



Office of the City Manager

CONSENT CALENDAR
December 15, 2020

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Scott Ferris, Director, Parks Recreation and Waterfront
 Subject: Joint Use Agreement between the City of Berkeley and Berkeley Unified School District

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a Joint Use Agreement between the City of Berkeley (City) and the Berkeley Unified School District (BUSD) for use of BUSD playgrounds, pools and buildings and City park facilities.

SUMMARY

The current Joint Use Agreement between the City and BUSD that covers pools and parks and has been in place since 1991 (Attachment 1) will expire on December 31, 2020. A separate agreement for the use of the Martin Luther King Junior Youth Services Center (MLK-YAP) expired in 2019 and is currently in holdover status. A new agreement is needed for the City and BUSD to jointly use these facilities. City and BUSD staff have been meeting consistently over the last eight months at the direction of City Council and the BUSD School Board to finalize the details of this Agreement. The proposed new agreement for the use of BUSD elementary school playgrounds, pools, the MLK-YAP center, and City parks will establish a new Joint Use Agreement between the two entities (Attachment 2).

FISCAL IMPACTS OF RECOMMENDATION

Maintenance costs for these facilities are already budgeted in the Parks Tax or BUSD budget. The only new direct cost, estimated at \$25,000 to \$50,000, associated with this agreement is the new fencing that separates the play area from the school at the West Campus site. Other potential City costs could be for BUSD staff that are needed to open or close BUSD elementary school playground sites on weekends, holidays or during school breaks.

This Agreement specifies a 30-year term for King Pool and MLK-YAP building, which will allow the City to use grant or bond funds to improve or maintain these facilities. The Agreement also specifies a 5-year term with an additional 5-year option for West Campus Swimming Pool, which means this site is not eligible for grant or T1 funding

and the upcoming \$500,000 needed in maintenance will need to come from the General Fund.

CURRENT SITUATIONS AND ITS EFFECTS

Multiple facilities covered in the expiring 1991 agreement are no longer applicable because either the City has ceased to operate particular facilities or they have been repurposed by BUSD. The remaining facilities that are covered by this new Agreement are properties owned by BUSD and operated and maintained by the City of Berkeley. These properties include three pool sites (King, West Campus, and Willard), two parks (King and Thousand Oaks), and six elementary school site playgrounds that were jointly funded by BUSD and the City. This new Agreement covers these pools, parks and the MLK-YAP facility site.

City Use of BUSD Pools and Other Facilities

The City will assume full responsibility for the operation, maintenance and capital expenditures of the following sites for the full term of the new agreement:

30-Year Term (expires January 2051):

- King Junior High Pool - 1700 Hopkins Street
- Martin Luther King Jr. Youth Services Facility (MLK-YAP) - 1730 Oregon Street.

These sites are envisioned as long-term assets and a 30-year agreement allows the City to spend grant or bond funds on the maintenance and improvements during the next 5 years since most outside funding sources require at least a 25-year agreement.

5-Year Term with 5-year Option (expires January 1, 2026):

- West Campus Pool - 2100 Browning Street

The City envisions San Pablo Park as the long-term home of the City's second municipal pool. The West Campus Pool will be operated and maintained until the San Pablo Park site can be developed in the next 5-10 years.

6-Month Term (expires July 1, 2021)

- Willard Pool - 2425 Stuart Street

The former Willard Junior High School pool and locker room will not be included in this long-term agreement. Willard Middle School uses the former pool area as the school's garden which is an integral part of the curriculum that takes place within BUSD. This garden also supports the Willard Young Leaders Entrepreneur Program and the Middle School CTE Pathway program. The City will identify an alternative site for its shower program and Recreation Hub over the next six months.

Public Use of BUSD Elementary School Sites

BUSD will open the playgrounds and fields of each site listed below to the general public on weekends and non-school days (including all holidays and school vacations or school breaks). The 1991 Agreement was limited to 6 elementary sites. This new Agreement expands this to add up to 6 more elementary sites, creating additional public spaces and playgrounds for residents to enjoy on weekends and non-school days. The new sites are labeled with an asterisk in the list below. BUSD will continue to operate and maintain these sites.

25-Year Term (expires January 1, 2046)

- Berkeley Arts Magnet – 2015 Virginia St *
- Cragmont – 830 Regal Road *
- Emerson – 2800 Forest Ave *
- Jefferson – 1400 Ada St*
- John Muir – 2955 Claremont Ave
- Malcolm X – 1731 Prince St
- Rosa Parks (except for the playground area) – 920 Allston Way
- Sylvia Mendez – 2840 Ellsworth St
- Thousand Oaks Field – 840 Colusa Ave
- Washington – 2300 Martin Luther King Jr Way
- West Campus (temporary Oxford site) – 1122 University Ave *
- Oxford School site (only if it reopens as a school) – 1130 Oxford Ave *

Also under this 25-year term, the City will continue to operate and maintain the following two District-owned property as City parks (See Exhibit A to the Agreement attached to the Resolution):

- King Park
- Thousand Oaks Park

As described in the 1991 Agreement, the new agreement will keep open two BUSD sites as parks, with the exception of the playing fields at Thousands Oak Park, which shall be reserved for District use during school hours, when school is in session.

District Use of City Parks and Park Facilities**25-Year Term** (expires January 1, 2046)

BUSD will have access to City parks, park buildings, and sports fields at no cost except for staffing. Specifically, BUSD will be able to reserve the San Pablo Park tennis courts for Berkeley High School interscholastic tennis matches during the boys and girls high school tennis seasons and have the right to reserve the King Junior High School pool for use by King Middle School aquatic programs during the school day (after 9 AM- and before 3 PM), provided that BUSD provide all required staff.

BACKGROUND

The Berkeley Unified School District and the City of Berkeley have collaborated on public recreation for many years. Agreements have been in place since the construction of Willard Pool (1963), West Campus Pool (1964) and King Pool (1965). An agreement for the use of the south pool at Berkeley High was added in 1982. In 1991, the four pools agreements were consolidated into the larger MOU between BUSD and the City which included multiple facilities.

Pools

In November of 2000, both BUSD and the City each passed General Obligation Bonds to renovate the Berkeley High School old gym building with the intention of the City to renovate the Warm Water pool using City Measure R (\$3.25M). After several years of building evaluations and master planning, BUSD decided to build classrooms in the existing space and recommended that the new Warm Water Pool be located across the street on Milvia. This left the City bond funds from Measure R unusable because they were associated with original site. In October 2007, the City completed a study of the new Milvia Street location for the Warm Water Pool. BUSD decided against use of this site for the Warm Water Pool, however, and instead designated it for parking and tennis courts.

In early 2008, the City and BUSD approved a joint resolution on the future development of public pools in Berkeley. This resolution established an 11-member task force to develop a comprehensive plan for all the pools on BUSD property. The City funded the costs of the planning process. In November 2009, the City adopted the [Citywide Pools Masterplan](#).¹

In November of 2010, the City placed a Mello-Roos Bond measure on the ballot that included approximately \$22.5M for capital and operations. The measure needed a 2/3 vote to pass, but failed with approximately 62.5% of the vote. A similar measure was put on the ballot in 2012 with the same result. In 2010, the City closed the aged Willard Pool and filled it with soil for safety purposes. The facility was in poor shape, and many of the pool systems and infrastructure had failed. In June of 2011, BUSD started construction of its South Bancroft Project and the Warm Water Pool was closed, leaving the City with 2 operating pools.

Maintenance and Operations

The City currently operates King and West Campus pools year-round. While Willard pool is closed, the building serves as a hub for the City's Recreation Division and host to the City's daily public shower program. The pool area is used as community garden by the Willard Middle School. All three pool sites are owned by Berkeley Unified School District (BUSD) and operated by the City of Berkeley (City). The City currently covers all capital, maintenance and operational expenses at the three sites.

¹ See https://www.cityofberkeley.info/Parks_Rec_Waterfront/Recreation/Citywide_Pools_Master_Plan.aspx

Martin Luther King Junior Youth Services Center

The Martin Luther King Junior Youth Services Center is located at 1730 Oregon Street, adjacent to Grove Park. It is the home to the Recreation Divisions Young Adult Program (YAP). The property was leased to the City for 50 years in 1946 and the building was constructed by the City in 1950. Upon expiration of the lease, the City and BUSD negotiated a short-term lease because the site was being considered as an expansion of the BUSD corporation yard, which is located on the western border of the property. This lease has since expired in 2010 and the property remains in holdover status (e.g., month-to-month).

Maintenance and Operations

The YAP program offers meaningful recreation experiences to several thousand middle school youth from predominantly African American and Hispanic households in south and west Berkeley. These activities include after school care, tutoring, violence prevention and leadership development.

Through programs such as After School and Summer Achievers, Justice in Action, From Boys to Men, and Young Divas, as well as a variety of service projects and special events, teens are given the opportunity to enhance their grades, gain valuable service learning experience, make new friends, and go on exciting field trips. The YAP community center includes a gymnasium, as well as a pre-k, teen and computer room. The City is responsible for all maintenance at this site. While the operation of these facilities is supported by the General Fund, the maintenance is supported by Parks Tax funding.

Parks and Elementary School Playgrounds

In 1974, the residents of Berkley passed a property tax increase (Measure Y) that generated \$3.3M over five years to acquire, develop and renovate parks in the City. The City, in collaboration with BUSD, used a portion of the Measure Y funding to build or improve open space areas as school sites. Per the Agreement, these Measure Y parks were to be open to the public when not being used by BUSD for the duration of the 1991 Agreement. These sites included the parks at King and Thousand Oaks (TO), and the playground areas at Sylvia Mendez (LeConte), Malcolm X, Rosa Parks (Columbus), John Muir, Washington, and Grizzly Peak elementary schools.

Maintenance and Operations

The City is responsible for maintenance responsibilities for King Park and Thousand Oaks Park and Thousand Oaks sports field. This maintenance is supported by Parks Tax funding

ENVIRONMENTAL SUSTAINABILITY

The new Joint Use Agreement between BUSD and the City will allow the community to have greater access to open space, which is a goal contained in the City's Climate Action Plan in Chapter 3 – Sustainable Transportation and Land Use Actions. Goal 2 in

this chapter aims to increase and enhance access to urban green and open space – as a way to improve the health and quality of life for residents.

RATIONALE

If the Agreement were to lapse or if a new agreement was not negotiated, community access to BUSD owned pools, facilities and elementary sites would be discontinued.

ALTERNATIVE ACTIONS CONSIDERED

The City considered the alternative to continue to support only one pool, but that alternative was rejected based on a desire to maintain existing service levels and concerns about geographic equity.

CONTACT PERSON

Scott Ferris, Director, Parks, Recreation and Waterfront, 981-6700

Attachments:

1. Resolution
 - a. Exhibit A - 2021 Facility Agreement between the City and BUSD
2. 1991 Facility Agreement between the City and BUSD

RESOLUTION NO. ##-###

AUTHORIZING AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR JOINT FACILITY USE, SITE DEVELOPMENT, SERVICES

WHEREAS, the City and the Districted entered in an agreement dated May 14, 1991 governing the joint use of certain District property and facilities by the City (“1991 Agreement”); and

WHEREAS, certain provisions of the 1991 Agreement expire on December 31, 2020; and

WHEREAS, the City and District mutually desire to continue to allow the joint use of certain District property so that the City can continue to provide recreational and other services to its residents; to allow the joint use of certain City property for the benefit of the District and its students; and to replace the 1991 Agreement with an updated joint use agreement that accomplishes these goals.

NOW, THEREFORE BE IT RESOLVED, that the City Council of the City of Berkeley hereby authorizes the City Manager to execute the Joint Facility Use Agreement with BUSD in substantially the same form as the agreement attached hereto as Exhibit A.

Attachments: Exhibit A - 2021 Facility Agreement between the City and BUSD

Exhibit A

**JOINT USE AGREEMENT BETWEEN THE CITY OF BERKELEY AND BERKELEY
UNIFIED SCHOOL DISTRICT**

THIS AGREEMENT is made and entered into this ____ day of December 2020, by and between the CITY OF BERKELEY, a municipal corporation (“City”), and the BERKELEY UNIFIED SCHOOL DISTRICT (“District”).

RECITALS

WHEREAS, the City and the Districted entered in an agreement dated May 14, 1991 governing the joint use of certain District property and facilities by the City (“1991 Agreement”);

WHEREAS, certain provisions of the 1991 Agreement expire on December 31, 2020;

WHEREAS, the City and District mutually desire to continue to allow the joint use of certain District property so that the City can continue to provide recreational and other services to its residents; to allow the joint use of certain City property for the benefit of the District and its students; and to replace the 1991 Agreement with an updated joint use agreement that accomplishes these goals.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows.

AGREEMENT

1. **Effective Date.** This Agreement shall be effective on January 1, 2021.
2. **City Use of District Pools and Other Facilities.**
 - a. The District hereby agrees to grant the City exclusive use of the following District facilities for the following terms:
 - i. King Junior High School pool and associated facilities located at 1700 Hopkins Street, Berkeley, California, until January 1, 2051.
 - ii. Martin Luther King Jr. Youth Services Facility (YAP) located at 1730 Oregon Street, Berkeley, California, until January 1, 2051.
 - iii. West Campus pool and associated facilities located at 2100 Browning Street, Berkeley, California, until January 1, 2026.

iv. Willard Junior High School pool (former) locker room and shower building, located at 2425 Stuart Street, Berkeley, California, until July 1, 2021.

The City agrees to assume full responsibility for operating each of these facilities for the terms listed in Section 2.a, and will be responsible for all maintenance and capital costs during the above-listed terms. The District grants the City an option to extend its term of exclusive use of the West Campus pool and associated facilities at its sole discretion for an additional five (5) years, until January 1, 2031. The City shall provide the District notice of its intent to exercise the option by no later than July 1, 2025.

b. Any capital improvement at the above-listed facilities exceeding \$25,000 in expenditures or any construction (regardless of dollar value) that will impact structural, accessibility, or fire or life safety systems must be approved in advance by the District. Approval of any capital improvement shall not be unreasonably withheld.

c. Upon the termination of the City's exclusive use rights, each facility and all improvements constructed thereon shall revert to the District. The District shall not assert any claim for breach of this agreement, waste, or any other claim for property damages based on the condition of any facility upon its return to the District at the termination of the City's rights under this Section.

3. Public Use of District Elementary School Sites.

a. This Section applies to the following elementary schools operated by the District: Berkeley Arts Magnet; Cragmont; Emerson; Jefferson; John Muir; Malcolm X; Rosa Parks (except for the playground area); Sylvia Mendez; Thousand Oaks; Washington; and West Campus (temporary Oxford site); and, should it reopen as a school, the former Oxford Elementary School site.

b. The District agrees that the playgrounds and fields of each site listed in Section 3.a will be open and accessible to the general public on weekends and non-school days (including all holidays and school vacations or breaks) until January 1, 2046.

c. The District shall post signage in a form reasonably acceptable to the City at each site listed in Section 3.a that provides adequate notice about restrictions on accessibility of the site to the general public.

d. No fee will be charged to the City for the use of District property; provided, however, the City will reimburse the District for direct staffing costs required to keep each of these sites open to the public on weekends and non-school days. The City may elect to waive its right to keep any site open to the public in lieu of paying direct staffing costs for that site.

e. The public use of District facilities is subject to the jurisdiction of the City of Berkeley Health Officer. The District shall comply with all applicable orders of the Health Officer in allowing public access under this Section.

f. The City agrees to construct fencing, subject to the review and approval of the District (which shall not be unreasonably withheld), between school buildings and playground and field areas at the West Campus and Oxford sites. The District will otherwise remain responsible for operation and maintenance costs for the sites listed above.

4. Maintenance of King and Thousand Oaks Sites as City Parks.

a. The City will operate and maintain the following District-owned property as a City park as delineated in Exhibit A:

- i. King Park
- ii. Thousand Oaks Park

b. The sites listed in Section 4.a shall remain open and accessible to the general public until January 1, 2046, except as set forth in City Park Rules; provided, however, that playing fields at Thousands Oak Park shall be reserved for District use during school hours, when school is in session.

c. No fee will be charged to the City for the use of District property. The City will pay for all maintenance and capital expenditures at the sites described in Section 4.a during the term of this Agreement.

d. Upon the termination of this Agreement, each site and all improvements constructed thereon shall revert to the District. The District shall not assert any claim for breach of this agreement, waste, or any other claim for property damages based on the condition of any site upon its return to the District at the termination of the City's rights under this Section.

5. District Use of City Parks and Park Facilities.

a. The City hereby agrees that the District will have access to City parks, park buildings, and sports fields at no cost, except as provided in this Agreement, until January 1, 2046.

b. The City agrees the District will have the right to reserve the San Pablo Park tennis courts for Berkeley High School interscholastic tennis matches during the boys and girls high school tennis seasons. The District will have priority access to the courts for those purposes after providing reasonable notice to the City.

c. The City agrees that the District will have the right to reserve the King Junior High School pool for use by the District's Middle School aquatic programs, and that priority considerations will be given to the District's request to reserve the pool for this purpose.

d. The District is responsible for paying any costs incurred to staff City facilities used by the District during the term of this Agreement and for any other services requested by and agreed to by the District. The City will not assess a facility rental charge for use of facilities by the District under this Agreement.

6. Indemnification.

a. The City shall indemnify, defend, and hold harmless the District and its officers, employees, agents, and volunteers against any and all liability for injury or damage caused or willful act or omission of the City or its officers, employees, agents, or volunteers arising from the City's use of District facilities under this Agreement or the District's use of City facilities under this Agreement; provided, however, that the City shall not be required to indemnify the District for any such claims, demands, or actions to the extent they result from the negligence or intentional acts on the part of the District or its officers, agents, employees, or volunteers.

b. The District shall indemnify, defend, and hold harmless the City and its officers, employees, agents, and volunteers against any and all liability for injury or damage caused by any negligent or willful act or omission of the District or its officers, employees, agents, or volunteers arising from the District's use of City facilities under this Agreement or the City's use of District facilities under this Agreement; provided, however, that the District shall not be required to indemnify the City for any such claims, demands, or actions to the extent they result from the negligence or intentional acts on the part of the City or its officers, agents, employees, or volunteers.

c. The provisions of this Section shall survive the termination of this Agreement.

7. Termination. Upon termination of this Agreement, all improvements, facilities, and fixtures on the properties referenced herein shall revert to the ownership District. Nothing herein shall prejudice the rights of the City and the District to extend the term of this Agreement or otherwise extend the term of the City's right to exclusive use of the properties referenced herein.

8. Authorization to Execute. Each party represents that the individual signing this Agreement is authorized to bind the party on whose behalf he, she, or they signs.

9. **Entire Agreement.** As to the matters set forth herein, this Agreement is the entire, integrated agreement and understanding of the Parties. This Agreement supersedes any prior Agreement between the parties regarding the subject matter of the Agreement, including but not limited to the 1991 Agreement.

10. **Modification.** This Agreement may be modified only by a writing signed by the parties.

11. **Severability.** If any part of this Agreement is found to be void, invalid or unenforceable, the remainder shall remain in full force and effect and shall be interpreted to carry out the parties' intent with respect to their obligations and rights.

12. **Drafting of Agreement.** The parties and their respective counsel have participated in the drafting and negotiation of this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by all parties.

13. **Applicable Law.** This Agreement shall be interpreted in accordance with California law, without reference to its choice of law provisions.

14. Execution in Counterparts. This Agreement may be executed in counterparts, and fax copies shall constitute good evidence of such execution.

CITY OF BERKELEY

Dated: _____, 2020

By: _____
City Manager

Registered on behalf of the City Auditor by:

By: _____
City Clerk

By: _____
Finance Department

APPROVED AS TO FORM:

By: _____
City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

Dated: _____, 2020

By: _____

APPROVED AS TO FORM:

By: _____

Exhibit A - Maps of joint use BUSD school parks maintained by COB

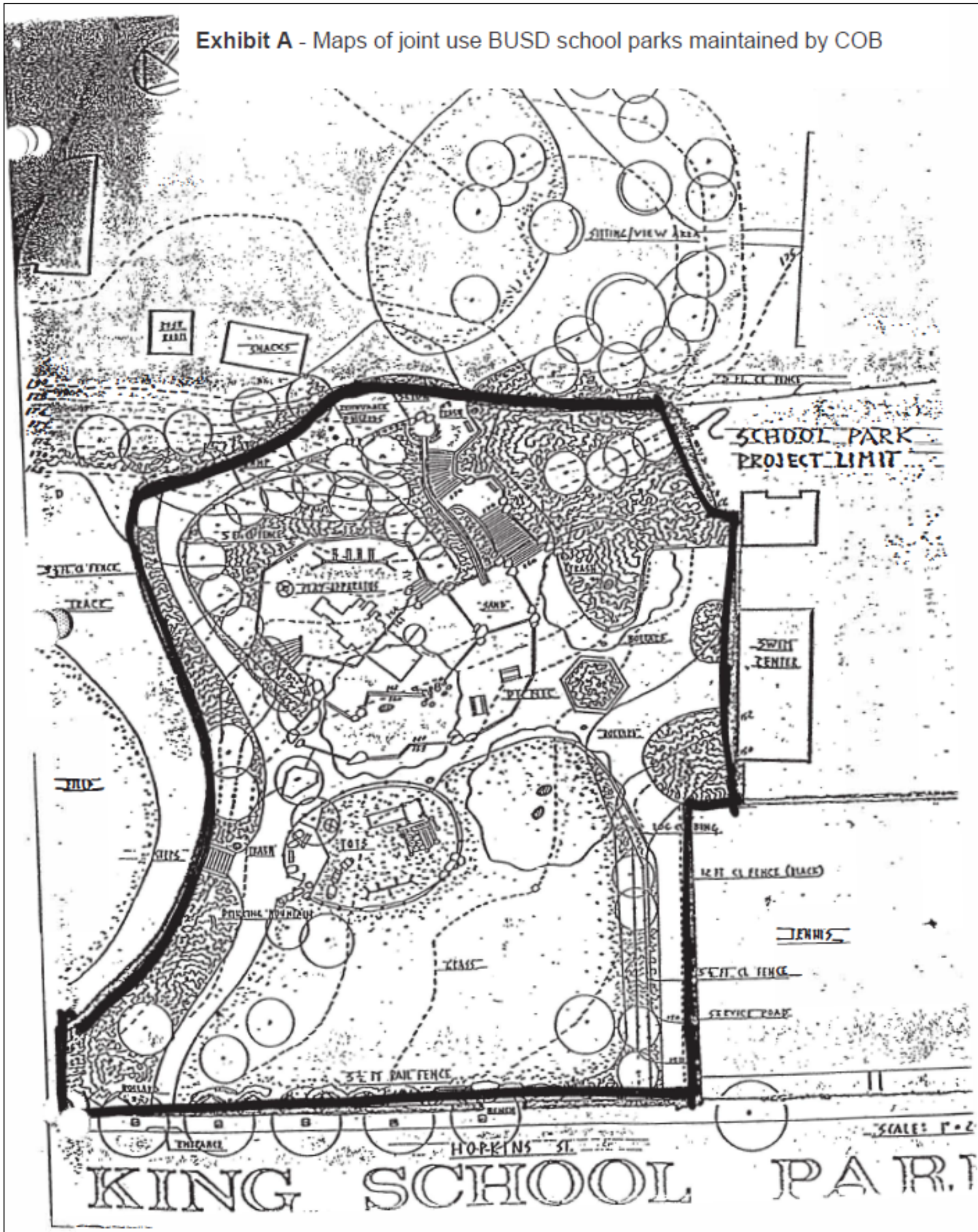
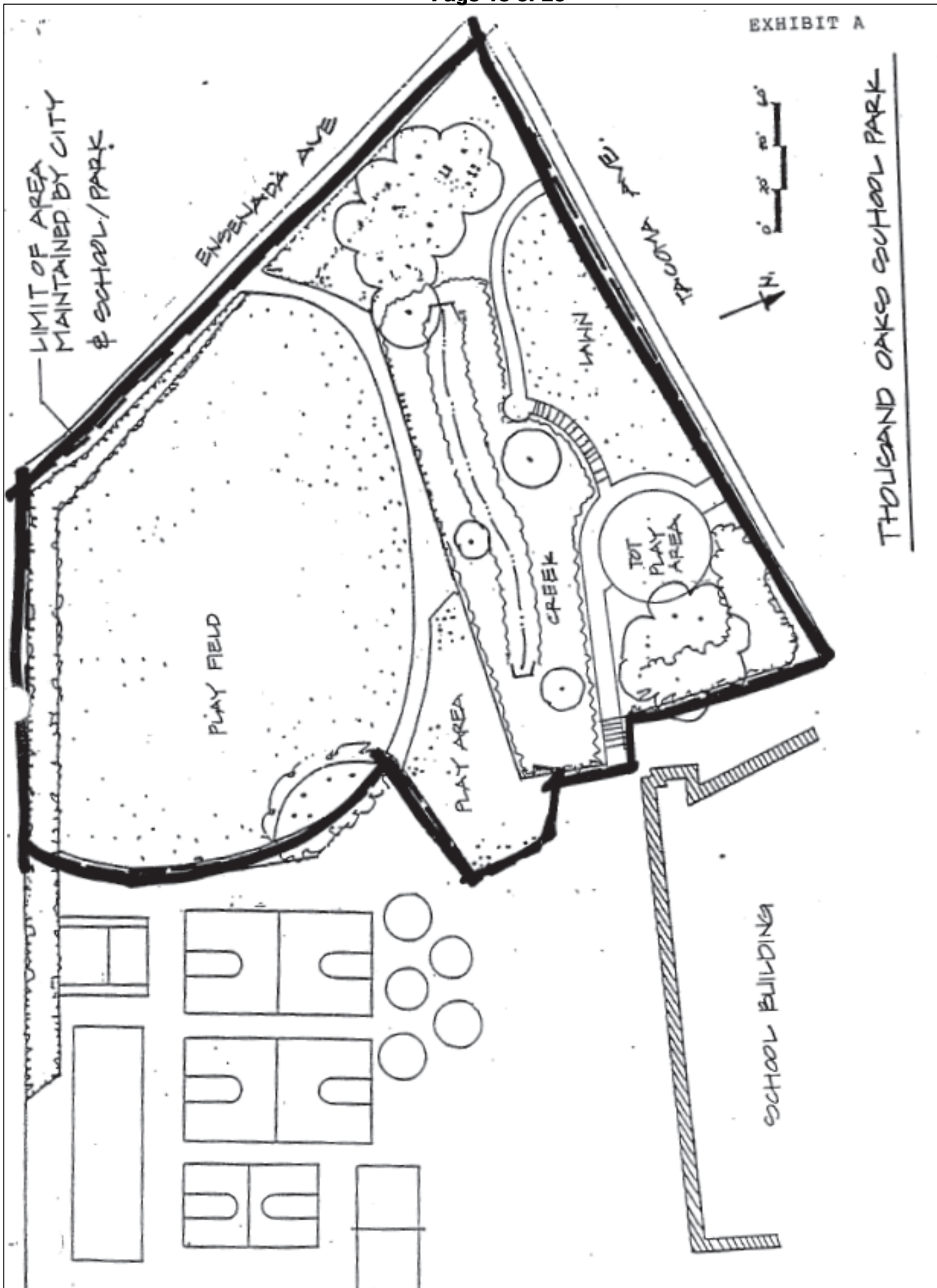


EXHIBIT A



RESOLUTION NO. 55,918 -N.S.

AUTHORIZING AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR MUTUAL FACILITY USE, SITE DEVELOPMENT, SERVICES, FEES AND PAYMENT SCHEDULE.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

That the City Manager is hereby authorized to enter into an agreement with the Berkeley Unified School District for mutual facility use, site development, services, fees and a payment schedule for Berkeley Unified School District's outstanding account, without interest as follows:

1. First Payment upon ratification of agreement		\$ 85,000
2. Second Payment	July 1991	75,000
3. Third Payment	July 1992	125,000
4. Fourth Payment	July 1993	<u>74,801</u>
	TOTAL	\$359,801

FURTHER RESOLVED, that the agreement shall be effective July 1, 1990.

FURTHER RESOLVED, that a record signature copy of said agreement is to be on file in the office of the City Clerk.

Copies sent 6/13/91

To: Auditor
Berkeley Unified School
District
Health & Human Services

RESOLUTION

No. 55,918 N.S.

Dated June 4, 1991

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmembers Chandler, Collignon, Dean, Goldfarb, Shirek,
Skinner, Wainwright, Woodworth, and President Hancock.

Noes: None.

Abstaining: None.

Absent: None.

Lois Hancock
Mayor and President of the Council

Attest Marie McKechnie
City Clerk and Clerk of the Council

55-718

A G R E E M E N T

THIS AGREEMENT, made and entered into this 3rd day of June 1991, by and between the CITY OF BERKELEY, a municipal corporation, hereinafter called CITY, and the BERKELEY UNIFIED SCHOOL DISTRICT, hereinafter call DISTRICT.

WITNESSETH:

WHEREAS, for a number of years the City and District have mutually provided services, site development and facility use through mutual understanding and various agreements; and

WHEREAS, in the spirit of cooperation, the City and District have entered into negotiations to clarify and continue the mutual facility use, site development and services; and

WHEREAS, the effective date for the agreement shall commence on July 1, 1990;

WHEREAS, this agreement only governs the specific items described herein and shall not be construed to waive any rights or debts or otherwise due either party.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

Section 1. Berkeley High School Donahue gym

As of January 7, 1991, the City will relocate its activities from Berkeley High School Donahue Gymnasium complex to King Junior High School's Gymnasium.

Section 2. Use of District properties

The District encourages the use of its facilities by the City.

Priority on use of District properties will be as follows:

- a. District
- b. City
- c. Others

It is agreed that the City and District will charge each other for the use of their facilities based on direct cost, defined as follows:

Direct costs are actual and necessary costs which create a financial liability to the lessor by the lessee. These costs shall include, but are not limited to, personnel overtime, utilities, equipment, and supplies required by the use. Also included are the costs to repair damage caused during such use.

It is agreed that both parties will inform each other on or before January 1 of each year what facilities they would like to schedule for

their use for the subsequent fiscal year, starting July 1 through June 30.

City and District will agree annually on direct cost rates on or before January 1 for the subsequent fiscal year starting July 1.

Section 3. King Junior High School Outdoor Recreational Facilities Development

The City and District agree to jointly study the further development of the outdoor recreational facilities at King Junior High School.

Section 4. King Junior High School Tennis Courts

If the City obtains funds for the rehabilitation of the five (5) tennis courts at King Junior High School, the District will lease these courts to the City at no cost for a term ending December 31, 2020 or twenty-five (25) years, whichever is longer.

The District shall close the King Junior High School tennis courts at such time as the City and District determine that they are unsafe.

Section 5. Measure Y Parks

The City and District have five (5) agreements on Measure Y Parks. The maintenance of the Measure Y Parks shall be as follows:

- a. The City will fully maintain Measure Y Parks at King Junior High and Thousand Oaks School.
- b. The District will fully maintain Le Conte, Malcolm X and Columbus Measure Y Parks.
- c. Under this agreement, there will be no need for billing between the City and District in regard to maintenance of Measure Y Parks.
- d. There is no existing agreement between the City and District in regard to Measure Y Parks at John Muir and Washington School. Therefore, the District will continue to maintain John Muir and Washington School Measure Y Parks.
- e. This agreement will require that the four (4) existing agreements on Measure Y Parks be canceled (King Junior High School, Le Conte, Thousand Oaks, and Malcolm X). Further, the Columbus agreement shall be amended to provide only for City interest to promote eligibility of East Bay Regional Park District's County AA Bond moneys.
- f. The District will then enter into new twenty-five (25) year lease agreements with the City for King Junior High School and Thousand Oaks park lands or for a period ending December 31, 2020.
- g. The District has basic requirements for the use of all District properties, including its fields. These

requirements include:

- i. Permit for use of facilities.
- ii. Minimum insurance
- h. The District extends these same requirements to Measure Y Parks, except Thousand Oaks and King Junior High School which the City will manage.
- i. The District and City will separate the utility services for the Measure Y Parks at Thousand Oaks and King Junior High School, where feasible.
- j. The District will continue to allow public access to Measure Y Parks between the hours of 8:30 A.M. to sunset, except during school hours.
- k. The City will use \$40,000 of County AA money to rehabilitate the Columbus School, Measure Y Park.
- l. The District will maintain the Columbus School Measure Y Park in accordance with generally accepted field maintenance standards, as mutually agreed to by the City and District.

Section 6. Mental Health Center Rental (1925 Derby Street

The District will waive rental fees for the period July 1, 1989 through June 30, 1993. Thereafter, the rental fee will be based on the District's direct costs.

Section 7. Old City Hall Custodial Overtime Facility Meetings

The City will be charged one (1) hour of custodial overtime for the set-up and clean-up for each meeting. In addition, the City will be charged for custodial overtime when a meeting extends past 11:00 P.M. in 15-minute increments.

Section 8. Pools

Effective July 1, 1990, the City will operate and maintain all pools except for the locker rooms and showers at Berkeley High School. It is further agreed that the costs of use for Willard Junior High School, King Junior High School, Berkeley High School, and West Campus pool will include maintenance, operating and capital improvement costs over the useful life. It is agreed that capital improvement costs will be amortized over the useful life or within the remaining lease term of the capital improvements and will be charged back to the District based on hours of use with a minimum District share of twenty percent (20%) of capital improvement costs. All capital improvements must be mutually agreed to by the City and District prior to construction. The maintenance and operations costs will be charged back to the District based on actual hours of use.

The District will inform the City on or before June 1 of each year what facilities it would like to schedule for its use for the subsequent

fiscal year beginning July 1 through June 30.

The District will have first priority on the use of all pools between the hours of 8:00 A.M. and 5:00 P.M. on school days. The District is open to negotiations with the City on joint use of pools during school hours.

The existing lease agreements on pools are as follows:

<u>SCHOOL</u>	<u>LEASE BEGIN</u>	<u>LEASE END</u>
Willard	1/10/63	12/31/03
King	11/23/65	11/22/05
West Campus	7/15/64	7/14/04
Berkeley High	12/07/82	12/06/07

The Alameda County AA Bond funding requires a minimum of twenty-five (25) years lease in order to obtain this money. Therefore, it is in the best interest of the City and District to extend all pool leases so that there would be a minimum remaining lease period of twenty-five (25) years. Further, it is desirable that all pool leases expire simultaneously.

Therefore, all four existing pool leases shall be extended to December 31, 2020. Upon completion of the leases for the pool at King, Willard and West Campus the buildings, equipment and apparatus will revert to City's ownership.

Further, the District may wish to develop any or all of the properties on which existing pools are located. The District has the option of relocating any and all of its existing pools on the existing site or to another site, said location to be done at the cost of the District to a site mutually agreed to between the City and District.

Section 9. Quarterly Meetings; City and District

The City and District staff will hold quarterly meetings to communicate with each other on the implementation of the various sections of the agreement between the City and the District.

Section 10. Open Space

The City and the District agree it is desirable to maintain open space. If school sites are withdrawn from school use, the District will make every effort to maintain adequate open space consistent with the District's development objectives and in accordance with Measure L.

Section 11. Building Permits

The City will exempt the District from the City requirement of obtaining building permits only for building construction fees that relate to educational projects.

Section 12. Election Costs

The District will be paid the current flat rate for polling places as established by Alameda County and the City at school sites used as

polling places.

Section 13. District/City Sub-Lease of Mutual Property

The City and District will not sub-lease any property rented from one another, except to the extent provided in any existing lease between City and District not specifically incorporated herein.

Section 14. Summary of Account Outstanding

The parties owe each other sums of money as set forth in Attachment 2 for the provision of services specified in the attachment. Nothing in this section shall modify, abrogate or otherwise govern any obligation not specifically described in such attachment. After accounting for offsetting charges for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$359,801 over a three year period without interest as follows:

a. First payment upon ratification of this agreement		\$ 85,000
b. Second payment	July 1991	75,000
c. Third payment	July 1992	125,000
d. Fourth payment	July 1993	74,801
	TOTAL	\$ 359,801

IN WITNESS WHEREOF, first party has hereunto set its corporate name and seal by its officers thereunto duly authorized and second party has hereunto set its name by its officers thereunto duly authorized, the day and year first above written.

CITY OF BERKELEY

By Carla Woodworth
Mayor

By [Signature]
City Manager

By _____
City Clerk

Registered by:
By Amalabkin
City Auditor

Approved as to form:

Katherine J. Iru
Deputy City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

By Siene R. Hegarty
President of its Board of Education

By [Signature]
Acctg Superintendent of Schools

CITY OF BERKELEY AND BERKELEY UNIFIED SCHOOL DISTRICTSUMMARY OF ACCOUNTS OUTSTANDING

DESCRIPTION	CHARGES TO CITY	CHARGES TO DISTRICT
1. City billing for swim center at King, Willard West Campus		
1987		\$58,145
1988		49,325
1989		40,020
1990		30,435
2. District bill for swim pool at Berkeley High		
1987	\$16,218	
1988	15,160	
1989	16,940	
1990	18,998	
3. City billing for Berkeley High swim pool maintenance		
1987		13,000
1988		14,449
1989		15,458
1990		21,562
4. City billing for Measure Y Parks		
1989		85,000
1990		85,000
5. City billing for playground equip-		
1989		19,000
1990		19,000

6. District billing
for Columbus
Measure Y Park
maintenance

1989	10,000
1990	2,000

7. District billing
Donohue Gym

1988	7,000
1989	7,000
1990	7,000

8. District billing
for West Campus
gym

1988	0
1989	0
1990	5,000

9. District billing
for summer paly-
ground 5 sites

1989	0
1990	401

10. District billing
for rental of
East Campus Bld.
for Mental Health

1989	wavied
1990	waived

11. District rent not
paid to District
by City

1990	10,683
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12. Double payment
District owe City
1986

25,807

GRAND TOTAL

\$ 116,400

\$ 476,201

NET

\$ 359,801

CITY OF BERKELEY
CONSENT CALENDAR INFORMATION

HEALTH AND HUMAN SERVICES THROUGH
From: CITY MANAGER *[Signature]* Deadline for Council Action _____
Council Meeting Date: June 4, 1991

IT IS RECOMMENDED THAT THE CITY COUNCIL: AUTHORIZE THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL DISTRICT FOR MUTUAL FACILITY USE, SERVICES AND PAYMENT SCHEDULE

1. COMMENTS, CITY ATTORNEY:

Council approval is required.

2. BACKGROUND AND NEED FOR COUNCIL ACTION;

Since 1949, the City of Berkeley (City) and the Berkeley Unified School District (District) have entered into a number of contracts for the mutual use of City and District facilities, site development, services and fees associated with the usage and services. Many of the agreements were written, while some agreements have been oral agreements between City and District staff. For the past ten years there have been a number of disagreements and disputes between the City and District in regard to the application and interpretation of use fees associated with the various written and oral agreements. As a result of the disagreements, no payments have been made between the City and District since July 1986.

In a spirit of cooperation, the City and District began discussions in December of 1988 to identify and compile the various written and oral agreements into a document that would provide the framework for shared facility use, site development and services. The City and District staff entered into negotiations on October 12, 1989. They were suspended subsequent to the earthquake and only concluded on December 20, 1990. The recommendations were forwarded to the School Board for approval and were ratified on February 6, 1991.

The delay in submission to the City Council was caused by the District's request for a sewer fee waiver. The City Attorney has rendered a opinion that the City, as a recipient of federal Clean Water Act funds, cannot waive the fees for sewer operation and maintenance incurred by the District. As a result, staff is in the process of calculating the fees to be assessed the School District.

It is recommended that the City Council authorize the City Manager to enter into an agreement with the Berkeley Unified School District for facility usage, site development, services, fees and the schedule for payment of fees without interest. The agreement shall become effective July 1, 1990 (Attachment 1).

AUTHORIZE AGREEMENT WITH
BERKELEY UNIFIED SCHOOL DISTRICT

CONSENT CALENDAR
June 4, 1991

3. FINANCIAL IMPLICATIONS (include any dollar amount, in-kind services, multi-year commitment) AND SOURCE OF FUNDS (for both cash and in-kind services; indicated if amount is currently budgeted and requirement for budget code). IF SUBMITTAL, AUTHORIZATION OR EXECUTION OF GRANTS IS INVOLVED (includes new grants or modification form) AN FNO06 (budget modification form) SHOULD BE SUBMITTED WITH ITEM. ITEM WILL NOT BE PROCESSED UNLESS FNO06 IS INCLUDED.

The agreement will set forth the fee structure for the use of various facilities, site development and services rendered by the City and District. After accounting for offsetting charges (Attachment 2) for the period July 1, 1986 through June 30, 1990, the District shall pay the City the amount of \$ 359,801 over a three year period without interest as follows:

Facility & Services

1.	First payment upon ratification of agreement		\$ 85,000
2.	Second payment	July 1991	75,000
3.	Third payment	July 1992	125,000
4.	Fourth payment	July 1993	74,801
	TOTAL		\$ 359,801

4. COUNCIL POLICY AND LEGISLATIVE HISTORY, IF ANY;

Council has entered into various agreements with the Berkeley Unified School District for facility use, site development, services and fees.

5. COMMUNITY GROUPS AFFECTED

The entire population of the City of Berkeley

6. NAME, TITLE AND TELEPHONE NUMBER OF PERSON(S), DEPARTMENT(S) BOARD(S), COMMISSION(S), COMMITTEE(S) TO CONTACT FOR ADDITIONAL INFORMATION:

Anton Jungherr, Associate Superintendent of Schools, Berkeley Unified School District644-6674
Emmett E. Jones, Assistant City Manager, Health & Human Services..644-6459