

MASTER AGREEMENT

This Master Agreement ("Master Agreement") is entered into this _____ day of _____, 2002, by and between the CITY OF SAN DIEGO, a municipal corporation ("**City**") and the SAN DIEGO UNIFIED SCHOOL DISTRICT of San Diego County ("**District**"), a political subdivision of the State of California (each, a "Party" and collectively, the "**Parties**").

RECITALS

- A. Each Party owns interests in certain real property, which may include, but not be limited to, fee simple title, leasehold title, easements, etc. ("**Real Property**") and personal property ("**Personal Property**") located in the County of San Diego, State of California (collectively, "**Assets**"),
- B. In order to make the most efficient use of the Assets and to enhance the Parties' ability to engage in the joint use of facilities and other public projects, and to serve the residents of the San Diego, California community, the Parties have agreed to enter into an ongoing series of Real Property and/or Personal Property exchanges or transfers (each, a "**Transfer Transaction**") pursuant to which one or both of the Parties will transfer or convey certain Assets to the other Party in exchange for Assets owned by the other Party which will result in a book-entry credit or debit (depending on the relative values of the Assets exchanged) on the Ledger (as defined herein) attached hereto as Attachment No. 2. No cash consideration will be paid in connection with any given Transfer Transaction.
- C. The Parties desire to enter into this Master Agreement in order to set forth the procedures that the Parties will follow in order to identify the Assets that each wishes to acquire from the other, to determine a method of valuing such Assets, and to establish a method of accounting for any differential in values between the Assets exchanged.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual obligations of the Parties herein expressed and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and District hereby agree as follows:

Definitions.

For purposes of this Master Agreement, the following capitalized terms shall mean as follows:

"Acquiring Party" means the Party acquiring an Asset (Grantee) pursuant to an Exchange Agreement.

“Agreed-Upon Value” means the ultimate value of an Asset determined in accordance with Section 2.3 of this Master Agreement.

“Assets” or **“Property”** means, collectively, Real Property and Personal Property owned by either of the Parties, which is the subject of an Exchange Agreement.

“City” means the City of San Diego.

“Closing” means the date of close of escrow under an Exchange Agreement.

“Commencement Notice” means the written notice identifying an Asset for consideration pursuant to Section 1.1 of this Master Agreement.

“Disapproved Exceptions” means exceptions to title shown in a PTR that are timely disapproved by the Acquiring Party pursuant to Section 4.2 hereof.

“District” means the San Diego Unified School District.

“Effective Date of an Exchange Agreement” means the later date on which an Exchange Agreement, duly authorized by the Parties, has been signed by both the City and the District.

“Exchange Agreement” means an agreement between the City and the District substantially in the form attached to this Master Agreement as Attachment No. 1, which is incorporated herein by this reference.

“Ledger” means the register in which the Parties will record every individual Transfer Transaction and keep a running total of credits and debits and maintain a current cumulative credits or debits, in the form attached to this Master Agreement as Attachment No. 2.

“Ledger Balance” means the current cumulative credit or debit on the Ledger at any particular time.

“Master Agreement” means this Agreement.

“Maximum Differential Amount” means the maximum dollar amount that either Party may be obligated to pay to the other Party, as a debit in the Ledger, at any given time as the result of an imbalance in the value of Assets transferred to and from the Parties.

“Parties” means the City and the District.

“Permitted Exceptions” means exceptions to title shown in a PTR that are expressly approved or not timely disapproved by the Acquiring Party pursuant to Section 4.2 hereof.

“Proposed Value” means the value of an Asset proposed by a Party in accordance with Section 2.1 of this Master Agreement.

“PTR” means a Preliminary Title Report relating to Assets.

“Real Property” means any interest in or to real property (fee simple, easement, right of entry, lease, etc.).

“Transfer Transaction” means an exchange or transfer of Assets between the City and the District to be effectuated pursuant to an Exchange Agreement.

“Title Company” means the title insurance company issuing the PTR pursuant to Section 4.1 hereof.

“Transferring Party” means the Party transferring an Asset (Grantor) pursuant to an Exchange Agreement.

“Unresolved Exceptions” shall mean Disapproved Exceptions which the Transferring Party is unable or unwilling to cause to be removed, as provided in Section 4.2 hereof.

1. **Identification of Assets.**

1.1 From time to time, City and District may agree to consider exchanging or transferring Assets, and shall evidence such agreement in writing, by means of a letter that identifies the Asset(s) and is signed by the City Manager or designee and the District Superintendant or designee (the **“Commencement Notice”**). Upon the mutual execution of a Commencement Notice, the Parties shall follow the procedure set forth in this Master Agreement prior to deciding whether to enter into an Exchange Agreement in the form attached hereto as Attachment No. 1.

All written communications between the Parties regarding any aspect of a proposed or agreed upon Transfer Transaction must make reference in the subject line to the Master Agreement as authority therefor.

1.2 An Auditor’s Certificate must be issued by the City Auditor and an authorization to expend funds must be authorized by the San Diego City Council concurrently with the City entering into an Exchange Agreement.

1.3 If the Assets to be exchanged or transferred are Real Property, the Parties shall agree in writing on the legal description of such Real Property, or identify the Real Property in the Commencement Notice. The only Real Property owned by City subject to this Master Agreement shall be property that is considered General City property or non-enterprise property, and which was not purchased using restricted funds such as, but not limited to, Trans-net or Gas Tax funds.

1.4 If the Assets to be exchanged or transferred are Personal Property,

the Parties shall agree in writing on the scope and identity of the Personal Property or identify the Personal Property in the Commencement Notice. Such agreement on the legal description or the identity of the Asset is not a contract to transfer, but a statement of agreement on what Asset(s) are contemplated for the Transfer Transaction.

2. Valuation Procedure.

2.1 Each Party shall, within ninety (90) days of the date of the Commencement Notice, advise the other Party in writing of such Party's opinion as to the value to be assigned to each Asset (each, a "**Proposed Value**"). The Proposed Value shall be the value of the Asset determined at its Highest and Best Private Use, which shall mean that reasonably probable and legal private use of vacant land or an improved property, which is physically possible, appropriately supported, financially feasible and that results in the highest value. Uses that are not considered "highest and best uses" are: interim use, special use, non-conforming use, speculative use and excess land. The term "private" is used to denote typical private sector uses, such as residential, commercial, industrial, etc. versus public sector special uses such as parks, schools, open space, fire stations, libraries, etc.

2.2 Should a leasehold interest of less than ten (10) years be acquired, rather than a fee simple interest or longer-term leasehold interest, the annual rent shall be determined by applying an annual rental rate of 10% to the Agreed-Upon Value. The annual rent for a leasehold interest of ten (10) years or longer shall be determined in the same manner as the value of a fee simple interest in an Asset. If the rent is to be prepaid in a lump-sum amount at the beginning of a lease, the prepaid rent shall be the present value of the future rental income stream, using a factor that is the sum of the annual rental rate and appreciation/inflation rate expectations.

For example, if the annual rental rate is to be 10% of the Agreed-Upon Value (as defined in Section 2.1), and appreciation/inflation is 3%, compounded, the total return or yield rate used to calculate the present value for the future rent, for the term of the lease, will be 13%. Notwithstanding the preceding, under no circumstance shall the present value and the value of the reversionary rate together equal more than the Agreed-Upon Value.

2.3 If the Parties' respective Proposed Values for any given Asset (which, in the case of proposed transaction involving multiple Assets shall mean each particular Asset) are within twenty percent (20%) or less (as a percentage of the larger Proposed Value), the definitive value ("**Agreed-Upon Value**") of such Asset for purposes of this Master Agreement shall be the average of District's Proposed Value and City's Proposed Value. If the Parties' respective Proposed Values for any given Asset are more than twenty percent (20%) apart (as a percentage of the larger Proposed Value), the Parties shall negotiate in good faith to agree upon an Agreed-Upon Value for such Asset. The Agreed-Upon Value(s) (however determined) shall be entered in the Ledger, from which the Ledger Balance will be determined.

2.4 If the Parties are unable to agree on the value of any Asset within thirty (30) days after the Parties have exchanged Proposed Values, City and District

shall each appoint a qualified professional independent real estate appraiser having not less than five (5) years experience appraising real estate in the greater San Diego, California, area (or if the Asset is Personal Property, a competent appraiser in the relevant field) who in turn, within twenty (20) days after their appointment, will select a third qualified professional independent appraiser complying with the standards set forth in this Section 2.4. The third appraiser will, within forty-five (45) days of his or her appointment, opine in writing a value which shall be the Agreed-Upon Value, which shall be conclusive and binding on the Parties. Within ten (10) days after the appointment of the third appraiser, both Parties shall have the right to provide to such appraiser copies of such Party's own appraisal and such other information concerning the Asset as the Parties shall deem necessary or appropriate.

2.5 In the event a mutually acceptable third appraiser is not agreed upon between the two selected appraisers within twenty (20) days after the last of the two selected appraisers is appointed, then the third appraiser will be appointed by the Presiding Judge of the Superior Court of the State of California, County of San Diego ("**Judge**"), acting in his or her individual capacity, upon application by either City or District with prior notice thereof to the other Party. In the event that the Judge declines to make the appointment, the Parties agree that the third appraiser shall be promptly determined in accordance with the rules of the American Arbitration Association. Said third appraiser shall make the determination set forth in Section 2.4 within forty-five (45) days of appointment.

2.6 Each Party shall pay the cost of its own selected appraiser and both Parties will share equally in the cost of the third mutually selected or court-appointed appraiser.

City and District agree to accept and be bound by the value determined by the third appraiser selected or appointed to complete the assignment.

3. Transfers.

3.1 Upon completion of each Party's due diligence or such date as may be approved by the Parties, the Parties will execute an Exchange Agreement in the form attached hereto as Attachment No. 1. The Parties shall strive to have all due diligence, including, without limitation, title and survey review and environmental review, as each Party deems necessary or desirable in connection with the acquisition of the Assets, and, in accordance with the terms and conditions set forth therein, shall be completed prior to the execution of the Exchange Agreement. The Closing of each Transfer Transaction shall occur within sixty (60) days after the execution of the Exchange Agreement (or such later date as may be approved by the Parties).

3.2 Prior to entering into an Exchange Agreement, the proposed Transfer Transaction must be submitted to the City Auditor and Comptroller for review and certification of fund availability. The City Auditor and Comptroller shall review the individual gross transactions in order to determine the proper debit and credit impacts on the Ledger as provided in Section 6, below, and to issue an Auditor's Certification of

the availability of funding.

3.3 Upon the Closing of any Transfer Transaction wherein Real Property is being conveyed, each Party conveying any Real Property shall deliver to the other the Closing documents described in the Exchange Agreement.

3.4 Upon the Closing of any Transfer Transaction wherein Personal Property is being transferred, each Party transferring any Personal Property shall deliver to the other a Bill of Sale in the form attached as Exhibit "C" to the Exchange Agreement.

4. Title to Assets.

4.1 Each Party acquiring Assets that are real property hereunder (as such, an "**Acquiring Party**"), at such Party's expense, may cause _____ Title Company or other title insurance company mutually acceptable to the City and the District ("**Title Company**") to issue a Preliminary Title Report for the subject Assets ("**PTR**") together with copies of all documents relating to the title exceptions referred to in such PTR, within thirty (30) days or as soon as reasonably practical after the date of the Commencement Notice. Each Party transferring Assets (as such, a "**Transferring Party**") shall provide the Acquiring Party with a copy of any existing survey of the Asset to be transferred in such Party's possession and existing Phase I and Phase II and/or other environmental studies in such Party's possession not later than thirty (30) days after the date of the Commencement Notice.

4.2 The Acquiring Party shall have forty-five (45) days after the delivery of the PTR, together with copies of all documents relating to the title exceptions referred to in such PTR, to notify the Transferring Party in writing of any objections which the Acquiring Party may have to matters reported or shown in the PTR, which shall constitute "**Disapproved Exceptions**". Matters reported in or shown by the Preliminary Title Report not timely objected to by the Acquiring Party shall be deemed approved by the Acquiring Party, and shall constitute "**Permitted Exceptions**". The following matters shall constitute "Permitted Exceptions," regardless of whether an Acquiring Party disapproves of them: (i) all non-delinquent taxes and assessments (which shall be assumed by the Acquiring Party), but not including any existing bond assessments or special district assessments and (ii) all matters created by or on behalf of the Acquiring Party. The Transferring Party shall have no obligation to cure or correct any Disapproved Exception. However, as soon as practical, but in no event later than five (5) days after the date Transferring Party receives the Acquiring Party's written notice disapproving any title exceptions contained in the PTR, the Transferring Party shall notify the Acquiring Party in writing of any Disapproved Exceptions which the Transferring Party is unable or unwilling to cause to be removed or insured against prior to or at Closing ("**Unresolved Exceptions**"). Failure by the Transferring Party to timely provide such notice shall be deemed to mean that the Transferring Party is unable or unwilling to remove or insure against such Disapproved Exceptions. With respect to any Unresolved Exception, the Acquiring Party shall elect, by giving written notice to the Transferring Party within thirty (30) days after Acquiring Party's receipt of Transferring

Party's determination regarding the Unresolved Exceptions (i) to terminate a Transfer Transaction , or (ii) to waive its disapproval of such Unresolved Exceptions, in such event such Unresolved Exceptions shall then be deemed to be "Permitted Exceptions". Acquiring Party's failure to terminate a Transfer Transaction within such thirty (30) day period shall constitute Acquiring Party's agreement to treat such Unresolved Exceptions as Permitted Exceptions.

4.3 Acquiring Party, at Acquiring Party's option, may obtain additional or extended title coverage at Acquiring Party's sole cost and expense, including without limitation, any costs of surveys or survey updates as may be required to obtain extended coverage. Provided, however, that such Party's decision to obtain such additional or extended title coverage shall not justify a delay in the Closing.

5. Inspection.

5.1 Prior to the execution of an Exchange Agreement, Acquiring Party and its agents and representatives shall be entitled to enter onto the Property to perform inspections and tests of the Property and to otherwise investigate the condition of the Property; provided, however, in no event shall Acquiring Party or its agents or representatives disturb any tenants or occupants of the Property or drill or bore on or through the surface of the Property or conduct an on-site environmental assessment without Transferring Party's prior written consent, which consent shall not be unreasonably withheld by the Transferring Party. After making such tests and inspections, Acquiring Party agrees to promptly restore the Property to its condition prior to such tests and inspections and to remove from the Property any material extracted or sampled during such inspections. Acquiring Party shall pay all costs and expenses relating to tests and inspections of the Property, and any restoration thereof, performed in accordance with this Section.

5.2 Prior to acquisition, Acquiring Party agrees to keep the Property to be acquired free from all liens arising from its activities on the Property, and to indemnify, defend, and hold harmless Transferring Party from all loss, liability, damage, cost and expense (including, but not limited to, attorneys' fees and costs) incurred, suffered by, or claimed against Transferring Party by reason of any actual damage to property or injury to persons caused by Acquiring Party and/or its agents, employees or contractors in exercising its rights under Section 5.1. This indemnity shall survive the Closing or any termination of this Master Agreement.

5.3 Acquiring Party shall provide to Transferring Party, upon Acquiring Party's receipt thereof, copies of all reports, studies, test results and similar data pertaining to the Property obtained by Acquiring Party in the course of its investigation, but not including market studies or economic feasibility analyses.

5.4 Within ninety (90) days after the date of the Commencement Notice and with reasonable advance notice to Transferring Party, Acquiring Party, its agents and representatives shall be entitled to inspect at Transferring Party's offices, during Transferring Party's regular business hours, material documents in Transferring Party's possession, if any, relating to the Property. Such documents shall include

environmental audits and assessments, toxic reports, surveys, soils and geological reports, engineering and structural tests, contracts for work in progress, governmental agreements and approvals, architectural plans, and site plans.

5.5 Prior to the execution of the applicable Exchange Agreement, Acquiring Party may conduct the inspections and investigations specified in this Section 5 and review all the materials provided by Transferring Party, as well as any other materials Acquiring Party may elect to obtain and review at Acquiring Party's sole cost and expense in connection with the Property. Acquiring Party may at any time terminate negotiations relative to an exchange or an Exchange Agreement in its sole and absolute discretion, by sending to Transferring Party written notice indicating Acquiring Party's desire to terminate. Acquiring Party's failure to terminate negotiations relative to an exchange or an Exchange Agreement prior to the execution of the Exchange Agreement in accordance with the provisions of this Section 5 shall be deemed approval of the Property and the matters covered by Acquiring Party's investigations and inspections thereof.

6. Ledger.

6.1 No cash consideration will be paid in connection with the Closing of any Transfer Transaction. Instead, upon the Closing of each Transfer Transaction, each Party shall receive a credit to the "Ledger" for the Agreed-Upon Value of the Asset transferred to the other party and a debit for the Agreed-Upon Value of the Asset received from the other party. By way of example, if the Agreed-Upon Value of the Asset(s) transferred by the District to the City exceeds the Agreed-Upon Value of the Asset(s) received from the City, then the transaction would result in a net credit impact to the District's Ledger balance and a net debit impact to the City's balance. No Transfer Transaction may be closed if it would cause the cumulative net debit balance for either party to exceed in the aggregate the Maximum Differential Amount (defined in Section 6.3 below). The net debit for any particular transaction could exceed the Maximum Differential Amount if the party receiving the debit has an existing cumulative net aggregate credit balance in its Ledger at least equal to or greater than the excess.

6.2 The Parties shall each individually maintain and retain separate Ledgers in the form attached to this Master Agreement as Attachment No. 2. The Parties shall each record every individual credit and debit transaction and maintain a current cumulative credit or debit "Ledger Balance". Before the closing of each Transfer Transaction, the Parties shall exchange reports of their respective Ledger Balances and reconcile any variances. Upon the Closing of each Transfer Transaction, the Parties shall record on their respective Ledgers the Agreed-Upon Value of the Asset(s) transferred or conveyed as credits or debits, as appropriate. Annually, not later than July 15, the Parties shall exchange and reconcile their respective Ledger Balances as of June 30 of such year.

6.3 For purposes of this Master Agreement, the term "**Maximum Differential Amount**" means the maximum dollar amount that either Party may be obligated to pay to the other Party, pursuant to Section 7.1 of this Master Agreement, at any given time as the result of the cumulative imbalance (net cumulative debit Ledger

Balance) in the Agreed-Upon Value of Assets transferred to and from the Parties. The initial Maximum Differential Amount shall be _____ Dollars (\$_____).

This Master Agreement and the appropriation and/or setting aside of funds by the City in a separate "Master Exchange Agreement Fund" to cover any contingent liability, pursuant to Section 7.1 of this Master Agreement, in an amount equal to the initial Maximum Differential Amount, are to be approved and executed concurrently by each Party. The governing body of each Party shall appropriate in each successive annual budget (for the fiscal year(s) beginning July 1st following the execution of this Master Agreement) an amount needed, if any, to assure that the Master Agreement Fund beginning balance to be held in reserve for payment pursuant to Section 7.1 of this Master Agreement is at least equal to the Maximum Differential Amount plus its beginning cumulative debit Ledger Balance, if any.

Until the termination of this Master Agreement, the governing body of each Party shall continue to appropriate and/ or set aside funds in an amount equal to the Maximum Differential Amount plus their respective Ledger beginning debit balance, if any. Each Party shall have the right, from time to time and in its sole discretion, upon written notice to the other Party, to "increase" the amount it has appropriated and/or holds in reserve to meet its obligation to pay any contingent liability pursuant to Section 7.1 of this Master Agreement. Such increase shall not require a similar action by the other Party. However, the governing bodies of both Parties may jointly take action, at any time upon mutual agreement, to appropriate and/or set aside funds to increase the initial Maximum Differential Amount.

The failure by either Party to approve an annual budget or set aside said funds containing an amount equal to the applicable Maximum Differential Amount and its debit Ledger balance, if any, before July 31st of any year (or such later date on which the then- current budget is to expire) shall be deemed to be an election by such Party to terminate this Master Agreement which immediately accelerates the obligation of the Party having a debit Ledger Balance to make payment to the other Party of such balance pursuant to Section 7.1 of this Master Agreement.

7. Termination; Disbursement of Funds.

7.1 This Master Agreement shall commence on the date hereof and terminate on the earlier of (i) the twentieth (20th) anniversary of the date hereof, (ii) the giving of written notice by either Party to the other Party that such Party wishes to terminate his Master Agreement ("**Termination Notice**"), or (iii) the deemed election to terminate pursuant to Section 6.3 of this Master Agreement. Any Termination Notice shall: (A) specify the effective date of the termination, if earlier than the end of the then-current fiscal year; (B) be given not less than forty-five (45) business days prior to the end of the then-current fiscal year.

(a) Upon the termination of this Master Agreement, the Party having a credit Ledger Balance shall be entitled to payment from the other Party of such balance. All such payments shall be made by wire transfer pursuant to directions provided by the Party entitled to payment.

(b) The Party having an obligation to disburse the Ledger Balance must do so on or before the twentieth (20th) business day after notice, but in any event such amount shall be paid or deemed paid within the same fiscal year following the date that it receives the Termination Notice.

8. **Miscellaneous.**

8.1 Time is of the essence of this Master Agreement.

8.2 Both Parties agree that the transactions contemplated herein will occur outside of escrow.

8.3 Except for escrow and closing costs, which the Parties shall share equally, each Party shall bear its own costs for the transactions contemplated herein.

8.4 This Master Agreement may be executed in one or more counterparts, each of which shall be deemed to constitute an original, but all of which, when taken together, shall constitute one and the same instrument, with the same effect as if all of the parties to this Master Agreement had executed the same counterpart.

8.5 In order to expedite the transaction contemplated herein, telecopied signatures may be used in place of original signatures on this Master Agreement or any document delivered pursuant hereto. The parties intend to be bound by the signatures on the telecopied document and are aware that the other parties will rely on the telecopied signatures, and hereby waive any defenses to the enforcement of the terms of this Master Agreement based on such telecopied signature.

8.6 Any provision of this Master Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

8.7 Each party will, whenever and as often as it shall be requested so to do by any other, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in the reasonable opinion of the requesting party, in order to carry out the intent and purpose of this Master Agreement.

8.8 In the event of a default by either Party, the other Party shall not be entitled to exercise any remedy for such default unless a notice of default is sent to the defaulting Party and the defaulting Party fails to cure such default within ten (10) days after receipt of such notice of default, or if such default is not reasonably capable of being cured within such ten (10) day period, such Party diligently and continuously proceeds to cure such default and in fact cures such default within sixty (60) days after receipt of such notice of default.

8.9 Each Party (respectively, the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party (respectively, the “Indemnified Party”) from and against any and all obligations, liabilities, claims, liens, encumbrances, losses, damages, costs and expenses, including without limitation, reasonable attorney’s fees, whether direct or contingent, incurred by the Indemnified Party relating to the Assets to which the Indemnifying Party currently has title and arising or occurring from acts of the Indemnifying Party or occurrences which take place on or before the exchange or transfer of said Assets.

8.10 Until the Closing of any transaction hereunder, each Party assumes the risk of loss or damage to its Assets or any portions thereof. The transferee shall have the risk of loss or damage to the Assets from and after the Closing.

8.11 All waivers, elections, options, notices, demands and consents which either Party may be required or may desire to give under this Master Agreement shall be in writing and shall be effective when telecopied to the fax numbers indicated below, when personally delivered, or when deposited in an official United States Postal Service office or branch or official depository maintained by the United States Postal Service, by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To District at:

San Diego Unified School District
4860 Ruffner Street
San Diego, California 92111
Attention: Chief Operating Officer

To City at:

City of San Diego
202 C Street, MS9B
San Diego, California 92101
Attention: Real Estate Assets Director

8.12 Neither City nor District nor any officer, agent or employee of City or District shall be deemed an officer, agent or employee of the other Party hereto.

8.13 This Master Agreement may be amended at any time by mutual consent of the Parties hereto. Any amendment hereto shall be in writing and shall set forth the date of the public Board of Education meeting at which the Board of the District approved such amendment and the Board Resolution Number by which the Board of the District approved such amendment, and the date of the public San Diego City Council meeting at which that body approved such amendment and the City Council Resolution Number by which the City Council approved such amendment.

8.14 No waiver of any right pursuant hereto or waiver of any breach hereof shall be effective unless in writing and signed by the Party waiving such right or breach. No waiver of any right or waiver of breach shall constitute a waiver of any other similar right or breach; and no failure to enforce any right hereunder shall preclude or

affect the later enforcement of such right.

9. Entire Agreement and Acknowledgments

9.1 This Master Agreement constitutes the entire Agreement between the Parties as to the subject matters hereof and supersedes any prior agreement, oral or written, with respect thereto. The Parties further agree that there are no understandings, agreements, or representations not specified in this Master Agreement and that in entering into this Master Agreement, no Party is relying upon any understandings, agreements or representations not expressly set forth herein.

9.2 Each of the Parties hereto, respectively, agrees and acknowledges that it has carefully reviewed this Master Agreement, that it understands its terms, that it has had legal advice with respect to this Master Agreement and has had an adequate opportunity to consult with legal counsel prior to executing this Master Agreement, and that it has executed this Master Agreement with full knowledge of its meaning and effect, and agrees to be bound by its terms and conditions. Each of the Parties hereto further agrees that it has relied wholly upon its own judgment and knowledge and has not been influenced to any extent whatsoever in making this Master Agreement by any representations or statements made by any other Party or anyone acting on behalf of any other Party, except as expressly contained in this Master Agreement. Each of the Parties hereto expressly agrees that no rule of construction or interpretation which would operate to construe any term of the Master Agreement against either Party shall apply. Each of the Parties to this Master Agreement hereby agrees that the proper venue for any lawsuit or other proceeding arising out of the terms of this Master Agreement or any Party's rights under this Master Agreement shall be San Diego County, California.

9.3 This Master Agreement shall be construed and interpreted according to the laws of the State of California. Should any provision of this Master Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected by said illegal or invalid term or provision, and said invalid part, term or provision shall be deemed not to be a part of this Master Agreement.

10. Conditions to Effectiveness

10.1 This Master Agreement shall not be binding or effective (i) against District until District's governing board has passed a resolution approving this Master Agreement and authorizing its execution and (ii) against City until City's governing board has passed a resolution approving this Master Agreement and authorizing its execution.

10.2 Notwithstanding anything in this Master Agreement to the contrary set forth or implied herein, no Exchange Agreement shall be enforceable or binding against the District until, pursuant to California Education Code Section 17537, the District's governing board has adopted, by two-thirds vote of its members, a resolution declaring its intention to exchange the property that is contemplated to be the subject of

the Exchange Agreement; or against the City until the City Council has adopted, by a majority vote of its members, a resolution declaring its intention to exchange the property that is contemplated to be the subject of the Exchange Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be executed on their behalf by their fully authorized representatives.

CITY OF SAN DIEGO,
a municipal corporation

SAN DIEGO UNIFIED SCHOOL DISTRICT,
a political subdivision of the State of California

By:_____

By:_____

Name:
Its:

Name:
Its:

Attachment No. 1 To Master Agreement

FORM OF EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT dated as of _____, 20__ (this "**Exchange Agreement**"), is made and entered into by and between the CITY OF SAN DIEGO, a municipal corporation ("**City**") and the SAN DIEGO UNIFIED SCHOOL DISTRICT of San Diego County ("**District**"), a political subdivision of the State of California (each, a "**Party**" and collectively, the "**Parties**"). Capitalized terms used but not defined herein shall have the meanings given to such terms in that certain Master Agreement by and between the Parties dated as of _____, 2002 ("**Master Agreement**").

RECITALS

Whereas, the City and District have entered into that certain Master Agreement dated as of _____, 2002; and

Whereas, the Master Agreement sets forth procedures that the Parties will follow in order to identify the Assets (as defined therein) that each wishes to acquire from the other, to determine a method of valuing such Assets, and to establish a method of accounting for any differential in values between the Assets exchanged; and

Whereas, the Parties have identified one or more Assets owned by one of them that the other wishes to acquire in accordance with the procedures, methods and requirements of the Master Agreement; and

[add additional recitals appropriate to particular transaction]

Whereas, the Acquiring Party has investigated title, physical conditions and all other matters concerning the Asset and has (a) determined that all such matters concerning the Asset are acceptable; (b) objected to one or more conditions concerning the Asset, in response to which the Transferring Party has agreed to provide a cure to the satisfaction of the Acquiring Party prior to the Closing; or (c) waived its right to object ; and

Whereas, this Exchange Agreement is being entered into by the Parties in order to document the agreement for a transfer or exchange of Assets pursuant to the Master Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the Parties hereby agree as follows:

1. **Exchange of Assets.** [If only one Party is conveying / transferring Assets, delete Section 1.1. or Section 1.2 (and Exhibit "A-1" and Exhibit "A-2") as

appropriate.]

1.1 **City Property.** City hereby agrees to sell, convey, and grant to District those certain Assets owned by City and located in the City of San Diego, State of California, and more particularly described on Exhibit "A-1" attached hereto and incorporated herein by this reference, together with all improvements located thereon ("**City Property**"), upon the terms and subject to the conditions described herein.

1.2 **District Property.** District hereby agrees to sell, convey, and grant to City those Assets owned by District and located in the City of San Diego, State of California, and more particularly described on Exhibit "A-2" attached hereto and incorporated herein by this reference, together with all improvements located thereon ("**District Property**"), upon the terms and subject to the conditions described herein.

1.3 **Consideration.**

(a) [Use if both Parties are conveying / transferring Assets] The consideration for each Party's conveyance of its Property to the other ("**Consideration**") shall be (i) as to District, the City's conveyance of the City Property to District, (ii) as to City, the District's conveyance of the District Property to City. The agreed-upon value of the Consideration shall be recorded in the ledger attached as Attachment "B" to the Master Agreement (the "Master Ledger") as a credit to the Party conveying the Assets and as a debit to the Party receiving the Assets, and the accumulated debits and credits when summed shall reflect the net debit or credit position of each Party.

(b) [Use if only one Party is conveying / transferring Assets] The Consideration for the [City's / District's] conveyance of the [City Property / District Property] shall be the property conveyed. The agreed-upon value of the Consideration shall be recorded in the Master Ledger as a credit to the Party conveying the Assets and as a debit to the Party receiving the Assets, and the accumulated debits and credits when summed shall reflect the net debit or credit position of each Party.

(c) No cash consideration shall be paid by either Party at the Closing (as defined in Section 8 of this Exchange Agreement).

1.4 **Appraised Values.** Pursuant to the Master Agreement, the Parties have agreed that the Agree-Upon Value of the City Property is _____ and that the Agree-Upon Value of the District Property is _____.

1.5 **Escrow.** The Parties shall promptly open escrow ("Opening of Escrow") by delivering a fully executed copy of this Agreement to _____ (herein referred to as the "Escrow Agent"). The Escrow shall be opened within three (3) business days after the Effective Date of

this Exchange Agreement, as mutually determined by the Parties following completion of due diligence. The Parties shall execute and deliver to the Escrow Agent any instructions as may be necessary or convenient to implement the terms of this Exchange Agreement and close the transaction contemplated hereby. The Parties shall also deposit with the Escrow Agent all instruments, documents, and other items (a) identified in the escrow instructions, and (b) reasonably required by the Escrow Agent to close the transaction. The Escrow Agent is hereby designated the "real estate reporting person" for purposes of Section 6045 of the Internal Revenue Code of 1986, as amended and Treasury Regulation 1.6045-4, and any instructions or settlement statement prepared by the Escrow Agent shall so provide. Escrow Agent shall be responsible for filing Form 1099-S with the Internal Revenue Service.

2. Representations and Warranties of the District. District represents and warrants to City that the following statements are true and correct as of the date hereof and as of the Closing, and covenants to execute and deliver to City upon the Closing (as defined in Section 8 of this Exchange Agreement) a certificate reaffirming the following representations or identifying, to the satisfaction of the City, the nature of any changes therein:

2.1 All the documents executed by District which are to be delivered to City at the Closing (as defined in Section 8 of this Exchange Agreement) shall have been duly authorized, executed, and delivered by District and will be legal, valid, and binding obligations of District enforceable against District in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), and will not violate any provisions of any agreement to which District is a party or to which it is subject.

2.2 To the knowledge of District and except as disclosed in writing by District to City, District represents and warrants to City that neither the District Property nor District is in violation of any Environmental Laws applicable to the District Property and that the District Property is not subject to any existing, pending or threatened investigation by any federal, state or local governmental authority and is not subject to any remedial obligation or lien under or in connection with any Environmental Law (as defined herein).

2.3 [Delete if District is not acquiring City Property] District acknowledges that (i) prior to the Closing (as defined in Section 8 of this Exchange Agreement), District had the opportunity (without any obligation to do so), to investigate all physical, legal and economic aspects of the City Property and to make all inspections and investigations of the City Property which District deems necessary or desirable to protect its interests in acquiring the City Property, including, without limitation, environmental audits and assessments, toxic reports, surveys, investigation of land use and development rights, development restrictions and conditions that are or may be imposed by governmental agencies, soils and geological reports, engineering and structural

tests, insurance contracts, contracts for work in progress, governmental agreements and approvals, architectural plans and site plans, and (ii) except as otherwise expressly set forth in this Exchange Agreement, neither City, nor anyone acting for or on behalf of City, has made any representation, warranty, promise or statement, express or implied, to District, or to anyone acting for or on behalf of District concerning the City Property, the use or development thereof. District further represents and warrants that, in entering into this Exchange Agreement, District has not relied on any representation, warranty, promise or statement, express or implied, of City, or anyone acting for or on behalf of City, other than as expressly set forth in this Exchange Agreement, and that District had the opportunity to verify all matters concerning the City Property prior to the Closing (as defined in Section 8 of this Exchange Agreement), and that District shall acquire the City Property on District's own prior investigation and examination of the City Property (or District's election not to do so); **AND THAT DISTRICT IS PURCHASING THE CITY PROPERTY IN AN "AS IS" AND "WITH ALL FAULTS" PHYSICAL CONDITION AND IN AN "AS IS" AND "WITH ALL FAULTS" STATE OF REPAIR.** Other than as set forth herein, District does hereby waive, and City does hereby disclaim, all warranties of any type or kind whatsoever with respect to the City Property, whether express or implied, including, by way of description but not limitation, those of fitness for a particular purpose and use, tenantability or habitability.

2.4 Notwithstanding anything to the contrary contained in this Exchange Agreement, District acknowledges that any written disclosures made by City prior to the Closing (as defined in Section 8 of this Exchange Agreement) shall constitute notice to District of the matter disclosed, and City shall have no liability with respect thereto if District thereafter consummates the transaction contemplated hereby.

2.5 No brokerage commission, finder's fee or other compensation is due or payable by reason of District's actions with respect to the transaction contemplated hereby. District agrees to indemnify, defend and hold City harmless from and against any losses, damages, costs and expenses (including attorneys' fees) incurred by City by reason of any breach or inaccuracy of the representation and warranty contained in this Section 2.5.

2.6 The documents relating to the Property that have been made available by District for review pursuant to Section 5.4 of the Master Agreement are (a) to the knowledge of District, all the material documents relating to the Property which District has in its possession, and (b) are either original documents or true copies of such documents in District's possession.

3. **Representations and Warranties of City.** City represents and warrants to District that the following statements are true and correct as of the date hereof and as of the Closing (as defined in Section 8 of this Exchange Agreement), and covenants to execute and deliver to District upon the Closing (as defined in Section 8 of this Exchange Agreement) a certificate reaffirming the following representations or identifying, to the satisfaction of the District, the nature of any changes therein:

3.1 All the documents executed by City that are to be delivered to District at the Closing (as defined in Section 8 of this Exchange Agreement) will be duly authorized, executed, and delivered by City and will be legal, valid, and binding obligations of City enforceable against City in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally), and will not violate any provisions of any agreement to which City is a party or to which it is subject.

3.2 To the knowledge of City and except as disclosed in writing by City to District, City represents and warrants to District that neither the City Property nor City is in violation of any Environmental Laws applicable to the City Property and that the City Property is not subject to any existing, pending or threatened investigation by any federal, state or local governmental authority and is not subject to any remedial obligation or lien under or in connection with any Environmental Law.

3.3 [Delete if City is not acquiring District Property] City acknowledges that (i) prior to the Closing (as defined in Section 8 of this Exchange Agreement), City had the opportunity (without any obligation to do so), to investigate all physical, legal and economic aspects of the District Property and to make all inspections and investigations of the District Property which City deems necessary or desirable to protect its interests in acquiring the District Property, including, without limitation, environmental audits and assessments, toxic reports, surveys, investigation of land use and development rights, development restrictions and conditions that are or may be imposed by governmental agencies, soils and geological reports, engineering and structural tests, insurance contracts, contracts for work in progress, governmental agreements and approvals, architectural plans and site plans, and (ii) except as otherwise expressly set forth in this Exchange Agreement, neither District, nor anyone acting for or on behalf of District, has made any representation, warranty, promise or statement, express or implied, to City, or to anyone acting for or on behalf of City concerning the District Property, the use or development thereof. City further represents and warrants that, in entering into this Exchange Agreement, City has not relied on any representation, warranty, promise or statement, express or implied, of District, or anyone acting for or on behalf of District, other than as expressly set forth in this Exchange Agreement, and that City had the opportunity to verify all matters concerning the District Property prior to the Closing (as defined in Section 8 of this Exchange Agreement), and that City shall acquire the District Property on City's own prior investigation and examination of the District Property (or City's election not to do so); **CITY IS PURCHASING THE DISTRICT PROPERTY IN AN "AS IS" AND "WITH ALL FAULTS" PHYSICAL CONDITION AND IN AN "AS IS" AND "WITH ALL FAULTS" STATE OF REPAIR.** Other than as set forth herein, City does hereby waive, and District does hereby disclaim, all warranties of any type or kind whatsoever with respect to the District Property, whether express or implied, including, by way of description but not limitation, those of fitness for a

particular purpose and use, tenantability or habitability.

3.4 Notwithstanding anything to the contrary contained in this Exchange Agreement, City acknowledges that any written disclosures made by District prior to the Closing (as defined in Section 8 of this Exchange Agreement) shall constitute notice to City of the matter disclosed, and District shall have no liability with respect thereto if City thereafter consummates the transaction contemplated hereby.

3.5 City has not entered into any agreement or incurred any obligation that might result in the obligation to pay any brokerage commission, finder's fee or other compensation with respect to the transaction contemplated hereby. City agrees to indemnify, defend and hold District harmless from and against any losses, damages, costs and expenses (including attorneys' fees) incurred by District by reason of any breach or inaccuracy of the representation and warranty contained in this Section 3.5.

3.6 The documents relating to the Property that have been made available by City for review pursuant to Section 5.4 of the Master Agreement are (a) to the knowledge of City, all the material documents relating to the Property which City has in its possession, and (b) are either original documents or true copies of such documents in City's possession.

4. **Intentionally Omitted.**

5. **Release.**

5.1 City and any person or entity claiming by, through or under City, hereby fully and irrevocably releases, discharges and waives its rights to recover from District and its officers, directors, employees, shareholders, partners, agents and representatives (collectively, "**District Releasees**"), from any and all claims that City may now have or hereafter acquire against any District Releasee for any cost, loss, claim, penalty, fine, lien, judgment, liability, damage, expense, action or cause of action (including, without limitation reasonable attorneys' fees and costs), whether foreseen or unforeseen, direct or indirect, known or unknown, arising from or related to the existence or presence of Hazardous Substances in, on, under, or about the District Property or the non-compliance of the District Property with any Environmental Laws. The foregoing release does not extend to a breach by District of the representation set forth in Section 2.2 above.

5.2 District and any person or entity claiming by, through or under District, hereby fully and irrevocably releases, discharges and waives its rights to recover from City and its officers, directors, employees, shareholders, partners, agents and representatives (collectively, "**City Releasees**"), from any and all claims that District may now have or hereafter acquire against any City Releasee for any cost, loss, claim, penalty, fine, lien, judgment, liability, damage, expense, action or cause of action (including, without limitation reasonable attorneys' fees

and costs), whether foreseen or unforeseen, direct or indirect, known or unknown, arising from or related to the existence or presence of Hazardous Substances in, on, under, or about the City Property or the non-compliance of the City Property with any Environmental Laws. The foregoing release does not extend to a breach by City of the representation set forth in Section 3.2 above.

5.3 As used herein the term “**Hazardous Substance**” shall mean, at any time, (i) any substance that is then defined or listed in, or otherwise classified pursuant to, any Environmental Laws or any occupational safety and health laws as a “hazardous substance,” “hazardous contaminants,” “hazardous constituents,” “hazardous material,” “hazardous waste,” “infectious waste,” “toxic substance,” “toxic pollutant,” “toxic emission,” “air contaminant” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, radioactivity, carcinogenicity, toxicity, reproductive toxicity, or “EP toxicity,” (ii) any oil, gas and other petroleum hydrocarbons or any products, by-products or fractions thereof (including, without limitation, gasoline, diesel fuel, and solvents), (iii) PCBs, (iv) urea formaldehyde, (v) any substance potentially injurious to the public health, safety or welfare, the environment or the Properties, (vi) asbestos, lead, cadmium, mercury and other heavy metals, cyanide, pesticides, chlorinated hydrocarbons, and (vii) any substance which is a basis for liability to any governmental authority or third party under any applicable statute, regulation or common law theory.

5.4 As used herein, “**Environmental Laws**” means collectively, all present and future laws (whether common law, statute, rule, regulation, ordinance or otherwise), the requirements of governmental authorities and any permits and guidance issued pursuant thereto relating to Hazardous Substances, human health or the environment, as heretofore or hereafter amended, and in any regulations promulgated pursuant thereto.

5.5 City and District further acknowledge and agree that this release shall be given full force and effect according to each of its expressed terms and provisions, including, but not limited to, those relating to unknown and unsuspected claims, damages and causes of action. As a material covenant and condition of this Exchange Agreement, City agrees that in the event of the presence of any Hazardous Substances, or any other environmental conditions affecting the District Property, City shall look solely to persons and entities other than the District Releasees for any redress or relief (except to the extent of a breach by District of the representation set forth in Section 2.2 above). As a material covenant and condition of this Exchange Agreement, District agrees that in the event of the presence of any Hazardous Substances, or any other environmental conditions affecting the City Property, District shall look solely to persons and entities other than the City Releasees for any redress or relief (except to the extent of a breach by City of the representation set forth in Section 3.2 above). With respect to the release set forth herein relating to unknown and unsuspected claims, each Party hereby acknowledges that such waiver and release is made with the advice of counsel and with full knowledge and

understanding of the consequences and effects of such waiver, and that such waiver is made with the full knowledge, understanding and agreement that California Civil Code 1542 provides as follows, and that the protection afforded by said Code Section is hereby waived:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY

HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

Upon consummation of the Closing (as defined in Section 8 of this Exchange Agreement) hereunder, the foregoing release shall be deemed to be restated and made again as of the Closing (as defined in Section 8 of this Exchange Agreement).

6. **City’s Conditions Precedent.** The following shall be conditions precedent to City’s obligation to perform hereunder:

6.1 District shall not have validly terminated this Exchange Agreement.

6.2 Title Company shall be prepared to issue at Closing (as defined in Section 8 of this Exchange Agreement) to City a standard form CLTA Owner’s Policy of Title Insurance (“**City Title Policy**”), covering the District Property and insuring fee title vested in City and showing such title to be unencumbered except for the Permitted Exceptions. The City Title Policy shall be in an amount requested by City.

6.3 There shall be no material change in the status of any matter covered by any of District’s representations and warranties set forth herein as of the Closing (as defined in Section 8 of this Exchange Agreement); provided, however that if there is a material change in the status of any matter covered by any of the District’s representations and warranties set forth herein that is disclosed by the District to the City prior to the Closing (as defined in Section 8 of this Exchange Agreement), the Closing (as defined in Section 8 of this Exchange Agreement) shall be extended for up to thirty (30) days to permit District the opportunity to cure or correct the matter to the satisfaction of the City.

6.4 District shall have performed all of its obligations hereunder and shall not be in breach of this Exchange Agreement.

6.5 City shall not be required to accept a conveyance of title or leasehold title, as the case may be, to the District Property unless City shall have obtained all discretionary entitlements and approvals (not including ministerial permits) needed for the development of the District Property.

The conditions set forth in this Section 6 are solely for the benefit of the City and may be waived only by the City. The City shall, at all times prior to the Closing (as defined in Section 8 of this Exchange Agreement), have the right to waive any of these conditions.

7. **District's Conditions Precedent.** The following shall be conditions precedent to District's obligation to perform hereunder:

7.1 City shall not have validly terminated this Exchange Agreement

7.2 Title Company shall be prepared to issue at Closing (as defined in Section 8 of this Exchange Agreement) to District a standard form CLTA Owner's Policy of Title Insurance ("**District Title Policy**"), covering the City Property and insuring fee title vested in District and showing such title to be unencumbered except for the Permitted Exceptions. The District Title Policy shall be in an amount requested by District.

7.3 There shall be no material change in the status of any matter covered by any of City's representations and warranties set forth herein as of the Closing (as defined in Section 8 of this Exchange Agreement); provided, however that if there is a material change in the status of any matter covered by any of the City's representations and warranties set forth herein that is disclosed by the City to the District prior to the Closing (as defined in Section 8 of this Exchange Agreement), the Closing (as defined in Section 8 of this Exchange Agreement) shall be extended for up to thirty (30) days to permit City the opportunity to cure or correct the matter to the satisfaction of the District.

7.4 City shall have performed all of its obligations hereunder and shall not be in breach of this Exchange Agreement.

7.5 District shall not be required to accept a conveyance of title or leasehold title, as the case may be, to the City Property unless District shall have obtained all discretionary entitlements and approvals (not including ministerial permits) needed for the development of the City Property.

The conditions set forth in this Section 7 are solely for the benefit of the District and may be waived only by the District. The District shall, at all times prior to the Closing (as defined in Section 8 of this Exchange Agreement), have the right to waive any of these conditions.

8. **Closing.** The Closing shall be the date upon which the grant deeds, in the form of Exhibit "B" attached hereto, (i) conveying title to the District Property to City ("**District Grant Deed**"), and/or (ii) conveying title to the City Property to District ("**City Grant Deed**") are recorded in the official records of San Diego County, California (the "**Closing**"). Alternatively, in the event of a transfer or exchange of a leasehold interest in property, the Closing shall be the date upon which the leases, in the form of "C" hereto, (y) conveying a leasehold interest to the District Property to City ("**District Lease**"), and/or (z) conveying a leasehold interest to the City Property to District ("**City Lease**")

are executed and delivered and memoranda thereof are recorded in the official records of San Diego County, California. The Closing shall occur on or before _____, _____ (**"Closing Date"**) [**I. E., NOT LATER THAN 60 DAYS (except in the case of an acquisition lease by City which would require the lease be approved by ordinance and would always take more than 60 days) AFTER THE EFFECTIVE DATE OF THIS EXCHANGE AGREEMENT - UNLESS A LATER DATE IS APPROVED BY CITY AND DISTRICT]**].

9. **Costs, Fees and Expenses.** District shall pay the cost of any documentary transfer tax due in connection with recording the City Grant Deed and the title insurance premium for the District Title Policy. City shall pay the cost of any documentary transfer tax due in connection with recording the District Grant Deed and the title insurance premium for the City Title Policy. City shall pay the cost of recording the City Grant Deed and any other instruments necessary or appropriate hereunder. District shall pay the cost of recording the District Grant Deed and any other instruments necessary or appropriate hereunder. Each Party shall bear the expense of its own counsel.

10. **City's Deliveries.** City hereby covenants and agrees to deliver to escrow on or prior to the Closing the following instruments and documents:

10.1 the City Grant Deed in the form of Exhibit "B" attached hereto, duly executed and acknowledged by City conveying the City Property to District, subject to the Permitted Exceptions and to the covenants set forth therein; or, alternatively, the City Lease in the form of Exhibit "D" attached hereto, and a Memorandum of Lease, duly executed and acknowledged by City conveying a leasehold interest in the City Property to District, subject to the Permitted Exceptions and to the covenants set forth therein;

10.2 a Bill of Sale in the form of Exhibit "C" attached hereto, duly executed by City assigning to District all tangible personal property owned by City and located on the City Property.

10.3 any other instrument or documents necessary to effectuate the purposes of this Exchange Agreement.

11. **District's Deliveries.** District hereby covenants and agrees to deliver to escrow on or prior to the Closing the following items and documents:

11.1 the District Grant Deed in the form of Exhibit "B" attached hereto, duly executed and acknowledged by District conveying the District Property to City, subject to the Permitted Exceptions and to the covenants set forth therein; or, alternatively, the District Lease in the form of Exhibit "D" attached hereto, and a Memorandum of Lease, duly executed and acknowledged by District conveying a leasehold interest in the District Property to City, subject to the Permitted Exceptions and to the covenants set forth therein;

11.2 a Bill of Sale in the form of Exhibit "C" attached hereto, duly

executed by District assigning to City all tangible personal property owned by District and located on the District Property.

11.3 Any other instrument or documents necessary to effectuate the purposes of this Exchange Agreement.

12. **Prorations, Adjustments; Release Of Bonds And Other Security Devices.** The following shall be prorated and adjusted between the Parties as of the Closing Date, except as otherwise specified:

12.1 General real estate, personal property and ad valorem taxes and assessments for the current tax year for the Properties, and any common area or owner's association dues or fees.

12.2 Utility charges, if any, costs of maintaining the Property, if any, and such other items that are customarily prorated in transactions of this nature.

For purposes of calculating prorations, each Acquiring Party shall be deemed to be in title to the Property, and, therefore, responsible for the expenses thereof for the entire day upon which the Closing occurs. All such prorations shall be made on the basis of the actual number of days of the month which shall have elapsed as of the day of the Closing and based upon the actual number of days in the month and a three hundred sixty-five (365) day year. Such prorations shall be performed by the Parties at Closing. No further prorations shall be made after the Closing.

13. **Risk Of Loss/Taking.**

13.1 If prior to the Closing, either the City Property or the District Property is damaged, the Acquiring Party shall have the right, exercisable by giving written notice to Transferring Party within five days after receiving written notice of such damage or destruction (but in any event prior to the Closing), either (i) to terminate this Exchange Agreement, in which case neither Party shall have any further rights or obligations hereunder, or (ii) to accept the Property in its then condition and to proceed with the Closing and to receive an assignment of all of Transferring Party's right to any insurance proceeds payable by reason of such damage or destruction. If Acquiring Party elects to proceed under clause (ii) above, Transferring Party shall not compromise, settle or adjust any claims to such proceeds without Acquiring Party's prior written consent.

13.2 Each Party agrees to give the other Party notice of any taking, damage or destruction of the Property promptly after such Party obtains knowledge thereof.

14. **Default.** In the event a Transferring Party defaults in its obligation to transfer the Property pursuant to this Exchange Agreement, the Acquiring Party shall have all rights and remedies available to it at law or in equity; provided, however, that in an action for damages, Purchaser shall be limited to recovering its actual damages but not any consequential or punitive damages.

15. **Conditions to Effectiveness.**

15.1 This Exchange Agreement shall not be binding or effective (i) against District until pursuant to California Education Code Section 17537, the District's governing board has adopted, by two-thirds vote of its members, a resolution declaring its intention to exchange the property that is contemplated to be the subject of the Exchange Agreement, approving this Exchange Agreement and authorizing its execution and (ii) against City until the City Council has adopted, by majority vote of its members, a resolution declaring its intention to exchange the property that is contemplated to be the subject of the Exchange Agreement, approving this Exchange Agreement and authorizing its execution.

16. **Notices.** All notices under this Exchange Agreement shall be in writing and shall be given to the Parties at the addresses herein set forth, or at such other address as any of the Parties may hereafter specify in the same manner. All notices required or permitted to be given may be given by personal delivery (including express courier service) or by United States certified mail, postage prepaid, return receipt requested. Any such notice shall be deemed received upon the actual delivery of such personal service (or express courier service) or, if sent by certified mail, three (3) days after the date of mailing by certified mail. The addresses for notices are as follows:

To District at:

San Diego Unified School District
4860 Ruffner Street
San Diego, California 92111
Attention: Chief Operating Officer

To City at:

City of San Diego
202 C Street, MS9B
San Diego, California 92101
Attention: Real Estate Assets Director

17. **Time of the Essence.** Time is of the essence of this Exchange Agreement, and any amendments hereto.

18. **Amendments.** Any amendments to this Exchange Agreement shall be effective only when in writing and duly executed by the Parties.

19. **Entire Agreement.** This Exchange Agreement supersedes any prior agreement, oral or written, and contains the entire agreement between City and District as to the transaction contemplated by this Exchange Agreement. No subsequent agreement, representation or promise made by either Party, or by or to an employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby.

20. **Further Assurances.** Each Party agrees to execute any additional instructions or documents as may be necessary to complete the transaction

contemplated by this Exchange Agreement.

21. **Construction and Captions.** This Exchange Agreement shall be construed as a whole and in accordance with its fair meaning. Captions and organizations are for convenience only and shall not be used in construing meaning.

22. **No Waiver.** The waiver by either Party of the performance of any covenant, condition or promise, shall not invalidate this Exchange Agreement, nor shall it be considered a waiver of any other covenant, condition or promise. The waiver by either Party of the time for performing any act shall not be a waiver of the right to require performance of any similar or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions in this Exchange Agreement for any remedy shall not exclude any other remedy unless it is expressly excluded.

23. **Attorneys' Fees.** If either District or City commences any action or proceeding in court to enforce any of the terms of this Exchange Agreement or for damages by reason of an alleged breach of any provision of this Exchange Agreement, the losing or defaulting Party shall pay to the prevailing Party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action.

24. **Governing Law.** This Exchange Agreement shall be construed in accordance with and governed by the laws of the State of California. Proper venue for any action shall be in the County of San Diego, California.

25. **Assignment; Binding Effect.**

25.1 Except as provided in Section 25.2, below, neither Party shall have the right to assign this Exchange Agreement without the prior written consent of the other Party, which consent shall may be given or withheld in such Party's sole and absolute discretion, and provided any such assignment shall not release either Party from any obligation or liability hereunder.

25.2 Assignments to Affiliates shall be permitted. For purposes of this Exchange Agreement, an "Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with another person or entity. The term "control" as used in the immediately preceding sentence, shall mean the power to direct the management or the power to control election of the board of directors.

25.3 This Exchange Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns, heirs and legatees.

26. **Relationship of the Parties.** Nothing stated in this Exchange Agreement is intended to or shall be construed as establishing City and District as partners or joint venturers or as creating the relationship of principal/agent between the Parties. Neither Party has any power, right or authority to bind the other Party or to assume or create

any obligation or responsibility, express or implied, on behalf of the other Party, except as herein expressly provided.

27. **Counterparts.** This Exchange Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all Parties had signed the same signature page. Any signature page of this Exchange Agreement may be detached from any counterpart of this Exchange Agreement and reattached to any other counterpart of this Exchange Agreement identical in form hereto but having attached to it one or more additional signature pages.

28. **No Third Party Beneficiaries.** Except as specifically set forth in this Exchange Agreement, nothing in this Exchange Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Exchange Agreement on any persons other than the Parties and their respective permitted successors and assigns, nor is anything in this Exchange Agreement intended to relieve or discharge the obligation or liability of any third persons to any Party, nor give any third persons any right of subrogation or action against any Party.

IN WITNESS WHEREOF, the Parties hereto have executed this Exchange Agreement as of the date shown above.

“CITY”

THE CITY OF SAN DIEGO, CALIFORNIA,
a municipal corporation

By: _____

Name:

Title:

“DISTRICT”

SAN DIEGO UNIFIED SCHOOL DISTRICT,
a political subdivision of the State of California

By: _____

Name:

Title:

EXHIBIT "A-1" to Exchange Agreement
Legal Description of the District Property

[to come]

EXHIBIT "A-2" to Exchange Agreement

Legal Description of the City Property

[to come]

EXHIBIT "B" to EXCHANGE AGREEMENT

Form of Grant Deed

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL GRANT
DEED AND TAX STATEMENTS TO:**

GRANT DEED

The undersigned Grantor requests that the Documentary Transfer Tax not be made a part of the public records.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, _____, a _____ ("**Grantor**"), hereby **GRANTS** to _____, a ("**Grantee**"), that certain real property located in the County of San Diego, State of California and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"), **SUBJECT TO** those matters of record and any and all applicable laws, ordinances, rules, regulations and permits affecting the Property or governing the use thereof.

IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

DATED: _____, 200__

GRANTOR:

By:

Name:

Title:

[illegible]

On _____, 200_, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official Seal.

Notary Public in and for said State
My commission expires: _____

[SEAL]

EXHIBIT “A” TO GRANT DEED

Legal Description of the Property

**STATEMENT OF TAX DUE AND REQUEST
THAT TAX DECLARATION NOT BE MADE A PART
OF THE PERMANENT RECORD
IN THE OFFICE OF THE
COUNTY RECORDER
(Pursuant to Cal. Rev. and Tax Code Section 11932)**

To: Registrar - Recorder/
County of San Diego

Request is hereby made in accordance with the provision of the Documentary Transfer Tax Act that the amount of tax due not be shown on the original document which names:

_____, as grantor

and

_____, as grantee.

The property described in the accompanying document is located in _____, California.

The amount of tax due on the accompanying document is _____ Dollars (\$_____), computed on full value of property conveyed, less any liens remaining on the property.

By: _____
Authorized Signatory of
Grantor

NOTE: After the permanent record is made, this form will be affixed to the conveying document and returned with it.

EXHIBIT "C" to EXCHANGE AGREEMENT

BILL OF SALE AND ASSIGNMENT

THIS BILL OF SALE AND ASSIGNMENT is executed as _____, 200_, by
_____, a _____ (**"Assignor"**), in favor of
_____, a _____ (**"Assignee"**).

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Assignor does hereby grant, bargain, sell, convey, assign, transfer and set over unto Assignee, all of Assignor's right, title and interest in and to (i) all tangible personal property and fixtures that are located on the land described on Exhibit A attached hereto (the **"Land"**) or the improvements located thereon (collectively, with the Land, the **"Real Property"**) and used exclusively in the operation or maintenance of the Real Property, and (ii) to the extent assignable, all of Assignor's interest in any licenses, approvals, certificates and permits that relate to the Real Property.

IN WITNESS WHEREOF, Assignor has executed this Bill of Sale and Assignment as of the day and year first above written.

"Assignor"

By:

Name:

Title:

EXHIBIT A TO BILL OF SALE AND ASSIGNMENT

Legal Description of the Land

EXHIBIT “D” to Exchange Agreement

FORM OF LEASE

[TO BE ADDED]

Attachment No. 2 to Master Agreement

LEDGER

CURRENTLY APPLICABLE MAXIMUM DIFFERENTIAL AMOUNT: \$_____

[illegible]