

**MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT
AND
THE CITY OF SAN PABLO
(CONSTRUCTION OF PARKING STALLS AT HELMS MIDDLE SCHOOL)**

This Memorandum of Understanding (“Agreement”) is made and entered into this day of 2019 (“Tuesday, April 16, 2019”), by and between the West Contra Costa Unified School District, a California public school district (“District”), and the City of San Pablo, a California (“City”). The District and City may be individually referred to herein as a “Party,” or collectively referred to as “Parties.”

RECITALS

1. The District owns real property located at 2450 Road 20, San Pablo, CA 94806 (“Premises”), adjacent to the Helms Middle School site that is leased, pursuant to the Amended and Restated Ground Lease Agreement between the West Contra Costa Unified School District and the City of San Pablo regarding the Construction and Use of a Community Center at Helms Middle School dated December 3, 2012, in part, to the City for purposes of operating the San Pablo Community Center and includes a non-exclusive right to use the parking lot located on the Premises (“Lease”).
2. As part of the City’s use of the Premises, the City desires to permanently increase the number of parking stalls by having four (4) additional parking stalls (“New Stalls”) constructed for use in the parking lot as more particularly identified in Exhibit “A” hereto (“Work”).
3. The Parties agree that the Work shall be performed by the District, but at the sole cost and expense of City and shall be performed as described herein this Agreement.
4. The City’s use of the New Stalls shall be in accordance with the current existing terms of the Lease.

NOW, THEREFORE, it is mutually agreed by and between the Parties as follows:

TERMS AND CONDITIONS

1. RESPONSIBILITIES AND OBLIGATIONS.

1.1. City’s Obligations.

- 1.1.1. City agrees to reimburse District for all costs associated with the Work, including all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to perform the Work, regardless of whether the costs involve a District-requested change from the specifications referenced in Exhibit “B.” However, City’s payment obligations under this Agreement shall not exceed [\$38,150.00]. City shall pay the District within forty-five (45) days of receipt of a detailed invoice from the City for the performance of the Work.

1.1.2. Once the Work is completed, the City's use of the New Stalls shall be subject to the terms and conditions of the Lease.

1.2. District's Obligations.

1.2.1. The District agrees to perform the Work according to the specifications as indicated in Exhibit "B" attached hereto and that the Work shall meet all accessibility requirements. The District in its sole discretion may make changes to the specifications included in Exhibit "B", as it desires or as required by law, with the understanding that such changes will not affect the City's maximum payment obligation set forth in Section 1.1.1.

If District engages contractor(s) to undertake some or all of the Work, then District shall ensure that the contractors indemnify the District and City; are licensed to do work in the State of California; and carry no less than \$1 million in general liability insurance and auto liability and workers compensation insurance with admitted insurers with an AM Best's rating of no less than A:VII. The District and City shall be named as an additional insured by endorsement on the contractor's general liability policy

1.2.2. District shall ensure that during the Work the public can continue to access the front door of the City's Community Center.

2. MISCELLANEOUS.

2.1. **No Grant of Agency:** Except as the Parties may specify in writing, no Party shall have authority, express or implied, to act on behalf of any other Party in any capacity whatsoever as an agent. No Party shall have any authority, express or implied, pursuant to this Agreement, to bind any other party to any obligation whatsoever.

2.2. **Limitation of Liability.** Notwithstanding any other provision of this Agreement, in no event, shall the District or the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Work performed in connection with this Agreement.

2.3. **Disputes:** In the event of a dispute between the Parties as this Agreement, its interpretation, or payment, the Parties shall attempt to resolve the dispute by negotiation and/or mediation, if agreed to by the Parties.

2.4. **Notice.** Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served, and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by overnight delivery service, or facsimile transmission, addressed as follows:

West Contra Costa Unified School District
1400 Marina Way South
Richmond, CA 94801
ATTN: District Superintendent

City of San Pablo
13831 San Pablo Avenue
San Pablo, CA 94806
ATTN: City Manager

Any notice personally given or sent by facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 2.5. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations, and agreements, whether oral or written, with the exception of the Lease. This Agreement may be amended or modified only by a written instrument executed by both Parties.
- 2.6. **California Law.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California. The Parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in the California county in which the District’s administration offices are located.
- 2.7. **Waiver.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.
- 2.8. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
- 2.9. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.
- 2.10. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first written above.

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| West Contra Costa Unified School District | City of San Pablo |
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| Title | Title |
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