

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT ("Agreement"), dated for purposes of identification only this December 2015, is made and entered into by and between the

CITY OF ANAHEIM, a municipal corporation, hereinafter referred to as "ANAHEIM",

AND

ANAHEIM CITY SCHOOL DISTRICT, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California ("District").

ANAHEIM and the DISTRICT are sometimes individually referred to herein as "Party" and collectively as "Parties."

W I T N E S S E T H:

WHEREAS, the District and the City have agreed to explore the feasibility of developing a facility for the joint use of both Parties ("Joint Use Project"); and,

WHEREAS, the City and District have agreed to share in the due diligence costs regarding potential sites to be acquired by the District for the potential Joint Use Project.

NOW, THEREFORE, the Parties agree as follows:

1. **TERM.**

This Reimbursement Agreement shall be effective as of the latter of the date signed by either of the Parties as shown below. This Agreement shall terminate upon the City's reimbursement to District of the total Scope of Work costs incurred by the District. Either Party may terminate the Agreement without cause upon thirty (30) days written notice. In the event of such early termination, City shall be responsible for payment of any Scope of Work costs incurred by the District on or before the date the notice of termination is received by the District.

2. **SCOPE OF WORK.**

District will undertake a due diligence investigation of the following adjacent properties in the County of Orange for the purpose of developing an Joint Use Project in Study Areas A, B, C, and D in the Platinum Triangle Area (as shown in the aerial photograph attached as Exhibit A), for a total assemblage of approximately nineteen (19.0) acres, described as follows:

Study Area A: Assessor Parcel Numbers ("APNs") 253-531-03 and 253-531-04 (8.02 acres);

Study Area B: APNs 253-531-05 and 253-531-06 (8.6 acres);

Study Area C: APN 253-531-07 (0.51 acres);

Study Area D: APNs 253-531-01 and 253-531-02 (1.9 acres).

The due diligence investigation will include title and appraisal work and environmental site assessment work ("Scope of Work"). The Parties may mutually agree to add additional work to the Scope of Work.

3. **REIMBURSEMENT OBLIGATIONS.**

City agrees to reimburse District on a periodic basis upon receipt of acceptable invoices with explanatory back-up documentation, as follows:

- a. One Hundred Percent (100%) of title and appraisal work undertaken for Study Areas B, C, and D;
- b. Fifty Percent (50%) of CEQA costs, environmental site assessment work, and other DTSC-related costs undertaken for Study Areas A, B, C, and D;
- c. For other due diligence expenses and in amounts as agreed upon by the parties hereto.

City's payment is due in full within thirty (30) days of City's receipt of an acceptable invoice.

4. **DISTRICT AUTONOMY.**

Although City is funding a portion of the Scope of Work, District shall have the right, in its sole and absolute discretion, to select, negotiate and enter into agreements with any consultant or other service providers in connection with completing the Scope of Work.

5. **NO AGENCY RELATIONSHIP**

Each Party is acting hereunder as an independent party and not as an agent or employee of the other Party. No employee of each Party is, or shall be an employee of the other Party by virtue of this Agreement, and the each Party shall so inform each employee organization and each employee who is hired or retained under this Agreement. Each Party shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the other Party.

6. **INDEMNIFICATION**

To the fullest extent permitted by law, DISTRICT agrees to indemnify, defend (at ANAHEIM's option), and hold harmless ANAHEIM, its officials, officers, employees, agents, and representatives from and against any and all claims, losses, damages, defense costs, or liability, of any kind or nature (collectively referred to hereinafter as "Claims"), arising out of or in connection with DISTRICT's (or DISTRICT's contractors' or subcontractors', if any) (i) acts, errors, or omissions, (ii) performance or failure to perform, (iii) goods or services provided, or (iv) work performed by, or on behalf of, DISTRICT, relative to this Agreement.

7. PROHIBITION AGAINST ASSIGNMENTS AND TRANSFERS

Neither the whole nor any interest in, nor any of the rights or privileges granted under this Agreement shall be assigned, transferred or encumbered in any way without the prior written consent of ANAHEIM. If ANAHEIM approves an assignment or transfer, this Agreement and the covenants and conditions contained herein shall be binding upon and inure to the benefit of and shall apply to the permitted successors and assigns of DISTRICT

8. NOTICE.

Any notice, request, information or other document to be given hereunder to any of the parties by any other parties shall be in writing and shall be deemed given and served upon delivery, if delivered personally or through facsimile, or three (3) days after mailing if sent by certified mail, postage prepaid, as follows:

DISTRICT: Anaheim City School District
Attn: Patrice Langevin, Director of Facilities & Planning
1001 So. East Street
Anaheim, CA 92805

IF TO CITY: City of Anaheim
Attn: Director of Community Services
200 S. Anaheim Blvd, 4th Floor
Anaheim, CA 92805

9. INTEGRATED CONTRACT

This Agreement and the Exhibits hereto contain the entire agreement of ANAHEIM and DISTRICT with respect to the matters covered hereby, and no agreement, statement or promise made by either ANAHEIM or DISTRICT which is not contained herein, shall be valid or binding. No prior agreement, understanding or representation pertaining to any such matter shall be effective for any purpose.

10. INTERPRETATION

Each Party acknowledges that he/she/it has had the benefit of advice of competent legal counsel with respect to its decision to enter this Agreement. The provisions of this Agreement shall be interpreted to give effect to their fair meaning and shall be construed as prepared by both Parties.

11. AMENDMENTS

This Agreement may be modified or amended only by a written document executed by both DISTRICT and ANAHEIM and approved as to form by ANAHEIM's City Attorney.

12. SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of its terms and provisions to persons and circumstances other than those to which it has been held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13. REMEDIES CUMULATIVE

The remedies given to ANAHEIM and DISTRICT herein shall be cumulative and are given without impairing any other rights given ANAHEIM or DISTRICT by statute or law now existing or hereafter enacted and the exercise on any one (1) remedy by ANAHEIM or DISTRICT shall not exclude the exercise of any other remedy.

14. NO THIRD PARTY BENEFICIARIES

The Parties intend that neither rights nor remedies be granted to any third party as a beneficiary of this Agreement or of any covenant, duty, obligation or undertaking established herein.

15. CONTROLLING LAW AND VENUE

The laws of the State of California shall govern this Agreement and all matters relating to it and any action brought relating to this Agreement shall be adjudicated in a court of competent jurisdiction in the County of Orange.

16. NATURE OF THE AGREEMENT

This Agreement is not intended to constitute a binding agreement by the City or the District to acquire all or any portion of Study Areas A, B, C, and D or to construct a Joint Use Project; nor is it intended to constitute a binding agreement to enter into a definitive agreement or any other contract for the acquisition of all or any portion of Study Areas A, B, C, and D or to develop a Joint Use Project (a "Definitive Agreement"). Notwithstanding any other provision hereof, neither the District nor the City shall be under any obligation to approve or execute any Definitive Agreement during or upon conclusion of the due diligence period. Any Party may refuse to approve and execute any Definitive Agreement in its sole and absolute discretion, with or without cause.

This Agreement does not constitute exercise of control over property by the City or the District. Execution of this Agreement by the parties is merely an agreement to jointly explore the feasibility of the acquisition of all or any portion of Study Areas A, B, C, and D and the development of a Joint Use Project according to the terms hereof, reserving final discretion and approval by the City Council of the City of Anaheim and the Board of the District as to any Definitive Agreement and all proceedings and decisions in connection therewith.

17. ENVIRONMENTAL REQUIREMENTS

Certain state and local environmental requirements (including, without limitation, the California Environmental Quality Act (Public Resources Code Section 21000 et seq.; herein referred to as "CEQA") may be applicable to the proposed Joint Use Project. Pursuant to such requirements, certain environmental documents may be required to be prepared for the proposed Joint Use Project. Feasibility or planning studies for possible future actions which the City and the District have not approved, adopted, or funded do not require the preparation of environmental documentation under CEQA and is, therefore, exempt from the provisions of CEQA under Section 15262 of Title 14 of the California Code of Regulations. The acquisition of the subject property for the proposed Joint Use Project, on the other hand, will be preceded by, and is conditional and contingent upon, environmental assessment and review under, and in compliance with, CEQA.

18. AUTHORITY

Each individual executing this Agreement on behalf of a corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of such entity or organization and that this Agreement is binding upon the same in accordance with its terms. DISTRICT shall, at ANAHEIM's request, deliver a certified copy of its governing board's resolution or certificate authorizing or evidencing such execution.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

DATE: _____

CITY OF ANAHEIM,
a municipal corporation

By: _____
Mayor of the City of Anaheim

DATE: _____

ATTEST

By: _____
Linda N. Andal, City Clerk

ANAHEIM CITY SCHOOL DISTRICT, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California

DATE: _____

By: _____

Title: _____

Print Name: _____

APPROVED AS TO FORM:
MICHAEL R.W. HOUSTON, CITY ATTORNEY

By: _____
Bryn M. Morley
Deputy City Attorney

Exhibit "A"
Photograph of study area

(Attached behind this page)



SOURCE: GOOGLE EARTH MAP DATED MARCH 2015

padre
 associates, inc.
 ENGINEERS, GEOLOGISTS &
 ENVIRONMENTAL SCIENTISTS

ANAHEIM CITY SCHOOL DISTRICT STUDY AREAS A, B, C, D ANAHEIM, ORANGE COUNTY CALIFORNIA			
PROJECT NO. 1501-4220	DATE 9/21/15	DR. BY AC	APP. BY AJK

PLATE A
 STUDY AREAS A, B, C, D