

**LONG TERM USE AGREEMENT
BETWEEN
CITY OF CAPITOLA
AND
SOQUEL UNION ELEMENTARY SCHOOL DISTRICT**

THIS LONG TERM USE AGREEMENT (“Agreement”) is entered into effective _____, 20__ (“Effective Date”), by and between the City of Capitola (“City”) and the Soquel Union Elementary School District (“District”). City and District are sometimes hereinafter referred to collectively as the “Parties” or each individually as a “Party.”

RECITALS

- A. Pursuant to Education Code sections 38130, *et seq.* (“Civic Center Act”), the management, direction, and control of school facilities are vested in the District’s Board of Trustees (“Board”), and the Board may provide for the use of school facilities as a civic center where such use is consistent with school purposes and does not interfere with the regular conduct of schoolwork.
- B. The District is the fee owner of that certain real property located at 4510 Jade Street in the City of Capitola, California, with Assessor’s Parcel Number (“APN”) 34-551-02, also known as the Jade Street Property (the “Property”), as more particularly depicted in **Exhibit A-1**, attached hereto and incorporated herein by this reference.
- C. The Property includes Opal Cliffs School (“School Site”), owned and operated by the District, identified as “*Opal Cliffs School*” in **Exhibit A-2**.
- D. With the exception of the School Site, the Property is currently not in use by the District.
- E. On March 26, 1982, the District leased the Property to the City pursuant to a written Lease Agreement (“Lease”) for the exclusive purpose of establishing, developing, and maintaining a public recreational park.
- F. Following execution of the Lease, the City constructed a community center (“Community Center”), identified as “*Community Center*” in **Exhibit A-2**. In addition, the Property includes public tennis courts (“Tennis Courts”), playing fields (“Playing Fields”), and restrooms (“Restrooms”) (collectively, the “Park Facilities”).
- G. On January 8, 1985, the Parties entered into an Amendment to the Lease amending the District’s termination notice requirements. On November 25, 1986,

- the Parties entered into a further Amendment to the Lease, in which the District expressly reserved the right to terminate the Lease by giving the City written notice twelve months in advance of termination when the District required the Property for a public school building. The District gave such advance notice of termination to the City on July 26, 2000.
- H. In a Conditional Judgment of Ejectment (“Judgment”) filed April 14, 2003, in the matter of *Soquel Union School District v. City of Capitola*, Case No. CV 141712 (“2001 Lawsuit”), the Santa Cruz County Superior Court determined, among other things, that the Lease was terminated on July 26, 2001, subject to the right of the City to remain in possession of the Property during the remainder of the term of the original Lease or until the District is ready to commence use of the Property, with all necessary approvals. The Court retained jurisdiction for the limited purpose of determining when the District is entitled to possession of the Property, including determination of any disputes about access reasonably necessary to obtain approvals or financing.
- I. On May 26, 2010, the City filed a lawsuit against the District, challenging the District’s adoption of a mitigated negative declaration under the California Environmental Quality Act (“CEQA”) with regard to the District’s Public Works Plan (“PWP”) for the Property (“CEQA Lawsuit”).
- J. In August 2010, the Parties entered into a settlement agreement with regard to the CEQA Lawsuit (“Settlement Agreement”) in which the Parties agreed to compromise and settle the CEQA challenge with regard to Phase One of the PWP (consisting of construction of the current Opal Cliffs School), and to defer any CEQA challenge by the City with respect to Phase Two of the PWP. The Settlement Agreement provided, among other things: (1) that the landlord/tenant relationship between the City and District created by the Lease was terminated; and (2) that the District acknowledged the City’s right to possession of the Property for public recreational purposes for the remaining term of the terminated Lease (expiring March 25, 2032) and subject to the terms of the Judgment and any consistent terms of the terminated Lease.
- K. In 1986, the City entered into a sublease, expiring on September 1, 2032, with Trade Winds Resident Association, Inc. (“Trade Winds”) for a portion of the Property, identified as “*Lot currently ‘sub-leased’ by City to Tradewinds*” in **Exhibit A-2**. In the 2001 Lawsuit, the Court ruled that this sublease is valid. The District does not contest that determination.
- L. With the exception of the School Site, the City has continued to use and occupy the Property, subject to the terms of the Judgment and consistent with terms of the terminated Lease.
- M. The City now desires to make certain improvements to the Community Center (the “Community Center Improvements”) for the benefit of the community at

large, including but not limited to District students and families, and further desires to enter into a new agreement with the District permitting the City to continue to use and occupy that portion of the Property, excluding the School Site, including the Park Facilities (hereinafter the “Premises”) until June 30, 2052.

- N. The District, recognizing that the City’s proposed Community Center Improvements and continued operation of the Premises as a public recreational park are of benefit to the community at large, including but not limited to District students and families, is hereby willing to grant the City continued use and occupation of the Premises through June 30, 2052, subject to the terms and conditions set forth in this Agreement.
- O. It is the desire and intent of the Parties that, except as expressly set forth hereunder, nothing in this Agreement shall modify, supersede, alter, replace, or revise the Judgment or any other ruling, order, or decision by the Court in the 2001 Lawsuit or any of the terms and conditions set forth in the Settlement Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below, the City and the District agree as follows:

- 1. Grant of Use. The District hereby grants to the City and the City hereby accepts from the District the grant of use of the Premises for use as a public recreational park under the terms and conditions set forth in this Agreement. The City shall use the Premises only as public recreational park and for no other purposes without the District’s prior written consent. This grant of use includes use of all current improvements on the Premises, as shown in **Exhibit A-2**.
- 2. Term; Renewal. This Agreement shall commence on the Effective Date and terminate on June 30, 2052, subject to its earlier termination as provided hereunder (“Term”). The Parties may, by mutual written agreement, renew this Agreement for up to two (2) additional ten (10) year terms (each a “Renewal Term”). There shall be no “holding over” by City with regard to the Premises without the District’s express prior written consent. Title to the Premises shall, at all times during the Term and any Renewal Term thereof, remain vested in the District.
- 3. Termination.
 - a. This Agreement may be terminated by either Party at any time for cause. “Cause” shall consist of a breach of any material provision of this Agreement, and the failure of the breaching Party to cure the breach within thirty (30) days of being notified of the breach, provided that if the breach cannot reasonably be cured within said thirty (30) day period, the breaching Party will not be in default under this Agreement if the breaching Party commences to cure the breach within the thirty (30) day

period and diligently prosecutes the same to completion. Upon expiration of the applicable cure period, the non-breaching Party may terminate the Agreement.

- b. Regardless of any other term or condition of this Agreement, the District retains and reserves the right to terminate this Agreement, at any time, by giving written notice to the City of its intention to so terminate this Agreement at least twenty four (24) months in advance, should the District, in its sole and absolute discretion, determine that the Premises are needed for school purposes. Following the issuance of written notice of termination to the City, the District, its consultants, representatives, and agents shall have the right, upon twenty-four (24) hours' notice to the City, to access the Premises for the purpose of conducting any and all testing and inspections the District determines are necessary or as required by state and federal law for the use of the Premises for public school purposes.
 - c. In the event that the District exercises its termination rights under Section 3(b), it shall fairly compensate the City for a percentage of the total costs of construction of the Community Center Infrastructure Improvements, as defined hereunder and set forth in **Exhibit B** attached hereto and incorporated herein by this reference. The percentage of such compensation to be paid to the City shall be dependent on the effective date of the District's termination and shall be calculated as set forth in **Exhibit C** attached hereto and incorporated herein by this reference, except that no compensation shall be paid to City unless and until City has completed all of the Community Center Infrastructure Improvements as listed in **Exhibit B**.
 - d. Upon termination or expiration of this Agreement for any reason, the District shall have the right to retain, at no cost to District, all buildings and fixtures then located on the Premises, ("Improvements"), including but not limited to the Community Center Infrastructure Improvements, constructed or installed on the Premises or in or at the Park Facilities, that District deems appropriate for its use. The City shall remove all other buildings, fixtures, equipment, and personal property from the Premises within ninety (90) days of such termination date and surrender the Premises to the District in accordance with Section 4 hereunder. All such buildings, fixtures, equipment, and personal property not so removed within such ninety (90) day period shall be deemed abandoned by the City and the District may dispose of them for its own benefit in whatever way it deems appropriate.
4. Surrender of Premises. Upon termination or expiration of this Agreement for any reason, the City shall surrender the Premises to the District in good order, condition, and repair, and free and clear of all liens, claims, and encumbrances. Said condition shall be similar to that existing as of the Effective Date, excepting

reasonable wear and tear and any Improvements constructed or installed by the City subsequent to the Effective Date. Upon surrender of the Premises, the City shall have no further right to use the Premises or Park Facilities beyond that enjoyed by any other entity or organization in compliance with the District's general policies and procedures applicable to same.

5. Annual Use Fee. In recognition of the recreational opportunities and other benefits made available to members of the public and the community, including District students and families, through the City's operation and maintenance of the Premises as a public recreational park, the City shall pay to the District the total amount of One Hundred Dollars (\$100.00) for each year of the Term of this Agreement, as an annual use fee ("Annual Use Fee"), which amount shall be payable upon execution of this Agreement and annually invoiced by the District thereafter on each anniversary of the Effective Date. The District reserves the right to increase the Annual Use Fee for any Renewal Terms hereof.
6. Compliance with Law; Limitations Upon Use.
 - a. The City shall comply with all federal, state, local and District laws, statutes, codes, ordinances, rules, regulations, policies, and requirements regarding the use and occupation of the Premises, as well as all current and future orders, laws, and recommendations issued by an applicable government agency (including the California Department of Public Health, the Santa Cruz County Health Officer, and the state and federal governments) related to COVID-19 or any other public health emergency, that are applicable to the City's use of the Premises, including but not limited to those related to social distancing, the use of personal protective equipment ("PPE") such as face coverings and gloves, and the sanitization of facilities ("Law").
 - b. The City shall not cause the Premises to be used, occupied, or improved in any manner or for any purpose that is in any way in violation of any Law or that will constitute waste, nuisance, or unreasonable annoyance to residents in the surrounding area, interfere with the educational program or activities at the School Site, or jeopardize the safety of the students and staff at the School Site.
 - c. If any license, permit, or other governmental authorization is required for the City's use of the Premises, the City shall procure and maintain same to the extent required by Law.
 - d. Without limitation of the City's other indemnification obligations set forth in this Agreement, the City shall indemnify, defend and hold the District free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from the City's failure to comply with and perform the requirements of this Section, except to the extent that

any such liability is caused by the sole negligence or willful misconduct of the District or any person or entity under its explicit direction or control. Upon request, the City shall provide copies of all licenses, permits, or approvals which the District may require to verify that the City is in compliance with the requirements of this Section.

- e. The City shall be solely and completely responsible for the safety of all persons and property associated with the City's use and occupation of the Premises. The City and the City Parties (as defined hereunder) shall fully comply with all state, federal, and other laws, rules, regulations, and orders related to safety. All materials, equipment, and supplies provided by the City when using the Premises shall fully conform to all applicable Law.
7. Use of Premises Granted on "As Is" Basis. The Parties acknowledge that the City is already in possession of the Premises as of the Effective Date. The District provides, and the City accepts, the Premises in its "AS IS" condition. The District shall not be required to make, construct, or remove any Improvements to the Premises during the Term of this Agreement or any Renewal Terms thereof. Furthermore, the District makes no representations or warranties regarding the fitness or suitability of the Premises for the City's intended use of same.
 8. Landscaping. City shall water, weed, mow, trim and maintain lawns, shrubs, trees, and plantings as necessary to maintain the Premises as a public recreational park. City may also remove trees in compliance with City regulations and may plant new trees, shrubs, and other plants as appropriate for a public recreational park.
 9. Maintenance and Repairs. The City, at its own cost and expense, shall maintain the Premises in a safe and clean condition and free from rubbish and litter at all times. The term "maintain" shall be defined as routine, regular, or necessary maintenance, including but not limited to: (1) daily removal of all trash and debris from the Premises, including all parking areas, driveways, sidewalks, and walkways; (2) daily cleaning of Restrooms; and (3) other maintenance necessary to maintain the Premises in a condition suitable for use as public recreational park. The City shall be solely responsible, at its own cost and expense, for any and all maintenance, repair, replacement, and upkeep for the Premises, including but not limited to the following systems, equipment or elements: heating, ventilating and air conditioning system ("HVAC"), plumbing, sewer and water lines, interior and exterior lighting, interior and exterior fixtures, interior walls, ceilings, floors and flooring, windows, interior and exterior doors, signage, walkways, parking lot, and any foundation or exterior surface on which the Park Facilities or other Improvements are placed. The District shall have no obligation whatsoever for any maintenance, repair, replacement, or upkeep for the Premises, or any related costs or expenses.

10. Utilities. The City shall be solely responsible for and shall pay all charges for water, sewer, gas, electricity, telephone and internet service, garbage disposal costs, and any other utility used or consumed by the City at the Premises, including those utilities and water costs necessary for maintaining the landscaping at the Premises. The City shall comply with all present and future water conservation programs required by federal, state, or local laws.

11. Parking. Parking of cars by City employees, agents, contractors, licensees and invitees, including the public, shall be confined to those parking spaces in the parking lot identified as “Lot currently ‘sub-leased’ by Tradewinds to City” in **Exhibit A-2**. Parking spaces designated for the City’s use are to be used for parking operable motor vehicles only. Parking of trailers, boats, campers, or trucks, other than pick-up trucks, on the Premises shall be prohibited. Overnight parking shall be prohibited, with the exception of City-owned vehicles. School Site staff and visitors shall have priority for parking spaces in the asphalt lot between the Community Center and the School Site while school is in session. The District has the right to reserve parking spaces in this lot for School staff and visitors as needed.

12. Improvements. The City shall not construct or cause to be constructed on the Premises any Improvements without the express prior written consent of the District. Notwithstanding the foregoing, the Parties understand and agree that the City, at its sole cost and expense, may install drinking fountains, signage, fencing, and benches consistent with the use of the Premises as a public park (“Exempt Improvements”). The City may replace the current play structure with equipment of comparable quality and utility. Further, the Parties understand and agree that the City, at its sole cost and expense, intends to make those certain Community Center Infrastructure Improvements and Community Center Ancillary Improvements (together, the “Community Center Improvements”) as listed in **Exhibit B** and pursuant to those requirements set forth in this Section 12 and Section 13 hereunder. In regard to all Improvements, including but not limited to the Community Center Improvements, the District and City agree as follows:
 - a. The City shall be solely responsible for the costs and expenses of all Improvements, including but not limited to the costs of planning, permitting, design, engineering, architectural services, inspections, and construction. The District shall not be required to pay any of the costs or contribute any labor, supplies, or equipment necessary for the City’s completion of Improvements.

 - b. Prior to commencing construction of any Improvements, excepting Exempt Improvements, the City shall provide the District’s Superintendent or designee with copies of drawings, plans, and specifications for the proposed Improvement(s) for the District’s review and approval, which approval shall not be unreasonably delayed, conditioned, or withheld. Each such submission shall include the estimated cost for the proposed Improvement(s) as set forth in the contract

awarded by the City for construction of the proposed Improvement(s) and the dates for commencement and completion of the proposed Improvements and shall identify those Improvements that require the approval of local and state governmental agencies. If the District does not either object or provide written approval to the proposed plans and specifications within forty-five (45) days of receipt, the plans and specifications shall be deemed approved.

- c. All Improvements shall be subject to all state and local site, zoning, use permits, and design review and other required approvals (“Governmental Approvals”). The City acknowledges that it assumes full responsibility for securing and maintaining all such permits and required Governmental Approvals, and for the costs and expenses incurred in securing and maintaining same. At no cost or expense to the District, the District shall reasonably cooperate with the City in good faith, as necessary for the City to secure Governmental Approvals.
- d. All contracts for construction of the Improvements shall provide for compliance with all applicable law regarding the construction of public works projects, including but not limited to, the payment of prevailing wages.
- e. Scheduling of construction of Improvements, excepting Exempt Improvements, shall be coordinated with and agreed to in advance by the District in order to minimize disruptions or interference with school operations or activities at the School Site to the maximum extent feasible.
- f. Prior to commencing any Improvements, the City shall install protective fencing, barriers, and warning signs, at all work sites and take other protective measures as necessary to ensure public safety, as required by law. Such protective measures shall remain in place until completion of Improvements.
- g. Upon commencement of construction of any Improvements, excepting Exempt Improvements, the City shall cause the work to be diligently pursued to completion in accordance with the schedule for completion agreed to by the Parties, subject to unavoidable delays caused by weather, supply shortages, strikes, or acts of nature.
- h. All work on Improvements shall be performed in a sound and workmanlike manner, in compliance with applicable laws and building codes, and in conformance with the plans and specifications approved by the District.
- i. The District or the District’s agents shall have a continuing right at all times during the period that Improvements are being constructed on the

Premises to enter the Premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction.

- j. Within fifteen (15) days after completion of construction of any Improvements on the Premises, excepting Exempt Improvements, the City shall deliver to the District a written notice of completion and a full and complete set of as-built plans or the Improvements so completed.
- k. In addition to and without limitation of the City's other indemnification obligations as set forth in this Agreement, the City shall defend, indemnify, and hold harmless the District and the District Parties (as that term is defined hereunder) for any and all claims, liabilities, or damages arising out of or in any way relating to the planning, development, construction, or installation of any and all Improvements, except for those claims, liabilities, or damages arising from the sole negligence or willful misconduct of the District or any person or entity under the District's direction or control.

13. Community Center Improvements. In addition to those requirements set forth in Section 12, the Parties agree to the following with regard to the Community Center Improvements as listed in **Exhibit B**:

- a. The City shall complete all Community Center Infrastructure Improvements listed in **Exhibit B** within forty eight (48) months of the Effective Date (the "Completion Date"), unless the Parties otherwise mutually agree in writing to a different timeline for such completion.
- b. Upon completion of each of the Community Center Infrastructure Improvements listed in **Exhibit B**, the City shall provide the District with detailed invoices verifying the costs and expenses reasonably and actually incurred by the City in completing each such Community Center Infrastructure Improvement. Such invoices shall be compared to and reconciled with the estimated costs of the Community Center Infrastructure Improvements listed in **Exhibit B** and the Community Center Reimbursement Schedule at **Exhibit C**. Receipt of invoices verifying all such costs and expenses incurred by the City in the construction of the Community Center Infrastructure Improvements shall be a precondition to the District's payment of any compensation to the City as a result of the District's early termination of this Agreement pursuant to Sections 3(b) and 3(c), above. The City shall only be compensated for such verified costs and expenses.
- c. In the event the City fails to timely complete the Community Center Infrastructure Improvements by the Completion Date, and the Parties have not otherwise mutually agreed in writing to a different timeline for such

completion, this Agreement shall terminate on March 25, 2032, unless otherwise extended by mutual written agreement of the Parties.

14. District Use of Community Center. The Parties agree that the District shall have the use of the Community Center for six (6) days of each year during the Term of this Agreement and any Renewal Terms thereof. The District shall coordinate and schedule such use in advance with the City. The City shall use its best efforts to accommodate the District's requested dates of use. Prior to use of the Community Center, the District shall submit a facility use agreement as required by the City for City approval and shall provide proof of insurance as may be required by the City.
15. Right of Entry and Inspection. The District and its officers, agents, and employees shall have the right to enter the Premises at any reasonable time for the purpose of inspecting the same. Except in cases of emergency, the District shall provide the City with notice at least one (1) business day in advance of any District entry and inspection.
16. Liens and Claims. The City shall promptly pay in full all costs associated with the City's use of the Premises or Park Facilities, and any equipment, furnishings, furniture, trade fixtures or other items for the Premises or Park Facilities that the City shall cause to be delivered to the Premises or Park Facilities and shall timely pay in full all persons who perform labor for the City's use of the Premises or Park Facilities. If any mechanics' or materialmen's liens or any other liens or claims for any work done or items furnished at the City's request are filed against the Premises or Park Facilities, the City shall promptly remove the liens and claims at the City's own expense. If the City fails to remove the liens or claims and any judgment is entered thereon or thereunder, the City shall pay that judgment. Should the City fail, neglect, or refuse to remove any such liens or claims or to pay any judgment, the District shall have the right to pay any amount required to release any such liens or claims, or to defend any actions brought on the liens or claims and to pay any judgment entered on the liens or claims, and the City shall be liable to the District for all costs, damages, reasonable attorneys' fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or claims or any judgment obtained therefor. The District may record, post, and maintain upon the Premises or Park Facilities a notice of non-responsibility. The City shall not encumber by any security instrument, all or a part of the City's interest under this Agreement without the prior written consent of the District, and upon such terms and conditions as the District may require.
17. Assignment and Subleases.
 - a. Assignment. Neither Party may assign or transfer any of its obligations, rights, or duties under this Agreement without the prior written consent of the other Party. Any assignment or transfer made without such written

consent shall be void, and at the option of the non-assigning Party, shall immediately terminate this Agreement.

- b. Subleases. Except as set forth in Section 17(c) below, the City may not sublease the Premises or any portion thereof, including but not limited to the Park Facilities, without the District's express prior written consent, which consent may be withheld in District's sole and absolute - discretion. In the event the District provides express prior written consent to any such sublease (each an "Approved Sublease"), the City shall pay to District fifty percent (50%) of any revenues obtained by the City pursuant to each Approved Sublease entered into by the City subsequent to the Effective Date of this Agreement (the "District's Revenue Share"). The initial payment of the District's Revenue Share, as well as a copy of each fully executed Approved Sublease, shall be due to the District within thirty (30) calendar days of actual receipt by the City of the first payment to the City under any Approved Sublease for these purposes. In the event that an Approved Sublease expires or terminates, the City's obligation to pay the District's Revenue Share for such sublease shall automatically terminate upon the date of such expiration or termination. With the exception of the Trade Winds Sublease, as described in Section 17(c) below, upon termination or expiration of this Agreement, all Approved Subleases shall automatically expire.
- c. Trade Winds Sublease. The District hereby grants consent to the City for its sublease to Trade Winds (the "Trade Winds Sublease") of that portion of the Premises identified as "*Lot currently 'sub-leased' by City to Tradewinds*" in **Exhibit A-2** ("Trade Winds Sublease Area"). The Parties agree that the current Trade Winds Sublease shall terminate as of September 1, 2032, and that no renewal or extension thereof shall be permitted without the District's express prior written consent. The Parties agree that the District has no duties or obligations under the current Trade Winds Sublease, and that the City alone shall be responsible for such duties and obligations. If the District, in its sole and absolute discretion, declines to grant its prior written consent for renewal of the Trade Winds Sublease, the City shall be responsible for ensuring that Trade Winds vacates and surrenders the Trade Winds Sublease Area as of September 1, 2032 (or as of the expiration date under an extension or renewal that has been granted by the District). Without limitation of the City's other indemnification obligations set forth in this Agreement, the City shall indemnify, defend, and hold the District and the District Parties (as defined hereunder) harmless from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description resulting from or related to the Trade Winds Sublease and any delay or refusal of Trade Winds to vacate and surrender the Trade Winds Sublease Area, but excepting injury,

death or damage arising from the sole negligence or willful misconduct of District. Upon any renewal or extension, the Trade Winds Sublease shall be subject to Section 17(b), above.

18. Dangerous and/or Hazardous Conditions. The City shall assume full and sole responsibility for repairing and remediating any dangerous and/or hazardous conditions occurring at or on the Premises that may pose a risk of injury to the public. The City shall fully repair and remediate any such dangerous and/or hazardous condition on the Premises within ten (10) business days of its identification and in the most effective and efficient means possible with the least disruption to school operations at the School Site; provided that if, because of the nature of such dangerous and/or hazardous condition, such repair or remediation cannot be completed within such ten (10) day period, the City shall commence performance within such ten (10) day period, and thereafter diligently prosecute the same to completion. Further, the City shall take steps necessary to ensure the safety of the public until such repair or remediation is completed, including without limitation the installation of fencing, barriers, or warning signs and any other protective measures at the site of the dangerous and/or hazardous condition, as appropriate under the circumstances. Without limitation of the City's other indemnification obligations set forth in this Agreement, the City shall indemnify, defend, and hold the District free and harmless from any and all liability, loss, damages, fines, penalties, claims, and actions resulting from the City's failure to comply with and perform the requirements of this Section, except to the extent that any such liability is caused by the sole negligence or willful misconduct of the District or any person or entity under its explicit direction or control. The City's failure to comply with its obligations under this Section may, at the District's discretion, result in termination of this Agreement pursuant to Section 3(a).

19. Hazardous Materials. The City shall not use, maintain, or keep any Hazardous Materials, other than ordinary cleaning supplies and waste at, in or on the Premises without the District's prior written approval. The term "Hazardous Materials" as used in this Agreement shall mean any products, substances, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Premises, is either (a) potentially injurious to the public health, safety or welfare and environment of the Premises, (b) regulated or monitored by any governmental authority, or (c) a basis for liability of City or District to any governmental agency or third party under any applicable statute or common law theory. Hazardous Materials shall include, but not be limited to, hydrocarbons, MTBE, petroleum, gasoline, crude oil, or any products, by-products, or fractions thereof. Willful or negligent breach of the City's obligations under this Section may, at the District's discretion, result in termination of this Agreement pursuant to Section 3(a). The City shall promptly give notice to the District of any Hazardous Materials dispersal or spill, or Hazardous Materials claim, of which it is or becomes aware.

Without limitation of the City's other indemnification obligations set forth in this Agreement, the City shall indemnify, defend, and hold the District and District Parties (as defined hereunder) harmless from any and all claims, costs, damages, penalties or liabilities arising out of the City's use or release of any Hazardous Materials at, in or on the Premises, except to the extent that any such liability is caused by the sole negligence or willful misconduct of the District or any person or entity under its direction or control. The City shall be solely responsible for investigation and remediation expenses related to the abatement of asbestos and other Hazardous Materials that may be required as a result of any Improvements, repairs, replacement, or remediation to the Premises undertaken by the City.

20. Damage/Destruction.

- a. Should the Premises be damaged or destroyed by fire or any cause not the fault of the City or the City Parties (as defined hereunder), including any person on or about the Premises with the express or implied consent of the City, the City shall have, as its sole options, the right to either: (1) repair and restore said Premises, at the City's sole cost and expense, to a condition similar to that existing as of the date of damage or destruction, excepting reasonable wear and tear; or (2) terminate this Agreement pursuant to Section 3(a) by giving District written notice of such termination, and surrender the Premises pursuant to Section 4.
- b. Should the Premises be damaged or destroyed by fire or any cause that is the fault of the City or the City Parties (as defined hereunder), or the fault of any person on or about the Premises with the express or implied consent of the City, the District may, in its sole discretion terminate this Agreement pursuant to Section 3(a) and the City shall surrender the Premises in accordance with Section 4. If the District does not, in its sole discretion, exercise its termination rights, this Agreement shall remain in full force and effect and the City shall repair and restore said Premises, at the City's sole cost and expense, to a condition similar to that existing as of the date of such damage or destruction, excepting reasonable wear and tear.

21. Signage; Cooperation and Public Communications.

- a. The Parties shall mutually agree on the design, content, and location of a park sign located on the Premises; however, the Parties agree that the City has the right, in its sole discretion, to post signage regarding park rules, regulations, public safety, and other public information of its choosing on the Premises. Upon expiration or termination of this Agreement, the City shall remove all signage posted by the City and shall restore the Premises to the condition existing prior to installation of the signage to the District's reasonable satisfaction. All such signage shall be subject to compliance with all applicable laws at the City's sole cost.

- b. The Parties understand and agree that the District's grant of use and occupation of the Premises under this Agreement is intended to strengthen the continuing partnership between the City and the District with regard to the recreational and other opportunities made available to the public and community, including District students and families, through the City's operation and management of the Premises as a public recreational park. To that end, the Parties agree to cooperate in promoting their partnership in announcements and public communications concerning the Premises, in signage placed thereon by the Parties, and as the Parties may otherwise agree. At the District's request, such announcements, public communications, and signage shall identify the District as the owner of the Premises.

22. Taxes and Assessments. Pursuant to Revenue and Taxation Code section 107.6, the City is hereby advised that by entering into this Agreement, a possessory interest subject to taxation may be created and that a property interest may be subject to property taxation if created, and that the Party in whom the possessory interest is vested may be subject to property taxes levied on the interest. All assessments assessed against or attributable to the Premises, any improvements or personal property placed upon the Premises by the City, at the inception date of this Agreement and assessed or falling due during the Term of this Agreement or any Renewal Terms thereof, shall be paid by the City. If the City fails to pay any taxes or assessments for which the City is responsible, before delinquency, the District shall have the option to pay such taxes or assessments and hold the City liable for indemnification of all such payments.

23. Indemnification; Limitation of Liability.

- a. Without limitation of the City's other indemnification obligations set forth in this Agreement, the City shall defend, indemnify, and hold harmless District and its agents, representatives, officers, consultants, employees, Board of Trustees, members of the Board of Trustees (collectively, the "District Parties"), from and against any and all claims, demands, liabilities, damages, losses, suits and actions, and expenses (including, but not limited to attorney fees and costs including fees of consultants) of any kind, nature and description (collectively, the "Claims"), including but not limited to Claims for injury to or death of persons or damage to property or delay directly or indirectly arising out of, connected with, or resulting from any act, error, omission, negligence, or willful misconduct of the City, or its agents, contractors, subcontractors, employees, material or equipment suppliers, invitees, or licensees (collectively, the "City Parties") in the performance of or failure to perform the City's obligations under this Agreement, including, but not limited to the City's use and occupation of the Premises, any work performed on the Premises or materials furnished to the Premises at the request of the City, or any

persons or entities acting for or on behalf of the City, or breach of any of the representations or warranties contained in this Agreement by the City; except, however, the foregoing indemnification shall not apply to the extent that any such Claims arise as a result of the sole negligence or willful misconduct or omissions of the District or any person or entity under its direction or control. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a party, person, or entity described in this Section.

- b. No individual employed by, or any elected or appointed official of, the District or the City will be personally liable in any manner or to any extent under or in connection with this Agreement. The City and the District and their respective successors and assigns hereby waive any and all such personal liability. Notwithstanding anything stated herein to the contrary, neither the District nor the City shall be liable for any special, consequential, indirect or incidental damages, including but not limited to lost profits in connection with this Agreement.
- c. This Section 23 and all other indemnification provisions set forth in this Agreement including but not limited to those in Sections 6, 12, 17, 18, and 19, shall survive expiration or termination of this Agreement for any reason.

24. Insurance.

- a. Coverage Required. The City shall, at its own cost and expense, secure and maintain at all times during the Term of this Agreement and any Renewal Terms thereof, with insurance companies acceptable to the District, the following insurance policies covering the Premises:
 - i. Public liability insurance for bodily injury, personal injury, and property damage, and including products and completed operation and non-owned and hired automobile coverage, with liability limits of not less than Two Million Dollars (\$2,000,000) per occurrence, and Four Million Dollars (\$4,000,000) in the aggregate. Such policy shall specifically state: "Coverage does not contain limitations of coverage or exclusions for molestation, sexual abuse, child abuse, or child endangerment." Such policy shall not contain any exclusions and/or limitations of coverage for mental, physical, emotional and/or sexual abuse, including molestation.
 - ii. Automobile liability insurance for bodily injury, personal injury and property damage for vehicles owned, non-owned, or hired, with policy limits or not less than One Million Dollars (\$1,000,000) combined single limit.

iii. Property insurance for the Premises plus the value of the inventoried contents thereof, in an amount no less than One Million Dollars (\$1,000,000) for the first year of the Term of this Agreement, which amount shall be adjusted annually by the percentage of change in the value of the Premises and the contents thereof. The Premises shall be insured on a replacement cost basis without regard for depreciation.

b. Insurance Provisions. Each of the policies required under this Section shall:

i. name the District as an additional insured and be provided on an occurrence basis;

ii. state that such policy is primary, and non-contributing with any other insurance carried by the District;

iii. state that the naming of an additional insured shall not negate any right the additional insured would have had as claimant under the policy if not so named; and

iv. state that not less than 30 calendar days written notice shall be given to the District before the cancellation or reduction of coverage or amount of such policy.

c. A certificate of insurance for each of the policies required under this Section shall be delivered to the District upon request. Each such certificate shall set forth the limits, coverage, and other provisions required under this Section.

25. Worker's Compensation Insurance and Employer's Liability Insurance. The City shall maintain statutory Worker's Compensation insurance, including Employer's Liability for coverage for no less than One Million Dollars (\$1,000,000) per accident, disease, and annual aggregate. A certificate of insurance verifying that the City has such insurance in force shall be delivered to the District upon request.

26. District Insurance. At all times during the Term of this Agreement or any Renewal Terms hereof, the District shall maintain first party property insurance for the Premises. The City shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the typical insurance rate for public parks or affect any property insurance or other insurance upon the Premises, (unless the District gives its prior approval and the City pays any increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Premises, nor shall the City sell

or permit to be kept, used, or sold in or about the Premises any articles which may be prohibited by a standard form policy of property insurance.

27. Amendment of Settlement Agreement.

The Parties hereby agree to amend the Settlement Agreement to remove Paragraph 5 in its entirety and replace it to read as follows, and to seek court approval of such amendment of the Settlement Agreement as the District, in its sole and absolute discretion, determines to be necessary:

5. The City shall have the right to legally challenge the District's compliance with the laws, rules, and regulations referenced in paragraph 4 solely with respect to Phase Two in accordance with any procedures set forth in said laws, rules, and regulations for asserting legal challenges. Notwithstanding the foregoing, the City hereby unconditionally waives its right to challenge the MND referenced in Recital D, as currently drafted, solely as to Phase Two should the District purport to rely on the MND for CEQA compliance relative to Phase Two implementation. The City does not waive its right to challenge any addendum, supplement or modification to the MND as to Phase Two should the District purport to rely on information not contained in the 2008 MND for CEQA compliance relative to Phase Two implementation.

28. Resolution of Disputes. In the event of a dispute between the Parties concerning this Agreement or the rights and duties of either Party under this Agreement, the Parties shall first attempt to resolve the dispute informally. If the Parties cannot reach a resolution, they shall attempt in good faith to settle the dispute through non-binding mediation. The Parties shall agree upon and select a mediator and share equally the costs and fees of mediation. Each party shall bear its own legal fees and costs. If the Parties are unable to resolve the dispute through non-binding mediation, each Party may pursue its legal rights and remedies through any other legally permissible means, but neither Party may pursue any such legal remedy unless and until the Parties have engaged in at least one session of non-binding mediation.

29. Review. The City and the District will meet regularly, and not less than annually, to review the Parties' use of the Premises, and any necessary changes to such use, and to determine if mutually accepted revisions should be made to this Agreement.

30. Notices. All notices, certificates, or other communications hereunder shall be deemed given when personally delivered or mailed by certified mail, postage prepaid, to the Parties at the addresses set forth below:

To District:

Soquel Union Elementary School District
620 Monterey Avenue
Capitola, CA 95010
Attn: Superintendent

To City:
City of Capitola
420 Capitola Avenue
Capitola, CA 95010
Attn: City Manager

31. Miscellaneous Provisions.

- a. Amendment. This Agreement may be amended only in writing signed by both the City and the District. The Capitola City Council and the District Board of Trustees must approve this Agreement and any amendments or modifications thereto before any amendments and/or modifications become effective.
- b. Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Santa Cruz County.
- c. Severability. If any provision of this Agreement is held invalid, void or unenforceable by a court of competent jurisdiction, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then this Agreement shall not be affected and it shall remain in full force and effect, unless amended or modified by mutual consent of the Parties; provided, however, that if the invalidity or unenforceability of any provision of this Agreement results in a material failure of consideration, then the Party adversely affected thereby shall have the right in its sole discretion to terminate this Agreement upon providing written notice of such termination to the other Party.
- d. Successors and Assigns. The terms and provisions of this Agreement shall extend to and be binding upon and inure to the benefit of the successors and permitted assigns of the respective Parties.
- e. No Property Interest Created. This Agreement does not create any interest for the City in the Premises, or any property owned or maintained by the District and is not coupled with any property interest or other interest.

- f. Waiver. No waiver of default in any of the terms, covenants, or conditions in this Agreement shall be a waiver of any subsequent default of the same or any other terms, covenants or conditions herein contained.
- g. Future Assurances. Each of the Parties agrees to execute such further documents and take such further actions as may be reasonably necessary or appropriate to effectuate the terms of this Agreement.
- h. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Facsimile signature pages transmitted to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.
- i. Warranty of Authority. Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the latest date written below.

CITY OF CAPITOLA

**SOQUEL UNION
ELEMENTARY SCHOOL
DISTRICT**

By: Jamie Goldstein
City Manager

By: Scott Turnbull
Superintendent

_____, 20__

_____, 20__

EXHIBIT A
ASSESSOR'S PARCEL MAP (EXHBIT A-1) AND AERIAL PHOTO OF PROPERTY (EXHIBIT A-2)

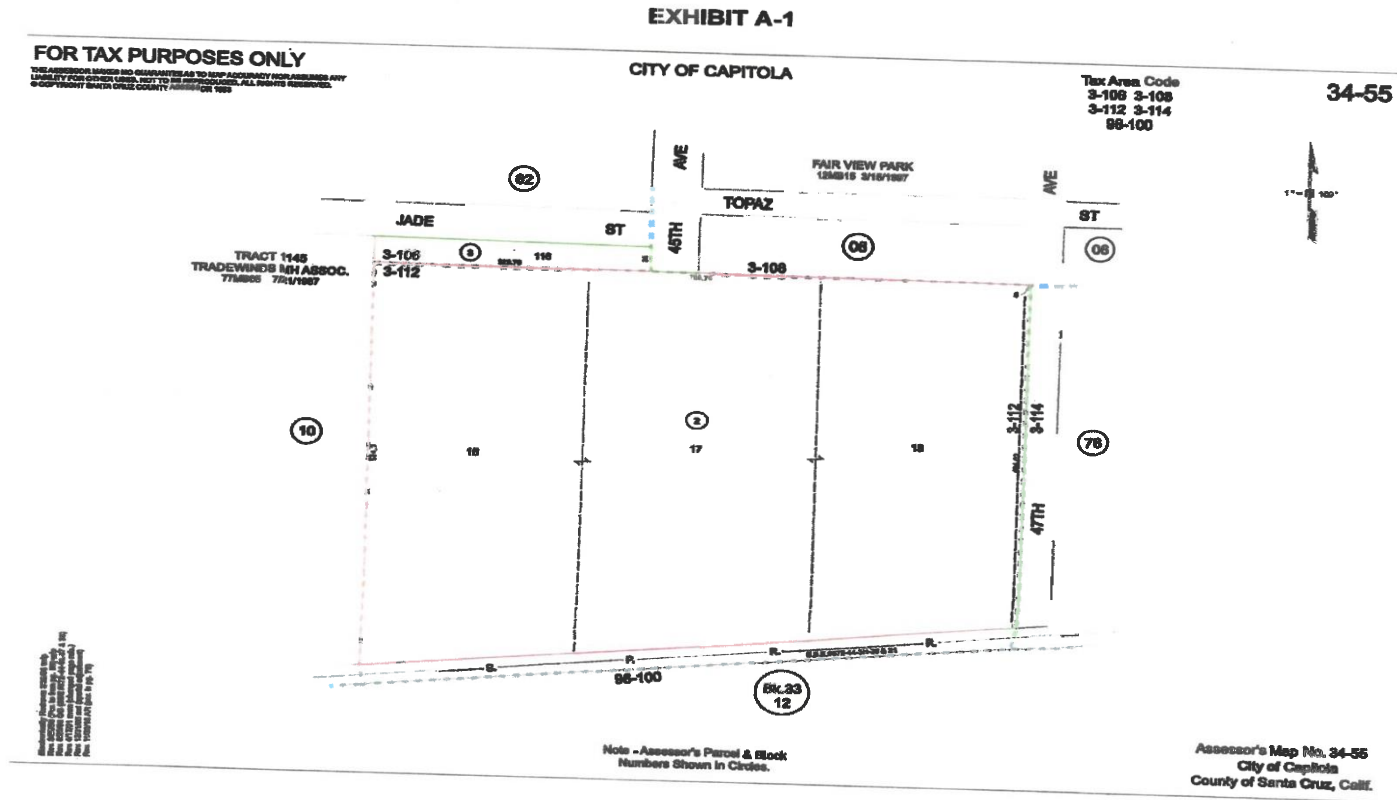
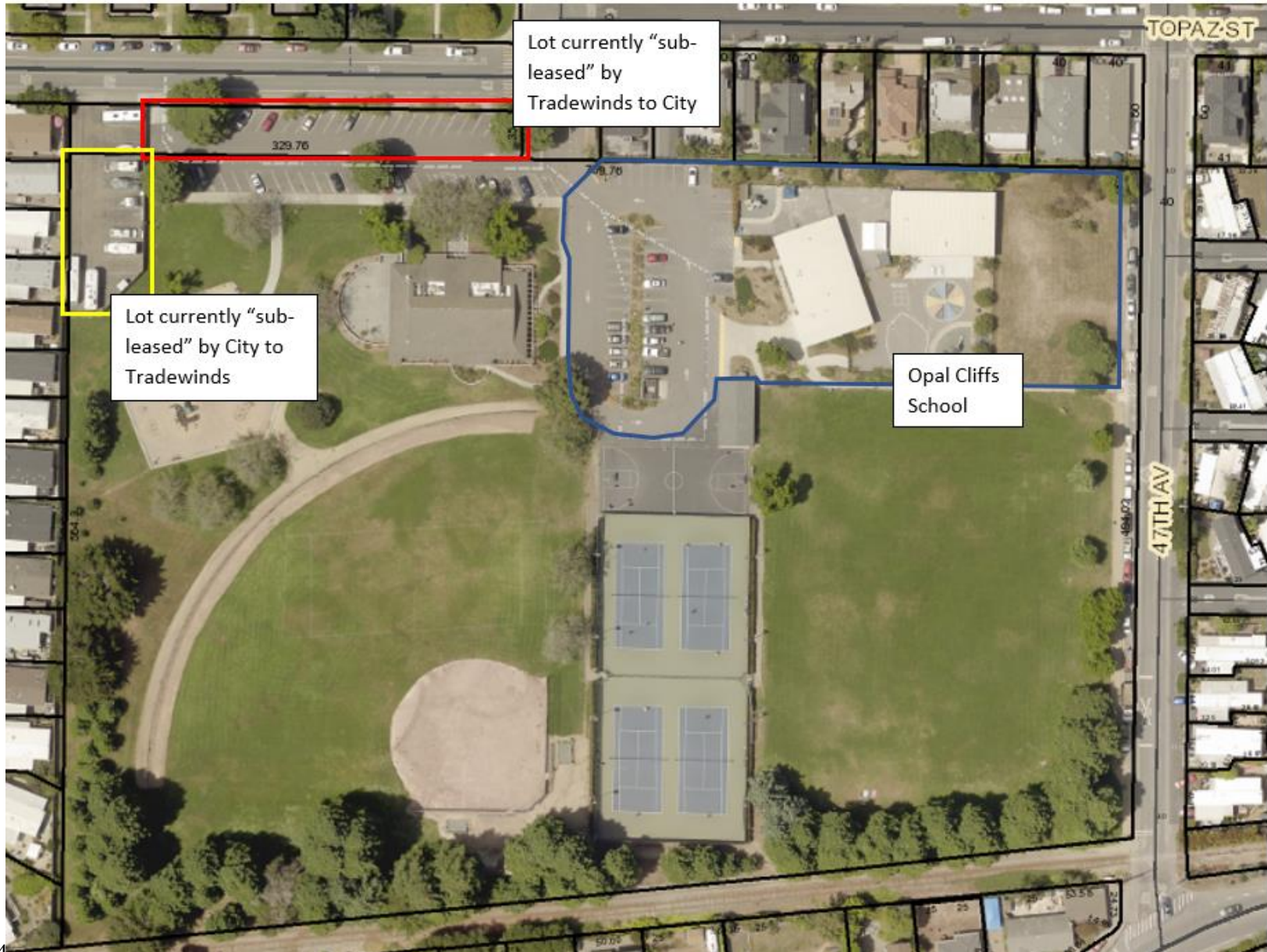


Exhibit A-2



Lot currently "sub-leased" by Tradewinds to City

Lot currently "sub-leased" by City to Tradewinds

Opal Cliffs School

TOPAZ ST

47TH AV

EXHIBIT B

**PROJECTED COSTS FOR JADE STREET COMMUNITY CENTER
INFRASTRUCTURE AND ANCILLARY IMPROVEMENTS AS OF
NOVEMBER 2022**

INFRASTRUCTURE IMPROVEMENTS	
Item	Cost Est
Exterior siding/roof/paint	\$ 120,000
Interior ADA – add single user restroom	\$ 210,000
Plumbing	\$ 240,000
HVAC	\$ 84,000
ADA Improvements	\$ 66,000
Total Infrastructure	\$ 720,000
ANCILLARY IMPROVEMENTS	
Item	Cost Est
Interior renovation (offices, closets, etc..)	\$ 50,000
Flooring	\$ 50,000
Partitions	\$ 125,000
Kitchen renovation	\$ 150,000
Replace doors/windows	\$ 250,000
Electrical upgrades (exterior power and interior service)	\$ 50,000
Restroom renovations	\$ 50,000
Total Other Projects	\$ 725,000
Total planned improvements	\$ 1,445,000
Design costs	\$ 216,750
Total planned building investment	\$ 1,661,750
Universal Design Outdoor Play Structure - site improvements	\$ 1,000,000
Total planned site investment	\$ 2,661,750

EXHIBIT C

**COMMUNITY CENTER INFRASTRUCTURE IMPROVEMENTS
REIMBURSEMENT SCHEDULE**

Upon early termination of this Agreement by District pursuant to Section 3(b), District shall reimburse City for a percentage of the costs of the Community Center Infrastructure Improvements set forth in **Exhibit B** in accordance with the following Schedule, provided that: (1) the City has timely completed all of the Community Center Infrastructure Improvements listed in **Exhibit B** and in accordance with Sections 12 and 13 of the Agreement; and (2) the City has provided District with detailed invoices verifying the costs of each completed Community Center Infrastructure Improvement along with a full and complete set of as-built plans for all such completed Community Center Infrastructure Improvements. The City shall only be reimbursed for such verified costs.

2025	100%	\$720,000
2026	95%	\$684,000
2027	90%	\$648,000
2028	85%	\$612,000
2029	80%	\$576,000
2030	75%	\$540,000
2031	70%	\$504,000
2032	65%	\$468,000
2033	60%	\$432,000
2034	55%	\$396,000
2035	50%	\$360,000
2036	45%	\$324,000
2037	40%	\$288,000
2038	35%	\$252,000
2039	30%	\$216,000
2040	25%	\$180,000
2041	20%	\$144,000
2042	15%	\$108,000
2043	10%	\$72,000
2044	5%	\$36,000
2045	0%	\$0