

**INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT
CONCERNING THE OPERATION OF THE MARY WAYTE POOL**

1. PARTIES

This Interlocal Agreement (“Agreement”) is entered into by the City of Mercer Island, a Washington municipal corporation (“City”), and the Mercer Island School District, No.400, a municipal corporation, King County, Washington (“District”). The City and District enter into this Agreement pursuant to and as authorized by the Interlocal Cooperation Act (Chapter 39.34).

2. PURPOSE AND RECITALS

- 2.1 The Mary Wayte Pool, located at 8815 SE 40th Street, Mercer Island, Washington was built as part of the Forward Thrust initiative in approximately 1972 (“Pool”).
- 2.2 Since its construction, King County operated and maintained the Pool on property owned by the Mercer Island School District (“District”), pursuant to a forty (40) year Lease Agreement dated June 14, 1972 between the District, as lessor and King County, as lessee (“Lease”) until it determined that it would cease operating the Pool at the end of 2002.
- 2.3 King County declared it would begin mothballing the Pool on or about December 20, 2002, and would cease operating and maintaining the Pool on December 31, 2002 unless title to the Pool has been transferred to Northwest Center for the Retarded (“Northwest”) on or before December 20, 2002, or other arrangements satisfactory to Northwest and the County had been implemented to provide funds to the County for operating the Pool after December 31, 2002.
- 2.4 The City agreed to assist in keeping the Pool operating, subject to available funding.
- 2.5 Assuming that adequate financial support is available from the City and/or other community resources to operate the Pool through the end of the 40-year lease term, Northwest Center agreed to assume the lessee’s interest in the Pool, with the District’s consent, and to operate and maintain the Pool.
- 2.6 Northwest advised the City and District of its intent to terminate the previous agreements entered into with the City and District, and to cease operation of the Pool effective December 31, 2010.

- 2.7 The District expressed an interest in resuming full ownership of the Pool, and operating and maintaining the Pool after December 31, 2010. The City and the District developed an aquatic committee to explore the continued aquatic services.
- 2.8 The aquatic committee made a recommendation to the City Council and School Board to authorize staff to investigate potential pool operators in efforts to continue aquatic services for the Mary Wayte Pool. The City Council and School Board approved the recommendation at a special joint meeting on October 18, 2010.
- 2.9 City Manager Rich Conrad and School Superintendent Dr. Gary Plano developed a proposal process for interested aquatics professional to submit written proposals for pool operations beginning January 1, 2011. The pool operator proposal request also disclosed that the School District and/or City reserve the right the option to operate the Mary Wayte Pool. An aquatics consultant (KJ Design) was hired to provide a swimming pool life cycle analysis and this report was made available to any potential pool operators.
- 2.10 After careful consideration, the Mercer Island School District Superintendent intends to recommend that the School District take over pool operations, with a Sub-Contractor assuming responsibility for operations under an Agreement with the District.
- 2.11 In efforts to continue public swimming and programs for Mercer Island residents, the City will enter into an agreement with the School District. As provided herein, the School District will sub contract with a qualified pool operator (“Sub-Contractor”) and will guarantee hours and programs similar to the Northwest Center pool schedule.

3. RESPONSIBILITIES OF DISTRICT

- 3.1 Maintenance & Operation of Pool. The District shall own, maintain in good condition and repair and operate the Pool through a Sub-Contractor commencing on the Effective Date of this Agreement
- 3.2 Capital and maintenance. The District will address the immediate maintenance and capital needs identified by the aquatics consultant. The District will be responsible for all capital and maintenance projects to ensure proper facility operations. The District and/or its Sub-Contractor will generate and transmit operational reports to include financial and program utilization. All aspects of pool operations, maintenance and capital projects will be the responsibility of the Mercer Island School District. The District shall be the sole owner of the Mary Wayte Pool facility and land.

- 3.3 Capital Improvements. The District shall make all capital improvements and repairs to the Pool that are necessary to allow it to fulfill its commitment to operate the Pool.
- 3.4 Level of Service. In operating the pool, the District shall provide programs and hours of operation that are reasonably similar to those programs and hours of operation previously provided by King County and Northwest to Mercer Island residents and School District aquatic programs.
- 3.5 Quarterly Reports. The District and/or its Sub-Contractor shall provide quarterly reports to the City regarding the maintenance and operation of the Pool, including, but not limited to, pool usage and revenue therefrom, repairs and capital improvements, fee schedules, utility costs, staffing costs, hours of operation, available programs and maintenance costs. In addition, upon request, the City shall be allowed to review the financial information and books held by the District and/or its Sub-Contractor.
- 3.6 Ownership and Assignment. Prior to termination of this Agreement, the District shall not transfer title to the Pool or contract with any third party to operate the Pool without the written consent of the City, which shall not be unreasonably withheld.

4. RESPONSIBILITIES OF CITY

- 4.1 In consideration of the District's agreement to own, operate and maintain the Pool consistent with the terms of this Agreement (including the service levels established in Section 3.4) the City shall pay the District One Hundred Thousand Dollars and No/100 (\$100,000.00) during 2011 and 2012 in equal monthly payments, commencing on the Effective Date of this Agreement as described in Section 6.1.
- 4.2 The City will provide the District \$100,000 annually for Pool operations as provided in subsection 4.1 , with an additional \$25,000 annually on January 1 of each year, that will be placed in a reserve account for Pool operating deficits and capital expenditures. The District will also place \$25,000 annually on January 1 of each year, inclusive of anticipated District in-kind services, in a District reserve account to be used solely for capital pool expenditures/improvements. During any year of this Agreement, the District may access the City's reserve account for capital expenditures purposes, upon approval by the City Manager, and only if it has first exhausted its own \$25,000 capital reserve account. The District may access the City's reserve account for operating deficit purposes upon a showing to the City such a deficit exists and upon approval by the City Manager. If there is no need to expend all funds in the reserve accounts, the District and City will carry over their existing balance in the reserve accounts to be added to the annual contributions for the next contract year. Upon termination of this Agreement, all

unencumbered funds in the City's and District's reserve accounts shall be the sole property of the City or District respectively.

- 4.3 In the event that the sub-contractor incurs an operating loss during any year of this Agreement, it may apply to the District for an operating subsidy not to exceed the available balance held in the City of Mercer Island's reserve account dedicated for this purpose. Payment of any subsidy to the sub-contractor under this section shall require prior approval of both the District and the City.

5. DISPUTE RESOLUTION

The parties mutually agree to use a formal dispute process such as mediation, through an agreed upon mediator and process, if agreement cannot be reached regarding interpretation or implementation of any provision of this Agreement. All costs for mediation services would be divided equally among the parties to the dispute. Each party would be responsible for the costs of their own legal representation; provided that nothing in this Section 5 shall be construed to limit or negate the parties' obligations to indemnify and defend as set forth in Section 7 below.

6. EFFECTIVE DATE, DURATION AND TERMINATION

- 6.1 Effective Date. The effective date of this Agreement is January 1, 2011.
- 6.2 Term. This Agreement shall commence upon the Effective Date and shall continue until December 31, 2012, unless earlier terminated pursuant to any other provision of this Section 6.
- 6.3 Termination by Mutual Consent. This Agreement may be terminated upon mutual consent of the City and the District. Any mutual termination shall become effective thirty (30) days following written amendment to the Agreement executed by the parties.
- 6.4 Termination Due to Replacement Facility. Should the City construct (or contribute substantially to the construction of) a new swimming pool facility in Mercer Island for public use during the Term of this Agreement, the obligations of the City under this Agreement shall cease upon the opening for operation of that new swimming pool facility, even if such opening occurs prior to the end of 2012.
- 6.5 Termination Due to Failure to Maintain Insurance. In the event that the District fails to maintain the insurance required by Section 8 of this Agreement, the City may terminate this Agreement.
- 6.6 Pro-Rata Refund to City. In the event of termination for any reason occurs on any day other than the last day of the month, the District agrees to repay to the City pro rata any portion of any monthly distribution calculated on the number of days the Pool was closed due to termination, compared to the total days in that month.

7. INDEMNIFICATION AND LIABILITY

- 7.1 The District shall release, protect, save harmless, indemnify, and defend, at its own expense (including attorney fees and costs), the City, its officers, elected officials, agents, volunteers and employees from any and all costs, claims, judgments or awards of damages arising out of or in any way resulting from the negligent acts, errors or omissions of the District, its officers, employees and agents in performing this Agreement.
- 7.2 The City shall release, protect, save harmless, indemnify, and defend, at its own expense (including attorney fees and costs), the District, its elected and appointed officials, officers, employees and agents, from any and all costs, claims, judgments or awards of damages, arising out of or in any way resulting from the negligent acts, errors or omissions of the City, its officers, employees or agents in performing this Agreement.
- 7.3 In the event of either party's liability for damages of any nature whatsoever arising out of the performance of this Agreement, including claims by either party's own officers, officials, employees, agents, or volunteers, or claims by third parties, caused by or resulting from the concurrent negligence of the parties, their officers, officials, employees or volunteers, each party's liability hereunder shall be limited to the extent of that party's negligence.
- 7.4 No liability shall be attached to either party by reason of entering into this Agreement except as expressly provided herein.
- 7.5 It is further specifically and expressly understood that either party's indemnification provided herein constitutes such party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section 7 shall survive the expiration or termination of this Agreement.

8. INSURANCE

The District shall require its Sub-Contractor to maintain workers' compensation insurance in amounts sufficient pursuant to the laws of the State of Washington, automobile and commercial general liability insurance coverage in amounts consistent with standard industry practice in the Puget Sound region covering facilities open to the public and covering entities operating pools. The District shall also maintain secondary self-insurance coverage for the Pool through the Washington Schools Risk Management Pool. The District shall provide the City certificates of self-insurance coverage concurrent with the execution of this Agreement, and copies of its Sub-Contractor's certificates of insurance coverage upon receipt.

9. RECORDS

The parties shall maintain adequate records to document obligations performed under this Agreement. The parties shall have the right, at its own expense and upon reasonable advance notice, to review the other party's records with regard to the subject matter of this Agreement during regular business hours.

10. GENERAL PROVISIONS


This Agreement contains all of the agreements of the parties with respect to any matter covered or mentioned in this Agreement. No provision of the Agreement may be amended or modified except by written Agreement signed by the parties. Any provision of this Agreement which is declared invalid or illegal shall in no way affect or invalidate any other provision. Except as otherwise provided in Section 7 of this Agreement, in the event either of the parties defaults on the performance of any terms of this Agreement or either party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, each party shall pay all its own attorney fees, costs and expenses. The venue for any dispute related to this Agreement shall be King County, Washington. Failure of either party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection with, shall not waive such breach or default. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

The parties have signed this Agreement on the date indicated below.

CITY OF MERCER ISLAND

MERCER ISLAND SCHOOL DISTRICT





Richard M. Conrad
City Manager

Dr. Gary Plano
Superintendent

Date: 12-16-2010

Date: 12-18-2010

Approved as to Form:

Approves as to Form:





Katie H. Knight
City Attorney

Cliff Foster
Attorney for School District

**EXTENSION AGREEMENT TO
INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT
CONCERNING THE OPERATION OF THE MARY WAYTE POOL**

1. **PARTIES**

This Extension Agreement (“Extension Agreement”) is entered into by the City of Mercer Island, a Washington municipal corporation (“City”), and the Mercer Island School District, No. 400, a municipal corporation, King County, Washington (“District”). The City and District enter into this Extension Agreement pursuant to and as authorized by the Interlocal Cooperation Act (Chapter 39.34) to amend the INTERLOCAL AGREEMENT BETWEEN THE CITY OF MERCER ISLAND AND MERCER ISLAND SCHOOL DISTRICT CONCERNING THE OPERATION OF THE MARY WAYTE POOL (“Interlocal Agreement”), which Interlocal Agreement has an effective date of January 1, 2011.

2. **PURPOSE AND RECITALS**

The Interlocal Agreement between the City and District expires as of December 31, 2012. The City and District desire to extend the Interlocal Agreement for a period of one year, commencing January 1, 2013 and ending December 31, 2013, by executing this Extension Agreement.

3. **EXTENSION AGREEMENT TERMS**

The following sections of the Interlocal Agreement are revised to state:

- 4.1 In consideration of the District’s agreement to own, operate and maintain the Pool consistent with the terms of this Agreement (including the service levels established in Section 3.4) the City shall pay the District One Hundred Thousand Dollars and No/100 (\$100,000.00) during 2013 in equal monthly payments, commencing on January 1, 2013.
- 4.2 The City will provide the District \$100,000 for Pool operations as provided in subsection 4.1, with \$25,000 on January 1, 2013 that will be placed in a reserve account at the City for Pool operating deficits and capital expenditures. The District will also place \$25,000 on January 1, 2013, inclusive of anticipated District in-kind services, in a District reserve account to be used solely for capital pool expenditures/improvements. During 2013, the District may access the City’s reserve account for capital expenditures purposes, upon approval by the City Manager, and only if it has first exhausted its own capital reserve account. The District may access the City’s reserve account for operating deficit purposes upon a showing to the City such a deficit exists and upon approval by the City Manager. Upon termination of this Agreement, all unencumbered funds in the

City's and District's reserve accounts shall be the sole property of the City or District respectively.

- 4.3 In the event that the sub-contractor incurs an unavoidable operating loss during 2013, it may apply to the District for an operating subsidy held in the City of Mercer Island's reserve account dedicated for this purpose. Payment of any subsidy to the sub-contractor under this section shall require prior approval of both the District and the City.
- 6.1 Effective Date. The effective date of this Agreement is January 1, 2013. However, for the purposes of the operating and capital expenditures reserves' subsidies, such amounts are non-accumulating and shall never exceed \$25,000 respectively in a given calendar year.
- 6.2 Term. This Agreement shall commence upon the Effective Date and shall continue until December 31, 2013, unless earlier terminated pursuant to any other provision of Section 6 of the Interlocal Agreement.

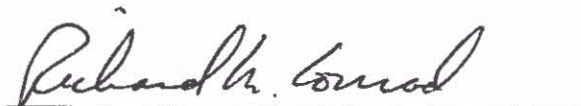
4. CONSTRUCTION OF EXTENSION AGREEMENT

The express terms of this Extension Agreement shall control over any conflicting terms of the Interlocal Agreement. All other terms of the Interlocal Agreement shall remain in effect during 2013.

The parties have signed this Agreement on the date indicated below.

CITY OF MERCER ISLAND

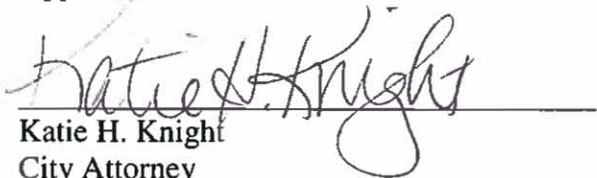
MERCER ISLAND SCHOOL DISTRICT



Richard M. Conrad
City Manager

Date: 5-17-2012

Approved as to Form:



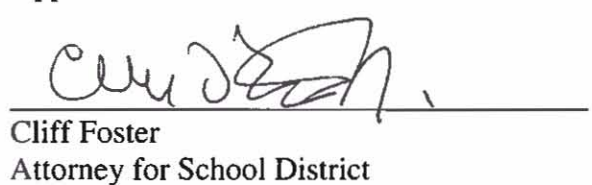
Katie H. Knight
City Attorney



Dr. Gary Plano
Superintendent

Date: 5-17-2012

Approved as to Form:



Cliff Foster
Attorney for School District

**EXTENSION AGREEMENT TO
INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT
CONCERNING THE OPERATION OF THE MARY WAYTE POOL**

1. PARTIES

This Extension Agreement (“Extension Agreement”) is entered into by the City of Mercer Island, a Washington municipal corporation (“City”), and the Mercer Island School District, No.400, a municipal corporation, King County, Washington (“District”). The City and District enter into this Extension Agreement pursuant to and as authorized by the Interlocal Cooperation Act (Chapter 39.34) to amend the INTERLOCAL AGREEMENT BETWEEN THE CITY OF MERCER ISLAND AND MERCER ISLAND SCHOOL DISTRICT CONCERNING THE OPERATION OF THE MARY WAYTE POOL (“Interlocal Agreement”), executed by the City and the District on January 1, 2011.

2. PURPOSE AND RECITALS

2.1 The Interlocal Agreement between the City and District expires as of December 31, 2013. The City and District desire to extend the Interlocal Agreement for a period of one year, commencing January 1, 2014 and ending December 31, 2014, by executing this Extension Agreement.

3. EXTENSION AGREEMENT TERMS

The following sections of the Interlocal Agreement are revised to state:

3.1 In consideration of the District’s agreement to own, operate and maintain the Pool consistent with the terms of this Agreement the City shall pay the District One Hundred and Twenty-five Thousand Dollars and No/100 (\$125,000.00) during 2014 in equal monthly payments, commencing on January 31, 2014.

3.2 The District will place \$25,000 on January 1, 2014, inclusive of the dollar amount of anticipated District in-kind services, in a District reserve account to be used solely for capital pool expenditures/improvements. If there is no need to expend all funds in the reserve account, the District will carry over their existing balance in the reserve accounts to be added to the annual contributions for the next contract year, if any. Upon termination of this Agreement, all unencumbered funds in the District’s reserve accounts shall remain in the District’s capital facilities account, to provide major upgrades to the Mary Wayte Pool infrastructure in succeeding years.

4. EFFECTIVE DATE

4.1 The effective date of this Agreement is January 1, 2014.

5. TERM

5.1 This Agreement shall commence upon the Effective Date and shall continue until December 31, 2014, unless earlier terminated pursuant to any other provision of Section 6 of the Interlocal Agreement.

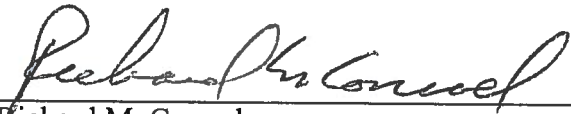
6. CONSTRUCTION OF EXTENSION AGREEMENT

6.1 The express terms of this Extension Agreement shall control over any conflicting terms of the Interlocal Agreement. All other terms of the Interlocal Agreement shall remain in effect during 2014.

The parties have signed this Agreement on the date indicated below.

CITY OF MERCER ISLAND

MERCER ISLAND SCHOOL DISTRICT



Richard M. Conrad
City Manager

Date: 11/5/2013

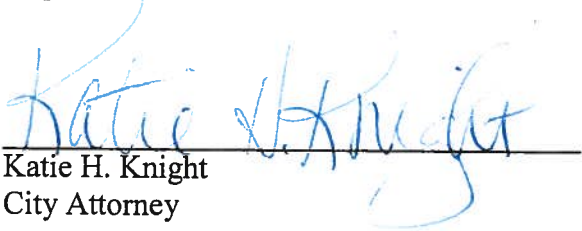


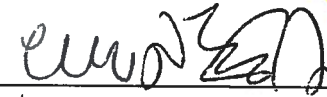
Dr. Gary Plano
Superintendent

Date: 11/15/13

Approved as to Form:

Approves as to Form:


Katie H. Knight
City Attorney


Cliff Foster
Attorney for School District



**THIRD EXTENSION AGREEMENT TO
INTERLOCAL AGREEMENT
BETWEEN THE CITY OF MERCER ISLAND AND
THE MERCER ISLAND SCHOOL DISTRICT
CONCERNING THE OPERATION OF THE MARY WAYTE POOL**

1. PARTIES

This Third Extension Agreement (“Third Extension Agreement”) is entered into by the City of Mercer Island, a Washington municipal corporation (“City”), and the Mercer Island School District, No. 400, a municipal corporation, King County, Washington (“District”). The City and District enter into this Third Extension Agreement pursuant to and as authorized by the Interlocal Cooperation Act (Chapter 39.34) to amend the INTERLOCAL AGREEMENT BETWEEN THE CITY OF MERCER ISLAND AND MERCER ISLAND SCHOOL DISTRICT CONCERNING THE OPERATION OF THE MARY WAYTE POOL (hereafter “Interlocal Agreement”), which was extended for 2013 by an extension agreement executed May 17, 2012 (hereafter “First Extension Agreement”), and extended for 2014 by an extension agreement executed in November 2013, with said amendments expiring December 31, 2014 (hereafter “Second Extension Agreement”).

2. PURPOSE AND RECITALS

The Interlocal Agreement, as amended, expires as of December 31, 2014. The City and District desire to extend the Interlocal Agreement in accordance with the terms of this Third Extension Agreement.

3. AMENDMENTS TO SECTION 4.1 AND 4.2 AND 4.3.

Section 4.3 of the Interlocal Agreement is deleted and sections 4.1 and 4.2 of the Interlocal Agreement are revised to state:

- 4.1 In consideration of the District’s agreement to own, operate and maintain the Pool consistent with the terms of this Third Extension Agreement, the City shall pay annually to the District One Hundred and Twenty-six Thousand Five Hundred Dollars and No/100 (\$126,500.00) in equal monthly payments, commencing on January 1, 2015. This facility management subsidy shall be adjusted by the prior year’s annual Seattle-Tacoma-Bremerton CPI-U for Consumers (“CPI”) for each year beginning with the 2016 subsidy.
- 4.2 The parties agree on the need to maintain a capital reserve that can fund required capital expenditures/improvements as preventative and/or corrective maintenance to the pool as determined by the District to be necessary. As of the beginning of each calendar year, commencing January 1, 2015, the District shall place an annual minimum of at least \$25,000 in a District capital reserve to be annually adjusted commencing in 2016 by the prior year's Seattle-Tacoma Bremerton CPI [“CPI”]. Monies in the capital reserve fund created

under this section may be used to reimburse the District for in-kind services relating to capital expenditures/improvements to the pool. Upon termination of this Interlocal Agreement, all unencumbered funds in the capital reserve account shall remain in the District's capital facilities account, to be applied in such manner as the District shall determine.

The District will include up to \$3,000,000 for the duration of this Interlocal agreement to pay for infrastructure and other capital improvements designed to extend the useful life of Mary Wayte Pool until at least December 31, 2024. The District intends to seek funds for these capital improvements from a proposed 2016 District capital levy.

In the event: (a) the District's 2016 Capital levy fails or is not submitted to the voters; (b) a pool system and/or infrastructure failure occurs that cannot be cured from the available funds in the capital reserve account and/or from the 2016 Capital Levy, if approved,; or (c) the District can no longer secure the services of a private contractor to operate the Mary Wayte Pool under the terms of the Interlocal Agreement for an annual cost no greater than the facility management subsidy provided in Section 4.1, the parties agree to negotiate a further amendment to the Interlocal Agreement within 30 days following either party's notice to the other. If the parties are unable to agree on an amendment during the 30-day period, this Interlocal Agreement shall terminate at the election of either party.

Upon termination of this Interlocal Agreement, all unencumbered funds in the District's reserve and Mary Wayte Pool Capital Levy accounts shall remain in the District's capital facilities account, to be applied in such manner as the District shall determine.

4. EFFECTIVE DATE AND TERM

The effective date of this Third Extension Agreement is January 1, 2015 (the "Effective Date"). The terms of the Third Extension Agreement shall commence upon the Effective Date and shall continue until December 31, 2024, unless earlier terminated pursuant to any other provision of the Interlocal Agreement, as amended by this Third Extension Agreement (the "Term").

5. CONSTRUCTION OF THIRD EXTENSION AGREEMENT

The express terms of the Third Extension Agreement shall control over any conflicting terms of the Interlocal Agreement. All other terms of the Interlocal Agreement shall remain in effect during the Term.

The parties have signed this Third Extension Agreement on the date indicated below.

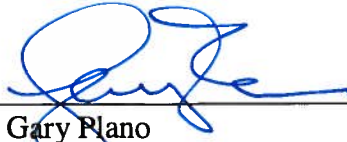
CITY OF MERCER ISLAND

MERCER ISLAND SCHOOL DISTRICT



Noel Treat
City Manager

Date: 6/3/14

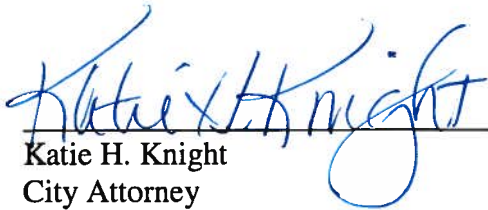


Dr. Gary Plano
Superintendent

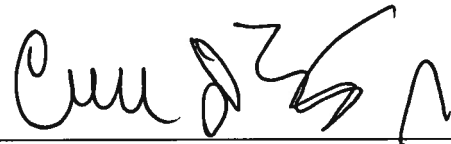
Date: 6/12/14

Approved as to Form:

Approved as to Form:



Katie H. Knight
City Attorney



Cliff Foster
Attorney for School District