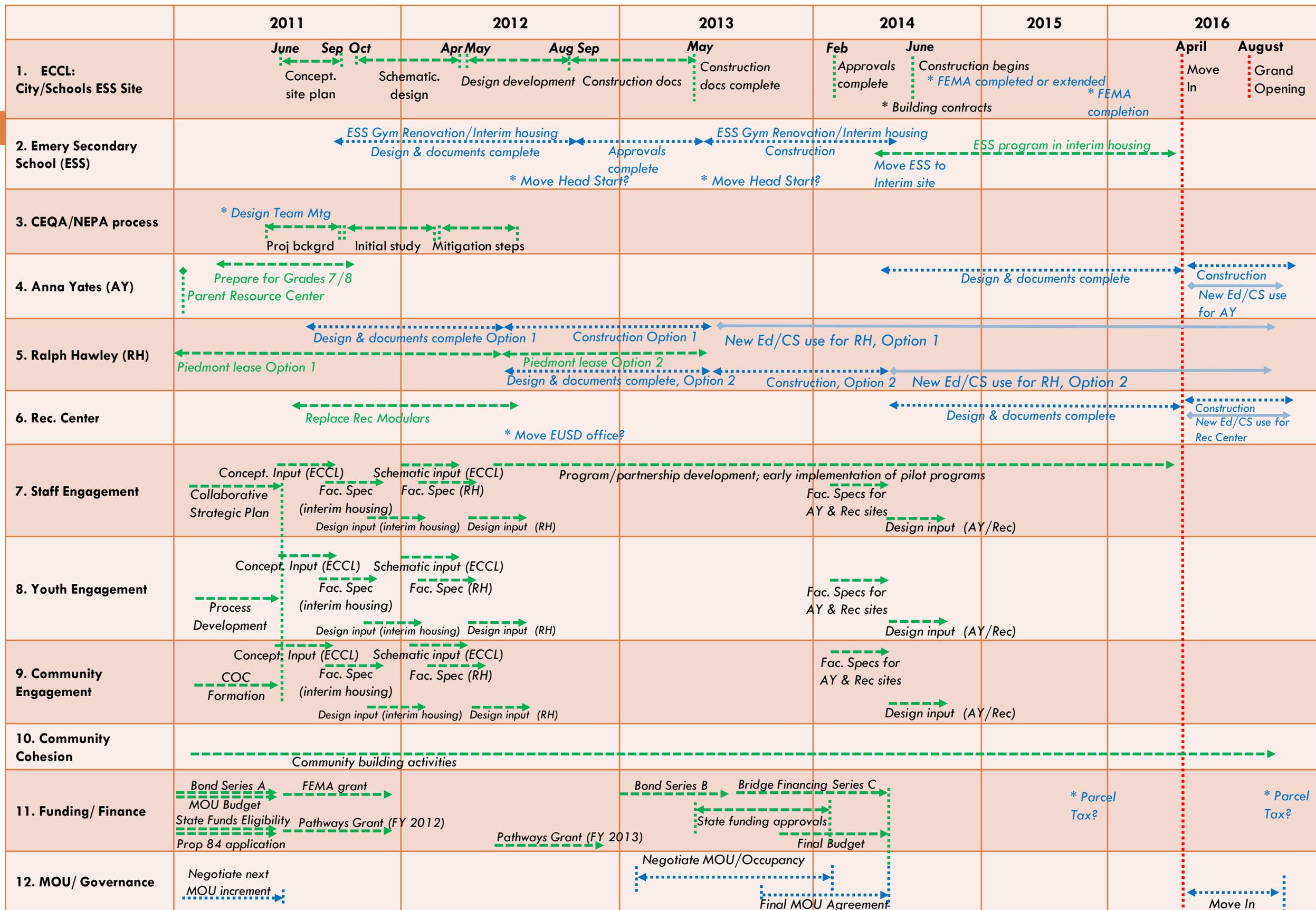
Project Management and Administration of all ECCL Project activities

C.1.G. Assessment and evaluation of relevant ECCL project activities

**EXHIBIT D  
TO  
MEMORANDUM OF UNDERSTANDING  
*INCREMENT 2***

**SCHEDULE**

# Exhibit D: Schedule



**EXHIBIT E**  
**TO**  
**MEMORANDUM OF UNDERSTANDING**  
*INCREMENT 2*

**COMMUNITY ENGAGEMENT POLICY**

February 8, 2011

City of Emeryville and the Emery Unified School District  
City/Schools Committee Policy # 1800  
**Community Engagement<sup>1</sup>**

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The City Council of the City of Emeryville and the Board of Trustees of the Emery Unified School District, who together comprise the City/Schools Committee, believe that input from staff, parents/guardians, students and members of the Community of Emeryville provides valuable perspectives and expertise to inform the work of the Committee.

The Committee seeks to build a collective sense of ownership of the schools and the community by encouraging open communication and facilitating community-building across diverse interests.

Accordingly, the City/Schools Committee (or their designees), following upon, and with input from the Citizens' Oversight Committee (COC), shall:

- Adopt a resolution defining and establishing a process for community information, input, and engagement in the design of school sites or related facilities.
- Establish administrative councils, task forces, or advisory committees (and/or work in conjunction with existing bodies), that have broad community representation and embrace the "Core Values for the Practice of Public Participation."<sup>2</sup>
- Develop a specific plan for soliciting community input and participation including a working timeline of community meetings and presentations, in alignment with existing City and School District advisory committees and taskforces. This plan shall include, but not be limited to:
  - Workshops with District and the City's Community Services staffs;
  - Meetings hosted by the School District, City, and/or community residents;
  - Ongoing community engagement activities including web-based communications, mailings, and notices; and other elements as defined by the Resolution.
- Encourage proactive engagement of youth, families, and community members
- Develop community practices that distribute responsibility and accountability in open and transparent interactions

The community engagement activities are specifically meant to outlast the duration of the facilities project known currently as the Center of Community Life. They are intended to form relational structures and behaviors that build long-lasting and trusting relationships amongst community members.

Adopted by the City/Schools Committee on \_\_\_\_\_

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<sup>1</sup> Opportunity for access to programs and activities is available to all. (PCL Guiding Principle)

<sup>2</sup> As defined by the International Association of Public Participation: (1) Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process; (2) Public participation includes the promise that the public's contribution will influence the decision; (3) Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers; (4) Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision; (5) Public participation seeks input from participants in designing how they participate; (6) Public participation provides participants with the information they need to participate in a meaningful way; (7) Public participation communicates to participants how their input affected the decision.

**EXHIBIT F**  
**TO**  
**MEMORANDUM OF UNDERSTANDING**  
*INCREMENT 2*

**CITIZENS' OVERSIGHT COMMITTEE BYLAWS**

# CITIZENS' BOND OVERSIGHT COMMITTEE BYLAWS

## Section 1. Committee Established.

The Emery Unified School District (the "District") was successful at the election conducted on November 2, 2010, in obtaining authorization from the District's voters to issue up to \$95,000,000 aggregate principal amount of the District's general obligation bonds, pursuant to a greater than 55% vote. The election was conducted under Proposition 39, being chaptered as the Strict Accountability in Local School Construction Bonds Act of 2000, at Section 15264 et seq. of the Education Code of the State ("Prop 39"). Pursuant to Section 15278 of the Education Code, the District established the Citizens' Bond Oversight Committee (the "Committee") at a special meeting held on [insert date here] in order to satisfy the accountability requirements of Prop 39. The Board of Trustees of the Emery Unified School District (the "Board") hereby adopts the Citizens' Bond Oversight Committee Bylaws setting forth the duties and rights of the Committee. The Committee does not have independent legal capacity from the District.

## Section 2. Purposes.

The purposes of the Committee are set forth in Prop 39, and these Bylaws are specifically made subject to the applicable provisions of Prop 39 as to the duties and rights of the Committee. The Committee shall be deemed to be subject to the Ralph M. Brown Public Meetings Act of the State of California and shall conduct its meetings in accordance with the provisions thereof. The District shall provide necessary administrative support to the Committee as shall be consistent with the Committee's purposes, set forth in Prop 39.

The proceeds of general obligation bonds issued pursuant to the Election are hereinafter referred to as "bond proceeds."

## Section 3. Duties.

To carry out its stated purposes, the Committee shall perform the following duties:

**3.1 Inform the Public.** The Committee shall inform the public concerning the District's expenditures of bond proceeds.

**3.2 Review Expenditures.** The Committee shall review quarterly expenditure reports produced by the District to ensure that (a) bond proceeds are expended only for the purposes set forth in the ballot measure; (b) no bond proceeds are used for any teacher or administrative salaries or other operating expenses, (c) bond proceeds are maximized.

**3.3 Annual Report.** The Committee shall present to the Board, in public session, an annual written report which shall include the following: (a) A statement indicating whether the District is in compliance

with the requirements of Article XIII A, Section 1(b)(3) of the California Constitution, and (b) A summary of the Committee's proceedings and activities for the preceding year.

**3.4 Steering Committee.** The Committee shall act as a Steering Committee for the scope of work associated with the Measure J projects.

**3.5 Community Engagement.** The Committee shall ensure community engagement as stipulated by the Measure J bond language.

**3.6 Relationship with City/Schools Committee.** The Committee shall provide a monthly update on COC activities to the City/Schools Committee and shall make recommendations to the City/Schools Committee as needed to move the Measure J bond project work forward.

**3.7 Duties of the Board/Superintendent.** The Committee shall not have responsibility for the following types of activities. Either the Board or the Superintendent, as the Board shall determine, shall have the following powers reserved exclusively to it:

- (i) Approval of construction contracts,
- (ii) Approval of construction change orders,
- (iii) Appropriation of construction funds,
- (iv) Handling of all legal matters,
- (v) Approval of construction plans and schedules,
- (vi) Approval of Deferred Maintenance Plan, and
- (vii) Approval of the sale of bonds.

The Committee shall review, in summary form, items (ii) through (iii) above as part of its financial oversight duties. The Committee may review, in summary form, others of these items to the extent that the Board/Superintendent approves and to the extent that they are necessary to the Committee's duties.

## **Section 4. Authorized Activities.**

**4.1** In order to perform the duties set forth in Section 3, the Committee may engage in the following authorized activities:

(a) Receive and review copies of the District's annual independent performance audit and annual independent financial audit, required by Article XIII A of the California Constitution.

(b) Inspect school site facilities and grounds for which bond proceeds have been or will be expended, in accordance with any access procedure established by the Director of Maintenance and Operations.

(c) Review copies of deferred maintenance proposals or plans developed by the District.

(d) Review the District's efforts to maximize bond proceeds in ways designed to: (1) reduce costs of professional fees, (2) incorporate efficiencies in school site design; (3) encourage joint use of core facilities; (4) involve cost-effective and efficient reusable facility plans, or (5) reduce costs to the bond funds for site acquisition or construction.

**4.2** Make requests for copies or inspection of District records in writing to the District's Chief Business Officer, Business Services.

## **Section 5. Membership.**

**5.1** The committee shall consist of a minimum of seven (7) members recommended to the Board of Trustees by the City/Schools Committee and then appointed by the Board of Trustees from a list of candidates submitting written applications, and based on criteria established by Prop 39 as follows:

- One (1) parent.
- One (1) member active in a business organization representing the business community located in the District.
- One (1) member active in a senior citizen's organization.
- One (1) member active in a bona-fide taxpayers association.
- One (1) parent active in a support organization for the District, such as the Parent Teacher Organization.
- Two (2) members of the community at-large appointed by the Board.

In addition to the membership required by Prop 39 listed above, the following additional members may be appointed to the COC:

- Two additional (2) Community-at-Large members - Must be resident, or work in Emeryville or has child in EUSD
- One (1) Parent member of AY PTO
- One (1) Parent member of ESS PTO
- One (1) member with experience w/Facilities Management/Dev.
- One (1) member of a recognized arts organization
- One (1) student alumnus/alumna of the school district
- One (1) member who has education/community services/rec. experience
- Two (2) students

Unless otherwise stipulated, members of the COC are not required to be residents within Emeryville.

**5.2 Qualification Standards.** To be eligible for membership, the following qualifications must be met:

(a) To be a qualified person, he or she must be, if a student, in at least grade 8, or

(b) The committee may not include any employee or official of the District or the City, or any vendor, contractor or consultant of the District or the City. The committee may not include any elected members

of the City Council or the School Board of Trustees. Student members of the COC may cast votes that shall be counted for the purposes of determining the outcome of any formal action taken by the COC.

(c) Members must conduct their responsibilities in a manner consistent with these by-laws, the “Guiding Principles” adopted by the City/Schools Committee for the bond projects, and any policies adopted by the City/Schools Committee for the bond projects.

**5.3 Ethics; Conflicts of Interest.** By accepting appointment to the Committee, each member agrees to comply with Articles 4 (commencing with Section 1090) and 4.7 (commencing with Section 1125) of Division 4 of Title 1 of the Government Code and the Political Reform Act (Gov. Code §§81000 et seq.), and to complete the Form 700 as required by all “designated employees” of the District. Additionally, each member shall comply with the Committee Ethics Policy attached as Attachment A to these Bylaws.

**5.4 Term.** Except as otherwise provided herein, 8 members will be appointed to one-year terms and 9 members will be appointed to two-year terms. All appointees, regardless of the original term of appointment, are limited to a second term not to exceed two years.

**5.5 Removal: Vacancy.** The Board may remove any Committee member for cause, including unexcused failure to attend three consecutive Committee meetings or for failure to comply with the Committee Ethics Policy, or for repeated disruptive behavior that interferes with the Committee’s ability to conduct its work in an orderly fashion. Upon a member’s removal, his or her seat shall be declared vacant. The Board shall fill by appointment any vacancies on the Committee or any additional membership on the Committee.

**5.6 Compensation.** The Committee members shall not be compensated for their services.

**5.7 Authority of Members.** Committee members shall not have the authority to direct staff of the District. Individual members of the Committee retain the right to address the Board as an individual.

## **Section 6. Meetings of the Committee.**

**6.1 Regular Meetings.** The Committee shall establish a schedule for the date and time of regular meetings to be held monthly to include an annual organizational meeting to be held in July.

**6.2 Location.** All meetings shall be held at a location within the Emery Unified School District.

**6.3 Procedures and Quorum.** All meetings shall be open to the public in accordance with the Ralph M. Brown Act, Government Code Section 54950 et seq. Meetings shall be conducted according to such additional procedural rules as the Committee may adopt. Seven (7) Committee members shall constitute a quorum for the transaction of any business except adjournment.

**6.4 Meeting processes.** All meetings shall be conducted in accordance with *Robert's Rules of Order Newly Revised* in all cases to which they are applicable and in which they are not inconsistent with any special rules of order the meeting may adopt.

## **Section 7. District Support.**

**7.1** The District shall provide to the committee necessary technical and administrative assistance as follows:

- (a) preparation of and posting of public notices as required by the Brown Act, ensuring that all notices to the public are provided in the same manner as notices regarding meetings of the District Board,
- (b) provision of a meeting room, including any necessary audio/visual equipment,
- (c) preparation and copies of any documentary meeting materials, such as agendas, meeting minutes, and reports, and
- (d) retention of all Committee records, and providing public access to such records on an Internet website maintained by the District Board.

**7.2 District staff.** As identified by the Superintendent of Schools, shall include individuals whose work responsibilities directly relate to the bond projects and those who can provide the Committee with support in the accomplishment of the Committee's responsibilities. As identified by the Superintendent, those District staff shall attend all Committee proceedings in order to report on the status of projects, the expenditures of bond proceeds, and any other matter within the jurisdiction of the Committee.

## **Section 8. Reports.**

In addition to the Annual Report required in Section 3.2, the Committee shall report to the Board following each quarterly meeting in order to advise the Board on the activities of the Committee. Such report shall be in writing and shall summarize the proceedings and activities conducted by the Committee. The Committee shall also give a status update monthly to the City/Schools Committee at their regular monthly meeting.

## **Section 9. Officers.**

The Committee shall elect a chair and a vice-chair who shall act as chair only when the chair is absent, which positions shall continue for one (2) year term. No person shall serve as chair for more than one term.

## **Section 10. Amendment of Bylaws.**

Any amendment to these Bylaws shall be approved by a two-thirds vote of the entire Board.

## **Section 11. Termination.**

The Committee shall automatically terminate and disband at the earlier of the date when (a) all bond proceeds are spent, or (b) all projects funded by bond proceeds are completed.

## **ATTACHMENT A – CITIZENS’ BOND OVERSIGHT COMMITTEE ETHICS POLICY STATEMENT**

This Ethics Policy Statement provides general guidelines for Committee members to follow while carrying out their roles. Not all ethical issues that Committee members face are covered in this Statement. However, this Statement captures some of the critical areas that help define ethical and professional conduct for Committee members. The provisions of this Statement were developed from existing laws, rules, policies and procedures as well as from concepts that define generally accepted good business practices. Committee members are expected to strictly adhere to the provisions of this Ethics Policy.

### **POLICY**

**CONFLICT OF INTEREST.** A Committee member shall not make or influence a District decision related to: (1) any contract funded by bond proceeds or (2) any construction project which will benefit the committee member’s outside employment, business, or a personal finance or benefit an immediate family member, such as a spouse, child or parent.

**OUTSIDE EMPLOYMENT.** A Committee member shall not use his or her authority over a particular matter to negotiate future employment with any person or organization that relates to: (1) any contract funded by bond proceeds, or (2) any construction project. A Committee member shall not make or influence a District decision related to any construction project involving the interest of a person with whom the member has an agreement concerning current or future employment, or remuneration of any kind. For a period of two (2) years after leaving the Committee, a former Committee member may not represent any person or organization for compensation in connection with any matter pending before the District that, as a Committee member, he or she participated in personally and substantially. Specifically, for a period of two (2) years after leaving the Committee, a former Committee member and the companies and businesses for which the member works shall be prohibited from contracting with the District with respect to: (1) bidding on projects funded by the bond proceeds, and (2) any construction project.

**COMMITMENT TO UPHOLD LAW.** A Committee member shall uphold the federal and California Constitutions, the laws and regulations of the United States and the State of California (particularly the Education Code) and all other applicable government entities, and the policies, procedures, rules and regulations of the Emery Unified School District.

**COMMITMENT TO DISTRICT.** A Committee member shall place the interests of the District above any personal or business interest of the member.

The undersigned acknowledges he or she has received a copy of this Ethics Policy Statement, understands the provisions of this policy and agrees to adhere to its requirements.

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Date

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Member, Citizens Oversight Committee

**EXHIBIT G  
TO  
MEMORANDUM OF UNDERSTANDING  
*INCREMENT 2***

**ORIGINAL LEASE AGREEMENT**

ORIGINAL

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made this 15<sup>th</sup> day of October, 2002 ("Execution Date"), by and between the CITY OF EMERYVILLE ("City"), a municipal corporation, and EMERY UNIFIED SCHOOL DISTRICT ("EUSD"), a political subdivision of the State of California, with reference to the following facts:

1. EUSD has received a loan from the State of California, appropriated to EUSD pursuant to the terms of Statutes 2001, Chapter 135, to assist EUSD in addressing certain fiscal problems that currently face EUSD.

2. Statutes 2001, Chapter 135 authorizes the administrator of EUSD to enter into a lease with the City for the use of EUSD facilities during nonschool hours and events for recreational and community programs, so that the school district may utilize the proceeds from the lease to pay off the loan made pursuant to Statutes 2001, Chapter 135.

3. City desires to lease specific EUSD facilities and make capital improvements thereto in order to eliminate blighting influences on the Emeryville Redevelopment Project Area and the Shellmound Park Redevelopment Project Area and then to use such facilities in offering City recreation programs to the citizens of Emeryville. Additionally, the City desires to provide for lease of EUSD property to facilitate the construction of a community recreation center.

4. The parties intend and understand that this Agreement is made in accordance with all terms and provisions of Statutes 2001, Chapter 135 and Education Code Section 10900 *et seq.*, for the purpose of improving both public education and public recreation. The parties also intend and understand that this agreement will be interpreted and implemented in accordance with the purposes of, and the laws and regulations governing, both public education and public recreation.

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Premises. EUSD hereby leases to City, and City hereby leases from EUSD, that certain real property located within Emery High School, 1100 47th Street, Emeryville, California, as more particularly described on **Exhibit A** attached hereto and made a part hereof (the "Premises"). The Premises shall consist of three separate areas located within Emery High School, commonly referred to as (a) the Gymnasium, (b) the Athletic Field Complex and (c) the Pool Area as described below:

a. The Gymnasium. The Gymnasium shall include the entire area designated as such on **Exhibit A**, including the gymnasium, access to the gymnasium from 47th Street, stage area, gymnasium restrooms, exercise room/studio, weight room and recreation office located adjacent to the gymnasium. The Gymnasium is shown in more detail on **Exhibit B**.

b. The Athletic Field Complex. The Athletic Field Complex shall include the entire area designated as such on **Exhibit A**, including the athletic field, the back patio and seating area located adjacent to the athletic field and the sport courts located between the gymnasium/pool building and the track.

c. The Pool Area. The Pool Area shall include the entire area designated as such on **Exhibit A**, including deck and pool maintenance area, the pool locker rooms, the front and back gated areas adjacent to the pool and the cement corridor which runs from 53rd Street to the back gate of the pool area. The Pool Area is shown in more detail on **Exhibit B**.

2. Term. The term of this Agreement shall commence on July 1, 2002 (the "Commencement Date") and shall expire on June 30, 2042, unless otherwise extended.

3. Option to Extend Term. If this Agreement has not been previously terminated, the term of this Agreement may be extended at any time prior to its expiration upon mutual agreement of the parties hereto. In the event that City constructs a Recreation Center, as provided for in Section 14 of this Agreement, City and EUSD may, upon mutual agreement, extend the term of the Agreement for the entire Premises to be consistent with the term of the lease of the Recreation Center, as set forth in Section 14 of this Agreement.

4. Rent. City shall make payments of rent to EUSD for lease of the Premises as follows:

a. City shall make a payment of rent to EUSD in the amount of \$500,000 within thirty (30) calendar days of the Execution Date.

b. City shall make a payment of rent to EUSD in the amount of \$400,000 on or before July 1, 2003.

c. City shall make a payment of rent to EUSD in the amount of \$300,000 on or before July 1, 2004.

d. City shall make a payment of rent to EUSD in the amount of \$200,000 on or before July 1, 2005.

e. City shall make a payment of rent to EUSD in the amount of \$100,000 on or before July 1, 2006.

f. Beginning July 1, 2007, City shall pay to EUSD one dollar per year as rent for the remainder of the Term.

5. Use of Premises. This Agreement shall entitle City to exclusive use of the Premises during the specific hours as designated herein for the Gymnasium, Athletic Field Complex and Pool Area, respectively.

a. The City shall have exclusive use of the Gymnasium immediately after the end of the regular school day, or as soon as any regularly scheduled school programs are complete, but no later than 6:00 p.m., except during school events as defined below. On all weekends, holidays, summer sessions, inter-sessions and any other non-regular school days, the City shall have exclusive use of the Gymnasium all day, except during school events as defined below. In addition, the City may use the Gymnasium during regular school days with the express written consent of EUSD.

b. The City shall have exclusive use of the Athletic Field Complex immediately after the end of the regular school day, or as soon as any regularly scheduled school programs are complete, but no later than 6:00 p.m., except during school events as defined below. On all weekends, holidays, summer sessions, inter-sessions and any other non-regular school days, the City shall have exclusive use of the Athletic Field Complex all day, except during school events as defined below. In addition, the City may use the Athletic Field Complex during regular school days with the express written consent of EUSD.

c. The City shall have exclusive use of the Pool Area at all times, except during school events as defined below. The access door between the Gymnasium Locker Rooms and Pool Locker Rooms shall remain locked at all times so that EUSD students cannot access the Pool Locker Rooms.

d. When the City is using the Premises as provided above, the City shall have access to the restrooms located in the main gymnasium locker rooms to accommodate disabled participants in City recreation programs.

e. Prior to July 1 of each year, EUSD shall provide to the City a schedule of school events for the coming school year. EUSD shall be permitted to amend or update the schedule prior to the second semester of the school year, provided that such updates are submitted to the City

prior to December 1 of that school year. Prior to March 31 of each year, EUSD shall provide to the City a schedule of anticipated school events for the coming summer session. The schedules submitted under this section and any amendments or updates thereof shall be subject to City approval, which approval shall not be unreasonably withheld.

f. For purposes of this Agreement, "Regular school days" shall include all school days scheduled to meet the minimum requirements of instructional days and/or the minimum requirements of instructional minutes required by State law. Regular school days shall not include summer school days or inter-session school days. The parties understand that the regular school day currently ends no later than 3:15 p.m. unless it is necessary for the day to be lengthened to comply with any change in law or regulation or unless it is agreed to by the City.

g. For purposes of this Agreement, "Regularly scheduled school programs" shall include all regularly scheduled EUSD athletic practices and school programs held in the Gymnasium and/or Athletic Field Complex after the regular school day ends and ending by 6:00 p.m.

h. For purposes of this Agreement, "School events " shall include any scheduled athletic events, school programs or school special events to held upon the Premises after the regular school day ends or during weekends, holidays, summer sessions, inter-sessions or other non-regular school days.

i. EUSD recognizes the City's right to exclusive use of the Premises as described in this Section 5, and does hereby represent and warrant that it will not lease the Premises or any portion thereof to any third party during the time designated for the City's exclusive use without express written permission from the City.

## 6. Maintenance.

a. Regular Maintenance. EUSD shall provide all routine and preventive maintenance necessary to maintain the Gymnasium and Athletic Field Complex and all fixtures within the Gymnasium and Athletic Field Complex, in good condition and repair and in a clean, safe and sanitary condition. EUSD shall be responsible for cleaning the Gymnasium and Athletic Field Complex immediately prior to such times that the Gymnasium and Athletic Field Complex are available for use by the City. The City shall clean any and all portions of the Gymnasium and Athletic Field Complex used by City immediately subsequent to City use of the Gymnasium and/or Athletic Field Complex.

City shall provide all routine and preventive maintenance necessary to maintain the Pool Area in good condition and repair and in a clean, safe and sanitary condition, using City employees and/or independent contractors. In the event that EUSD uses the Pool Area for school events, EUSD shall maintain the Pool Area and all fixtures located therein in good condition during such times that EUSD uses the Pool Area. EUSD shall clean the Pool Area immediately subsequent to EUSD use of the Pool Area.

b. Major Maintenance. EUSD shall conduct all major maintenance and rehabilitation on the Gymnasium and Athletic Field Complex. City shall conduct all major maintenance and rehabilitation on the Pool Area. Major maintenance shall include, but not be limited to, replacement of major building, electrical or mechanical systems, including roof, flooring, HVAC system, irrigation system and pool filter/heating system.

7. Damage or Destruction.

a. Destruction Due to Risk Covered by Insurance. If, during the term of this Agreement or any extension thereof, the Premises or any building or fixture thereon are totally or partially destroyed from a risk covered by the insurance described in Section 12 of this Agreement, rendering the Premises totally or partially inaccessible or unusable, the party whose insurance covers the damage to the Premises shall restore the Premises to substantially the same condition as they were in immediately before destruction.

b. EUSD Responsibility for Restoration. If, during the term of this Agreement, the Premises or any of the fixtures thereon are totally or partially damaged or destroyed by the acts or omissions of EUSD or any invitee of EUSD and such acts or omissions are a risk not covered by the insurance described in Section 12 of this Agreement, EUSD shall restore the destroyed property to substantially the same condition as it was in immediately before destruction.

c. City Responsibility for Restoration. If, during the term of this Agreement, the Premises or any of the fixtures thereon are totally or partially damaged or destroyed by the acts or omissions of the City or any invitee of the City and such acts or omissions are a risk not covered by the insurance described in Section 12 of this Agreement, the City shall restore the destroyed property to substantially the same condition as it was in immediately before destruction.

d. Monitoring Damage or Destruction. During the term of this Agreement, City and EUSD appointed staff will jointly determine the

cause of any damages to the facilities, will conduct evaluations of the conditions of the facilities after each school semester and end of summer session or inter-session and provide written documentation of such inspections. In the event that the cause of damage is unknown or partially due to normal wear and tear, the City Manager and EUSD Superintendent or Administrator shall agree on an appropriate allocation of the cost of repairs between the two agencies.

8. Utilities. EUSD shall pay all fees and charges for electricity, gas, water, sewage and all other utilities associated with use, maintenance and operation of the Gymnasium and Athletic Field Complex. City shall pay all fees and charges for electricity, gas, water, sewage and all other utilities associated with use, maintenance and operation of the Pool Area.

9. Security. At such times that the City has exclusive use of the Gymnasium, Athletic Field Complex and/or Pool Area, City shall be responsible for the security of such facilities, including opening and closing the facilities, checking the facilities and perimeters and securing any applicable alarms for the facilities. EUSD shall provide the City with the necessary keys and alarm codes. City shall keep such keys to the facilities and alarm codes secure under procedures agreed upon between the City and EUSD.

10. Collaborative Programs. City and EUSD currently provide recreation and enrichment programs to Emeryville students, residents, businesses and other non-resident individuals and organizations by means of a Joint Operating Use Agreement dated June 15, 1996 (the "Joint Use Agreement"). The intent of this collaboration is to maximize the use of available facilities and program resources to benefit the youth and community of Emeryville. Under this collaboration, EUSD provides facilities, and the City operates programs. Pursuant to this Agreement, which shall replace the Joint Use Agreement, City and EUSD shall continue to provide recreation and enrichment programs ("collaborative programs") through the collaborative use of City and EUSD facilities and resources. EUSD shall provide the facilities for collaborative programs and the City shall operate the collaborative programs in the following manner:

a. Use of Facilities on Regular School Days, Weekends, Holidays, Summer Sessions, Inter-Sessions and Non-Regular School Days. During the term of this Agreement, in addition to City's use of the Premises, EUSD agrees to provide to City facilities suitable for collaborative programs on days in which school is in session, before the regular school day begins and after the regular school day ends, as well as on weekends, holidays, summer sessions, inter-sessions and non-regular school days. Specific facility locations for collaborative programs will be designated through the collaborative process as described in Section 10.b. below. Facilities to be made available for collaborative

programs include, but are not limited to, multipurpose rooms, common areas, designated classrooms, outside grounds (including playgrounds and hard tops), and kitchen facilities (under regulations specified by EUSD) at the following locations:

Emery High School, located at 1100 47<sup>th</sup> Street  
Emery Middle School Academy, located at 1275 61<sup>st</sup> Street  
Anna Yates Elementary School, located at 1070 41<sup>st</sup> Street  
Any new school site that is constructed or acquired by EUSD

b. Collaborative Process for Designating Facility Locations.  
City and EUSD shall designate facility locations for collaborative programs through the following collaborative process:

i. A base facility use schedule has been established that identifies the facility locations that have historically been designated for collaborative programs either on regular school days or on weekends, holidays, summer sessions, inter-sessions or non-regular school days. EUSD will continue to provide the facilities identified in the base facility use schedule for collaborative programs at the times identified unless EUSD informs the City of a change to the base facility use schedule by providing 90 days written notice prior to the anticipated change.

ii. Each year, City and EUSD shall provide program schedules to one another by July 31<sup>st</sup> for the Fall Semester (September-December), by December 1<sup>st</sup> for the Winter/Spring Semester (January-June), and by March 31<sup>st</sup> for Summer School.

iii. City and EUSD shall meet within one week following program schedule due dates to agree upon collaborative programs and facilities available to conduct such programs.

iv. Final collaborative program schedules approved by City and EUSD will remain in effect through the applicable school semester, summer session or inter-session.

v. Use of EUSD facilities outside of the approved collaborative program space will be subject to EUSD facility use process and policies.

c. City Operation of Collaborative Programs.

i. City shall provide the equipment and supplies for use in operating the collaborative programs pursuant to this section.

ii. City shall have exclusive discretion over the types of activities provided as part of the collaborative programs, the selection of personnel to coordinate or supervise the recreation programs.

iii. City's continued provision of collaborative programs is dependant on available funding. City has discretion to cease offering any or all collaborative programs in the event that funding is not available.

d. Continuation of Collaborative Programs after Expiration of Lease Term or Lease Termination. Two years prior to the expiration of the term of this Agreement, City and EUSD shall commence discussions regarding the continuation of the provisions of this Section 10, either through the extension of the term of this Agreement pursuant to Section 3 or through the execution of a separate agreement addressing only the collaborative programs provisions. In the event of termination of this Agreement pursuant to Section 16, the provisions of this Section 10 shall continue for one year following the termination date during which time EUSD and the City shall discuss the continuation of the collaborative program provisions under a separate agreement.

11. Indemnity.

a. EUSD Indemnity. EUSD shall indemnify, defend and save City harmless from and against any and all claims, demands, actions, damages, liability and expenses (including reasonable attorneys' fees and costs of investigation with respect to any claim, demand or action) in connection with loss of life, personal injury and/or damage to property arising from or connected with the activities conducted by EUSD, its contractors, employees or agents on the Premises, or from any breach or default on the part of EUSD in the performance of any covenant or agreement on the part of EUSD to be performed pursuant to this Agreement.

b. City Indemnity. City shall indemnify, defend and save EUSD harmless from and against any and all claims, demands, actions, damages, liability and expenses (including reasonable attorneys' fees and costs of investigation with respect to any claim, demand or action) in connection with loss of life, personal injury and/or damage to property arising from or connected with the activities conducted by City, its contractors, employees or agents on the Premises, or from any breach or default on the part of City in the performance of any covenant or agreement on the part of City to be performed pursuant to this Agreement.

12. Insurance

a. EUSD Insurance

i. Liability Insurance. EUSD shall, at its expense, at all times from and after the date hereof and during the term, maintain in full force a policy or policies of comprehensive liability insurance written by one or more responsible insurance companies licensed to do business in the State of California in an amount no less than \$1 million, which will insure City and EUSD against any liability for injury to persons and property and death of any person or persons occurring in, on or about the Premises during such times that the Premises is available for EUSD use, or arising out of EUSD's maintenance, use and occupancy thereof.

ii. Property and Other Insurance. EUSD shall, at its expense, at all times from and after the date hereof and during the term, maintain on the Gymnasium and the Athletic Field Complex a policy of standard fire and extended coverage or all risk insurance, with vandalism and malicious mischief endorsements, to the extent of the full replacement cost of any such buildings and other insurable improvements located on or in the Gymnasium or Athletic Field Complex from time to time. The policy shall name as insureds EUSD and City, as their interests appear.

b. City Insurance.

i. Liability Insurance. City shall, at its expense, at all times from and after the date hereof and during the term, maintain in full force a policy or policies of comprehensive liability insurance written by one or more responsible insurance companies licensed to do business in the State of California in an amount no less than \$1 million, which will insure City and EUSD against any liability for injury to persons and property and death of any person or persons occurring in, on or about the Premises during such times that the Premises is available for City use, or arising out of City's maintenance, use and occupancy thereof.

ii. Property and Other Insurance. City shall, at its expense, at all times from and after the date hereof and during the

extended coverage or all risk insurance, with vandalism and malicious mischief endorsements, to the extent of the full replacement cost of any such buildings and other insurable improvements located on or in the Pool Area from time to time. The policy shall name as insureds City and EUSD, as their interests appear.

13. Improvements. City shall undertake and complete such repairs and improvements necessary to bring the Pool Area to a usable condition, as listed in the List of Repairs and Improvements attached hereto as **Exhibit C** on or before October 1, 2004. EUSD shall undertake and complete such repairs and improvements necessary to bring the Gymnasium (including the Back Patio and Gymnasium Restrooms) and Athletic Field Complex to a usable condition, as listed in the List of Repairs and Improvements attached hereto as Exhibit C on or before October 1, 2004.

14. Right to Construct Recreation Center.

a. Option to Construct. City shall have the option to construct a Recreation Center on the Premises upon the area designated for such Recreation Center on **Exhibit A** ("Option to Construct"). In the event that the Recreation Center is built, it shall be used to house the City's Recreation Department and to provide recreation programs that will be available to the public. City's Option to Construct shall expire on June 30, 2012.

b. Construction Responsibilities. City shall be responsible for all aspects of design, construction and development of the Recreation Center and conduct in connection with said construction, including but not limited to the supervision of the work of construction, the qualifications, financial condition and performance of all architects, engineers, contractors, subcontractors of any tier, material suppliers and consultants, and the accuracy of all applications for payment and the proper application of all disbursements.

c. EUSD Review of Recreation Center. EUSD shall be entitled to review and participate in the design of the Recreation Center. EUSD approval of design of the Recreation Center shall be required prior to commencement of construction of the Recreation Center, which approval shall not be unreasonably withheld.

d. Construction of Recreation Center. In planning, developing and constructing the Recreation Center, City shall comply with all applicable laws, ordinances, rules, regulations, building restrictions, recorded covenants and restrictions, and requirements of all regulatory agencies having jurisdiction over the Recreation Center, including the

Field Act. City shall solicit public input from the neighboring community on the Recreation Center prior to commencing construction of the Recreation Center.

e. Lease of Recreation Center. In the event that the City does construct the Recreation Center as provided for in this Section 14, City and EUSD shall enter into a new 40 year lease for the portion of the Premises upon which the Recreation Center is constructed, including access to the Recreation Center property, at no additional cost, expense or obligation to the City. The new lease for the Recreation Center property shall commence on the date that the Certificate of Occupancy for the Recreation Center is issued. Five years prior to the expiration of the lease of the Recreation Center property, City and EUSD shall commence discussions regarding the transition of the Recreation Center building and the underlying property upon expiration of the lease term, or in the alternative, an extension of the lease term. In the event that City and EUSD do not agree on an alternative transition plan by the end of the Recreation Center lease term, the Recreation Center building shall become the property of EUSD, and EUSD shall be responsible for all operation, maintenance and insurance costs associated with the Recreation Center building.

f. Ownership and Use of Recreation Center. City shall own and have exclusive right to use the Recreation Center at all times. At such times when all or part of the Recreation Center facilities are not being used by the City, EUSD shall have the first option to use the Recreation Center for collaborative programs that benefit the students of EUSD and the Emeryville community under the same terms that the City uses EUSD facilities for such programs as set forth in Section 10 of this Agreement. EUSD shall clean the Recreation Center or portion thereof used by EUSD immediately subsequent to EUSD use of the Recreation Center facilities. In the event that EUSD opts to use the Recreation Center facilities, EUSD shall, at its expense, maintain in full force a policy or policies of comprehensive liability insurance written by one or more responsible insurance companies licensed to do business in the State of California in an amount no less than \$1 million, which will insure City and EUSD against any liability for injury to persons and property and death of any person or persons occurring in, on or about the Premises during such times that the Premises is available for EUSD use, or arising out of EUSD's maintenance, use and occupancy thereof.

15. Renegotiation of Agreement. City and EUSD may renegotiate the terms of this Agreement in the event of an unforeseen material change to the Premises or EUSD's ability to make the Premises available to City. Such unforeseen material changes shall include, but not be limited to:

a. EUSD determines that it needs to expand or construct additional classroom space on the Premises or any part thereof to accommodate increased enrollment.

b. EUSD determines that it will need to replace or substantially renovate any or all of the facilities located on the Premises.

c. EUSD relocates Emery High School to a new location or opens a new high school with additional recreational facilities.

d. The Premises or any part hereof is rendered temporarily or permanently unusable due to an act of God, government or other force or event beyond the reasonable control of the parties hereto.

#### 16. Termination of Agreement

a. EUSD Termination. During the initial five years of the term of this Agreement, EUSD may not terminate this Agreement. Thereafter, EUSD may only terminate this Agreement and recover possession of the Premises upon the occurrence of a default by City under this Agreement, which City fails to correct within a reasonable period of time. In the event of a default by City, EUSD shall give City written notice to City of such default. If City fails to remedy said default within 30 days of receipt of such notice of default or fails to commence to cure such default which cannot be reasonably remedied in 30 days, EUSD may terminate this Agreement. However, in the event that EUSD terminates the Agreement in accordance with this Section 16, EUSD shall be required to repay to City a portion of the rent paid pursuant to section 4 of this Agreement, in accordance with the schedule attached hereto as **Exhibit D**. EUSD may not, at any time, terminate this Agreement without cause. Nothing in this section shall be interpreted to restrict or otherwise affect each party's right to seek correction of or other remedies for the other's default, or resolution of any other dispute under this agreement, as provided for in Section 18.

b. City Termination. During the initial five years of this Agreement, the City may not terminate this Agreement. Thereafter, City may terminate this agreement without cause by providing 45 days written notice of such termination to EUSD, or upon the occurrence of a default by EUSD under this Agreement, which EUSD fails to correct within a reasonable period of time. In the event of a default by EUSD, City shall give EUSD written notice to EUSD of such default. If EUSD fails to remedy said default within 30 days of such notice of default or fails to commence to cure such default which cannot reasonably be cured in 30 days, City may terminate this Agreement. However, in the event that the City terminates because of an occurrence of default by

EUSD, EUSD shall be required to repay to City a portion of the rent paid pursuant to Section 4 of this Agreement, in accordance with the schedule attached hereto as **Exhibit D**. Nothing in this section shall be interpreted to restrict or otherwise affect each party's right to seek correction of or other remedies for the other's default, or resolution of any other dispute under this agreement, as provided for in Section 18.

c. City Termination of Lease of Pool Area. After the initial five years of the term of this Agreement, the City may terminate the provisions of this Agreement with respect to the lease of the Pool Area by providing 45 days written notice of such termination to EUSD. Such termination shall eliminate the City's obligation to provide regular, preventive and major maintenance for the Pool Area pursuant to Section 6 of this Agreement, to pay for utilities for the Pool Area pursuant to Section 8 of this Agreement and to provide Property insurance for the Pool Area pursuant to Section 12.b.ii of this Agreement.

17. Redevelopment Agency Reimbursement. This Agreement is subject to and conditioned upon the City entering into a Reimbursement Agreement with the Redevelopment Agency of the City of Emeryville ("Agency") pursuant to which the Agency reimburses the City for the cost of all payments authorized to be paid for pursuant to the Community Redevelopment Law and the Emeryville Redevelopment Plan.

18. Dispute Resolution. Any dispute between the parties under this Agreement that the parties are unable to resolve may be resolved through the judicial process, except that the parties hereto may agree to resolve such dispute through an alternative means of dispute resolution, including but not limited to non-binding mediation.

19. Attorneys' Fees. If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including but not limited to court costs, expert witness fees, discovery expenses and attorneys' fees.

20. Entire Agreement; Amendments. This Agreement and all exhibits, addenda, schedules and agreements referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the Agreement between City and EUSD pertaining to City's lease of the Premises and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement by, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement. This Agreement may be amended only by an agreement in writing signed by City and EUSD.

21. Exhibits. The Exhibits attached to this Agreement are a part of this Agreement and incorporated into this Agreement by reference.

22. Reasonableness and Good Faith. Except as limited elsewhere in this Agreement, whenever this Agreement requires City or EUSD to give its consent or approval to any action on the part of the other, such consent or approval shall not be unreasonably withheld or delayed.

If either City or EUSD disagrees with any determination covered by this provision and reasonably requests the reasons for that determination, the determining party shall furnish its reason in writing and in reasonable detail within five business days following the request.

23. Partial Invalidity. If a court or arbitrator of competent jurisdiction holds any Agreement clause to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses, or portions of them, shall not be affected unless an essential purpose of this Agreement would be defeated by loss of the invalid or unenforceable provision.

24. Binding Effect. This Agreement shall bind and benefit the parties to this Agreement and their legal representatives and successors in interest.

25. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

26. Notices. Any notice to be given or other document to be delivered by either party to the other hereunder shall be in writing and delivered to either party personally or by depositing same in the United States mail, duly certified, with postage thereon fully prepaid and addressed to the party for whom intended, as follows:

To City:

City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608-3517  
Attn: City Manager

To EUSD:

Emery Unified School District  
4727 San Pablo Avenue  
Emeryville, CA 94608  
Attn: District Administrator

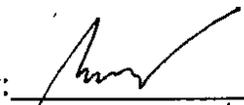
Either party hereto may from time to time by written notice to the other party designate a different address which shall be substituted for the one above specified. Notices shall be effective when received. Any notice or other document sent by certified mail, as aforesaid, shall be deemed received 72 hours after the mailing thereof, as above provided.

27. Force Majeure Specific Exceptions. The time for performance of an obligation other than the payment of money under this Agreement shall be extended for the period during which a party is prevented from performing by acts of God, government or other force or event beyond the reasonable control of that party.

In witness thereto, the parties set forth below execute this Lease Agreement as of the date first written above.

EUSD

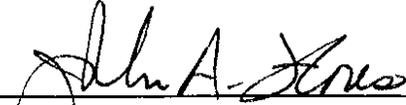
EMERYVILLE UNIFIED SCHOOL DISTRICT

By: 

Its: State Administrator

CITY

CITY OF EMERYVILLE

By: 

Its: City Manager

APPROVED AS TO FORM:

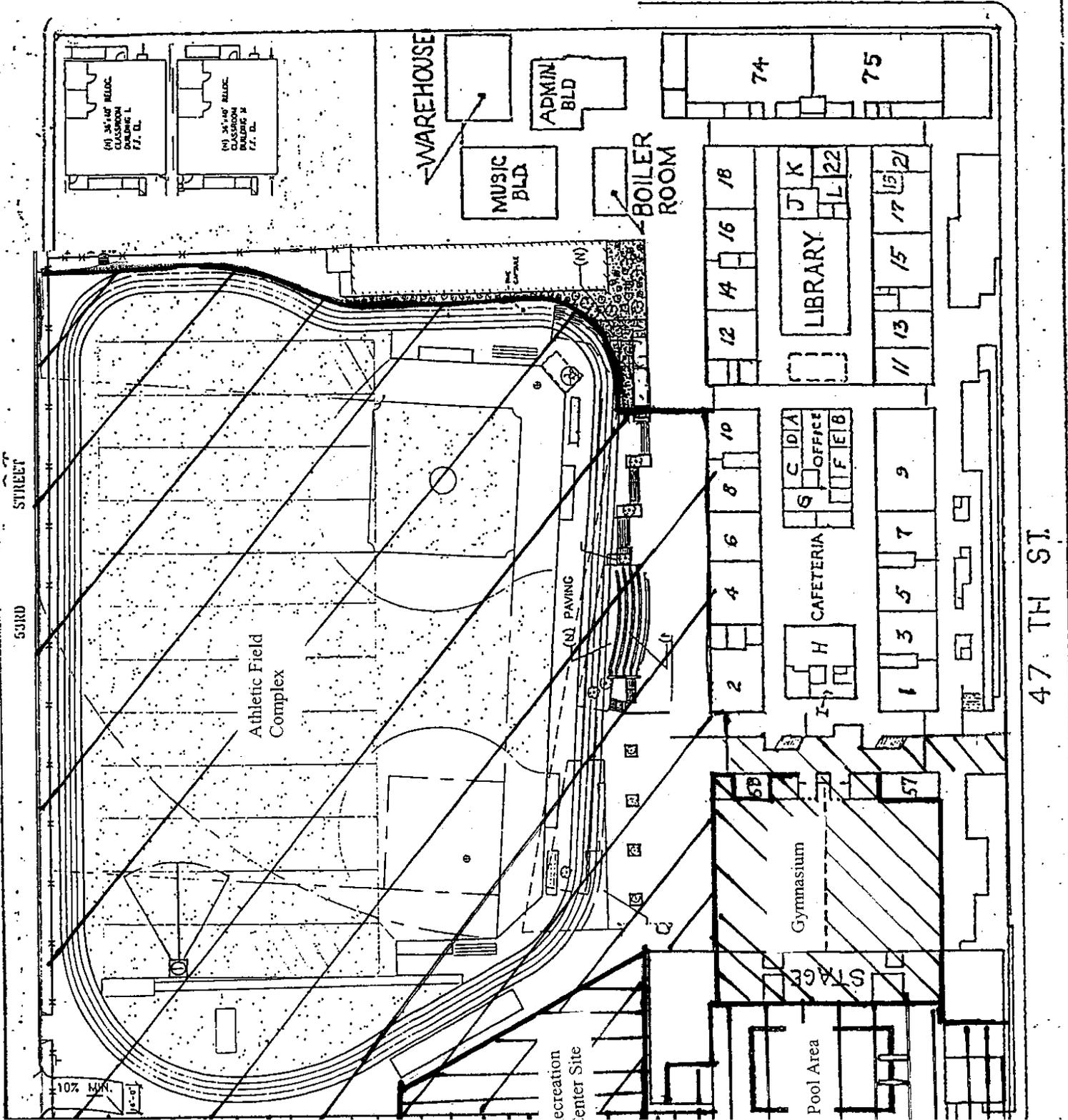
Michael L. Biddle  
City Attorney

List of Exhibits:

- Exhibit A: Map of Premises
- Exhibit B: Detailed Map of Gymnasium and Pool Area
- Exhibit C: List of Repairs and Improvements
- Exhibit D: Repayment Schedule

Exhibit A  
 City-EUSD Lease Agreement  
 Map of Leased Premises

-  Gymnasium.....
-  Athletic Field.....
-  Pool Area.....
-  Recreation Center Site.....



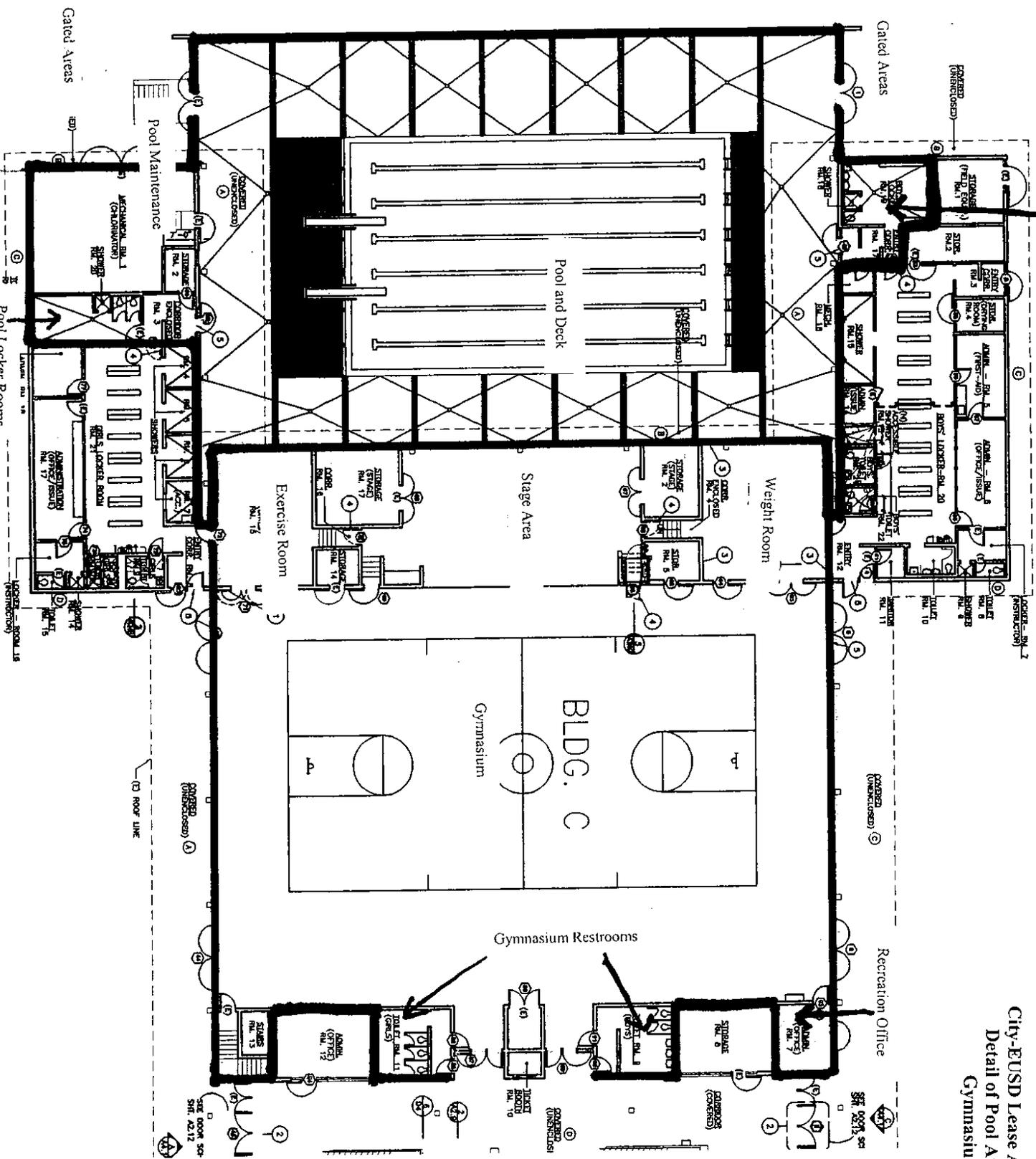
47 TH ST.

Pool Locker Rooms

BLDG. B

Exhibit B

City-EUSD Lease Agreement  
Detail of Pool Area and  
Gymnasium



**Pool Area**  
 Pool and Deck  
 Pool Maintenance Area  
 Pool Locker Rooms  
 Gated Areas  
 Cement Access Corridor (no

**Gymnasium**  
 Gymnasium  
 Stage Area  
 Gymnasium Restrooms  
 Exercise Room  
 Weight Room  
 Recreation Office  
 Access to 47th Street (not sho

SEE ROOM SCHEDULE  
SHEET 2212

**CITY/EUSD LEASE AGREEMENT  
EXHIBIT C**

**CITY IMPROVEMENTS**

*As defined in Section 13 of the Agreement*

***POOL TANK***

- Treat and clear water
- Repair pump
- Repair/patch pool tank liner
- Reseal tank at tile stripe
- Repair filter system
- Install pool covers
- ✓ Install California ADA compliant pool lift
- ✓ Replace pool heaters

***GIRLS LOCKER ROOM***

- Reballast lights
- Replumb and/or replace sink
- Retrofit toilets
- Replace toilet partitions
- Install California ADA compliant fixtures
- Rebuild shower valve
- Paint walls and benches
- Recondition tile floors
- Coat tile floor w/non-skid
- Rekey lock in door to pool
- Remove metal hooks from wall
- Remove graffiti
- Retrofit lockers

***BOYS LOCKER ROOM***

- Reballast lights
- Retrofit toilets and urinals
- Install new toilet and urinal partitions
- Replumb sink
- Install California ADA compliant fixtures
- Remove and replace lockers
- Replace ventilation system
- Paint walls and benches
- Recondition tile floors
- Coat tile floor with non-skid
- Rekey lock in door to pool
- Remove graffiti

**CITY/EUSD LEASE AGREEMENT**

**EXHIBIT C**

Page 2

**CITY IMPROVEMENTS**

*As defined in Section 13 of the Agreement*

***POOL AREA/DECK***

Install side gate to meet California ADA requirements for access to pedestrian traffic

Install new entry access and new signage

Install alarms

Replace front door and locks

Clean debris and install lights in pedestrian side entrance

Clean debris and restore area behind pool to useable condition

Improve aesthetic design of deck area

Install California ADA compliant shower outside, next to the boys locker room

Replace existing light fixtures with energy efficient fixtures (36 fixtures)

Remove corroded and cracked high diving board and stand

Recondition pool deck to meet safety standards with a non skid overlay

Repair water fountains

***UTILITY ROOM***

Install new utility meters for water, gas and electricity

Install chemical shower eye wash station

Replace chemical room door

Replace exhaust fan/ventilation

Replace roof over chemical storage room

Replace service panels and I.D. circuitry

Replace floor pump

**CITY/EUSD LEASE AGREEMENT**

**EXHIBIT C**

Page 3

**EUSD IMPROVEMENTS**

*As defined in Section 13 of the Agreement*

**GYMNASIUM**

Replace light bulbs as needed

Repair/replace fire boxes

Repair water fountain

Replace torn wall mats

Repair broken bleachers and replace missing handrails

Replace glass basketball backboards with plexiglass/safety glass backboards

Repair double door frames providing access from breezeway

**GYMNASIUM REST ROOMS**

Reballast Lights

Retrofit toilets, sinks, urinals

Install California ADA compliant sink and toilet fixtures

Recondition floor and wall tile

Patch & Paint walls and ceilings

Install new or reconditioned toilet partitions

Install/repair soap, hand towel and toilet paper dispensers

**BACK PATIO**

Replace broken patio tables

Repair water fountain by basketball court

**FIELD**

Repair turf

Evaluate irrigation system and repair as needed

**Exhibit D**  
**Repayment Schedule - 4% Discount Rate**

<b>Year of Lease</b>	<b>Future Value of City Payments (Paid in Years 1-5)</b>	<b>Future Value of Constant Stream of Payments</b>	<b>Repayment Amount (Difference)</b>
6	\$1,803,411	\$477,635	\$1,325,776
7	\$1,875,547	\$568,750	\$1,306,798
8	\$1,950,569	\$663,509	\$1,287,060
9	\$2,028,592	\$762,059	\$1,266,533
10	\$2,109,736	\$864,550	\$1,245,186
11	\$2,194,125	\$971,141	\$1,222,984
12	\$2,281,890	\$1,081,996	\$1,199,894
13	\$2,373,166	\$1,197,285	\$1,175,881
14	\$2,468,093	\$1,317,186	\$1,150,907
15	\$2,566,816	\$1,441,883	\$1,124,934
16	\$2,669,489	\$1,571,567	\$1,097,922
17	\$2,776,268	\$1,706,439	\$1,069,829
18	\$2,887,319	\$1,846,706	\$1,040,613
19	\$3,002,812	\$1,992,583	\$1,010,229
20	\$3,122,924	\$2,144,296	\$978,629
21	\$3,247,841	\$2,302,077	\$945,765
22	\$3,377,755	\$2,466,169	\$911,586
23	\$3,512,865	\$2,636,825	\$876,040
24	\$3,653,380	\$2,814,307	\$839,073
25	\$3,799,515	\$2,998,889	\$800,626
26	\$3,951,496	\$3,190,854	\$760,642
27	\$4,109,555	\$3,390,497	\$719,059
28	\$4,273,938	\$3,598,126	\$675,812
29	\$4,444,895	\$3,814,060	\$630,835
30	\$4,622,691	\$4,038,632	\$584,059
31	\$4,807,599	\$4,272,186	\$535,412
32	\$4,999,903	\$4,515,083	\$484,820
33	\$5,199,899	\$4,767,696	\$432,203
34	\$5,407,895	\$5,030,413	\$377,482
35	\$5,624,210	\$5,303,638	\$320,572
36	\$5,849,179	\$5,587,793	\$261,386
37	\$6,083,146	\$5,883,314	\$199,832
38	\$6,326,472	\$6,190,656	\$135,816
39	\$6,579,531	\$6,510,291	\$69,240
40	\$6,842,712	\$6,842,712	\$0

**EXHIBIT H  
TO  
MEMORANDUM OF UNDERSTANDING  
*INCREMENT 2***

**ADDENDUM TO LEASE AGREEMENT**

## ADDENDUM TO LEASE AGREEMENT

This ADDENDUM TO LEASE AGREEMENT (“Addendum”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 2011 (“Effective Date”), by and between the CITY OF EMERYVILLE (“City”), a municipal corporation, and EMERY UNIFIED SCHOOL DISTRICT (“EUSD”), a political subdivision of the State of California, (collectively, the “Parties”) with reference to the following facts:

**WHEREAS**, on October 15, 2002, the City and EUSD entered into a Lease Agreement (“Lease Agreement”) whereby the City paid One Million Five Hundred Thousand Dollars (\$1,500,000.00) to utilize certain portions of the property located within Emery High School (the “Premises”);

**WHEREAS**, the Parties have subsequently entered into two Memoranda of Understanding (MOU #1 on November \_\_\_\_, 2009 and MOU #2 on July 1, 2011) to spell out the Parties’ rights and obligations with respect to construction of the Emeryville Center of Community Life (the “Project”);

**WHEREAS**, this Addendum is Exhibit “G” to MOU #2 referenced in the previous Recital;

**WHEREAS**, the Parties have determined that the Premises defined in the Lease Agreement are not appropriate for construction of the City’s portion of the Project;

**WHEREAS**, the Parties cannot at this point in time identify upon which portion(s) of the Premises the City’s portion of the Project will ultimately be constructed;

**WHEREAS**, the Project, and the associated MOUs, are enabling the creation and construction of a New City Park on the Premises, and which shall also constitute the main playfield for the Project;

**WHEREAS**, by its current terms, the Lease Agreement expires on June 30, 2042;

**WHEREAS**, the Parties wish to extend the term of the Lease Agreement; and

**WHEREAS**, prior to or upon the conclusion of MOU #2, the Parties intend to enter into a third MOU (“MOU #3”);

**NOW, THEREFORE**, in consideration of the foregoing Recitals, and mutual promises and covenants of the Parties contained in this Addendum, and in exchange for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Term.** Section 2 of the Lease Agreement shall be revised to read as follows: “Pursuant to Section 3 below, the term of this Agreement commenced on July 1, 2002 (the “Commencement Date”) and shall expire on June 30, 2101, unless otherwise extended or terminated by mutual agreement of the Parties. (the “Term”)”

2. Rent.

- Section 4.f shall be deleted, and replaced with: “In exchange for extension of the lease Term set forth in Section 2 above, City shall pay EUSD Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000.00), as follows:
  - i. Consistent with Sections 4.b(1) and 4.c of MOU #2, City shall pay to EUSD One Million Dollars (\$1,000,000.00).
  - ii. Prior to, or contemporaneously with, execution of MOU #3, City shall pay to EUSD One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00).”
- A new section 4.g shall be added, as follows: “If MOU #2 (to which this Addendum is Exhibit “G”) is terminated pursuant to Section 17 therein, or if MOU #3 (as defined in MOU #2) is not executed, then the following refund provisions shall apply:
  - i. if the termination of MOU #2, or non-execution of MOU #3 (notwithstanding satisfaction of the Conditions Precedent contained in Section 2.b of MOU #2), was through no fault of EUSD, then no refund shall be owed and EUSD shall keep the Rent payments made to date; and
  - ii. if the termination of MOU #2 or non-execution of MOU #3 (notwithstanding the satisfaction of the Conditions Precedent contained in Section 2.b of MOU #2) is caused by EUSD, then City shall be refunded: (1) Seven Hundred Fifty Thousand Dollars (\$750,000.00) upon termination of MOU #2; or (2) Five Hundred Thousand Dollars (\$500,000.00) if MOU #2 is not terminated, but MOU #3 is not executed.”
  - iii. if the termination of MOU #2 or non-execution of MOU #3 (notwithstanding the satisfaction of the Conditions Precedent contained in Section 2.b of MOU #2) is agreed to be “no-fault” by the District and City, then the Parties shall negotiate a mutually agreeable resolution to this refund at the time of that termination or non-execution.

Except as specifically modified by this Addendum, all of the terms and conditions of the Lease Agreement shall remain in full force and effect. In the event of a conflict between any term and provision of the Lease Agreement and this Addendum, the terms and conditions of this Addendum shall control.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum as of the Effective Date set forth above.

EUSD

EMERYVILLE UNIFIED SCHOOL DISTRICT

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

Its: \_\_\_\_\_

CITY

CITY OF EMERYVILLE

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

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

\_\_\_\_\_  
General Counsel for EUSD