

OPERATING AGREEMENT

This Operating Agreement [the Agreement] is entered into by and between the CITY OF SAN DIEGO [the City] and the San Diego Community College District, a community college district of the State of California [SDCCD].

I. [§ 100]SUBJECT OF AGREEMENT

A. [§ 101]Purpose of This Agreement

The purpose of this Agreement is to effectuate the Redevelopment Plan for the City Heights Redevelopment Project, by providing for the management of a Parking District [District] adjacent to the SDCCD Continuing Education Center [Center] on the corner of Wightman Street and Fairmount Avenue, for the exclusive use of the Centers Students during the Centers hours of operation.

D. [§ 102]The Site

That "Site" is that certain real property within the City Heights Redevelopment Project area illustrated and designated as such on the "Site Map" (which is attached hereto and incorporated herein as Attachment No. 1).

E. [§ 103]Parties to the Agreement

1. [§ 104]The City

The City is a municipal corporation. The principal office of the City is located at Redevelopment Division, 600 B Street, Suite 400, San Diego, California 92101.

"City" as used in this Agreement includes the Redevelopment Agency of The City of San Diego, and any assignee of or successor to its rights, powers, and responsibilities.

2. [§ 105]The SDCCD

The SDCCD is a Public Community College District of the State of California, located in San Diego County.

The principal office of the SDCCD is located at 3375 Camino del Rio South, San Diego, California 92108.

II [§ 200]PARKING DISTRICT

A. [§ 201]Responsibilities of the City

1. [§ 202]The City shall be responsible for all activities necessary for the establishment of the Parking District [hereafter sometimes referred to as “District”] pursuant to California Vehicle Code Section 22507(b).

2. [§ 203]The Parking District shall designate parking spaces adjacent to the Center to be used exclusively by the Center’s staff and students during the hours of 7:30 a.m. to 7:30 p.m., Monday through Thursday, and 7:30 a.m. to 4:30 p.m. on Fridays.

3. [§ 204]The City shall be responsible, and shall be reimbursed by the SDCCD, for construction and placement of appropriate parking signage.

4. [§ 205] The following description of the location of the parking spaces is to remain in effect until the opening of a new parking structure by San Diego Revitalization Corporation in the City Heights Urban Village Town Homes and Office Project. The Parking District, prior to the opening of the new parking structure, shall consist of approximately 95 parking spaces, located at the following locations:

a. On Wightman Street between Fairmount Avenue and 43rd Street, on both sides of the street and center median;

b. On the east side of 43rd Street between Wightman and Landis Streets, except for the 8 parking spaces immediately adjacent to the Mid City Community Gymnasium;

c. On the north side of Landis Street between 43rd Street and Fairmount Avenue;

d. On the east side of Fairmount Avenue the eight (8) spaces closest to the intersection with Wightman Street.

5. [S 206] The City, through its Redevelopment Agency, will enter into an agreement with San Diego Revitalization Corporation which requires that San Diego Revitalization Corporation provide parking spaces during designated times for SDCCD in a new parking structure being installed as part of the City Heights Urban Village Town Homes and Office project. The City, through its Redevelopment Agency, will agree to contribute \$200,000 for the cost of installing 45 additional spaces in the parking structure and making available other spaces within the parking structure during designated times. With the opening of this structure and the provision of parking spaces for SDCCD use, the Parking District designated spaces shall change to consist of approximately 76 spaces, located at the following locations:

a. On Wightman Street between Fairmount Avenue and 43rd Street, adjacent to the south side of the street and adjacent to the north side and south side of the center median;

b. On the east side of 43rd Street between Wightman and Landis Streets, except for the 7 parking spaces immediately adjacent to the Mid-City Community Gymnasium;

c. On the north side of Landis Street between 43rd Street and Fairmount Avenue.

6. [S 207] Except as provided in this Agreement, the City neither undertakes nor assumes nor will have any responsibility or duty to the SDCCD or to any third party to review, inspect, supervise, pass judgment upon or inform the SDCCD or any third party of any matter in connection with the day to day management of the Parking District.

B. [S 208] Responsibilities of the SDCCD

1. [S 209] SDCCD shall cause the Center to be constructed, operated and maintained at its own cost, at the location described above.

2. [S 210] SDCCD shall be responsible for the day to day management of the Parking District, including distribution of student parking permits, parking enforcement, and record keeping, as more specifically detailed and set forth in the "Permit Program Guidelines" attached hereto as Attachment 2, and incorporated herein by this reference.

3. [S 211] SDCCD will enter into an agreement with San Diego Revitalization Corporation which requires that San Diego Revitalization Corporation will provide parking spaces during designated times for SDCCD in a new parking structure to be installed as part of the City Heights Urban Village Town Homes and Office project. SDCCD will agree to contribute \$150,000 for the cost of installing 45 additional spaces in the parking structure and making 45 spaces in the parking structure available for the use of SDCCD during the designated times of 7:30 a.m. to 6:00 p.m. on Mondays through Fridays and making 90 spaces in the parking structure available for the use of SDCCD during the designated times of 6:00 p.m. to 10:00 p.m. Mondays through Thursdays.

III. [300] TERM OF AGREEMENT

A. [§ 301] Term of Agreement

This Agreement shall be effective on the date it is executed by the last party to sign the Agreement, and it shall remain in effect for so long as the Center is operated by the SDCCD, unless otherwise terminated as provided for herein.

B. [§ 302] Termination for Default

If either party fails to perform or adequately perform an obligation required by this Agreement, that party's failure constitutes a Default. If the defaulting party fails to satisfactorily cure a Default within ten (10) calendar days of receiving written notice from the non-defaulting party specifying the nature of the Default, the non-defaulting party may immediately cancel and/or terminate this Agreement, and terminate each and every right of the defaulting party, and any person claiming any rights by or through the defaulting party under this Agreement. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of this Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party."

C. [§ 303] City's Right to Terminate for Non-use

If at any time after six months from the commencement date of the district, the City determines that a significant number of the parking spaces within the district are not being used by the district, a consultant, acceptable to both parties shall be retained to conduct a study of the actual percentage of parking spaces being used, and the parties shall in good faith work together to amend the Agreement accordingly.

IV. [§ 400] GENERAL PROVISIONS

A. [§ 401] Maintenance of Records

The SDCCD shall maintain books, records, logs, documents and other evidence sufficient to record all actions taken with respect to the operation of the District throughout the term of the Agreement, and for a period of five (5) years following the expiration of the Agreement. The SDCCD further agrees to allow the City to inspect, copy, and audit such books, records, documents and other evidence at all reasonable times.

B. [§ 402] Insurance

The SDCCD shall not begin its obligations under this Agreement until it has: a) obtained insurance certificates reflecting evidence of all insurance required in this Agreement, however, the City reserves the right to request, and SDCCD shall submit, copies of any policy upon reasonable request by the City; b) obtained City approval of each company or companies, and c) confirmed that all policies contain the specific provisions required in the Agreement. In lieu of providing insurance for comprehensive general liability, the SDCCD may self insure all or any portion of the required coverage for contractual, property damage, completed operations and personal injury.

Further, the SDCCD shall not allow any Subcontractor to perform any of the obligations under this Agreement pursuant to a subcontract until all insurance required of the SDCCD under this Agreement is also obtained by the Subcontractor.

1. [§ 403] Types of Insurance

At all times during the term of this Agreement, the SDCCD shall maintain insurance coverages as follows:

2. [§ 404] Comprehensive General Liability

For all of the SDCCD's operations, including contractual property damage, completed operations, and independent SDCCD's liability, the SDCCD shall keep in full force and effect, during any and all work on this project, all applicable insurance to personal injury, bodily injury and property damage, providing coverage to a combined single limit of \$1,000,000 per occurrence, subject to an annual aggregate of \$5,000,000 for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage for tort liability of another party to pay for bodily injury or property damage to a third person or organization. Contractual liability limitation endorsement is not acceptable.

b. [§ 405] Worker's Compensation

For all of the SDCCD's employees who are subject to this Agreement and to the extent required by the State of California, the SDCCD shall keep in full force and effect, a workers compensation policy. That policy shall provide a minimum of \$1 million of employers liability coverage, and SDCCD shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents and representatives.

c. [§ 406] Rating Requirements

All insurance required by express provision of this Agreement shall be carried only by responsible insurance companies that have been given at least an "AV" rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City. Further, all deductibles on any policy shall be the responsibility of the SDCCD.

C. [§ 407] Responsibility for Subcontractors

SDCCD shall be generally responsible to the City for the actions of persons and firms performing services under this Agreement by subcontract.

D. [§ 408] Drug-Free Workplace

City has a policy (Council Policy 100-17) requiring every person or organization awarded a contract or grant by the City for the provision of services to certify to the City that it will

provide a drug-free workplace by taking certain actions. SDCCD, as both a state and federal grant recipient and contractor, is required to, and does, comply with both state and federal laws concerning drug-free workplaces. SDCCD's compliance with state and federal drug-free workplace requirements is deemed to meet the requirements of City's policy to provide a drug-free workplace.

E. [§ 409]Headings

All article headings are for convenience only and shall not affect the interpretation of this Agreement.

F. [§ 410]Non-Assignment

The SDCCD shall not assign the obligations under this Agreement, without the City's prior written approval. Any assignment in violation of this paragraph shall constitute a Default and is grounds for immediate termination of this Agreement, at the sole discretion of the City. In no event shall any putative assignment create a contractual relationship between the City and any putative assignee.

G. [§ 411]Independent Contractors

The SDCCD and any Subcontractors employed by the SDCCD shall be independent contractors and not agents of the City.

H. [§ 412]Compliance with Controlling Law

The SDCCD shall comply with all laws, statutes, ordinances, or regulations, of the federal, state, and local governments applicable to this Agreement. In addition, the SDCCD shall comply immediately with all lawful directives issued by the City or its authorized representatives to comply with any laws, statutes, ordinances, or regulations. The laws of the State of California shall govern and control the terms and conditions of this Agreement.

I. [§ 413]Integration

This Agreement and the exhibits and references incorporated into this Agreement fully express all understandings of the Parties concerning the matters covered in this Agreement. No change, alteration, or modification of the terms or conditions of this Agreement, and no verbal understanding of the parties, their officers, agents, or employees shall be valid unless made in the form of written change agreed to in writing by both Parties or an amendment to this Agreement agreed to by both Parties. All prior negotiations and agreements are merged into this Agreement.

J. [§ 414]Counterparts

This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all parties had executed the same page.

K. [§ 415]No Waiver

No failure of either the City or the SDCCD to insist upon the strict performance by the other of any covenant, term or condition of this Agreement, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Agreement, shall constitute a waiver of any such breach or of such covenant, term or condition. No waiver of any breach shall affect or alter this Agreement, and each and every covenant, condition, and term hereto shall continue in full force and effect to any existing or subsequent breach.

L. [§ 416]Severability

The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render any other provision of this Agreement unenforceable, invalid, or illegal.

M. [§ 417]Municipal Powers

Nothing contained in this Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.

N. [§ 418]Notices, Demands, and Communications between the Parties

Formal notices, demands and communications between the City and the SDCCD shall be sufficiently given if dispatched by registered or certified mail, postage prepaid, return receipt requested, or by courier or overnight delivery service not affiliated with the sender at the cost of the sender with written evidence of receipt, to the principal offices of the City or of the SDCCD as designated in this Agreement. Such written notices, demands, and communications may be sent in the same manner to such other addresses as either party may from time to time designate, by mail as provided herein.

O. [§ 419]Conflict of Interest

Except as has been disclosed to the Agency, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such member, official, or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

The SDCCD warrants that it has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement.

P. [§ 420]Non-Liability of the City Officials and Employees

No member, official, or employee of either party shall be personally liable to the other party, or any successor in interest, as a result of any default or breach by the party or for any amount which may become due to the other party or successor or on any obligations under the terms of this Agreement.

Q. [§ 421] Approvals

Except where this Agreement expressly provides for the approval by a party of any matter in its discretion, approvals required of the City or the SDCCD shall not be unreasonably withheld.

R. [§ 422] No Third Party Beneficiary

The parties agree that this Agreement is made solely for the benefit of the City and the SDCCD, and no third person or entity shall be deemed to have any rights or remedies hereunder.

V. [§ 500] INDEMNIFICATION

A. [§501] Claims Arising From Sole Acts or Omissions of SDCCD

The SDCCD hereby agrees to defend and indemnify the City, its agents, officers and employees (hereinafter collectively referred to in this paragraph as “City”), from any claim, action or proceeding against City, arising solely out of the acts or omissions of SDCCD in the performance of this Agreement. At its sole discretion, City may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve SDCCD of any obligation imposed by this Agreement. City shall notify SDCCD promptly of any claim, action or proceeding and cooperate fully in the defense.

B. [§ 502.] Claims Arising From Sole Acts or Omissions of City

The City hereby agrees to defend and indemnify the SDCCD, its agents, officers and employees (hereafter collectively referred to in this paragraph as “SDCCD”) from any claim, action or proceeding against SDCCD, arising solely out of the acts or omissions of City in the performance of this Agreement. At its sole discretion, SDCCD may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve City of any obligation imposed by this Agreement. SDCCD shall notify City promptly of any claim, action or proceeding and cooperate fully in the defense.

C. [§ 503] Claims Arising From Concurrent Acts or Omissions

The SDCCD hereby agrees to defend itself, and the City hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of SDCCD and City. In such cases, SDCCD and City agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 505 below.

D. [§ 504] Joint Defense

Notwithstanding paragraph 503 above, in cases where SDCCD and City agree in writing to a joint defense, SDCCD and City may appoint joint defense counsel to defend the claim,

action or proceeding arising out of the concurrent acts or omissions of City and SDCCD. Joint defense counsel shall be selected by mutual agreement of SDCCD and City. SDCCD and City agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 505 below. SDCCD and City further agree that neither party may bind the other to a settlement agreement without the written consent of both SDCCD and City.

E. [§ 505] Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, SDCCD and City may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

VI. [§ 600] Defaults - General

Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The party who fails or delays must immediately, upon receipt of written notice as specified below, commence to cure, correct, or remedy such failure or delay and shall complete such cure, correction, or remedy with reasonable diligence, and during any period of curing shall not be in default.

The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default. Except as otherwise expressly provided in this Agreement, any failures or delays by either party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by either party in asserting any of its rights and remedies shall not deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

B. [§ 602] Legal Actions

1. [§ 603] Institution of Legal Actions

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover for damages for any default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of San Diego County, State of California, in any other appropriate court in that county, or in the Federal District Court in the Southern District of California.

2. [§ 604] Applicable Law

The laws of the State of California shall govern interpretation and enforcement of this Agreement.

C. [§ 605]Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

VII. [§ 700]SPECIAL PROVISIONS

C. [§ 703]Equal Opportunity Program

Neither party shall discriminate against any employee or applicant for employment on any basis prohibited by law. Each party shall provide equal employment opportunity in all employment practices. SDCCD shall ensure that its subcontractors under this Agreement comply with the City of San Diego’s Equal Employment Opportunity Program.

SAN DIEGO COMMUNITY COLLEGE DISTRICT

DATE: _____

By _____
Augustine P. Gallego
Chancellor

THE CITY OF SAN DIEGO

DATE: _____

By _____
D. Cruz Gonzalez
Director of Transportation

APPROVED AS TO FORM AND LEGALITY

CASEY GWINN
City Attorney

By _____
Douglas K. Humphreys
Deputy City Attorney

Permit Parking Guidelines
Attachment No. 2

In addition to the San Diego Community College District Parking Regulations applicable throughout the San Diego Community College District [SDCCD], the following shall apply specifically to the Mid City Community College Parking District [District] established by the Council of the City of San Diego, and regulated by the Operating Agreement Between the City of San Diego [City] and the San Diego Community College District [Operating Agreement].

1. SDCCD student parking permits must be displayed on vehicles parked within this special parking district between the hours set forth in the Operating Agreement.
2. SDCCD student permit fees are established by the Board of Trustees in accordance with Education Code section 76360 and are deposited along with fines and forfeitures in the Parking Program fund (#1855) which is maintained separate from the District General Fund. These funds are used exclusively for the purchase, construction, operation and maintenance of student parking facilities and are subject to public audit.
3. SDCCD students, including continuing education students, who qualify as having financial need pursuant to Education Code section 76300(g), will pay a maximum of \$20 per semester for a single-vehicle student parking permit.
4. Site security and parking enforcement falls under the auspices of the College Police Department under the direction of the Chief of Police. SDCCD police officers are sworn peace officers under section 830.32(a) of the California Penal code. Only regularly salaried and employed College Police Officers or College Service Officers are legally authorized to enforce District parking regulations.
5. Generally one college police officer or college service officer will be assigned to provide site security for the District. This officer is also responsible for enforcement of all parking regulations as written in the SDCCD parking policies and procedures manual and provided to students as the SDCCD parking regulations.
6. Parking regulations are established pursuant to California Vehicle Code section 21113. All provisions of the California Vehicle Code are applicable to the traffic upon the driveways, paths, parking facilities and grounds of the SDCCD including the District. No person shall drive any vehicle or animal, nor shall any person stop, park or leave standing any vehicle or animal, whether attended or unattended, upon the driveways, paths, parking facilities or grounds of the SDCCD in violation of posted regulations or California Vehicle code sections.
7. Parking citations are issued in accordance with section 40202 of the California Vehicle Code on a form approved by the SD County Superior Court and processed by an agency licensed to do so in the State of California.

8. Parking signage shall be installed, by the City and reimbursed by the SDCCD. Painting and maintenance, including bi-monthly sweeping of the garage and on-street parking, is the responsibility of the parking services unit under the direction of the District Parking Program Supervisor.