

**Council Meeting: July 15, 2008****SUBJECT: Columbia Neighborhood Center Expansion Project –
Memorandum of Understanding and Community Development Block Grant
Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale
School District****REPORT IN BRIEF**

At its inception, the Columbia Neighborhood Center (CNC) campus was a 25-acre site that included Columbia Middle School, AMD Sports and Services Center, a pool, tennis courts, track and fields, and the Sunnyvale Preschool Center (see Attachment H for a detailed site map). Community residents have long used “Columbia Neighborhood Center” to refer to the AMD Sports and Services Center specifically, including all services, programs, and activities offered. For the purpose of this report, CNC and the CNC expansion project refers to the specific AMD Sports and Service Center.

CNC was developed to meet the health, social, recreational and educational needs of North Sunnyvale residents through a coordinated network of services. Several years ago, the governing body of CNC, the Joint Task Force, made up of School District and City of Sunnyvale officials, found that CNC lacked adequate space to serve the community’s needs, particularly with regard to counseling and medical services and embarked on exploring options to expand the CNC facility. The CNC expansion project has been included in the City’s budget as a capital improvement project since FY 2006-07. The proposed expansion project would add an additional 3,500 square feet to the existing facility and is currently in schematic development phase with actual construction projected to begin September 2009.

The purpose of this report is to present for Council’s approval two documents that support the path forward for the CNC expansion project as identified in the previously approved Capital Improvement Project. The first document is a Memorandum of Understanding (MOU) between the City of Sunnyvale and the Sunnyvale School District regarding funding of the CNC expansion project. The second document is a Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District.

The agreements are depicted in Attachments A & B. Both documents have been extensively reviewed by the Office of the City Attorney. The terms of the proposed MOU dictate that the Sunnyvale School District and the City of

Sunnyvale evenly share the cost of the expansion. The original cost of the project was estimated at \$3 million, divided equally between the two parties with each party responsible for \$1.5 million. Although cost estimates have since risen, the proposed MOU allows for further discussion between the two parties and for either party to abandon the project and terminate the MOU upon written notice should actual bids exceed original estimates. The City would fund its share of the project through Community Development Block Grant (CDBG) allocations from the Housing and Urban Development (HUD) Department of the US Government. The use of HUD funds for the CNC expansion project was included and approved as a capital improvement project in FY 2006-07, FY 2007-08 and FY 2008-09 budgets. The agreements proposed by this report represent steps necessary to implement this Council-approved project. Staff recommends approving both the MOU and the Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District for expansion of Columbia Neighborhood Center.

BACKGROUND

The CNC campus, located on a 25-acre site, includes Columbia Middle School, AMD Sports and Services Center, a pool, tennis courts, track and fields, and the Sunnyvale Preschool Center (see Attachment H for a detailed site map). The planning for this collaborative project between the City, Sunnyvale School District, Advanced Micro Devices (AMD – a leading semiconductor manufacturer) and numerous community agencies began in the fall of 1994, concurrent with the opening of Columbia Middle School. In the fall of 1996, the new AMD Sports and Service Center (19,600 square feet) opened and housed a gymnasium and health/social service wing. The City and District shared the cost of \$3.5 million for the structure. The Columbia Neighborhood Center (CNC) campus was developed to meet the health, social, recreational and educational needs of north Sunnyvale residents through a coordinated network of services.

Community residents have long used “Columbia Neighborhood Center” to refer to the AMD Sports and Services Center specifically, including all services, programs, and activities offered. For the purpose of this report, CNC and the CNC expansion project refers to the specific AMD Sports and Service Center. CNC’s Mission is “to support and empower youth and families so that the children of the community will develop the life skills necessary to be successful in school and beyond.” To this end, the CNC provides educational programs, social and health services to residents in the northeast quadrant of Sunnyvale – bordered by Highway 237, Mathilda Avenue, Lawrence Expressway/Calabazas Creek and Evelyn Avenue. The complex is generally open year round, seven days a week, and late into the evenings.

Most of the services currently offered at the CNC had been available at other sites throughout Sunnyvale prior to the construction of the CNC, and many of the services had been offered only at the respective agency headquarters. CNC services are largely offered by outside agencies' staff, repositioned to the Columbia site, and do not require additional agency funding or City support aside from physical space for the providers. Among the services offered are after school recreation programs (classes, sports and activities), adult education (English as a Second Language classes, Citizenship classes), tutoring, juvenile diversion programs, social services such as counseling, parenting workshops, and health care. CNC also conducts special events – such as health fairs, family oriented recreational activities – as a means of increasing a sense of community and simultaneously promoting services. Most services are available to all neighborhood residents regardless of ability to pay.

The essential elements of the CNC include a focus on the neighborhood itself as a whole community, and recognition that students and their families live in an environment that extends well beyond the school itself. CNC is focused on prevention, early intervention, and reduction of problems, such as truancy or youth-related crimes, in the community. Elements contributing to CNC's ability to impact the community are summarized below:

- *Increases accessibility to programs by bringing services to the child, through the full use of school sites and other neighborhood facilities.*
- *Utilizes interventions at the earliest appropriate age levels.*
- *Leverages City and District resources through partnerships with multi-disciplinary agencies.* To achieve the CNC outcomes it takes a coordinated team of players to assist youth and their families to function optimally. A demonstration of this collaborative commitment can be best appreciated by reviewing what resources the current partners bring to the CNC:
 - Catholic Charities provides counseling for students and their families;
 - City of Sunnyvale contributes recreation services, on-site library services, neighborhood safety classes, juvenile diversion, volunteer services and employment assistance;
 - Family & Children Services provides counseling for students and their families;
 - Friends for Youth provide one-on-one mentoring for youth;
 - County of Santa Clara links families to affordable health insurance for children;

- El Camino Hospital offers free immunizations and provides a grant for bilingual counseling services for individuals, couples and families;
 - Fremont Union High School District relocates adult education courses to the CNC for non-English speaking residents;
 - Kaiser Permanente facilitates support groups for Columbia Middle School students;
 - MayView Community Clinic provides family health care services;
 - Northwest YMCA is a partner in the Free Jacket Giveaway event and in offering subsidized summer camps for youth;
 - Parent Institute for Quality Education conducts a 9-week parent education series for parents in their native language focused on supporting their child in school;
 - Satsuma Karate Program offers low-cost karate program to youth and adults;
 - Second Harvest Food Bank provides free youth snacks to support programs and services serving low-income youth
 - Support Network for Battered Women holds weekly support groups for women in Spanish;
 - Sunnyvale School District provides school nurse services, counseling interns and a counseling coordinator.
- *Obtains community involvement in planning and oversight of services at the CNC.* The continuing process of inclusive community involvement through community feedback and the CNC Community Advisory Committee has led to a greater public understanding of the needs of youth and an appreciation of the extensive diversity of these north Sunnyvale neighborhoods.

Columbia Neighborhood Center's Impact on North Sunnyvale Youth & Families

CNC'S IMPACT FOR FY 2006-2007

- 68,754 participant hours in community education, mental health services, and recreation & enrichment.
- 8,761 participant hours in social, health, and neighborhood safety activities.
- 351 children received health insurance.

- Of the Columbia Middle School (CMS) students who participated in CNC sponsored activities, 93% reported having a positive sense of belonging to school.
- Of the CMS parents who participated in education/safety programs sponsored by CNC, 88% reported being more active in their child's education at the end of the program(s).
- CNC received a 96% overall customer satisfaction rating from residents who received any type of CNC services.
- Received an estimated \$503,653 in grants and in-kind services
- Sunnyvale School District contributed \$372,590 (incl. grants, staff time) to support CNC
- City of Sunnyvale contributed \$410,378 (incl. grants, staff time) to support CNC

EXISTING POLICY

General Plan Goal 5.1G – Enhance the provision of health and social services to Sunnyvale residents by providing opportunities for the private marketplace to meet the health and social service needs of City residents.

General Plan Goal 5.1H Identify pressing health and social needs of the Sunnyvale community, encouraging appropriate agencies to address these needs in an adequate and timely manner.

Policy 5.1H.8 – Encourage programs that assist at-risk youth in obtaining an education and learning job skills.

Action Statement 5.1H.8a – support cooperative programs with local school districts.

Policy 5.1H.11 – Encourage the adequate provision of social services to Sunnyvale residents.

Action Statement 5.1H.11c – Participate in joint planning efforts with appropriate agencies.

General Plan Goal 5.1I – Monitor human service needs of the community in order to identify appropriate responses and encourage the provision of needed services.

Action Statement 5.1J2a – Encourage and advocate coordination and cooperation among organization providing human services in Sunnyvale.

Action Statement 5.1J2b – Advocate, encourage, and wherever possible, facilitate the co-location of human service providers.

DISCUSSION

Several years ago, the governing body of CNC, the Joint Task Force, made up of School District and City of Sunnyvale officials, found that CNC lacked adequate space to allow needed expansion of services and embarked on exploring options to expand the CNC facility. In FY 2006-07, a Capital Improvement Project was proposed and approved by the City Council to expand the CNC by approximately 3,500 square feet.

The purpose of this report is to present for Council's approval two documents that support the path forward for the CNC expansion project as identified in the previously approved Capital Improvement Project. The first document is a Memorandum of Understanding (MOU) between the City of Sunnyvale and the Sunnyvale School District regarding funding of the CNC expansion project. The second document is a Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District.

The Sunnyvale School District and the City of Sunnyvale agreed to evenly share the cost of the expansion. The original cost of the project was estimated at \$3 million, divided equally between the two parties with each party responsible for \$1.5 million. The school district has had a long-standing corporate partner in Advanced Micro Device (AMD), headquartered in Sunnyvale. AMD was instrumental in helping fund the initial building of CNC with a contribution of \$1 million in 1996. AMD has once again demonstrated their support and commitment to the Sunnyvale community by donating another \$1 million dollars to the expansion of CNC through the Sunnyvale School District. The City would fund its share of the project through Community Development Block Grant (CDBG) allocations from the Housing and Urban Development (HUD) Department of the US Government. The use of HUD funds for the CNC expansion project as a capital improvement project was included and approved in FY 2006-07, FY 2007-08, and FY 2008-09 budgets. Please see Attachment D for the CNC Expansion Project Information Sheet approved by Council as part of the Capital Improvement Plan of the FY 2008-09 budget. Allocations of CDBG funds over five years are as follows:

2006/07:	\$492,163
2007/08:	\$274,802
2008/09:	\$250,000
2009/10:	\$250,000
2011/12:	\$250,000

Total:	\$1,516,802
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The two documents are attached; see Attachments A & B. Both the MOU and the Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District have been extensively

reviewed by the Office of the City Attorney. Since both parties are using different funding sources with different regulations and requirements, a MOU and an agreement were needed to address the complexity of different regulations and requirements of multiple funding sources. Below are a summary of additional project information and/or specific clauses of the MOU and/or agreement:

- The expansion will add an additional 3,500 square feet to the existing facility and double the number of offices for social services from four to eight, double the number of examination rooms from two to four to increase the community health clinic's capacity to serve the health needs of residents, add a large conference room that may be used as a classroom for adult/parenting education or community meetings, and add a fitness room that will be utilized by both the middle school students and the community.
- The agreement states both parties agree to split evenly, on a 50-50 basis, the estimated cost of \$3 million, including contingencies. While the original cost estimate of the project was \$3 million, the current estimate of the total project cost is \$3.55 million due to increases in construction costs and building materials. If the actual construction costs are greater than \$3 million estimated costs, the two parties will meet within 30 days to either agree on an allocation of the excess cost or either party may abandon the project and terminate the agreement upon written notice. Upon termination of the agreement, each party is responsible for its 50 percent share of incurred project costs up to the termination date, including design and predevelopment costs, payments due to the architect, inspect(s), contractor(s), and other entities contracted to perform on the project.
- The Reversion of Assets provision is a requirement of HUD for use of CDBG funds, see Attachment B. The provision requires the City to have full use of the CNC facility for services provided to the community through June 30, 2026, which is the expiration date of the current, ongoing executed operational agreement between the City and Sunnyvale School District for the operation of CNC. If Sunnyvale School District solely terminates the operational agreement between the two parties, Sunnyvale School District will reimburse the City an amount equal to the fair market value of the City's proportionate contribution to the expansion project.
- The master project schedule is attached, see attachment F. It is estimated that the entire project will take 648 days, from August 1, 2008 through January 25, 2011. The actual construction phase is estimated to take 346 days, from September 29, 2009 through January 25, 2011. During the construction phase of the project, CNC staff and services will be relocated to two portables in the CNC parking lot, one portable for

CNC staff and social services, another portable for the medical clinic services, examination rooms, and clinic staff.

- The CNC model leverages resources from community partners and agencies who reposition their staff and services to CNC to serve all of Sunnyvale, with primary focus on north Sunnyvale youth and families. With this successful model of service, existing CNC staff will seek additional community partners and organizations who may be interested in providing additional services and programs at CNC and therefore increase the level of leveraged resources at CNC. Additional costs to furnish new social service offices, medical examination rooms, large conference room and fitness room have been included in the expansion project budget. The increase in the on-going operations budget of CNC due to the on-going maintenance costs of the additional furniture and equipment will be factored into CNC's operating budget beginning in FY 2010-11 and is estimated at \$18,961.00 per year. That increase cost will be split evenly, on a 50-50 basis, between the City and Sunnyvale School District as all operations costs are shared evenly between the two parties, as detailed in the operational agreement between the City and Sunnyvale School District for the operation of CNC.
- Sunnyvale School District Board reviewed the CNC expansion agreement at their board meeting on Thursday, June 19, 2008 and voted to approve both documents, MOU between the City of Sunnyvale and the Sunnyvale School District and a CDBG agreement between the City of Sunnyvale and the Sunnyvale School District, to support the path forward for the CNC expansion project.

FISCAL IMPACT

The City would fund its share of the project through Community Development Block Grant (CDBG) allocations from the Housing and Urban Development (HUD) Department of the US Government. Allocations of CDBG funds over five years are as follows:

2006/07:	\$492,163
2007/08:	\$274,802
2008/09:	\$250,000
2009/10:	\$250,000
2011/12:	\$250,000

Total:	\$1,516,802
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These costs are anticipated and included in the Resource Allocation Plan approved by City Council. There is no additional fiscal impact proposed by this report. Should actual bids for this project exceed anticipated costs, staff would return to Council for further direction.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Approve the Memorandum of Understanding with Sunnyvale School District for expansion of Columbia Neighborhood Center as depicted by Attachment A of this report.
2. Approve the Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District for expansion of the Columbia Neighborhood Center as depicted by Attachment B of this report.
3. Revise the Memorandum of Understanding with Sunnyvale School District for expansion of Columbia Neighborhood Center as depicted by Attachment A of this report.
4. Revise the Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District for expansion of the Columbia Neighborhood Center as depicted by Attachment B of this report.
5. Reject the Memorandum of Understanding with Sunnyvale School District for expansion of Columbia Neighborhood Center as depicted by Attachment A of this report.
6. Reject the Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District for expansion of the Columbia Neighborhood Center as depicted by Attachment B of this report.
7. Other alternatives deemed appropriate by Council.

RECOMMENDATION

Staff recommends Alternative No. 1 and 2, approve the Memorandum of Understanding with Sunnyvale School District for expansion of Columbia Neighborhood Center and approve the Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District for expansion of the Columbia Neighborhood Center because

these actions are required to implement the Council-approved concept of expanding the CNC.

Reviewed by:

Robert Walker, Assistant City Manager, Office of the City Manager
Prepared by: Angela Chan, Youth & Family Resources Manager

Approved by:

Amy Chan
City Manager

Attachments

Attachment A: Memorandum of Understanding Between City of Sunnyvale and Sunnyvale School District Regarding Financing and Construction of the Expansion of Columbia Neighborhood Center

Attachment B: Community Development Block Grant Funds (CDBG) Agreement Between the City of Sunnyvale and Sunnyvale School District for the Columbia Neighborhood Center Expansion Project

Attachment C: Agreement between City of Sunnyvale and Sunnyvale School District for the Operation of Columbia Neighborhood Center at the Columbia Middle School Site

Attachment D: CNC Expansion Project Information Sheet Included in the Capital Improvement Plan of the FY 2008-09 budget.

Attachment E: Schematic Drawing of the Columbia Neighborhood Center Expansion

Attachment F: Master Project Schedule of CNC Expansion Project

Attachment G: Project Cost Estimate of CNC Expansion Project

Attachment H: Columbia Neighborhood Center Campus Map

Attachment A

**MEMORANDUM OF UNDERSTANDING (“M.O.U.”) BETWEEN
CITY OF SUNNYVALE AND
SUNNYVALE SCHOOL DISTRICT REGARDING
FINANCING AND CONSTRUCTION OF
THE EXPANSION OF COLUMBIA NEIGHBORHOOD CENTER**

This M.O.U. Between City of Sunnyvale and Sunnyvale School District Regarding Financing and Construction of Expansion of Columbia Neighborhood Center (“Agreement” or “M.O.U.”) is made this _____ day of _____ 2008, by and between the **City of Sunnyvale**, a municipal corporation (“City”), and the **Sunnyvale School District** (“District”), a public school district (collectively, “Parties”; individually “Party”).

RECITALS

- A.** City and District share common objectives of supporting the positive development of high-risk youth; improving the health of underserved youth and families; increasing student academic performance; reduction of neighborhood crime, delinquency and truancy; and enhancement of recreational opportunities for the students and neighbors of the Columbia Middle School, for the greater overall benefit of all residents of the City.
- B.** Pursuant to the City and District’s common objectives, over the past ten years City and District have successfully collaborated in the development and operation of the Columbia Neighborhood Center (“Center”), a school-based family resource center, to provide a variety of important services for the benefit of the students of Columbia Middle School, the residents of the adjacent neighborhood, and all residents of the City.
- C.** On December 16, 2006, City and District entered into a twenty-year agreement for the continued development and operation of the Columbia Neighborhood Center, a copy of which is attached hereto as **Exhibit A**, and incorporated by reference.
- D.** Due to the Center’s success and additional unmet community needs, City and District have agreed that it would be beneficial to expand the Center and desire to be equal partners in the funding of the design and construction of a Center expansion project of approximately 3,000 square feet of space (“Improved Facilities” or “Project”) to provide additional benefits for the students of Columbia Middle School, the residents of the adjacent neighborhoods, and all residents of the City.
- E.** City and District are separate government agencies and will be using separate sources of funding for their respective contributions to Project costs. City and District desire to cooperate to comply with the legal requirements for their separate sources of funds.
- F.** Section 10900 et seq. of the Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, construct, improve, maintain and operate recreation centers,

including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums.

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **Design of Improved Facilities.** The District shall cause the Improved Facilities to be designed, subject to the City's approval, which shall not be unreasonably withheld. The District or its agents or representatives shall meet and confer with the City prior to finalizing design work on the Improved Facilities, and at reasonable intervals during the design process. The District shall coordinate with the City to ensure that the design efforts undertaken on District's behalf will accommodate the rights and obligations of the Parties to this Agreement. The Improved Facilities shall be designed substantially to conform with the project timeline and scope of development attached hereto as **Exhibit B**, and incorporated by reference.

2. **Payment for Design and Construction of Improved Facilities.**
 - A. City and District have agreed to split evenly, on a 50-50 basis, the costs for the design and construction of the Project. For its initial contribution toward Project costs, the City has budgeted a total of \$1,500,000 in Community Development Block Grant ("CDBG") funding through Fiscal Year 2010-2011. The terms of this arrangement are more fully set out in the CDBG Agreement attached hereto as **Exhibit C**, and incorporated by reference.
 - B. City shall not deduct any of the funds it expends related to this Project from any Redevelopment funds, fees, "pass through" payments, apportionments, or any other monies owing or potentially owing to the District.
 - C. The District shall be responsible for procuring the design of the Improved Facilities with appropriate City input on the design.
 - D. The Parties agree that a reasonable construction cost estimate for the Improved Facilities ("Estimated Cost") is \$3,000,000, inclusive of a contingency amount. The Parties agree that the construction cost of the Improved Facilities will be the total cost submitted by the successful bidder ("Improved Facilities Construction Cost").
 - E. If the Improved Facilities Construction Cost falls within the Estimated Cost, City and District may mutually agree to a construction bid amount with a set contingency percentage to account for change orders and other unanticipated costs.
 - F. If the Improved Facilities Construction Cost is greater than the Estimated Cost, then representatives of the District and City shall meet and confer. Within 30 days, City and District shall either agree on an allocation between City and District of the excess cost or either Party may abandon the Improved Facilities and terminate this Agreement upon written notice. Such abandonment and/or termination shall not relieve either Party of its 50 percent obligation for Project costs, including design and predevelopment costs, incurred up to the notice of termination. The Parties shall also split 50-50 all costs associated with the abandonment and/or termination including, without limitation, all payments due to the architect, inspector(s), contractor(s), and other entities contracted to

perform on the Project, based on work performed and/or claims made due to the abandonment and/or termination.

3. Project Coordination.

- A. Hanson Hom, or his designee, shall be the Project Manager for City and shall render overall supervision of the progress and performance of this Agreement by City. All services agreed to be performed by City shall be under the overall direction of the Project Manager. Should circumstances or conditions subsequent to execution of this Agreement require a substitute Project Manager for City, City shall notify District immediately of such occurrence.
- B. District shall assign a single Project Director who shall have overall responsibility for the progress and execution of this Agreement. Should circumstances or conditions subsequent to execution of this Agreement require a substitute Project Director for District, District shall notify City immediately of such occurrence.
- C. Project Manager for City and City staff and Project Director for District and District staff shall fully cooperate relating to the Project, any areas of concern, and impact of Project on City and District.
- D. City staff shall provide assistance to District in connection with obtaining conformity of the Project where required with the City's policies and procedures and obtaining conformity of Project where required with CDBG requirements or other applicable requirements of City's funding source(s). District agrees to cooperate with City to comply with applicable requirements which may include providing information for reports, making District records available for inspection and audit; completing required forms, and incorporating requirements of the United States Department of Housing and Urban Development ("HUD") into construction contract documents as more fully outlined in **Exhibit C**.

- 4. Construction of Improved Facilities.** The District shall cause the contract(s) for work on the Project to be awarded by a competitive process in compliance with all applicable laws. The City shall coordinate with the District to provide information regarding any laws and requirements applicable to the City's source(s) of funding. The District shall cause the Improved Facilities to be constructed and completed as indicated in a forthcoming construction contract with the successful bidder. The District or its agents or representatives shall meet and confer with the City prior to commencing construction of the Improved Facilities, and at reasonable intervals throughout the construction process. Construction of the Improved Facilities shall substantially comply with the design upon which the City has met and conferred. Prior to any substantial deviation from said design, the District or its agents or representatives shall further meet and confer with the City.

5. Change Orders and Claims.

- A. All change orders to the Improved Facilities shall be resolved between the City and the District as follows:
 - (1) Any change to the Improved Facilities shall be reflected in written change order(s) approved by the District and the contractor(s).

(2) Before requiring that the City pay any portion of a change order that results in an increase to the cost of the Improved Facilities, the District or its agents or representatives shall meet and confer with the City or its agents or representatives. The City and District shall enter into good faith discussions and agree upon an allocation between the Parties of the cost of the change order beyond the Improved Facilities Construction Cost (“Change Order Excess”). Allocation of Change Order Excess shall be expected to be 50-50 between the City and District, consistent with the overall cost-sharing arrangement.

(3) Neither Party shall refuse to pay a reasonable portion of any Change Order Excess within the contingency amount.

(4) If the City and District do not agree upon an allocation of the Change Order Excess, then the District may do either of the following in its sole discretion, (a) assume responsibility for procuring a resource to fund the cost of the Change Order Excess, while retaining the right to pursue the City for any amounts the District believes the City should reasonably pay for any Change Order Excess; or (b) reduce the scope of the Improved Facilities to bring the total cost of the Improved Facilities to or below the Improved Facilities Construction Cost.

(5) If the City and District do not agree upon an allocation of the Change Order Excess and District does not take either step identified in number (4) above, City and District may agree mutually to abandon the Improved Facilities and terminate this Agreement. Such abandonment and/or termination shall not relieve either Party of its 50 percent obligation for Project costs, including design and predevelopment costs, incurred up to the notice of termination. The Parties shall also split 50-50 all costs associated with the abandonment and/or termination including, without limitation, all payments due to the architect, inspector(s), contractor(s), and other entities contracted to perform on the Project, based on work performed and/or claims made due to the abandonment and/or termination.

B. The District shall not be liable to the City or in any way be in breach of this Agreement because of any delay in designing and/or constructing the Improved Facilities.

6. Progress Payments.

A. City shall pay to the District 50% of the contractor’s progress payments and 50% of other invoiced Project costs within fourteen (14) days of receipt of the contractor’s or other invoice(s). Also, within thirty (30) days of the District’s approval of a change order and receipt of the contractor’s invoice(s) for the change order, City shall make a full payment for its portion of any Change Order Excess that it has agreed to pay.

B. The District shall review, approve, and administer all contractors’ payment applications as indicated in the District’s contract with each contractor.

7. Termination for Cause or Convenience.

A. If either Party breaches this Agreement in any material way, the aggrieved Party must provide written notice to the breaching Party of the breach(es). If the breaching Party does not cure the breach(es) within thirty (30) days of receipt of the notice, the aggrieved Party may terminate this Agreement by providing written notice of termination to the breaching Party. The breaching Party shall be liable to aggrieved Party for all costs, fees, expenses, and other damages the aggrieved Party incurs because of the breaching Party’s breach(es).

- B. Termination for Convenience. City or District may terminate or suspend this Agreement in whole or in part when both Parties agree in writing that the continuation of the Project would not produce beneficial results commensurate with the further expenditure of funds. Both Parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated.
- C. The remedies in this paragraph are in addition to any additional remedies available at law or under this Agreement. A decision by a Party not to terminate this Agreement pursuant to this paragraph does not constitute a waiver of any other claims or remedies that Party may have against the other. Termination pursuant to items A or B above shall not relieve either Party of its 50 percent obligation for Project costs, including design and predevelopment costs, incurred up to the notice of termination. The Parties shall also split 50-50 all costs associated with the abandonment and/or termination including, without limitation, all payments due to the architect, inspector(s), contractor(s), and other entities contracted to perform on the Project, based on work performed and/or claims made due to the abandonment and/or termination.

8. Indemnification and Cooperation in Claim Defense.

- A. District shall indemnify, save, protect, defend and hold harmless the City, its officers, agents and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury or death, to persons or property arising from the negligent or wrongful acts or omissions of the District or its agents under this Agreement, except to the extent that such claims, costs, or liability arise directly or indirectly from the negligent or wrongful acts or omissions of City, its officers, agents and employees.
- B. City shall indemnify, save, protect, defend and hold harmless the District, its officers, agents and employees from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death, to persons or property arising from the negligent or wrongful acts or omissions of the City or its agents under this Agreement, except to the extent that such claims, costs, or liability arise directly or indirectly from the negligent or wrongful acts or omissions of District, its officers, agents and employees.
- C. The City and the District shall cooperate in the defense of any action against the District and/or the City related to the Improved Facilities. The Parties shall pay equal shares for the defense of any claim, action, or suit. The District shall have the right to select legal counsel for this defense, although the Parties acknowledge and agree that the defense and indemnity of a claim, action, or suit, may be tendered to a contractor pursuant to the forthcoming construction contract between the District and successful bidder.

- 9. Environmental Review.** The District shall be responsible for ensuring compliance with the California Environmental Quality Act and any other applicable environmental laws with regard to the Improved Facilities project. City shall be responsible for ensuring compliance with the National Environmental Policy Act and District agrees to provide City support documentation necessary to meet compliance. The Parties shall share the costs for environmental compliance activities.

- 10. Attorneys' Fees.** During any dispute(s) between the Parties related to this Agreement, if any, each Party shall pay their own attorneys fees and related expenses incurred and shall not have a right to recover any of those fees from the other Party.

- 11. Force Majeure.** Neither Party shall be held responsible or liable for an inability to fulfill any obligation under this Agreement by reason of an act of God, natural disaster, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or terrorism (“Force Majeure”). Any Party relying on a Force Majeure shall give the other Party reasonable notice thereof, and the Parties shall use their best efforts to minimize potential adverse effects from such Force Majeure, including, without limitation, subcontracting the obligations of the Party claiming such Force Majeure to a third party and extending the time periods for performance.
- 12. Assignment.** Neither Party may, without the other Party’s prior written consent, assign its rights or delegate its duties pursuant to this Agreement. This provision does not apply to the District’s contracting with contractor(s), consultant(s), or others to perform services or provide other items related to the planning, approval, design, or construction of the Improved Facilities.
- 13. Successors and Assigns.** This Agreement shall bind the successors and assigns of the Parties hereto.
- 14. Further Assurances.** Each Party to this Agreement shall at its own expense perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement.
- 15. Modifications.** The terms and conditions of this Agreement may be modified or changed only by written mutual consent of the Parties.
- 16. Notices.** Any notices that either Party desires to or is required to give to the other Party or to any other person shall be in writing and either served personally or sent by prepaid first class mail. Such notices shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed communicated within seventy-two hours from the date of mailing, if mailed as provided in this paragraph.
- | | |
|--|--|
| <p>City Of Sunnyvale
 Attn: Community Development Director
 456 West Olive Avenue
 Sunnyvale, CA 94086</p> | <p>Sunnyvale School District
 Attn: Dr. Benjamin H. Picard,
 Deputy Superintendent
 825 West Iowa
 Sunnyvale, CA 94086</p> |
|--|--|
- 17. Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.
- 18. Interpretation.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.

19. Severability. Should all or any portion of any provision of this Agreement be held unenforceable or invalid for any reason, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then the remaining portions or provisions shall be unaffected.

20. Governing Law. This Agreement shall be governed by the laws of the State of California and venue shall be in the appropriate Superior Court in Santa Clara County, California, or where appropriate, in the United States District Court, Northern District of California, San Jose, California.

21. Incorporation of Recitals and Exhibits. The Recitals and all Exhibits attached hereto, are hereby incorporated herein and made a part of this Agreement by this reference.

22. Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

23. Entire Agreement. This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral.

24. Time of the Essence. Time is of the essence in the performance of each Party’s respective obligations under this Agreement.

25. Parties to Bear Their Own Costs. Except as specifically set forth in this Agreement, the Parties shall each bear their own costs, including, without limitation, attorneys’ and consultants’ fees, incurred in connection with any negotiations, strategic planning, analysis and due diligence relating to this Agreement.

26. Effective Date. This Agreement must be executed by both Parties and approved or ratified by the City’s City Council and the District’s Board of Trustees. This Agreement shall be effective upon the latter date of approval of either the City Council or the Board of Trustees.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2008

Dated: _____, 2008

City Of Sunnyvale

Sunnyvale School District

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: _____

Print Title: _____

Exhibit A

**Agreement Between City of Sunnyvale and Sunnyvale School District for the
Development and Operation of a Neighborhood Service Center
at the Columbia Middle School Site**

[ATTACH CURRENT AGREEMENT]

Exhibit B

Project Timeline and Scope of Development

Exhibit C

CDBG Agreement between City and District

Attachment B

EXHIBIT C

**Community Development Block Grant Funds
AGREEMENT
BY AND BETWEEN THE CITY OF SUNNYVALE, CALIFORNIA
AND SUNNYVALE SCHOOL DISTRICT FOR THE
COLUMBIA NEIGHBORHOOD CENTER-EXPANSION PROJECT**

THIS AGREEMENT dated _____, 2008, is by and between the CITY OF SUNNYVALE, a municipal corporation (hereinafter CITY), and Sunnyvale School District, (hereinafter DISTRICT). City and District may be referred to individually as a "Party" or collectively as "Parties" or the "Parties to this Agreement".

Whereas CITY and DISTRICT have entered into an agreement for the continued operation of the Columbia Neighborhood Center executed on December 15, 2006 (Agreement Between City of Sunnyvale and Sunnyvale School District for the Operation of Columbia Neighborhood Center at Columbia Middle School Site);

WHEREAS, CITY and DISTRICT have agreed that it would be beneficial to expand the Center's facilities and desire to be equal partners in the funding of the design and construction of a Center expansion project of approximately 3000 square feet of space ("Project") to provide additional benefits for the students of Columbia Middle School and the residents of the adjacent neighborhoods, and accordingly, CITY and DISTRICT shall enter into a MEMORANDUM OF UNDERSTANDING regarding the expansion of the Center's facilities, to be executed concurrently with this Agreement, or as soon as practicable thereafter, and this Agreement shall be Exhibit C and subject to the MEMORANDUM OF UNDERSTANDING. The MEMORANDUM OF UNDERSTANDING shall have precedence over this Agreement in the event of any conflict between this Agreement and the MEMORANDUM OF UNDERSTANDING;

WHEREAS, for its initial contributions toward Project costs CITY has appropriated \$1,500,000 in Community Development Block Grant (CDBG) funds, including funds in the amount of \$450,000 for FY2006-2007 and \$274,802 for FY2007-2008 for the purpose of an expansion of the facilities at the Columbia Neighborhood Center, operating from facilities located at 785 Morse Avenue, Sunnyvale, CA. 94086. City has agreed to total support of \$1,500,000 (RTC 07-157, May 8, 2007) for its initial contributions toward Project costs, including future CDBG funding of up to \$774,802 over the next three years through FY2010-2011.

WHEREAS, District desires to cooperate with CITY to comply with applicable requirements for the CITY's use of CDBG or other funds for City's contributions to Project costs.

NOW, THEREFORE, THE PARTIES agree to comply with the requirements set forth in the following documents, which are attached hereto and incorporated by these references herein:

- (1) **Scope of Expansion Project and Projected Timeline for Completion - Exhibit "1"**
- (2) **Budget and Method of Payment; Reporting - Exhibit "2"**
- (3) **Standard Provisions - Exhibit "3"**
- (4) **CDBG Assurances and Requirements - Exhibit "4"**
- (5) **Reversion of Assets – Exhibit "5"**
- (6) **Legal Description-Exhibit "6"**
- (7) **General Contractor Bonds-Exhibit "7"**

I. PROGRAM COORDINATION

A. Hanson Hom, or his designee, shall be the PROGRAM MANAGER for CITY and shall render overall supervision of the progress and performance of this agreement by CITY. All services agreed to be performed by CITY shall be under the overall direction of the PROGRAM MANAGER. Should circumstances or conditions subsequent to execution of this agreement require a substitute Project Manager for City, City shall notify District immediately of such occurrence.

B. DISTRICT shall assign a single PROGRAM DIRECTOR who shall have overall responsibility for the progress and execution of this agreement. Should circumstances or conditions subsequent to the execution of this agreement require a substitute PROGRAM DIRECTOR, DISTRICT shall notify CITY immediately of such occurrence.

C. PROGRAM MANAGER for CITY and CITY staff and PROGRAM DIRECTOR for DISTRICT and DISTRICT staff shall fully cooperate relating to the PROGRAM, any areas of concern, and the impact of PROGRAM on CITY and DISTRICT.

All notices or other correspondence required or contemplated by this agreement shall be sent to the parties at the following address:

CITY: City of Sunnyvale,
Attn: Community Development Director
456 West Olive Avenue

Attachment B

FY2006-07 and FY2007-08

Sunnyvale, CA. 94086
408-730-7698

DISTRICT: Sunnyvale School District
Attn: Dr. Benjamin H. Picard, Deputy Superintendent
825 West Iowa
Sunnyvale, CA 94086

AGREEMENT PROVISIONS:

The Parties further agree as follows:

1. FUNDING AND APPROPRIATION

City has received COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds from the United States Department of Housing and Urban Development ("HUD") as an entitlement. Toward the City's initial commitment of \$1,500,000 in CDBG funds for its contributions for Project costs, the City has appropriated Seven Hundred and Twenty-four Thousand Eight Hundred and Two AND 00/100 DOLLARS (\$724,802.00) combined allocations for FY 2006 and FY2007 from such CDBG grant funds (the "CDBG AWARD"), to be utilized during the CDBG grant time period ("Utilization Period") for the purpose of meeting the goals and objectives outlined in Exhibit 1, titled "Scope of Columbia Neighborhood Center Expansion Project" ("Project"), attached and incorporated by this reference.

2. DEFINITIONS

Whenever used in this Agreement and its attachments, the terms below, when initially capitalized, shall have the following meanings:

- A. Project: Design and construction of expansion of the Columbia Neighborhood Center of approximately 3,000 square feet of space.
- B. CDBG: Shall mean Federal Regulations 24 CFR Part 92, which govern the Community Development Block Grant funds. This definition shall include all statutes, HUD memos and other correspondence relating to or otherwise explaining on the CDBG Program.
- C. HUD: Shall mean the United States Department of Housing and Urban Development.
- D. OMB: Shall mean the Federal Office of Management and Budget.
- E. Project Property: Shall mean the building, including those areas to be constructed under this Agreement, and the grounds located at 785 Morse Avenue, Sunnyvale, California, (APN 204-07-001). This property is owned by District. The Legal

Sunnyvale, CA. 94086
408-730-7698

DISTRICT: Sunnyvale School District
Attn: Dr. Benjamin H. Picard, Deputy Superintendent
825 West Iowa
Sunnyvale, CA 94086

AGREEMENT PROVISIONS:

The Parties further agree as follows:

1. FUNDING AND APPROPRIATION

City has received COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) funds from the United States Department of Housing and Urban Development ("HUD") as an entitlement. Toward the City's initial commitment of \$1,500,000 in CDBG funds for its contributions for Project costs, the City has appropriated Seven Hundred and Twenty-four Thousand Eight Hundred and Two AND 00/100 DOLLARS (\$724,802.00) combined allocations for FY 2006 and FY2007 from such CDBG grant funds (the "CDBG AWARD"), to be utilized during the CDBG grant time period ("Utilization Period") for the purpose of meeting the goals and objectives outlined in Exhibit 1, titled "Scope of Columbia Neighborhood Center Expansion Project" ("Project"), attached and incorporated by this reference.

2. DEFINITIONS

Whenever used in this Agreement and its attachments, the terms below, when initially capitalized, shall have the following meanings:

- A. Project: Design and construction of expansion of the Columbia Neighborhood Center of approximately 3,000 square feet of space.
- B. CDBG: Shall mean Federal Regulations 24 CFR Part 92, which govern the Community Development Block Grant funds. This definition shall include all statutes, HUD memos and other correspondence relating to or otherwise explaining on the CDBG Program.
- C. HUD: Shall mean the United States Department of Housing and Urban Development.
- D. OMB: Shall mean the Federal Office of Management and Budget.
- E. Project Property: Shall mean the building, including those areas to be constructed under this Agreement, and the grounds located at 785 Morse Avenue, Sunnyvale, California, (APN _____). This property is owned by District. The Legal

Description of Project Property is set forth in Exhibit 6, titled "Legal Description of Property", attached and incorporated by this reference.

F. Operational Agreement: Shall mean the Agreement between City of Sunnyvale and Sunnyvale School District for the Operation of Columbia Neighborhood Center at the Columbia Middle School Site, executed on December 15, 2006.

3. OBLIGATIONS OF CITY

A. Contract Compliance:

City staff shall provide assistance to District in connection with:

- 1) Obtaining conformity of the Project with the City's policies and procedures;
- 2) Obtaining conformity of Project with CDBG requirements; and,
- 3) Review of Agreement for compliance purposes and evaluating Project based on annual reports received from District.

B. Method of Payment

City shall pay fifty percent of the actual cost for development and new construction on Project Property, with an initial anticipated contribution fund of One Million Five Hundred Thousand Dollars (\$1,500,000.00.)

C. Utilization of Funds

Funds shall be paid by City under this Agreement only for eligible expenses incurred during the Construction Period, which, for this Agreement began on November 8, 2006.

D. Joint Responsibility for HUD Penalties

The City shall assist the District, as the subrecipient of funds, in adhering to all applicable CDBG program requirements. The City agrees to pay fifty percent of any fine or penalty assessed by HUD for any violation of the CDBG requirements assessed to the District except in the case of the District's own willful misconduct or sole negligence.

4. OBLIGATIONS OF DISTRICT

A. With City's assistance District shall:

Abide by the conflict of interest provisions in the California Political Reform Act, which the Parties believe is consistent with 24 CFR 85.36 and OMB Circular A-110. In all cases not governed by these documents, 24 CFR 92.356

shall apply. These rules apply to any person currently being compensated by the District for services rendered to it within the previous twelve (12) months, whether as a full or part time employee, officer, independent contractor or otherwise. Any such persons who have exercised or exercise any decision-making functions or responsibilities with respect to City's administration of CDBG funds or gain inside information with regard to that process, are prohibited from obtaining any financial interest or benefit for themselves or those with whom they have family or business ties during their tenure with District and for one year thereafter.

B. Project Performance of District:

During the period of design and construction, with City's assistance District shall:

- 1) Submit to City all documentation required by City to assure compliance with CDBG requirements of the Project as described in Exhibit 1 and Exhibit 2, attached and incorporated by this reference;
- 2) Maintain all required insurance coverage as specified in the Operational Agreement and as specified for the successful bidder to maintain pursuant to Exhibit 3, titled "Insurance Requirements", attached and incorporated by this reference;
- 3) Obtain a Performance Bond and a Payment Bond, or provide City approved documentation of such bonds by the construction general contractor, each for at least the full amount of the Agreement, as specified in Exhibit 7, titled "Contractor Bonds", attached and incorporated by this reference;
- 4) Become familiar and comply with and cause all its relevant contractors, subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in Exhibit 3 and Exhibit 4, titled "Assurances", attached and incorporated by this reference.
- 5) Include an acknowledgment of City funding and support on all appropriate Project publicity and publications using words to the effect that construction is funded in part by the City of Sunnyvale with Community Development Block Grant funds.
- 6) Implement any changes required by City, HUD, or CDBG, to maintain compliance with CDBG Fund requirements and any other applicable statutes or regulations. City and District will seek remedies to address any changes that impact the financial viability of the Project or to address any conflict(s) between requirements applicable to City source(s) of funding and District

source(s) of funding.

C. Fiscal Responsibilities of District:

District shall:

- 1) Appoint and submit the name of a Fiscal Officer who shall be responsible for the financial and accounting activities of the District, including any receipt and disbursement of CDBG funds;
- 2) Establish and maintain a system of accounts that shall be in conformance with generally accepted principles of accounting for budgeted funds;
- 3) With City's assistance District shall:
 - a) Document all costs by maintaining complete and accurate records of all financial transactions, including, but not limited to, contracts, invoices, time cards, cash receipts, vouchers, canceled checks, bank statements, and/or other official documentation evidencing in proper detail the nature and propriety of all charges;
 - b) Within ninety (90) calendar days of the issuance of a Certificate of Occupancy, if applicable, for the Project, District shall complete a Certification of Actual Costs and Sources of Funds of the Project and an independent audit of that Certification. This audit must be performed by an independent auditor, approved in writing by the City. This audit must identify the sources and total of funds received for the Project, the terms of repayment of those funds, and a detailed breakdown of costs related to the Project. The cost for this audit shall be at City's expense.
 - c) Assure that all accounts and documentation of fiscal activities shall be consistent with the requirements of Exhibit 2.

D. Records, Reports and Audits of District:

- 1) With City's assistance District shall comply with all applicable federal Uniform Administrative Requirements as delineated in 24 CFR 570.502.
- 2) Establishment and Maintenance of Records: District shall maintain records, including but not limited to books, financial records, supporting documents, statistical records, personnel, property and all other pertinent Records sufficient to reflect properly (a) all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred to perform this Agreement, and (b) all other matters covered by this Agreement.

- 3) Preservation of Records: District shall preserve and make available its records:
- a) Until the expiration of five (5) years following the end of the Effective Date;
 - b) For such longer period, if any, as is required by applicable law; or
 - c) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five (5) years from the date of any resulting final settlement.
- 4) Examination of Records and Facilities: At any time during normal business hours and as often as may be deemed necessary, with at least five working days' notice by City, District agrees that City, and/or any duly authorized representatives shall, until expiration of (a) five (5) years after the conclusion of the Construction Period, or (b) such longer period as may be prescribed, have access to and the right to examine its offices and facilities engaged in performance of this Agreement and all its records with respect to all matters covered by this Agreement, excepting those falling within the attorney-client privilege and those falling within the attorney work-product privilege, provided that in the event of a dispute regarding the applicability of the attorney work-product privilege to specific records, the Parties agree to submit the dispute to an impartial mediator agreeable to both Parties. Agreement regarding the mediator shall not be withheld unreasonably. The Parties shall equally divide the costs of such mediation.

District also agrees that the City, or any duly authorized representatives, have the right to audit, examine and make excerpts or transcripts of and from, such records, and to make audits of all contracts and subcontracts, invoices, payrolls, records of personnel, conditions of employment, materials and all other data relating to matters covered by this Agreement.

5. CONTRACT COMPLIANCE

A. Monitoring and Evaluation of Project:

Evaluation of the Project performance shall be the mutual responsibility of both Parties. District shall furnish all service data, statements, records, information and reports if requested and if necessary for City to monitor, review and evaluate the Project performance.

B. Contract Noncompliance:

With receipt by either party of any information that evidences a failure or deficiency by either party to comply with any provision of this Agreement, or

other construction and agreements that govern the Project, either party shall have the right to require corrective action to enforce compliance with such provision. Corrective action shall be taken if any of the following, as examples only, occur:

- 1) If either party (with or without knowledge) has made any material misrepresentation of any nature with respect to any information or data furnished to the other party in connection with the Project;
- 2) If there is pending litigation with respect to the performance by either party of any of its duties or obligations under this Agreement, or other construction and/or regulatory agreements that govern the Project, which may materially jeopardize or adversely affect the undertaking of or the carrying out of the Project;
- 3) If either party shall have taken any action pertaining to the Project which requires the other party's approval without having obtained such approval;
- 4) If either party is in material default under the provisions of this Agreement, or other construction and agreements that govern the Project;
- 5) If either party makes improper use of CDBG funds;
- 6) If either party fails to comply with any of the terms and conditions of this Agreement, or other construction and agreements that govern the Project, in such a manner as to constitute material breach thereof; or,
- 7) If either party submits to the other party any reports which are incorrect or incomplete in any material respect.

C. Corrective Action:

Either party shall provide written notice to the other party of corrective actions necessary and a reasonable cure date. After a reasonable period of time, either party shall have the right to require the presence of any of the other party's officers at any hearing or meeting called for the purpose of considering corrective action within thirty (30) working days of issuing such notice. Both parties will be informed of and have an opportunity to participate fully in corrective action deliberations.

The party seeking corrective action shall forward to the other party a set of specific corrective action recommendations relative to Project noncompliance and a timetable for implementing the specified corrective action recommendations; such timetable shall allow District not less than thirty (30) working days to comply with the specified corrective action recommendations. Following implementation of the corrective actions, the party implementing the

corrective actions shall forward to the other party, within the time specified by that party, any documentary evidence required by that party to verify that the corrective actions have been taken. In the event the party implementing the corrective actions does not implement the corrective action recommendations in accordance with the corrective action timetable, either party may: disallow all or part of the cost of the activity or action in noncompliance; provide notice of intent to terminate this Agreement as specified in the MEMORANDUM OF UNDERSTANDING; and/or take other remedies that may be legally available.

6. ASSIGNABILITY AND INDEPENDENT CONTRACTOR REQUIREMENTS

- A. Neither Party may, without the other Party's prior written consent, assign its rights or delegate its duties pursuant to this agreement. This provision does not apply to the District's contracting with contractor(s), consultant(s), or others to perform services or provide other items related to the planning, approval, design, or construction of the Improved Facilities.

- B. The relationship of the Parties is that of independent contractors. The Parties have full rights to manage their employees subject to the requirements of the law. All persons employed by either Party in connection with this Agreement shall be employees of that Party in all respects. Each Party shall be responsible for all of its employee benefits, including, but not limited to, statutory worker's compensation benefits.

7. COMPLIANCE WITH LAW

District shall cooperate with City to become familiar and comply with and cause all its relevant contractors, subcontractors and employees, if any, to become familiar and comply with all applicable federal, state and local laws, ordinances, codes, regulations, and decrees, including, but not limited to, those federal rules and regulations outlined in Exhibit 4.

8. TERMS AND AMENDMENTS

Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring such revision, and any such adjustment to this Agreement shall be determined and effective only upon the mutual agreement in writing of the Parties hereto unless the amendments are made by HUD, in which case they will be adopted as ordered.

9. HOLD HARMLESS/INDEMNIFICATION/CLAIM DEFENSE

District shall indemnify, save, protect, defend and hold harmless the City, its officers, agents and employees from any and all claims, costs, and liability, including reasonable attorneys' fees for any damage, injury or death to persons or property arising from the negligent or wrongful acts or omissions of the District or

its agents under this Agreement, except to the extent that such claims, costs, or liability arise directly or indirectly from the negligent or wrongful acts or omissions of City, its officers, agents and employees.

City shall indemnify, save, protect, defend and hold harmless the District, its officers, agents and employees from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death, to persons or property arising from the negligent or wrongful acts or omissions of the City or its agents under this Agreement, except to the extent that such claims, costs, or liability arise directly or indirectly from the negligent or wrongful acts or omissions of District, its officers, agents and employees.

City and District shall cooperate in the defense of any action against the District and/or the City related to the Improved Facilities. The Parties shall pay equal shares for the defense of any claim, action, or suit. The District shall have the right to select legal counsel for this defense, although the Parties acknowledge and agree that the defense and indemnity of a claim, action, or suit, may be tendered to a contractor pursuant to the forthcoming construction contract between the District and successful bidder.

10. WHEN RIGHTS AND REMEDIES WAIVED

In no event shall any payment by City or any acceptance of payment by District hereunder constitute or be construed to be a waiver by City or District of any breach of covenants or conditions of this Agreement or any default which may then exist on the part of City or District, and the making of any such payment while any such breach or default shall exist shall in no way impair or prejudice any right or remedy available to City or District with respect to such breach or default.

11. MISCELLANEOUS PROVISIONS

- A. The Captions: The captions of the various sections, paragraphs, and subparagraphs of the Agreement are for convenience only and shall not be considered nor referred to for resolving questions of interpretation.
- B. No Third Party Beneficiary: This Agreement shall not be construed or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any claim or right of action hereunder for any cause whatsoever.
- C. Severability Clause: In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal, or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.
- D. Venue: In the event that suit shall be brought by any Party to this Agreement, the

Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

The Parties to this Agreement hereby indicate their acknowledgment and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the first day of the Construction Period set forth above.

CITY:

CITY OF SUNNYVALE, CALIFORNIA
A chartered California municipal Corporation

By: _____

Its: City Manager, City Of Sunnyvale

Date: _____

APPROVED AS TO FORM:

ROBERT BOCO, Assistant City Attorney

ATTEST:

City Clerk

Sunnyvale School District

By: _____

Its: Superintendent

Exhibit 1**Columbia Neighborhood Center Expansion Project****Scope of Expansion Project and Projected Timeline for Completion****1. PURPOSE OF PROJECT**

Based on City's source of funding for City's contribution to Project costs, District, as a separate government agency, shall cooperate with City to implement this Agreement in accordance with the applicable provisions of Title II of the Housing and Community Development Act of 1990, as amended, the federal regulations as set forth in 24 CFR Part 92, written interpretations or requirements by the United States Department of Housing and Urban Development ("HUD"), and all other applicable rules and regulations pertaining thereto. All these elements shall be collectively called "CDBG".

The purpose of this Project is to expand the facilities for use by the services provided at the Columbia Neighborhood Center (hereafter called Center) for the purpose of providing services to the students of Sunnyvale School District and the residents in the neighborhood surrounding the Center at 785 Morse Avenue, Sunnyvale, CA located in Census Tract No. 5090. This complex would be expanded by 3549 square feet at 785 Morse Avenue, Sunnyvale, California, APN 204-07-001. The Project shall consist of an expansion of operating facilities at the Center including the rehabilitation of existing office, lobby and medical examination rooms.

There will be two responsible parties involved in the development and operation of this Project: Sunnyvale School District, developer and owner of Project Property ("District") and the City of Sunnyvale ("City") which have entered into an Operational Agreement for shared use of the Center and a Memorandum of Understanding for shared financing and construction of the expansion of the Center.

2. DEFINITION OF TERMS

A. With City's assistance District shall develop the Project Property and construct the improvements in accordance with this Agreement and other construction and/or regulatory agreements that govern the Project.

B. Construction Management

1) Procurement specifications for all contractors, subcontractors and suppliers (including but not limited to architect and construction contractors) shall be subject to review by City.

2) The construction contract shall be a lump sum contract.

Exhibit 1

Columbia Neighborhood Center-Expansion Project

Scope of Expansion Project and Projected Timeline for Completion

1. PURPOSE OF PROJECT

Based on City's source of funding for City's contribution to Project costs, District, as a separate government agency, shall cooperate with City to implement this Agreement in accordance with the applicable provisions of Title II of the Housing and Community Development Act of 1990, as amended, the federal regulations as set forth in 24 CFR Part 92, written interpretations or requirements by the United States Department of Housing and Urban Development ("HUD"), and all other applicable rules and regulations pertaining thereto. All these elements shall be collectively called "CDBG".

The purpose of this Project is to expand the facilities for use by the services provided at the Columbia Neighborhood Center (hereafter called Center) for the purpose of providing services to the students of Sunnyvale School District and the residents in the neighborhood surrounding the Center at 785 Morse Avenue, Sunnyvale, CA located in Census Tract No. 5090. This complex would be expanded by [redacted] square feet at 785 Morse Avenue, Sunnyvale, California, APN [redacted]. The Project shall consist of an expansion of operating facilities at the Center including the rehabilitation of existing office, lobby and medical examination rooms.

There will be two responsible parties involved in the development and operation of this Project: Sunnyvale School District, developer and owner of Project Property ("DISTRICT") and the City of Sunnyvale ("CITY") which have entered into an Operational Agreement for shared use of the Center and a Memorandum of Understanding for shared financing and construction of the expansion of the Center.

2. DEFINITION OF TERMS

- A. With City's assistance District shall develop the Project Property and construct the improvements in accordance with this Agreement and other construction and/or regulatory agreements that govern the Project.
- B. Construction Management
 - 1) Procurement specifications for all contractors, subcontractors and suppliers (including but not limited to architect and construction contractors) shall be subject to review by City.
 - 2) The construction contract shall be a lump sum contract.

3) District shall manage all construction activities.

C. Maintenance and Repair of Project Property

- 1) As related to the construction on Project Property, with City's assistance District shall maintain Project Property in compliance with all federal, state and local standards. District shall cooperate with City staff conducting on-site inspections to determine compliance with this section.
- 2) Obligations for maintenance of the Center and Project Property as related to ongoing activities of the Center shall remain consistent with the Operational Agreement.

D. Reports and Submittals

- 1) Prior to the first payment to District under this Agreement, District shall provide City with a general statement of its sources and uses of funds for the Project.
- 2) Until such time as District is entitled to issuance of a certificate of occupancy, as applicable, the District shall provide City with monthly progress reports regarding the status of the Project.
- 3) In order to comply with CDBG and other applicable federal, state, and local requirements, and to efficiently monitor compliance with this Agreement, City may require additional reporting elements from District at City's cost.

3. PROJECTED TIMELINE AND PERFORMANCE SCHEDULE: The following performance schedule is the standard by which satisfactory progress will be measured.

Exhibit 2

**SUNNYVALE SCHOOL DISTRICT
COLUMBIA NEIGHBORHOOD CENTER
EXPANSION PROJECT**

Budget and Basis for Use of City's Funds

1. APPROPRIATION BUDGET

- A. The City's funds shall be used to assist in the development of Project, including architectural, engineering and construction costs. City shall have final determination for what activities its funds may be used. Development funds may be used for any reasonable expense normally associated with similar construction projects that are allowable costs under CDBG. Prior to commencement of construction, District shall provide City an expenditure plan, specifying the order and/or purpose for which City funds will be spent for design and construction costs incurred.

- B. It is the understanding of the City, prior to entering into this Agreement, that no relocation costs are required or applicable under the Uniform Relocation and Real Property Act of 1970, as the Project Property contains no habitable improvements.

- C. The District acknowledges that City's CDBG funds appropriated pursuant to this Agreement will only be available for Project costs after a Release of Funds is executed by HUD.

2. ACTUAL COST BASIS AND REIMBURSEMENT

- A. Actual Costs shall be based on the total cost bids, as contracted by District, for architectural/engineering services and construction costs. Work change orders shall be clearly itemized and added to the total costs as soon as approved by District.

- B. City shall pay to the District 50% of the contractor's progress payments and 50% of other invoiced Project costs within fourteen (14) days of receipt of the contractor's or other invoice(s). Also, within thirty (30) days of the District's approval of a change order and receipt of the contractor's invoice(s) for the change order, City shall make a full payment for its portion of any Change Order Excess that it has agreed to pay. The District shall review, approve, and administer all contractors' payment applications as indicated in the District's contract with each contractor.

- C. District will withhold ten percent (10%), as retention, from all construction costs. Retention funds shall only be repaid after a Notice of Completion has been recorded for at least 35 days, no outstanding liens on Project Property remain, a

Certificate of Occupancy, as applicable, has been issued, and all local federal and state requirements have been certified as complete.

Exhibit 3

**SUNNYVALE SCHOOL DISTRICT – COLUMBIA NEIGHBORHOOD CENTER
EXPANSION PROJECT**

Insurance Requirements

The District shall require the Project General Contractor to purchase and maintain the insurance policies set forth below in connection with the Columbia Neighborhood Center Expansion Project at its sole cost and expense.

1.1. Insurance

Unless different provisions and/or limits are indicated in the Special Conditions, all insurance required of Contractor and/or its Subcontractor(s) shall be in amounts and including the provisions as set forth herein.

1.1.1. Commercial General Liability and Automobile Liability Insurance

1.1.1.1. Contractor shall procure and maintain, during the life of this Contract, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, District, State, Construction Manager(s), Project Inspector(s), and Architect(s) from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under this Contract. Contractor shall ensure that Products Liability and Completed Operations coverage and Fire Damage Liability is included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

1.1.1.2. Subcontractor: Contractor shall require its Subcontractors, if any, to procure and maintain similar Commercial General Liability Insurance and Automobile Liability Insurance with minimum limits equal to the amount required of the Contractor.

1.1.2. Excess Liability Insurance

1.1.2.1. Contractor shall procure and maintain, during the life of this Contract, Excess Liability Insurance that shall protect Contractor, District, State, Construction Manager(s), Project Manager(s), and Architect(s) in amounts and including the provisions as set forth in the Supplementary Conditions and/or Special Conditions, and that complies with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance.

1.1.2.2. Subcontractor: Contractor shall require its Subcontractor(s), if any, to procure and maintain similar Excess Liability Insurance with minimum limits equal to the amount required of the Contractor.

1.1.3. Workers' Compensation and Employers' Liability Insurance

1.1.3.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.

1.1.3.2. Contractor shall procure and maintain, during the life of this Contract, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in work under this Contract, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers' Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under this Contract, on or at the Site of the Project, are not protected under the Workers' Compensation Statute, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

1.1.4. Builder's Risk Insurance: Builder's Risk "All Risk" Insurance.

Contractor shall procure and maintain, during the life of this Contract, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the District, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work of the Project included within the Contract Documents. Coverage is to insure against all risks of accidental physical loss and shall include without limitation the perils of vandalism and/or malicious mischief (both without any limitation regarding vacancy or occupancy), sprinkler leakage, civil authority, sonic disturbance, earthquake, flood, collapse, wind, fire, war, terrorism, lightning, smoke, and rioting. Coverage shall include debris removal, demolition, increased costs due to enforcement of all applicable ordinances and/or laws in the repair and replacement of damaged and undamaged portions of the property, and reasonable costs for the Architect's and engineering services and expenses required as a result of any insured loss upon the Work and Project, including completed Work and Work in progress, to the full insurable value thereof.

1.1.5. Proof of Carriage of Insurance and Other Requirements: Endorsements and Certificates

1.1.5.1. Contractor shall not commence Work nor shall it allow any Subcontractor to commence Work under this Contract, until Contractor and its Subcontractor(s) have procured all required insurance and Contractor has delivered in duplicate to the District complete endorsements (or entire insurance policies) and certificates indicating the required coverages have been obtained , and the District has approved these documents.

1.1.5.2. Endorsements, certificates and insurance policies shall include the following:

1.1.5.2.1. A clause stating:

“This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to District, Architect, and Construction Manager stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than thirty (30) days after date of mailing notice.”

1.1.5.2.2. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

1.1.5.3. All endorsements, certificates and insurance policies shall state that District, its trustees, employees and agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s) and Architect(s) are named additional insureds under all policies except Workers’ Compensation Insurance and Employers’ Liability Insurance. Contractor’s and Subcontractors’ insurance policy(s) shall be primary and non-contribution to any insurance or self-insurance maintained by District, its trustees, employees and/or agents, the State of California, Construction Manager(s), Project Manager(s), Inspector(s), and/or Architect(s). All endorsements shall waive any right to subrogation against any of the named additional insureds.

1.1.5.4. All policies shall be written on an occurrence form.

1.1.5.5. All of Contractor’s insurance shall be with insurance companies with an A.M. Best rating of no less than **A: XI**.

1.1.6. Insurance Policy Limits

Unless different limits are indicated in the Special Conditions, the limits of insurance shall not be less than the following amounts:

Commercial General Liability	Each Occurrence	\$1,000,000
	General Aggregate	\$2,000,000
	Product Liability and Completed Operations	\$1,000,000
Automobile Liability – Any Auto	Combined Single Limit	\$1,000,000
Excess Liability		\$4,000,000
Workers Compensation		Statutory limits pursuant to State law
Employers' Liability		\$1,000,000
Builders Risk (Course of Construction)		Issued for the value and scope indicated herein.

Exhibit 4

CDBG ASSURANCES AND REQUIREMENTS

**Sunnyvale School District
Columbia Neighborhood Center Expansion Project**

Pursuant to CITY's use of CDBG funds toward Project costs, the DISTRICT shall cooperate with City to comply with the applicable regulations, policies, guidelines and requirements as they relate to the application, acceptance and use of Federal funds for this Project, including:

- a. Federal OMB Circulars No. A-87, A-102, and A-133; and
- b. Title VI of the Civil Rights Act of 1964 (Public Law 88-352; 42 U.S.C. 2000d *et seq.*), as amended. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of the grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity; and
- c. Title VIII of the Civil Rights Act of 1968 (Public Law 90-284; 42 U.S.C. 3601 *et seq.*), as amended; and
- d. Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 (Public Law 93-383; U.S.C. 5301 *et seq.*), as amended; and
- e. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112; 29 U.S.C. 794), as amended; and
- f. The Age Discrimination Act of 1975 (Public Law 94-135; U.S.C. 6101), as amended.

District and City will or have already established safeguards to prohibit District and City employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other activities.

CDBG Requirements for Construction Projects:

Successful bidder shall comply with all applicable laws and regulations governing the use of CDBG funds, including but not limited to:

- a. Lead Based Paint. The requirements of the Lead-Based Paint Poisoning Prevention

Act (42 U.S.C. 4821-4846) and implementing regulations at 24 CFR Part 35.

b. Section 504 of the Rehabilitation Act of 1973. The requirements of Section 504 of the Rehabilitation Act of 1973. Section 504 imposes requirements to ensure that “qualified individuals with handicaps” have access to programs and activities that receive federal funds.

c. Outreach to Small and Minority Firms, Women’s Business Enterprises and Labor Surplus Area Firms. 24 CFR 85.36, subdivision (e) provides for all necessary affirmative steps to assure that minority firms, women’s business enterprises, and labor surplus area firms are used when possible. Affirmative steps shall include: (i) Placing qualified small and minority businesses and women’s business enterprises on solicitation lists; (ii) Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources; (iii) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women’s business enterprises; (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women’s business enterprises; (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce; and (vi) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in items (i) through (v) above.

d. Davis-Bacon Prevailing Wage Rate Compliance and Labor Standards.

The construction project shall be in conformance with the California Labor Code and the federal Davis-Bacon Act. In the event of any conflict, the higher prevailing wage shall govern. The Davis-Bacon Act provides that prevailing wage requirements be included in the construction contract. The District and City shall implement a labor compliance program on the Project. The construction activities must comply with the Safety Standards Act.

e. Training Opportunities. Compliance with E.O. 11246 and the requirements of Section 3 of the Housing and Urban Development Act of 1978, as amended, 12 U.S.C. 1701, requiring to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in, the areas of the project. The successful bidder agrees to include the following language in all subcontracts executed for work on this project:

The work to be performed under this agreement is a project assisted under a program providing direct federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to lower income residents of the project area and agreements of work in connection with the project be awarded to business concerns which are located

in, or owned in substantial part by persons residing in, the areas of the project.

f. Debarred, Suspended and Ineligible Contractors and Subcontractors. The DISRICT will take actions that insure that all prospective contractors and subcontractors will be checked against HUD's list of those ineligible to participate in the program. Debarred, suspended, or ineligible contractors or subcontractors cannot use CDBG funds.

Exhibit 5 – Reversion of Assets

**Sunnyvale School District
Columbia Neighborhood Center Expansion Project**

Reversion of Assets

Whereas CITY has appropriated CDBG funds in the initial amount of \$1,500,000 for the purpose of expansion of the Columbia Neighborhood Center at 785 Morse Avenue, Sunnyvale, CA. 94086 and whereas CITY and DISTRICT have executed an agreement for the ongoing operations of the COLUMBIA NEIGHBORHOOD CENTER for a period of twenty years, set to expire on June 30, 2026; and

Whereas CITY and DISTRICT have entered into this CDBG Agreement which for purposes of this Reversion of Assets provision shall expire on June 30, 2021. This expiration date is not intended to affect the timeline for DISTRICT's or CITY's satisfactory completion of obligations with respect to funding and construction of the Project;

Now therefore, the parties agree to comply with the following requirements as set forth below:

- A. The CITY funds contributed to the Project will be used to cover costs for pre-construction project planning, design and construction costs associated with the demolition and construction of the expansion of the Columbia Neighborhood Center building and is limited to the portion of the building providing services to the community.

- B. The CITY and DISTRICT agree that the anticipated useful life of the facility will exceed five years from the anticipated expiration date of this CDBG Agreement which for purposes of this Reversion of Assets provision shall be June 30, 2021. Subject to the parties' Operational Agreement for the Center, DISTRICT will continue to allow the CITY to operate the facility for the entire term of the Operational Agreement, and thereby comply with HUD CDBG Regulatory citation Section 570.503, and thereby continue to meet one of the national objectives in Section 570.208.

- C. The CITY and DISTRICT agree that should the anticipated services provided to the community through the operation of the facility be terminated solely by DISTRICT through its termination of the Operational Agreement and CITY is prohibited from operating its Columbia Neighborhood Center programs, then DISTRICT will reimburse the CITY an amount equal to the fair market value of CITY's proportionate contribution to the improved portion of the Project property less any portion of the value attributable to CITY's period of use under the Operational Agreement and to expenditures of non-CDBG funds for the

acquisition of, or improvement to, the improved portion of the Project property. CITY and DISTRICT agree that for purposes of this provision, the fair market value of CITY's proportionate contribution referenced above shall be equivalent to CITY's initial CDBG allocation of \$1,500,000 and that in the event of DISTRICT's early termination and prohibition on CITY's continued operations as referenced above, the reimbursement due the CITY will be equal to the balance of the remaining number of years of the twenty-year term of the Operational Agreement set to expire on June 30, 2026, multiplied by \$75,000 per annum. For example, should such services be terminated in 2021, with five years of operations remaining under the current term of the Operational Agreement, and the CITY is prohibited from operating its programs at the Columbia Neighborhood Center, the total amount due as reimbursement to the CITY under this provision would be \$375,000 (5 years x \$75,000 = \$375,000). If CITY and DISTRICT mutually agree that, for purposes of calculating the balance owed as reimbursement, that the fair market value of CITY's proportionate contribution actually exceeds or is less than the \$1,500,000 referenced above, the CITY and the DISTRICT shall agree to negotiate in good faith to determine a reasonable reimbursement amount. After the expiration of the current term of the Operational Agreement, no balance will be owed to CITY.

Exhibit 6

Columbia Neighborhood Center Expansion Project

Legal Description

**[LEGAL DESCRIPTION OF COLUMBIA MIDDLE SCHOOL SITE,
WHICH CONTAINS PROJECT PROPERTY, ATTACHED]**

Exhibit 6

**SUNNYVALE SCHOOL DISTRICT
COLUMBIA NEIGHBORHOOD CENTER EXPANSION PROJECT**

Legal Description

Attach Legal Description of Project Property

Alliance Title

PRELIMINARY REPORT

Escrow Branch:
901 Campisi Way, Suite 330
Campbell, CA 95008
(408) 558-7800
Fax: (408) 558-0170

Escrow Officer: Dora Taylor/td
Email: dtaylor@atc-ca.com

Columbia

ORDER NO. 11404219-004- DT

Ref. No:

Carroll Engineering
1101 So. Winchester Blvd., #H-184
San Jose, CA 95128
Attn.: Lynne McDonell

Property Address:
739 Morse Avenue
Sunnyvale, CA 94085
APN: 204-07-001
ARB: 206-07-001

In response to the above referenced application for a policy of title insurance, this Company reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception herein or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said Policy forms. The printed Exceptions and Exclusions from the coverage of said Policy or Policies are set forth in Exhibit A attached.

Please read the exceptions shown or referred to below and the Exceptions and Exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.

It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land. This report (and any supplements hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

The form of policy of title insurance contemplated by this report is:

ALTA Lender's Policy issued by First American Title Insurance Company

Dated as of October 31, 2005 at 7:30 a.m.

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A Fee

Title to said estate or interest at the date hereof is vested in:

Sunnyvale School District of Santa Clara, as to Parcels One, Two, Three, Six and Seven and Sunnyvale City Elementary School District of Santa Clara County, as to Parcels Four and Five

The land referred to in this Report is situated in the State of California, County of Santa Clara and is described as follows:
(See "Legal Description" Schedule C attached)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy would be those as shown on the following pages.

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1. Rights of the public, if any, over that portion of said land which lies within the bounds of San Diego Avenue and Morse Avenue
2. An Agreement, affecting said land, for the purposes stated herein and subject to the terms, covenants, and/or conditions, and easements, if any, contained therein
For: recreation centers
Dated: October 09, 1972
Executed by: City of Sunnyvale, a municipal corporation and Sunnyvale School District of Santa Clara County
Recorded: October 19, 1972 in Book 0075, Page 450, Official Records.
3. Rights of parties in possession of said land by reason of unrecorded leases, or rental agreements, if any.
4. Any easement not disclosed by those public records which impart constructive notice and which are not visible and apparent from an inspection of the surface of said land.
5. Any facts, rights, interests or claims which a correct survey would show.
6. Environmental Responsibility Acceptance: Evidence must be provided that there are no commitment statements in effect under Civil Code Section 850 et seq. with respect to the property.

In order to remove this statement, the landowner will need to provide this company with an affidavit stating that they are not aware of any release reports or commitment statements which have been issued under this statute, with respect to the property.

NOTES:

- a. Date last insured: -0-
- b. This report does not reflect requests for notice of default, requests for notice of delinquency, subsequent transfers of easements, and similar matters not germane to the issuance of the policy of title insurance anticipated hereunder.
- c. If this company is requested to disburse funds in connection with this transaction, Chapter 598 of 1989 Mandates of the California Insurance Code requires hold periods for checks deposited to escrow or sub-escrow accounts. Such periods vary depending upon the type of check and anticipated methods of deposit should be discussed with the escrow officer.
- d. No endorsement issued in connection with the policy and relating to covenants, conditions or restrictions provides coverage for environmental protection.

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- e. **SPECIAL RECORDINGS:** Due to a severe budget shortfall, many County recorders have announced that as of September 1, 1992, severe limitations will be placed on the acceptance of "special recordings."
- f. **HOMEOWNERS ASSOCIATION:** if the property herein described is subject to membership in a Homeowners Association, it will become necessary that we be furnished a written statement from the said Homeowners Association of which said property is a member, which provides that all liens, charges and/or assessments levied on said land have been paid. Said statement should provide clearance up to and including the time of closing. In order to avoid unnecessary delays at the time of closing we ask that you obtain and forward said statement at your earliest convenience.
- g. **DEMANDS:** This company requires that all beneficiary demands be current at the time of closing. If the demand has expired and a current demand cannot be obtained it may be necessary to hold money whether payoff is made based on updated verbal figures or an expired demand.
- h. **LINE OF CREDIT PAYOFFS:** If any deed of trust herein secures a line of credit we will require that the account be frozen and closed and no additional advances be made to the borrower. If the beneficiary is unwilling to freeze the account we will require you submit to us all unused checks, debit vouchers, and/or credit cards associated with the loan along with a letter (affidavit) signed by the trustor stating that no additional advances will be made under the credit line. If neither of the above is possible it will be necessary to hold any difference between the demand balance and the maximum available credit.
- i. **MAPS:** The map attached hereto may or may not be a survey of the land depicted thereon, you should not rely upon it for any purpose other than orientation to the general location of the parcel or parcels depicted. Alliance Title Company expressly disclaims any liability for alleged loss or damages which may result from reliance upon this map.
- j. According to the public records, no Deeds conveying the property described in this report have been recorded within a period of two (2) years prior to the date of this report, except as shown herein--

NONE

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**SCHEDULE C
LEGAL DESCRIPTION**

All that certain real property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

PARCEL ONE:

Beginning at a point in the center line of Morse Avenue at the common corner for Lots 6, 7, 17 and 18, as shown on the Map hereinafter referred to; thence S. 14° 52' W. along the center line of Morse Avenue, 13.41 chs. To a stake marked H. 1, from which a witness post marked W.P.H. 1 and standing in the Westerly line of Morse Avenue bears N. 75° 8' W. 20 feet; thence leaving said Avenue and running at right angles to it N. 75° 08' W. 11.19 chs. To a stake marked H.2, standing in the Westerly line of Lot 5; thence along the Westerly line of Lot 5 and Lot 6, N. 14° 52' E. 13.41 chs. To the common corner for Lots 6 and 7 in the Westerly line of the Subdivision hereinafter referred to; thence along the line between Lots 6 and 7, S. 75° 08' E. 11.19 chs. To the place of beginning and being all of Lot 6 and a part of Lot 5 as delineated and so designated upon Map of the L. L. Morse Subdivision of that part of Lot 2A of the Murphy Partition in the Rancho Pastoria de las Borregas, lying between Maude Avenue and Mt. View-Alviso Road, and which said Map was filed on December 6, 1899 in the office of the County Recorder of the County of Santa Clara, State of California, in Vol. "F1" of Maps, page 39.

PARCEL TWO:

Portion of Lot 5 as shown upon that certain Map entitled, "Map of L. L. Morse Subdivision", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on December 6, 1899 in Book F-1 of Maps, page 39, and more particularly described as follows:

Beginning at a point in the center line of Morse Avenue distant thereon South 14° 52' West, 295.02 feet from the common corner for Lots 5, 6, 16 and 17, as said Avenue and Lots are shown upon the Map above referred to; running thence South 14° 52' West along the said center line of Morse Avenue 80.00 feet; thence at right angles North 75° 08' West, 738.54 feet to the Northwesternly line of said Lot 5; thence at right angles along said last named line North 14° 52' East, 80.00 feet; thence at right angles South 75° 08' E. 738.54 feet to the point of beginning.

PARCEL THREE:

Beginning at a point in the center line of Morse Avenue distant thereon S. 14° 52' W. 375.02 feet from the common corner for Lots 6, 17, 5 and 16, as shown upon the Map hereinafter referred to; thence running along said center line of Morse Avenue S. 14° 52' W. 215.02 feet to the most Southerly corner of said Lot 5; thence along the Southeasterly line of said Lot 5, N. 75° 08' W. 738.54 feet to the most Westerly corner thereof; thence along the Northwesternly line of said Lot 5, N. 14° 52' E. 215.02 feet; thence parallel with the said Southwesterly line of Lot 5, S. 75° 08' E. 738.54 feet to the point of

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beginning, and being a portion of Lot 5 as shown upon that certain Map entitled, "Map of L. L. Morse Subdivision", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on December 6, 1899 in Book F-1 of Maps, page 39.

PARCEL FOUR:

Portion of Lot 48 as shown upon that certain Map entitled, "Map of J. T. Murphy Sub. No. 3", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on October 17, 1896 in Book I of Maps, at page 45 and more particularly described as follows:

Beginning at point on the Southeasterly line of Lot 48, distant thereon North $14^{\circ} 52'$ East 143.107 feet from the Easterly common corner for Lots 47 and 48 as said Lots are shown on the Map above referred to; running thence North $14^{\circ} 52'$ East along the said Southeasterly line of Lot 48 for a distance of 144.323 feet running thence North $75^{\circ} 08'$ West and parallel with the dividing line between said Lots 47 and 48 for a distance of 185.00 feet; running thence South $14^{\circ} 52'$ West and parallel with the Southeasterly line of said Lot 48 for a distance of 144.323 feet; running thence South $75^{\circ} 08'$ East and parallel with the dividing line between said Lots 47 and 48 for a distance of 185.00 feet to the point of beginning.

PARCEL FIVE:

Beginning at the most Southerly corner of Lot 48 as shown upon the Map hereinafter referred to; thence running along the Southeasterly line of said Lot 48, N. $14^{\circ} 52'$ E. a distance of 143.107 feet; thence leaving said Southeasterly line and running parallel with the Southwesterly line of said Lot 48, N. $75^{\circ} 08'$ W. 185 feet; thence parallel with the said Southeasterly line of Lot 48, S. $14^{\circ} 52'$ W. 143.107 feet to a point in the Southwesterly line of said Lot 48; thence along said Southwesterly line S. $75^{\circ} 08'$ E. 185 feet to the point of beginning, containing 0.607 of an acre of land, more or less, and being a portion of Lot 48, as laid down, designated and delineated upon that certain Map entitled, "Map of J. T. Murphy Subdivision No. 3", and which said Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California, on October 17, 1896 in Book "I" of Maps, page 45.

PARCEL SIX:

Portion of Lots 48 and 51, as shown upon that certain Map entitled "Map of J. T. Murphy Sub. No. 3", which Map was filed for record in the office of the Recorder of the county of Santa Clara, State of California, on October 17, 1896 in Book I of Maps at page 45 and more particularly described as follows:

Beginning at a point on the Southeasterly line of Lot 48, as said Lot is shown upon the Map above referred to, at the Easternmost corner of that certain parcel of land described in the Deed from Wm. H. Henderson, Jr., et ux, to Sunnyvale City Elementary School District of Santa Clara County, dated August 3, 1953, Recorded August 3, 1953 in Book 2695 of Official Records, page 96 Santa Clara County Records; running thence North $14^{\circ} 52'$ East along the Southeasterly line of Lots 48 and 51 as said Lots are shown upon the Map above referred to, for a distance of 520.00 feet; thence at right angles North $75^{\circ} 08'$ West 185.00 feet; thence at right angles South $14^{\circ} 52'$ West 520.00 feet to the

Northernmost corner of the land so described in the Deed to said Sunnyvale City Elementary School District of Santa Clara County; thence South 75° 08' East along the Northeasterly line of the land so described in the Deed to said Sunnyvale City Elementary School District of Santa Clara County for a distance of 185.00 feet to the point of beginning.

PARCEL SEVEN:

Portion of Lot 47 as shown upon that certain Map entitled "Map of the J. T. Murphy Subdivision No. 3," which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on October 17, 1886 in Book "T" of Maps, page 45; and more particularly described as follows:

Beginning at a point on the Easterly line of said Lot 47 at the Northeasterly corner of Lot 32, as said lot is shown on that certain map entitled, "Tract No. 1329 Western Estates", which Map was filed for record in the office of the Recorder of the County of Santa Clara, State of California on July 7, 1954 in Book 50 at Page 52; thence North 74° 38' West along the Northerly line of said Lot 32 and its prolongation Westerly 185.03 feet to the center line of San Diego Avenue as said Avenue is shown upon the Map of Tract No. 1329; thence North 14° 52' East along the center line of said San Diego Avenue 373.98 feet to the Northerly line of said Lot 47; thence South 75° 08' East along the Northerly line of said Lot 47, 185.02 feet to the Northeasterly corner thereof; thence South 14° 52' West along the Easterly line of said Lot 47, 375.92 feet to the point of beginning.

ARB No: 206-07-001
APN No: 204-07-001

Exhibit 7

General Contractor Bonds

The General Contractor under this Agreement shall furnish two (2) good and sufficient bonds; each of the said bonds shall be executed in the sum equal to one hundred percent (100%) of the contract price based on the actual or estimated quantities used to determine the successful bidder(s). One of the said bonds shall guarantee the faithful performance of said contract(s) by the construction General Contractor. The other of the said bonds is a payment bond and it shall be furnished as required by the terms of Division 3, Part 4, Title 15, Chapter 7 (commencing with Section 3247) of the Civil Code. The payment bond need not be furnished if the awarded contract does not involve expenditures in excess of Fifteen Thousand Dollars (\$15,000). This payment bond shall remain in full force and effect for the period provided in Section 3249 of the Civil Code.

Whenever any surety or sureties on any such bonds, or on any bonds, required by law for the protection of any claimant or his assign under the bond, become insufficient, or City or DISTRICT has cause to believe such surety or sureties have become insufficient, DISTRICT shall demand of the General Contractor, in writing, for such further bond or bonds or additional surety not exceeding the amount originally required, as is deemed necessary, considering the extent of the work remaining to be done. Thereafter, DISTRICT shall make no payment upon such contract until such further bond or bonds or additional surety has been furnished.

Attachment C

AGREEMENT BETWEEN CITY OF SUNNYVALE AND
SUNNYVALE SCHOOL DISTRICT FOR THE OPERATION OF COLUMBIA
NEIGHBORHOOD CENTER AT THE COLUMBIA MIDDLE SCHOOL SITE

THIS AGREEMENT, made and entered into by and between CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "CITY", and SUNNYVALE SCHOOL DISTRICT OF SANTA CLARA COUNTY, herein called "DISTRICT";

W I T N E S E T H:

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

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

WHEREAS, DISTRICT and CITY collaborated to construct Columbia Neighborhood Center, a school-based family resource center, with the support and financial contribution from Advanced Micro Devices (AMD); and

WHEREAS, both CITY and DISTRICT are vitally concerned with the social needs and general welfare of the students of the school, the residents of the adjacent neighborhood, and the citizens of the City of Sunnyvale as a whole; and

WHEREAS, CITY and DISTRICT share the common objectives of supporting the positive development of high risk youth; improving the health of underserved youth and families; increasing student academic performance; reduction of neighborhood crime, delinquency and truancy; and enhancement of recreational opportunities for the students and neighbors of the Columbia Middle School, for the greater overall benefit of all residents of the City of Sunnyvale;

WHEREAS, CITY and DISTRICT believe that they can best achieve such common objectives by jointly undertaking the collaborative planning and operation of a neighborhood service center ("The Center") at the Columbia Middle School along with a gymnasium at that site; and

WHEREAS, CITY and DISTRICT intend that the present Agreement will, upon execution, supersede the Agreement Between City of Sunnyvale and Sunnyvale School District for the Development and Operation of a Neighborhood Service Center at the Columbia Middle School which the parties entered into on March 31, 1995;

NOW, THEREFORE, in consideration of the covenants and conditions herein set forth, and pursuant to the provisions of the Education Code hereinabove referred to, it is agreed as follows:

SECTION 1. PURPOSES AND OBJECTIVES OF AGREEMENT.

(a) The purposes of this Agreement are:

(1) to provide for the administration, supervision, and operation of a neighborhood service center at the Columbia Middle School, and funding related thereto, through the participation of the CITY, DISTRICT, and public and private providers of social services within the City of Sunnyvale and County of Santa Clara; and

(2) to provide a cooperative arrangement between CITY and DISTRICT to enhance the use of the Center and the indoor and outdoor areas of the Columbia Middle School for education, health, social services, public leisure and recreational use and activities.

(b) The objectives of this Agreement are:

(1) to enhance the lives of students at the Columbia Middle School and other young persons in the neighborhood and community through the provisions of programs and activities which will increase academic performance and reduce neighborhood crime, delinquency and truancy; and

(2) to widen the scope of education, health, social services, leisure and recreational opportunities for young persons and other members of the neighborhood and community.

SECTION 2. JOINT NEIGHBORHOOD SERVICE CENTER TASK FORCE AND CENTER LEADERSHIP TEAM.

(a) There is established a Joint Neighborhood Service Center Task Force ("the Task Force"). The purpose of the Task Force is to provide joint oversight in such a way that coordinated services are delivered to students and families of the City of Sunnyvale and Sunnyvale School District to ensure the achievement of Service Center goals. The Task Force shall consist of the Principal of Columbia Middle School ("the Principal"); the Deputy Superintendent of Schools and the Director of Special Education and Pupil Personnel of DISTRICT; the Assistant City Manager, the Youth and Family Resources Manager and the Directors of Parks and Recreation and Public Safety of CITY, other members of the staff of DISTRICT appointed by its Superintendent and an equal number of other members of the staff of CITY appointed by its City Manager. Other members

may be appointed as determined appropriate by the Superintendent and the City Manager.

(b) The Task Force shall make recommendations to CITY and DISTRICT pertaining to the following:

(1) The physical components of the Center.

(2) Staffing levels and persons to be selected as oversight for the Center.

(3) The social, educational, health, leisure and recreation programs and services to be provided at the Center, and at other facilities at the Columbia Middle School to be used in connection with the purposes of the Center.

(4) Policy, direction and funding levels for the Center.

(c) The Task Force shall submit written findings to the City Manager of CITY and the Superintendent of DISTRICT as to the achievement of the program objectives pursuant to Section 10. As needed, the Task Force shall develop and recommend modifications to these objectives for the consideration of the City Manager of CITY and the Superintendent of DISTRICT.

(d) The Task Force shall act in close coordination with the Center administrative team, which shall exercise day to day responsibility for the operation of the Center, consistent with the policies of DISTRICT and the Columbia Middle School as articulated by the Principal. The Center administrative team shall consist of the Principal, the Youth and Family Resources Manager overseeing the Center facility, and their designees.

SECTION 3. DESIGN OF CENTER.

(a) The Center consists of an integrated set of programs, services and activities to be conducted

(1) at the Center facility and

(2) at other locations within the Columbia Middle School.

The purpose of the Center is to provide social, educational, health, leisure and recreational opportunities for the primary benefit of the students and the surrounding community.

(b) Except as may be modified pursuant to this section,

(1) the Center facility generally consists of a building to house a gymnasium, health center, counseling rooms, lobby area, office space and locker rooms; and

(2) the general physical components of the Center and its location within the Columbia Middle School site are set forth in Exhibits "A", "B" and "B-1", attached hereto and incorporated herein by this reference.

Those activities of the Center which will not be carried on at the Center facility will be conducted within existing facilities of the Columbia Middle School, including classrooms, library, computer center, multi-purpose room, kitchen, home economics room, industrial arts rooms, music room, identified office space, swimming pool and open space to the extent agreed upon by CITY and DISTRICT and authorized by the Task Force.

(c) The Center facility shall have an appropriate name which reflects AMD's role and assistance in establishing the Center. Such name was determined by CITY and DISTRICT in consultation with AMD. The design of the Center facility shall prominently display visual recognition of the monetary contributions of AMD, CITY and DISTRICT toward the design and construction of the Center facility.

(d) All utilities for the Center facility, including water, gas and electricity, shall be metered separately from utilities serving other buildings within the Columbia Middle School site.

(e) Ownership of the Center facility shall vest in DISTRICT.

SECTION 4. MAINTENANCE, REPAIRS, UTILITIES, FURNITURE AND EQUIPMENT AT CENTER FACILITY AND SWIMMING POOL.

(a) CITY shall be responsible for all maintenance of the Center facility and all furniture located within the service wing, including custodial service, cleaning and repairs, but structural repair or rehabilitation are not included. CITY and DISTRICT shall meet annually to develop a mutually acceptable plan for the maintenance of the Center facility and coordination of custodial service for the ensuing year. The plan shall be consistent with the goals and objectives of the Center. CITY and DISTRICT shall develop standards of maintenance of the Center facility. At the end of each calendar quarter CITY shall submit invoices to DISTRICT for half (50%) of the cost of such maintenance, service wing furniture, custodial service, cleaning and repairs, and DISTRICT shall reimburse CITY for such portion of that cost not later than thirty (30) days from date of invoice.

(b) CITY shall be responsible for payment of the costs of all utilities service the Center facility, including water, gas, electricity, garbage and sewer service. At the end of each calendar quarter CITY shall submit invoices to DISTRICT for half (50%) of the cost of such utilities, and DISTRICT shall reimburse CITY for such portion of that cost not later than thirty (30) days from date of invoice.

(c) CITY shall continue its obligation of maintenance and provision of gas, electrical and water utilities at Columbia Middle School swimming pool at CITY expense. Notwithstanding any other agreement between the parties to the contrary, DISTRICT hereby agrees to reimburse CITY for one-half (1/2) of such expenses. At the end of each calendar quarter CITY shall submit invoices to DISTRICT for half (50%) of the cost of such maintenance and utilities, and DISTRICT shall reimburse CITY for such portion of that cost not later than thirty (30) days from date of invoice.

(d) CITY shall be responsible at its cost for all maintenance of the locker rooms that are adjacent to the swimming pool and apart from the Center facility, including custodial service, cleaning and repairs, during the summer when regular school is not in session. DISTRICT shall be responsible for such maintenance at its cost during the remainder of the year.

(e) CITY and DISTRICT shall provide office and information technology equipment for the Center facility, as specified in Exhibit F. CITY shall be responsible for repairing, maintaining and replacing only CITY equipment. CITY computer equipment will be linked to the CITY's server. DISTRICT shall be responsible for repairing, maintaining and replacing only DISTRICT equipment. DISTRICT computer equipment will be linked to the DISTRICT's server. DISTRICT and CITY agree to meet and work together in the event that equipment from one entity interfaces with another and needs installation, maintenance or repair. At the end of each calendar quarter CITY shall submit invoices to DISTRICT for half (50%) of the cost of telephone maintenance,

telephone equipment, and audiovisual equipment, and DISTRICT shall reimburse CITY for such portion of that cost not later than thirty (30) days from date of invoice. All other equipment shall be supported and paid for by the entity that provided it.

SECTION 5. STAFFING OF CENTER FACILITY.

(a) The Youth and Family Resources Manager and each member of the support staff shall be an employee of CITY. CITY shall be responsible for the supervision and the compensation of the full-time Youth and Family Resources Manager. CITY shall be responsible for the supervision and the compensation of the support staff, subject to reimbursement by DISTRICT pursuant to subsection (d).

(b) CITY shall be responsible for adoption of class specifications for the Youth and Family Resources Manager and the support staff in consultation with the Task Force. The specifications for the Youth and Family Resources Manager shall be guided by the following:

(1) The Youth and Family Resources Manager, in coordination with the Task Force, shall be responsible for recruiting and scheduling participating service agencies at the Center facility; developing related agreements with such agencies; training and supervising newly hired and repositioned staff; conducting community outreach, so as to assure a means of regular adult and youth input; development of a system for collecting and reporting performance data; seeking supplementary revenue sources for the Center; completing grant applications, as appropriate; and assisting with design and implementation of programs.

(2) The Youth and Family Resources Manager shall also be responsible for the monitoring of the program objectives of the

program activities of the Columbia Neighborhood Service Center, and to measure performance indicators related thereto.

(3) The support staff shall be responsible for services as a receptionist for the Center facility; providing clerical support to the staff members located thereat; scheduling appointments for the various service providers; and scheduling community usage of the facility.

(c) CITY shall be responsible for the recruitment and selection of the Youth and Family Resources Manager and the support staff, in consultation with the Task Force. Staffing levels shall be agreed to by the Task Force and included in the budget for the Center for consideration by the governing bodies of CITY and DISTRICT.

(d) DISTRICT shall be responsible for reimbursement to CITY of fifty percent (50%) of the cost of compensation of the support staff. At the end of each quarter CITY shall submit invoices to DISTRICT for half (50%) of such costs, and DISTRICT shall reimburse CITY for such portion of those costs no later than thirty (30) days from date of invoice.

(e) Either party may provide additional staffing beyond that described in this section to serve at the Center facility or in connection with Center related programs, services or activities at the Columbia Middle School with the concurrence of the Task Force. The party which is the employer of the staff members is responsible for his or her supervision and compensation, except and to the extent that the parties agree in writing to share such costs.

(f) As used in this section, the cost of compensation for the support staff includes the costs of the following:

(1) Salary or wages, including attributable to paid leave, holiday, vacation, compensatory time, or overtime.

(2) Health insurance paid by the employer, including medical, dental, vision and employee assistance, but not including costs reimbursed by the employee to the employer.

(3) Disability insurance paid by the employer, including accidental death or dismemberment and income protection for disability, but not including costs reimbursed by the employee to the employer.

(4) Contributions by the employer to the retirement system.

(5) Contributions by the employer toward deferred compensation, not including contributions resulting from elections or employees to defer portions of their salary or wages.

(6) Life insurance paid by the employer.

(7) Worker's compensation insurance premiums and benefits.

(8) Unemployment insurance premiums.

(9) Payroll taxes or charges imposed upon the employer by the state or federal governments which are in addition to amounts withheld from the salary or wages of the employee.

(10) Lump sum payments of accrued vacation or paid time off in connection with separation from employment, to the extent such payments are attributable to service by an employee at the Center facility.

SECTION 6. NEIGHBORHOOD SERVICE CENTER PROGRAMMING.

(a) The Youth and Family Resources Manager shall be responsible for arrangement, general site and administrative supervision, and monitoring of the social, educational, health and recreation programs and services to be provided at the

Center facility and at other facilities at the Columbia Middle School to be used in connection with the purposes of the Center. Such responsibilities shall be exercised in consultation with the Task Force. The Youth and Family Resources Manager shall be responsible for determining the appropriate locations and scheduling of the various programs, services and activities within the Center facility and the other services and activities within the Center facility and the other facilities at the Columbia Middle School. Such determinations as to programs, services and activities within such other facilities at the School shall require the approval of the Principal. The Youth and Family Resources Manager shall coordinate and cooperate with the Principal of Columbia Middle School to ensure that the programs and services provided promote and advance Columbia Middle School's educational programs and goals. The Youth and Family Resources Manager is not responsible for the clinical supervision for any mental health related services. The Youth and Family Resources Manager is not responsible for the medical oversight for any of the health clinics (e.g. immunization clinic, primary health care clinic).

(b) DISTRICT shall, in consultation with the Youth and Family Resources Manager, select and provide a DISTRICT employee who will serve as a full-time case manager to provide coordinated social services to youths selected and identified as "high risk" by DISTRICT, based upon such factors as poverty, single parent family background, cultural barriers, lack of academic performance, truancy, and disciplinary problems. The case manager shall be responsible for developing a service plan with each selected "high risk" student in conjunction with the student's family and the Student Success Team. The case manager shall follow up to assess whether the services identified in the

service plan have been delivered. DISTRICT shall be responsible for the general supervision and the compensation of the case manager. The DISTRICT shall be responsible for the clinical supervision of the case manager, if necessary.

(c) In consultation with the Youth and Family Resources Manager, the DISTRICT shall provide a DISTRICT employee, who will serve as a school nurse. The DISTRICT shall be responsible for the supervision and the cost of compensation of the school nurse, as defined in Section 5(f). The duties of the school nurse shall be as follows: to collaborate with the Youth and Family Resources and the Columbia Middle School Principal to develop a plan for health services at the Center; to provide medical expertise in consultation to the Youth and Family Resources Manager in regards to the operation of the health clinic; to assist with the collection of data and the provision of information on the performance measures included in the health center plan; to coordinate case management services for students with special health needs; to develop health education programs accessing services of community agencies; to provide a link with feeder schools and conduct home visitations as needed; to work with the staff of Columbia Middle School to identify students with health problems, and to follow up with family members of such students and with other service agencies to assist the youths in obtaining needed services; to provide coordinated health services through the Center for high risk youths receiving case management services to address disciplinary, academic and attendance problems; to coordinate health education services by and for the community through community health organizations; to integrate health education into the curriculum of Columbia Middle School and to provide

assistance to the feeder elementary schools, in coordination with adult education programs.

(d) In consultation with the Youth and Family Resources Manager, the DISTRICT shall provide a DISTRICT employee, or compensation for contract employee, who will serve as a counseling services lead at the Center for at least 20 hours per week. The Youth and Family Resources Manager will be responsible for the general supervision of the counseling services lead. The DISTRICT will be responsible for the clinical supervision of the counseling services lead, if necessary. The counseling services lead shall be responsible for coordinating the Center's counseling clinicians to provide mental health therapy. The counseling services lead duties include reviewing the requests for mental health counseling received by the Center, assessing the need and determining appropriate responses for mental health service requests, appropriately assigning them to the counseling clinicians available at the Center, and coordinating communications with the counseling clinicians. The counseling services lead shall also be responsible for tracking the status of the assignments, and for maintaining the records of the requests received.

(e) The Youth and Family Resources Manager shall endeavor to secure a high degree of participation in the Center by the various public and private agencies providing educational, recreation, health and social services within the territory of the City of Sunnyvale and Santa Clara County. Such participation would be in the form of presentation of programs relating to special education; special counseling; adult/parent education; foreign language programs; special programs for "high risk" youth; and social assistance, not inconsistent with the program

of instruction at the Columbia Middle School. Such agencies shall not be required to pay rental or usage fees in connection with their use of facilities at the Center for services provided on a non-profit or subsidized basis, as determined by the Youth and Family Resources Manager.

(f) The Youth and Family Resources Manager shall endeavor to secure a high degree of participation in the Center by the various providers of health services in the community for establishment of a health service clinic at the Center. Such providers shall not be required to pay rental or usage fees in connection with their use of facilities at the center for services provided on a non-profit or subsidized basis, as determined by the Youth and Family Resources Manager.

(g) CITY shall provide through its Department of Public Safety one or more special programs concentrating on prevention of juvenile crime, intervention or rehabilitation of juvenile offenders at the Center, and programs for the general public on neighborhood and personal safety education.

(h) Unless otherwise agreed by the Task Force, the offices, conference room and health center space within the Center facility shall be used exclusively for the specialized programs, services and activities contemplated by this section.

SECTION 7. RECREATION DIVISION USE OF CENTER AND SCHOOL SITE:
PRINCIPLE, POLICIES AND GUIDELINES.

(a) CITY shall provide through the Recreation Division of its Department of Parks and Recreation a comprehensive program of sports, recreational and cultural activities within the gymnasium, open space area, multi-purpose room, and other rooms

within the Center or the Columbia School site amenable to such programs, pursuant to the following principles, policies and guidelines:

(1) All facility assignment and scheduling shall be in coordination with the Youth and Family Resources Manager, and in accordance with the guidelines in Section 8.

(2) A primary purpose of the program is to make the facilities available to the maximum number of participants.

(3) CITY shall be entitled to charge fees for the various activities in such amounts that will enable CITY to recover its program costs. The CITY shall provide fee waivers for participants with economic hardships, consistent with current fee waiver policies of CITY in effect for other recreational programs of CITY. CITY shall collect all required fees from the participants. All fees collected shall be the property of CITY. Participants in the Kids Learning After School Program and Co-op Sports Program are not eligible for City fee waivers as these programs are conducted by the District.

(4) CITY shall be responsible for the recruitment, selection, hiring, training and supervision of all instructors and other persons who will be in charge of or conducting the various activities offered by the Recreation Division. Recruitment, selection and supervision of coaches and officials for Co-op Sports is the responsibility of the District.

SECTION 8. GUIDELINES FOR USE OF SCHOOL AND CENTER FACILITIES:
HOURS, PRIORITIES, AND RESERVATIONS.

(a) During normal school hours, Monday through Friday, 7:30 a.m. to 3:30 p.m., school holidays and vacations excepted,

(1) With respect to the indoor facilities of the Columbia Middle School, and the gymnasium and locker rooms of the Center facility:

i. DISTRICT shall have the highest priority use.

(2) With respect to the offices, conference room and health clinic of the Center facility:

i. The Center shall be used for neighborhood programs, services and activities of CITY, DISTRICT and other agencies described in Section 6.

(b) During after school hours, Monday through Friday, 3:30 p.m. and 6:00 p.m., school holidays and vacations excepted,

(1) With respect to the indoor facilities of the Columbia Middle School, and the gymnasium and locker rooms of the Center facility:

i. DISTRICT shall have the highest priority use.

ii. CITY shall have secondary priority use for programs exclusively for youths of middle school age.

(2) The offices, conference room and health clinic of the Center facility shall be used for neighborhood programs, services and activities of CITY, DISTRICT and other agencies described in Section 6.

(c) After 6:00 p.m. during days when school is in session, and during all hours on all days when school is not in session,

(1) With respect to the indoor facilities of the Columbia Middle School, exclusive of the Center facility:

i. DISTRICT shall have the highest priority use.

ii. CITY shall have secondary priority use for youth oriented programs.

iii. CITY shall have tertiary priority use for neighborhood oriented and general recreational programs.

(2) With respect to offices, conference room and health clinic of the Center facility:

i. The Center facility shall be used for neighborhood programs, services and activities of CITY, DISTRICT and other agencies described in Section 6.

(3) With respect to the gymnasium and locker rooms of the Center facility:

i. The Center facility shall be used by CITY for general community programs, with priority given to youth oriented programs.

(d) If DISTRICT and CITY are not using the School or Center facilities, they may be rented as deemed appropriate by the Youth and Family Resources Manager, as outlined in Section 8.

(e) With respect to open space areas within the Columbia Middle School site, priority of use shall be governed by the existing written agreement between CITY and DISTRICT pertaining to use, maintenance and improvement for public recreation purposes of various buildings and open space areas at twelve (12) school sites.

(f) CITY shall be responsible for administering facility reservations for use by the general public of open space, the gymnasium and the athletic fields at the Columbia Middle School site. CITY shall be solely responsible for determining priority system for use of these facilities by the public, as well as fees to be charged to the public and/or organized groups for use of school sites during such times that the sites are under control of CITY. Such fees shall be required to conform to all applicable rules, regulations, ordinances and/or laws governing school grounds in addition to those applicable to CITY property. All fees collected shall be the property of CITY. CITY shall pay DISTRICT (a) an amount equivalent to eighty percent (80%) of the

fees collected for use of the open space areas and the multi-purpose and other rooms within the Columbia Middle School; and (b) an amount equivalent to forty percent (40%) of the fees collected for the use of the gymnasium and other indoor facilities of the Center facility. Copies of CITY's reservation and priority use policy will be provided to DISTRICT.

(g) The principles, policies and guidelines set forth in this section may be modified from time to time by agreement of the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT or their authorized representatives. Either party may recommend to the other modifications to this policy.

SECTION 9. ADMINISTRATION OF PUBLIC USE OF INDOOR FACILITIES OF DISTRICT (EXCLUSIVE OF CENTER FACILITY).

(a) It is the purpose of this section to facilitate the use of indoor facilities at Columbia Middle School exclusive of the Center facility by the public for recreational and leisure activities by providing for the administration of such use by CITY, and by providing for priority of use of such facilities by CITY and for its programs and activities in accordance with CITY policy.

(b) CITY shall provide the following services and undertake the following obligations:

(1) Schedule, reserve and rent on behalf of DISTRICT the indoor public use areas of Columbia Middle School ("the facilities") exclusive of the Center facility to individuals and groups for their use, at such times when school is not in session and not in designated school use, or use for the purposes of the Center (hereafter "non-school use"). CITY shall

be solely responsible for the coordination and scheduling of requests for the reservation and rental of the Facilities, which shall be accomplished in accordance with the Columbia Neighborhood Center and Columbia Middle School Facility Rental Policy and Fee Schedule, Exhibit "C", attached hereto and incorporated herein by this reference. CITY shall determine the appropriate level of staffing for the performance of such services.

(2) Collect all rentals and fees for the facilities from the individuals or groups using them, as set forth in the fee schedule adopted by DISTRICT and CITY in Exhibit "C". References in Exhibit "C" to fees for various gymnasiums, multi-purpose rooms, and other rooms at certain schools shall be applicable to those types of facilities at Columbia Middle School.

(3) Issue a completed Usage Permit to each individual or group user.

(4) Monitor and enforce the permittees' use of the facilities, to determine whether such use complies with the conditions of the permits. If a permittee's use of a facility does not comply with the conditions of the particular permit, CITY may deny the permittee further use of the facility.

(5) Provide DISTRICT with a regularly updated schedule use of the facilities not less frequently than once per month and make permits available upon request.

(6) Notify permittees of DISTRICT's and CITY's intended facility maintenance and improvement projects, including the time period for project completion, and of any facility closures that may become necessary to allow for the construction of said projects.

(7) Pay DISTRICT an amount equivalent to eighty percent (80%) of the rental revenue that the CITY collects from the facility permit holders under this Agreement, and retain the

remaining twenty percent (20%) of the revenue collected. Commencing on December 1, 1994, CITY shall make quarterly payments to DISTRICT equivalent to eighty percent (80%) of the revenue collected during the preceding quarter.

(8) Provide DISTRICT on a semi-annual basis, with a financial report which describes the revenues that the CITY has collected from facilities rentals under this Agreement during the immediately previous six months period, January through June, or July through December, as the case may be.

(9) Refer to DISTRICT for comment any dispute pertaining to any allegation of unlawful authorization, denial, or conditional authorization of use of facilities of DISTRICT at the Columbia Middle School. CITY shall have the authority and power to resolve any such dispute.

(10) Refer to DISTRICT for resolution any unresolved dispute pertaining to any allegation of unlawful authorization, denial, or conditional authorization of use of facilities at Columbia Middle School.

(11) Provide DISTRICT students with a recreational and instructional program during non-school hours which may include, among other offerings, art, sports and computers. Fee collection will be coordinated by DISTRICT staff at the Columbia Middle School Site.

(12) Provide DISTRICT with usage of CITY facilities as described in Exhibit "D", attached hereto and incorporated herein by this reference. The fees described in Exhibit "D" are those effective July 1, 2006 for all users, and CITY reserves the right to modify the fee schedule by resolution of its City Council for fiscal years in the future.

(c) DISTRICT shall undertake the following obligations:

(1) Provide and maintain the facilities for CITY to schedule, reserve and rent on behalf of DISTRICT to individuals or groups for non-school use.

(2) Provide CITY with a schedule of days at the Columbia Middle School for a block of designated exclusive school usage, and of days for a block of non-school usage. Not later than June 1 of each year DISTRICT will submit to CITY a proposed schedule for the immediately ensuing twelve (12) month period of September 1 through August 31 of the following year. Not later than June 10 of each year CITY shall review the schedule proposed by DISTRICT. Not later than June 22 of each year the Youth and Family Resources Manager and the Principal shall arrive at a consensus on the ensuing twelve (12) month period. Any subsequent changes to the schedule must be submitted 4 weeks in advance. Changes are subject to availability and the determination of the Youth and Family Resources Manager.

(3) On September 1 of each year, and on a semi-annual basis thereafter, DISTRICT shall provide to CITY a report which describes all of DISTRICT's intended facility maintenance, renovation and improvement projects. The report shall include the intended time period of completion of each project.

(4) Approve CITY/DISTRICT use application and permit forms; DISTRICT Facilities Usage polices; and the DISTRICT fee schedule for Facilities Usage.

(5) Provide an appropriate number of copies of the required polices and fees schedules or other items necessary for issuance to permittees if such issuance is required by DISTRICT policy.

(6) Grant CITY the right to resolve disputes pertaining to any allegation of unlawful authorization, denial, or conditional authorization of use of facilities of DISTRICT at the Columbia Middle School, consistent with the DISTRICT Facilities Usage Policy.

(7) Resolve any dispute not resolved by CITY pertaining to any allegation of unlawful authorization, denial, or conditional authorization of use of facilities of DISTRICT at the Columbia Middle School.

(8) Provide Sonitrol or security alarm access to CITY personnel assigned by CITY to provide services designated in this Agreement.

(9) Grant CITY the right to determine whether the permittees' use of the facilities complies with the conditions of the permits.

(d) CITY shall be entitled, at no cost or expense to the CITY except as provided in this subsection, to the use of the interior facilities at the Columbia Middle School which are subject to rental to the public under this Agreement for public recreational purposes on a first priority basis during the days designated for non-school usage and after scheduled school hours. Such use shall be for CITY sponsored or co-sponsored programs or activities. When CITY makes use of such facilities pursuant to this section it shall be responsible for custodial services and maintenance and shall restore the interior condition of the facilities to the condition in which CITY assumed them, except for routine wear and tear, when no regularly scheduled DISTRICT custodian is scheduled to provide such services and maintenance after CITY usage. DISTRICT shall cooperate with CITY in the scheduling by DISTRICT of its custodial service to facilitate usage without additional cost to either party. During the times CITY is entitled to the use of such facilities, the public shall have the right to use off-street parking facilities on the grounds of the Columbia Middle School and shall have reasonable access through school grounds to the facilities being used.

(e) The City Manager or designee shall represent CITY in all matters pertaining to the services to be rendered under this section. All requirements of CITY pertaining to the services to be rendered under this section shall be coordinated through the CITY representative.

(f) The Superintendent or designee shall represent DISTRICT in all matters pertaining to the services to be rendered under this section. All requirements of DISTRICT pertaining to the services to be rendered under this Agreement shall be coordinated through the DISTRICT representative.

SECTION 10. SERVICE CENTER PROGRAM ACHIEVEMENT AND EVALUATION.

(a) The establishment of the Columbia Neighborhood Service Center is predicated upon the recognition by both parties of the need to accomplish certain program objectives which are more particularly described in that certain document entitled "Columbia Neighborhood Service Center Objectives", set forth in Exhibit "E", attached hereto and incorporated by this reference herein. It is the express understanding of the parties that the Program Statement; Program Performance Measures; individual Service Delivery Products for the High Risk Youth, Educational/Community and Public Safety/Leisure Services components; and Program Targets are essential components and motivating factors in the participation in and continued support by CITY of the Center.

(b) After the conclusion of each fiscal year of CITY following the commencement of operation of the Center the Youth and Family Resources Manager shall prepare and submit a written

report to the Task Force pertaining to whether the following objectives were achieved:

- (1) Overall Program Performance Measure;
- (2) High Risk Youth Service Delivery Product;
- (3) Educational/Community Services Delivery Products;
- (4) Public Safety/Recreation Services Service Delivery Product.

(c) The Task Force shall review the report of the Youth and Family Resources Manager and shall submit written findings pertaining to the achievement of the objectives to the City Manager of CITY and to the Superintendent of DISTRICT. The City Manager of CITY and to the Superintendent of DISTRICT. The City Manager shall report such findings to the City Council and the Superintendent shall report them to the Board of Education of DISTRICT.

(d) Each year, after completion of the foregoing review and reporting process, if this Agreement shall not have been terminated for failure to meet service objectives, the City Manager of CITY and the Superintendent of DISTRICT may recommend to the City Council of CITY and Board of Education of DISTRICT modification of the service objectives and performance indicators set forth in Exhibit "E". Proposed modifications shall become effective when approved by both the City Council and the Board of Education.

SECTION 11. DUTY OF PARTIES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS.

(a) CITY shall save and hold harmless DISTRICT, its officers, employees and agents from, and defend them against any and all liability, costs, attorney's fees, or expenses

(hereinafter, "liability") incurred by DISTRICT, its officers, employees, or agents, on account of any lawsuit, judgment, or claim of any kind arising out of or connected with death or injury to persons, or damage to or loss of property arising out of any of the following:

(1) The negligence, willful misconduct or intentional misconduct of any officer, agent or employee of CITY in the course of maintenance of the Center facility.

(2) The negligence, willful misconduct or intentional misconduct of any officer, agent or employee of CITY in the course of conducting any program or activity at the Center facility or at the Columbia Middle School.

(3) The negligence, willful misconduct or intentional misconduct of the Youth and Family Resources Manager or any officer, agent or employee of CITY serving as support staff at the Center facility within the course and scope of their employment at the Center facility or at the Columbia Middle School.

(4) Use of any premises under the ownership or possession of CITY in connection with the performance of this Agreement, except where such liability arises out of the sole negligence of DISTRICT, its officer, employees, or agents.

(5) Use by CITY of the interior facilities at the Columbia Middle School pursuant to Section 9(d) of this Agreement, except where such liability arises out of the sole negligence of DISTRICT, its officers, employees or agents.

(b) DISTRICT shall save and hold harmless CITY, its officers, employees and agents from, and defend them against any and all liability, costs, attorney's fees, or expenses (hereinafter, "liability") incurred by CITY, its officers, employees, or agents, on account of any lawsuit, judgment, or

claim of any kind arising out of or connected with death or injury to persons, or damage to or loss of property arising out of any of the following:

(1) The negligence, willful misconduct or intentional misconduct of any officer, agent or employee of DISTRICT in the course of conducting any program or activity at the Center facility or at the Columbia Middle School.

(2) Any dangerous or defective condition of DISTRICT property, including permanently installed recreation and play equipment situated on DISTRICT property, except where such condition is solely attributable to the negligence, willful misconduct or intentional misconduct of any officer, agent or employee of CITY.

SECTION 12. INSURANCE.

(a) DISTRICT shall maintain in force during the term of this Agreement a combined, single-limit liability insurance policy in the amount of not less than one million dollars (\$1,000,000), with the CITY, its officers, employees and agents as named, at DISTRICT's expense, as additional insured under such liability policy, with respect to the hold harmless provision of Section 11 above.

(b) CITY shall maintain in force during the term of this Agreement a combined, single-limit liability insurance policy in the amount of not less than one million dollars (\$1,000,000), with the DISTRICT, its officers, employees and agents as named, at CITY's expense, as additional insured under such liability policy, with respect to the hold harmless provisions of Section 11 above.

(c) The Project shall be covered by earthquake insurance if available at reasonable cost and terms, to cover the value of the construction. The premium for such insurance shall be equally shared by CITY and DISTRICT.

SECTION 13. TIME OF THE ESSENCE.

Time is of the essence of this agreement.

SECTION 14. FORCE MAJEURE.

If, due to act of God; fire; flood; storm; inclement weather; earthquake; drought; acute restrictions of riot; war or insurrection; plant or animal infestation or disease; sudden or severe energy shortage; strike; work stoppage; work slowdown or other concerted job action; or other condition of emergency or disaster beyond the control of either party which makes performance of any of its obligations under this Agreement impossible or extremely impracticable, such obligation shall be suspended during such time any such condition or condition exist.

SECTION 15. DISCRIMINATION PROHIBITED.

Neither CITY nor DISTRICT shall discriminate against any employee, applicant for employment, or member of the public on account of race, color, national origin, ancestry, sex, disability, medical condition, or sexual orientation, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 16. NOTICES.

All notices shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To City City Manager
 City of Sunnyvale
 P.O. Box 3707
 Sunnyvale, California 94088-3707

To DISTRICT Superintendent
 Sunnyvale School District
 819 West Iowa Avenue
 Sunnyvale, California 94086

SECTION 17. EFFECT OF WAIVER OF BREACH OR VIOLATION.

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision of law shall not be deemed to be a waiver of any other term, covenant, or condition or law. The subsequent acceptance by either party of any money which may become due hereunder shall not be deemed a waiver of any preceding breach or violation by the other party of any term or condition of this Agreement, or of any applicable law.

SECTION 18. LEGAL ACTIONS; ATTORNEY FEES.

(a) Any disputes regarding this Agreement shall be resolved according to the laws of the State of California. The parties agree to meet and confer in good faith to discuss any dispute prior to commencing legal proceedings. Any legal proceedings shall be instituted in the courts of the State of California and County of Santa Clara, irrespective of any claim of diversity of citizenship or other possible jurisdictional conditions.

(b) Should litigation be necessary to enforce any terms or provisions of this Agreement or to resolve any disputes arising out of this Agreement, then each party shall bear its own

litigation and collection expenses, witness fees, court costs and attorney's fees.

SECTION 19. INTEGRATED AGREEMENT.

This document represents the entire and integrated Agreement between CITY and DISTRICT and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatever.

SECTION 20. AMENDMENT OF AGREEMENT.

This Agreement may be amended only by written instrument, signed by both CITY and DISTRICT.

SECTION 21. ALL PROVISIONS OF AGREEMENT ARE CONDITIONS.

All terms and provisions of this Agreement are expressly made conditions, unless any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable. In the event of such holding, the remaining terms and provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.

SECTION 22. TERM OF AGREEMENT; TERMINATION; SURVIVAL OF OBLIGATIONS.

(a) This Agreement shall terminate on June 30, 2026 unless sooner terminated pursuant to this section.

(b) This Agreement may be terminated at any time prior to June 30, 2026, upon the mutual consent of the City Council of CITY and the Board of Education of DISTRICT.

(c) DISTRICT may terminate this Agreement upon written notice to CITY delivered at least six (6) months prior to the date of early termination for any of the following reasons:

(1) The failure of CITY to complete the hiring of the Youth and Family Resources Manager or support staff pursuant to Section 5.

(2) The failure of CITY to undertake or to continue performance of its obligations for maintenance of the facility pursuant to Section 4.

(3) The failure of CITY to undertake or continue performance of its obligations to provide any program, services or activity required of CITY pursuant to Section 6.

(4) If, during any year, the Superintendent of DISTRICT shall have reported to the Board of Education of DISTRICT the findings with respect to the various objectives pursuant to Section 10, and the Board of Education of DISTRICT determines that all of the service objectives were not met for the previous year, or that pursuit of the service objectives is no longer consistent with Education Code section 10910, the Board of Education of DISTRICT may terminate this Agreement, including the DISTRICT's further participation in the Center.

(d) CITY may terminate this Agreement upon written notice to DISTRICT delivered at least six (6) months prior to the date of early termination for any of the following reasons:

(1) The failure of DISTRICT to undertake or continue performance of its obligations to provide any program, services or activity required of DISTRICT pursuant to Section 6.

(e) If, during any year, the City Manager shall have reported to the City Council the findings with respect to the various objectives pursuant to Section 10, and the City Council determines that all of the service objectives were not met for the previous year, the City Council of CITY may terminate this Agreement upon written notice to DISTRICT delivered at least six (6) months prior to the date of early termination.

(f) In the event of the delivery of the notice of the intent to terminate this Agreement early by DISTRICT or CITY pursuant to subdivisions (c), (d), or (e) above, the parties shall, promptly and in good faith, meet and confer in an effort to reach mutual agreement on any continuing responsibilities for any continued operation of the Center or any continuing participation in any program, service or activity at the Center facility or in connection with the overall Center Program at Columbia Middle School.

(g) If this Agreement is terminated by DISTRICT pursuant to subdivision (c)(4) above without the consent of CITY and the parties are unable to reach mutual agreement pursuant to subdivision (f) above for shared responsibilities for continued operation of the Center, the CITY shall have the right to continue to operate Center programs, services and activities at the Center facility at the CITY's sole cost and expense, including but not limited to costs for maintenance of the Center facility and costs for all utilities serving the Center facility, and subject to the CITY's continuing obligations pursuant to Section 8: Guidelines for Use of School and Center Facilities: Hours, Priorities, and Reservations, Section 11: Duties of Parties to Defend, Indemnify, and Hold Harmless,

Section 12: Insurance, and Section 15: Discrimination Prohibited, until such time as the Agreement would otherwise have expired according to its terms.

(h) Except as provided in subdivisions (f) and (g) above, termination of this Agreement after commencement of the operation of the Center shall have the following consequences unless otherwise agreed to by the parties in writing:

(1) CITY shall have no further responsibility for maintenance, cleaning or repairs of the Center facility, or for payment of utility costs, pursuant to Section 4 of this Agreement.

(2) CITY shall have no further responsibility to provide and compensate a Youth and Family Resources Manager or support staff at the Center facility, or to assign any other staff persons to participate in any program, activity or service at the Center, pursuant to Section 5 of this Agreement.

(3) CITY shall be entitled to remove from the Center facility any equipment, supplies or furnishing which are the property of CITY, excepting only fixtures, which shall remain in the Center facility.

(4) Neither party shall have any further responsibility to participate in any program, service or activity at the Center facility or in connection with the overall Center Program at Columbia Middle School, pursuant to Section 6 of this Agreement; provided, however, that CITY shall be entitled to continue to conduct the programs described in Section 7.

(5) The Joint Neighborhood Service Center Task Force shall be abolished.

(i) The following obligations shall survive the termination of this Agreement:

(1) The obligation pertaining to the naming of the Center facility and the display of recognition of monetary contributions, pursuant to Section 3(c).

(2) the obligation of each party pursuant to Section 11 to defend, indemnify and hold harmless the other party and its officers, agents and employees from any and all claims or causes of action which arose prior to such termination.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Agreement.

ATTEST:

CITY OF SUNNVALE ("CITY")

By [Signature]
City Clerk date 12/24/06

[Signature]
City Manager date

APPROVED AS TO FORM:

SUNNYVALE SCHOOL DISTRICT ("DISTRICT")

Asst. [Signature]
City Attorney date

[Signature] 12/15/06
Superintendent / Deputy date

APPROVED AS TO FORM:

[Signature] 12/13/06
Attorney for District date

Attachment D

Project Information Sheet

Attachment D

Project: 822910 Columbia Neighborhood Center Facility Expansion

Category: Capital	Type: CDBG	Department: Office of the City Manager
Origination Year: 2001-02	Fund: 110 Community Development Block Grant	Project Manager: Robert Walker
Planned Completion Year: 2009-10	Sub-Fund: 100 CDBG Fund	Project Coordinator: Angela Chan
Funding Sources: Community Development Block Grant (CDBG)		

Project Description/Scope/Purpose

In 2004, the governing body of Columbia Neighborhood Center (CNC) — the Joint Task Force, which is comprised of School District and City of Sunnyvale officials — found that CNC lacked adequate space to allow needed expansion of services. At that time, the Joint Task Force began to explore options to expand the CNC facility.

The expansion project will add an additional 3,500 square feet to the existing facility and double the number of offices for social services; double the number of exams rooms from two to four to increase the community health clinic's capacity to serve the health needs of residents; add a large conference room that may be used as a classroom for adult/parenting education or community meetings; and add a fitness room that will be used by both the Columbia Middle School students and the community.

The Sunnyvale School District will be the project lead on the expansion project, as they were when the CNC was originally built in 1996. The expansion project is currently in the schematic development phase with actual construction projected to begin in late 2008 or early 2009.

Project Evaluation & Analysis

With the cost of construction on the rise, the estimated cost of the expansion project is now \$3,550,000, which is \$550,000 more than was originally estimated at the project's inception in 2004. This increase resulted from dramatic increases in construction costs over the last several years. In 2006 and prior to the increase in construction costs, Sunnyvale's City Council approved in concept a \$1.5 million financing package for the CNC expansion project to be funded from Community Development Block Grant monies.

Fiscal Impact

Project costs will be shared by the School District and the City of Sunnyvale. To date, the City has pledged a total of \$1.5 million. Through FY 2008/2009, \$1,103,480 has been appropriated from CDBG monies; the remaining \$396,520 will be appropriated from future CDBG allocations.

On-going operating costs for facilities maintenance will be funded by the Youth and Neighborhood Services Fund. These maintenance costs will be split between the City and the Sunnyvale School District.

Project Financial Summary

	Project Costs	Revenues	Transfers In	Operating Costs
Prior Actual	4,330	0	0	0
2007-08	762,635	0	0	0
2008-09	336,515	0	0	0
2009-10	0	0	0	31,987
2010-11	0	0	0	32,627
2011-12	0	0	0	33,279
2012-13	0	0	0	33,945
2013-14	0	0	0	34,624
2014-15	0	0	0	35,316
2015-16	0	0	0	36,023
2016-17	0	0	0	36,743
2017-18	0	0	0	37,478
2018-19	0	0	0	38,602
2019-20	0	0	0	39,761
2020-21	0	0	0	40,953
2021-22	0	0	0	42,182
2022-23	0	0	0	43,447
2023-24	0	0	0	44,751
2024-25	0	0	0	46,093
2025-26	0	0	0	47,476
2026-27	0	0	0	48,900
2027-28	0	0	0	50,367
20 Year Total	336,515	0	0	754,554
Grand Total	1,103,480	0	0	754,554

Attachment E

Attachment F

Master Project Schedule
 Sunnyvale School District
 AEDIS, Inc.
 Tue 5/13/08

ID	Task Name	Duration	Start	Finish	Resource Names	2006							
						8/7	9/25	11/13	1/1	2/19	4/9	5/28	7/16
1	Columbia Neighborhood Center	648 days	Fri 8/1/08	Tue 1/25/11									
2	Design Development	52 days	Fri 8/1/08	Mon 10/13/08									
3	50 % Construction Documents	44 days	Tue 10/14/08	Fri 12/12/08									
4	Coordination Meeting	3 days	Mon 12/15/08	Wed 12/17/08									
5	DSA Submittal	37 days	Thu 12/18/08	Fri 2/6/09									
6	Consultant Coordination Meeting	14 days	Mon 2/16/09	Thu 3/5/09									
7	DSA Review/Approval	111 days	Mon 2/9/09	Mon 7/13/09									
8	Bidding	23 days	Tue 7/14/09	Thu 8/13/09									
9	Board Approval/ City Approval	20 days	Mon 8/17/09	Fri 9/11/09									
10	Construction	346 days	Tue 9/29/09	Tue 1/25/11									

Project: Master Schedule CNC Date: Tue 5/13/08	Task		Rolled Up Task		External Tasks	
	Critical Task		Rolled Up Critical Task		Project Summary	
	Progress		Rolled Up Milestone		Group By Summary	
	Milestone		Rolled Up Progress			
	Summary		Split			

Attachment G

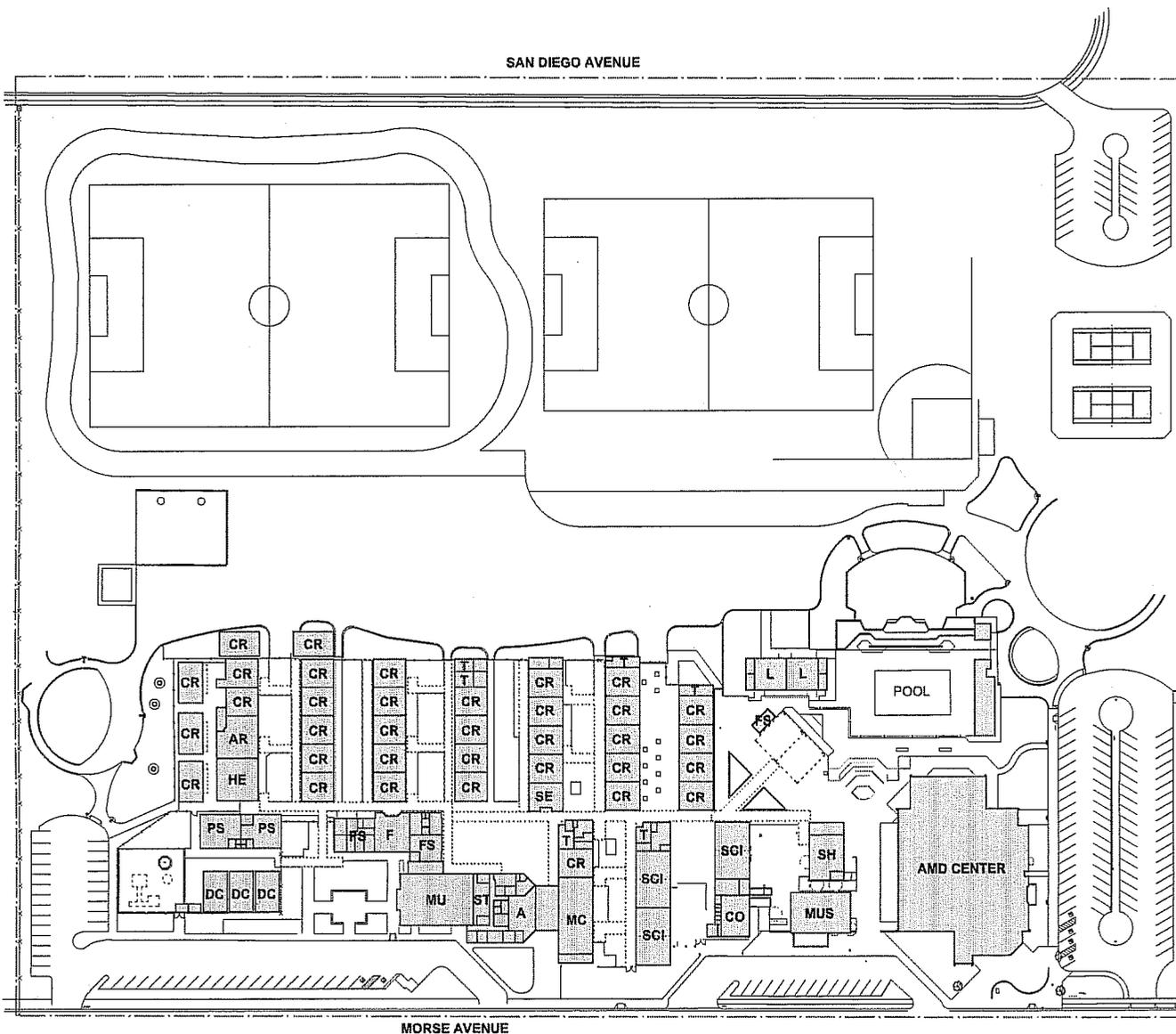
Sunnyvale School District Project Cost Control Sheet

Project Title: Columbia Neighborhood Center Project Number: 0524
 Funding Sources: Fund 212/CDBG City Funds
 Account Number: _____
 Contractor: TBD Bid No.: _____

	<u>Original Estimate</u>	<u>Expected Expenditures</u>	<u>First Revision</u>	<u>Second Revision</u>
	<u>up to July 2009</u>			
<u>Construction Costs</u>				
Purchase of Site	_____	_____	_____	_____
Building Improvement	\$ 2,510,000	_____	_____	_____
Surveys	_____	_____	_____	_____
Relocation Costs	_____	_____	_____	_____
TOTAL CONSTRUCTION COST	\$ 2,510,000	\$ -	0	0
<u>Acquisition/Appraisal Costs</u>				
Purchase of Buildings	_____	_____	_____	_____
Site Improvements	_____	\$ -	_____	_____
TOTAL ACQUISITION/APPRaisal	\$ -	\$ -	0	0
<u>Architect/Inspection/Testing</u>				
Architect/Engineer Fees	\$ 277,500	\$ 222,000	0	0
DSA/CDE Fees	\$ 25,100	\$ 25,100	0	0
Preliminary Tests	\$ 37,500	\$ 29,000	0	0
Inspection Fees	\$ 50,200	\$ -	0	0
Bid Alternates	\$ -	\$ -	_____	_____
Legal Ad	\$ 800	\$ 800	_____	_____
TOTAL FEES	\$ 390,300	\$ 276,900	0	0
INTERIM HOUSING	\$ 150,000	\$ -	_____	_____
TOTAL EQUIPMENT/FURNITURE	\$ 250,000	\$ -	_____	_____
SUB-TOTAL	\$ 3,300,300	\$ 276,900	0	0
CONTINGENCY/DESIGN/ESCALATION/	\$ 251,000	_____	_____	_____
TOTAL COST OF PROJECT	\$ 3,551,300	\$ 276,900	0	0

Date Submitted: 05/08/2008 Estimated By: Saylor/Aedis
 Project Reviewed By: _____ Funding Verified By: _____

Attachment H



KEY LEGEND

- A ADMINISTRATION
- AR ART CLASSROOM
- AU AUDITORIUM
- CL COVERED LUNCH STRUCTURE
- CW COVERED WALK
- CR CLASSROOM
- CO COMPUTER LAB
- CU CUSTODIAN
- DC DAY CARE
- EC ENTRANCE CANOPY
- F FACULTY LOUNGE
- FS FOOD SERVICE
- HE HOME ECONOMICS
- K KINDERGARTEN
- L LOCKER ROOM
- MC MEDIA CENTER
- MU MULTI-USE ROOM
- MUS MUSIC CLASSROOM
- P PROGRAM SPACE
- PS PRE-SCHOOL
- S STORAGE
- SCI SCIENCE LAB
- SE SPECIAL ED
- SH SHOP
- ST STAGE
- T TOILETS
- W WORK ROOM



Attachment H

EXISTING SITE PLAN

MASTER PLAN

COLUMBIA MIDDLE SCHOOL

SUNNYVALE SCHOOL DISTRICT

AEDIS ARCHITECTURE & PLANNING

