

**JOINT USE AGREEMENT BETWEEN THE
MERCED CITY SCHOOL DISTRICT
AND THE CITY OF MERCED**

THIS JOINT USE AGREEMENT (“Agreement”) is entered into as of May 20, 2008, by and between the Merced City School District (hereinafter referred to as “District”), a public school district organized and existing under the laws of the State of California, and the City of Merced (hereinafter referred to as “City”), together herein referred to as “Parties.”

RECITALS

WHEREAS, Education Code section 17052 authorizes school districts to enter into joint use agreements with community organizations for the purpose of constructing libraries, multipurpose rooms and gymnasiums on school campuses where these facilities are used jointly for both school and community purposes, and provides State funding for such projects; and,

WHEREAS, the Parties agree that public recreation is important and necessary for the development of good citizenship and the promotion, as well as the preservation, of the health and general welfare of the residents of the District and City; and

WHEREAS, the Parties have a mutual interest in providing a new gymnasium facility to serve the students and community residing, but not limited to, in the Fahren’s Park neighborhoods, incorporating a gymnasium, snack bar, locker rooms, restrooms, and storage areas for both the District and City, to provide recreational opportunities for the residents of the District and City, depicted in the site plan attached hereto as **Exhibit “B”** and incorporated herein by this reference;

WHEREAS, the District desires to construct a gymnasium facility (“Facility”) on the grounds of Rivera Middle School, a school site that is owned by the District and generally located at Rivera Middle School; and,

WHEREAS, the City is a community organization charged with the responsibility of providing the community service which is the purpose of the proposed Facility and this Agreement; and,

WHEREAS, the City desires that it become a partner in the use of the proposed Facility under the terms and conditions set forth in State law and under this Agreement; and,

WHEREAS, the Parties wish to provide a Facility that will be available for use by students, faculty, staff, and the general public for community purposes, in accordance with the policies and procedures contained in this Agreement and such additional policies

and procedures as may be developed, for the purpose of enhancing the services and facilities that might be offered by either party individually; and,

WHEREAS, it is the intent of the Parties to maximize the use of a new joint use Facility by allowing community access to the Facility before and after school hours as much as practicable. It is also the intent of the Parties to provide this access to the community at as minimal of a cost as possible, but at a no cost basis to the District and the City; and,

WHEREAS, the Parties agree that District shall seek State of California, Type II Joint-Use Project funding in accordance with Education Code sections 17077.40, *et seq.*, which requires that District submit a copy of this Agreement in its application;

WHEREAS, the Parties intend to pay for and share the total estimated costs of the Facility in accordance and consistent with the Preliminary Cost Estimate attached hereto as **Exhibit “C”** and incorporated herein by this reference;

WHEREAS, the Parties desire to set forth their respective rights, duties, obligations and procedures to facilitate cooperation concerning the joint use of the Facility, include without limitation the responsibilities of the Parties toward the maintenance and operation of the Facility.

WHEREAS, the Parties wish to specify the method for sharing capital and operating costs, their relative responsibilities for the operation and staffing of the Facility, and the manner in which the safety of school pupils will be maintained during school hours, and other terms pertinent to the construction, operation, and use of the Facility; and,

WHEREAS, the Parties have determined that the Facility will result in both economic and operational benefits to both Parties that could not be fully realized if acting independently.

NOW, THEREFORE, in consideration of the mutual promises and agreements herein contained, the Parties hereto agree as follow:

TERMS

1. Term of Agreement. The term of this Agreement shall commence upon execution by both parties and shall remain in effect for 40 years. After the initial 40-year term, the agreement shall automatically renew every five (5) years.

2. Description of Facility. The District owns the buildings, parking lots and school grounds of Rivera Middle School located at ___ Buena Vista Drive, Merced, California 95341 in the County of Merced, California. The portion of the School Site dedicated to the construction of the Facility is shown as Exhibit “A” attached hereto and incorporated by reference. The Parties intend that the Facility will be constructed as depicted in Exhibit “A” attached hereto, in accordance with plans and specifications

approved by the Division of the State Architect which are hereby incorporated by reference and will supercede the attached Exhibit "A" to the extent they are inconsistent.

3. Purpose of Facility. The purpose of the Facility will be to provide the students of Rivera Middle School, and the members of the City, regular access to gymnasium facilities. The Facility, in addition to supporting the District's educational purposes, is anticipated to support many youth and community groups and will be provided at minimal cost to the community. The Facility is intended to support, but not limited to, such activities as group recreation, activities, and meetings and after school programs.

4. Construction of Facility. The District shall be fully responsible for the construction of the Facility and for entering into any and all agreements required for, and relating to, the construction of the Facility. The District shall be responsible for complying with all State and local laws relating to the construction of school facilities.

The City Manager and District Superintendent shall monitor the construction of the Facility as well as its ongoing condition and operation and keep the Parties informed of the status of each. The City Manager and District Superintendent are hereby authorized to delegate their authority in such manner as mutually agreed upon.

5. Project Approvals. The District shall be responsible for obtaining all necessary approvals and permits for construction of the Facility including, but not limited to, obtaining approval of the plans and specifications by the Division of the State Architect, obtaining approval of the project by the State Department of Education, and applying for and obtaining State funding from the State Allocation Board.

6. Funding Responsibilities for Construction. Funding for the construction of the Facility shall be shared between the State of California and the District.

a. State. The State Allocation Board shall provide funding for construction in the amount approved by the State Allocation Board under the authority granted by Education Code section 17052 and in accordance with a separate agreement entered into between the District and the State pertaining to such funding.

b. District. The District shall provide all additional funding necessary for completion of the Project. The district will use its local bond for 100% its eligible matching share of the project, of at least 25% of the construction costs of the Facility.

c. City. The City shall contribute a local share of its eligible matching share of the project, not to exceed 25% of the construction costs of the Facility.

7. Joint Use of the Facility. The District and the City shall share the enjoyment and joint use of the Facility. The Parties hereby agree to cooperate in coordinating programs and activities conducted at the Facility so as to avoid conflicting

or competing uses. To ensure the availability of the Facility to the District, and the City on an equitable basis, and based upon the purposes and intentions set forth herein, the following guidelines shall control the scheduling of the Facility.

a. Scheduling Responsibility. The District shall be fully responsible for scheduling all use of the Facility.

b. Community Use. The Facility shall be available for District-wide community purposes for the maximum extent possible after regular school hours, but no less than twenty (20) hours per week.

c. District Priority. The District shall have exclusive use and control of the Facility from one hour prior to, until two and one-half hours after, regular school hours when school is in session. During non-school hours, District shall have a priority of use of the Facility in scheduling all District-sponsored athletics, activities, and other functions.

d. Scheduling Events. On an annual basis, the District shall provide the City a schedule of all District events for each school year as soon as such schedule is prepared. The City shall then submit a proposed schedule of City activities and events to the District. The District shall calendar activities and events before any other groups' events. The District shall notify the City of any additional events, not originally scheduled, as soon as practicable and such District events shall take priority over any other previously scheduled event. To avoid excessive disruption of events scheduled for community use, the District shall keep newly added events to a minimum.

e. Coordination. The designated Representatives of the District and the City shall meet at least annually, to discuss operations and scheduling of the Facility and make any necessary adjustments.

f. Disaster Relief Area. In the event any federal, state or local government agency determines a state of emergency in which the School Site and/or the Facility is designated or determined to be a "disaster relief area," the Parties acknowledge and agree that this Agreement, including any and all rights hereunder, are suspended until a reasonable time following the removal of such designation or determination of a "disaster relief area."

g. Governance. Any and all persons using the Facility shall abide by state and federal laws and regulations as well as local school board policies and administrative regulations.

8. Operations of Facility. The District and the City shall share responsibility for the day-to-day operations of the Facility. The District shall be responsible for providing staffing, supervision, and security during regularly scheduled school hours when school is in session, during any official, school-sponsored activities that occur after school hours, and during other community events. The City shall be responsible for providing staffing, supervision, and security as deemed necessary by

mutual agreement during all times during which the Facility is used for City sponsored activities and events.

9. Operational Costs.

a. Responsibility for Costs. District and City shall each be responsible to pay a proportionate share of the applicable operations and utilities costs for the Facility, including water and sewer, electricity, gas and refuse disposal, and custodial maintenance.

b. Charges for Facility Use. Costs associated with the use of the Facility by the City or other community groups will be born by the sponsoring group. These costs may include, but are not limited to, custodial support, lighting or electrical costs, heating costs, additional refuse disposal costs and custodial services (including overtime pay for district custodians if necessary), and/or reimbursement for damages caused by the City or its authorized users of the Facility, except that no reimbursement is to be required when City makes the repairs at its own expense.

Charges for Facility use will be determined by the District and billed to the user group. All charges will be determined in advance of the event or activity and agreed upon by the District and the user group before the date of the event or start of the activity. Charges will be determined in accordance with the District's Master Joint Use Agreement with the City, the Civic Center Act (California Education Code section 38130 et seq.) and the District's policy and regulations implementing the Civic Center Act.

c. Maintenance. District shall be responsible for the safety, security, and operations of the Facility, including the performance of all maintenance to building interiors, custodial services and consumable supplies, floor re-finishing, painting, and maintenance of all electrical, plumbing, and mechanical components of the building. District and City shall each pay a proportionate share of the maintenance, repair and replacement costs required for the Facility such as refinishing, painting and maintenance of floors, including materials and labor of employees, contractors, or consultants required.

10. Student Safety. The safety and security of District students and staff are of paramount importance. Therefore, use of the facility during school hours will be limited to special requests and will require advance notice and prior approval by the District. All facility use by non-district users (both for -sponsored and other community events) will be governed by the District's Board policies and administrative regulations regarding facilities use. No one shall be permitted to use alcohol, tobacco, or any illegal drugs at the School Site or Facility at any time.

The Parties acknowledge and agree that (1) as to any of its employees or volunteers working at the School Site, each Party must comply with Education Code sections 44830.1, et seq., or 45125.1, et seq., as appropriate, regarding employment of felons convicted of a violent or serious felony; and (2) as to any person or entity contracting with a Party to provide "school site services" as that term is used in

Education Code sections 45125.1 and 45125.2, that Party will comply and require that person or entity comply with all the requirements pursuant to said sections, regarding fingerprinting and criminal history background check requirements of employees providing school site services; and pupil safety requirements as to construction and contractors for on site work.

The Parties acknowledge and agree that as a building located on a school site, usage of the building is subject to all Field Act regulations, and the Parties hereby agree to comply with all of the requirements of the Field Act.

The safety and security of District students and staff are of the utmost importance. Therefore, use of the Facility during school hours will be limited to use by students, teachers, and other District staff. The use of the Facility by City will take place when school is not in session and will be governed by District's Board policies and administrative regulations regarding facilities use and by this agreement.

11. Insurance. Each party agrees to either self-insure in an amount not less than specified below or insure against damages or injuries which may arise from the activities contemplated by this Agreement by purchasing and maintaining for the term of this Agreement a commercial general liability insurance policy, and automobile policy, both with a combined single limit of not less than two million dollars (\$2,000,000), which policy shall include or be endorsed to include the other party as an additional insured. The Parties agree to provide evidence of such insurance upon request. Each party shall also carry Worker's Compensation Insurance for its own employees as required by law.

District shall provide property and general liability insurance in the same manner and at the same level as it does for other District facilities located on property owned by District, except that it shall add by endorsement to its general liability policy, City, its officers, agents, employees, independent contractors and elected and appointed official, as additional insured. City shall add District, its officers, agents, employees, independent contractors and elected and appointed officials, as additional insured on its existing general liability insurance policy.

12. Indemnification and Hold Harmless. District and City shall not be liable for any loss, damage or injury of any kind or character to any person or property caused by or arising from any act or omission of the other party, or any of its agents, employees, licensees or invitees, except as occasioned by the sole negligence of the District or City respectively or their agents, employees, licensees or invitees.

District shall indemnify, protect, defend, save and hold City, its officers, employees, and agents, harmless from any and all claims, actions, damages, liability and expenses, including attorneys' fees, in connection with the loss of life, personal injury and/or damage to property arising from the use by District of the Facility or any part thereof, or arising from or out of District's failure to comply with any provision of this Agreement, or otherwise occasioned wholly or in part by any act or omission of District,

its agents, representatives, employees, invitees or licensees, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of District or its officers, employees, volunteers and agents. The City shall, without fault on its part, be made a party to any litigation commenced against District, then District, shall protect and hold it harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred by City in connection with any such litigation. It is understood that the duty of District to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

City shall indemnify, protect, defend, save and hold District, its officers, employees, and agents, harmless from any and all claims, actions, damages, liability and expenses, including attorneys' fees, in connection with the loss of life, personal injury and/or damage to property arising from the use by City of the Facility or any part thereof, or arising from or out of City's failure to comply with any provision of this Agreement, or otherwise occasioned wholly or in part by any act or omission of City, its agents, representatives, employees, invitees or licensees, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of City or its officers, employees, volunteers and agents. The District shall, without fault on its part, be made a party to any litigation commenced against City, then City, shall protect and hold it harmless and shall pay all costs, expenses and reasonable attorneys' fees incurred by District in connection with any such litigation. It is understood that the duty of City to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

13. Termination. This Agreement shall automatically terminate in the event the Facility is not approved by the State Department of Education or the Division of the State Architect within one (1) year of execution. This Agreement shall also automatically terminate in the event the Facility is not approved for funding by the State Allocation Board within one (1) year of execution. In such cases, the Parties may amend this Agreement or enter into a new agreement for the same purposes contained herein. After the initial 40-year term of this agreement, either party may terminate this agreement by providing at least six (6) months written notice prior to the end of each subsequent five (5) year term.

14. Modifications. This Agreement may be varied, modified, or altered by the mutual consent of District and City. No alterations, amended modifications or variations of the terms of this Agreement shall be valid unless made in writing and signed by duly authorized representatives of District and City.

15. Notices and Contacts. All notices, statements, demands, requests, consents, approvals, authorizations, appointments or designations hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party, if sent by United States registered mail, return receipt requested, postage prepaid and addressed as follows:

District: Merced City School District
444 West 23rd Street
Merced, Ca. 95341

City: City of Merced
678 West 18th Street
Merced, Ca. 95341

Either party may change its address or contact person by giving notice to the other party.

16. Amendment. This Agreement, including Exhibits attached hereto, set forth the entire agreement between District and the City, and any modifications must be in the form of a written amendment agreed to by the Parties.

17. Waiver. The failure of either party to insist upon strict performance of any of the terms, conditions or covenants in this Agreement shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

18. Time. Time is of the essence of every provision of this Agreement in which time is an element.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date(s) indicated below.

MERCED CITY SCHOOL DISTRICT:

By: _____

Title: Superintendent/Board of Trustee Secretary

Date: _____

CITY OF MERCED:

By: _____

Title: _____

Date: _____

EXHIBIT “A”

DESCRIPTION OF GYMNASIUM

A gymnasium is to be located at Rivera Middle School, Merced, CA, 95341. The Facility consists of a gymnasium, locker rooms, storage space, restrooms, and indoor bleacher seating. The entire building is approximately 12,000 square feet. Attached is the current floor plan.