

**RESOLUTION NO. 21-019 OF THE BOARD OF EDUCATION OF THE
BERKELEY UNIFIED SCHOOL DISTRICT
AUTHORIZING AN AGREEMENT BETWEEN THE BERKELEY UNIFIED SCHOOL
DISTRICT AND THE CITY OF BERKELEY FOR JOINT FACILITY USE, SITE
DEVELOPMENT, SERVICES**

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

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

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

NOW, THEREFORE BE IT RESOLVED, that Governing Board of the Berkeley Unified School District hereby approves the Joint Facility Use Agreement between the Berkeley Unified School District and the City of Berkeley in substantially the same form as the agreement attached hereto as Exhibit A.

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

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

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

RECITALS

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

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

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

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

AGREEMENT

1. **Effective Date.** This Agreement shall be effective on January 1, 2021.

2. **City Use of District Pools and Other Facilities.**

a. The District hereby agrees to grant the City exclusive use of the following District facilities for the following terms:

i. King Junior High School pool and associated facilities located at 1700 Hopkins Street, Berkeley, California, until January 1, 2051.

ii. Martin Luther King Jr. Youth Services Facility (YAP) located at 1730 Oregon Street, Berkeley, California, until January 1, 2051.

iii. West Campus pool and associated facilities located at 2100 Browning Street, Berkeley, California, until January 1, 2026.

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

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

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

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

3. Public Use of District Elementary School Sites.

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

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

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

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

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

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

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

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

- i. King Park
- ii. Thousand Oaks Park

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

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

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

5. District Use of City Parks and Park Facilities.

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

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

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

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

6. Indemnification.

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

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

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

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

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

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

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

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

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

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

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

CITY OF BERKELEY

Dated: _____, 2020

By:

City Manager

Registered on behalf of the City Auditor by:

By:

City Clerk

By:

Finance Department

APPROVED AS TO FORM:

By:

City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

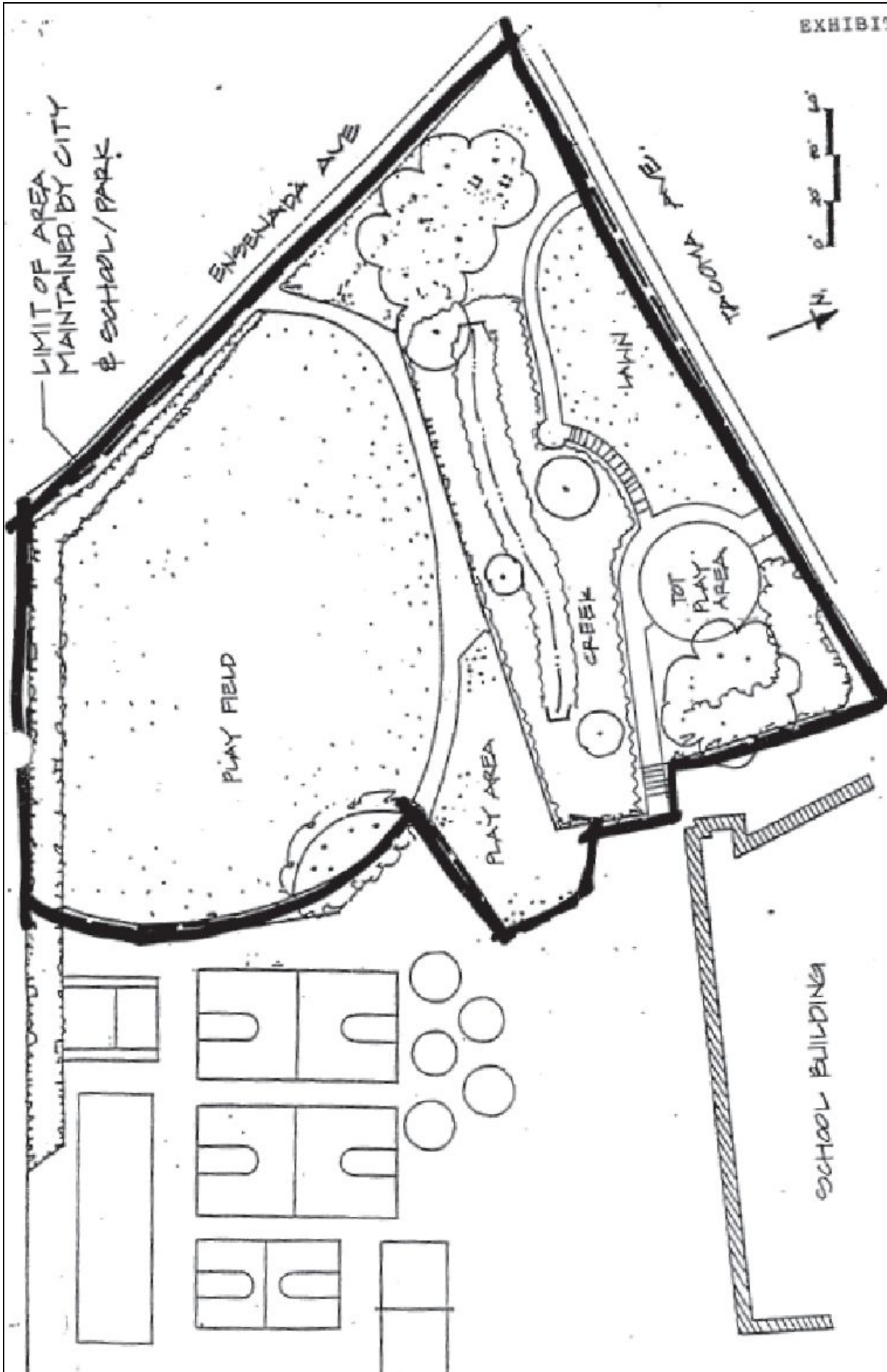
Dated: _____, 2020

By:

APPROVED AS TO FORM:

By:

[illegible]



THOUSAND OAKS SCHOOL PARK