

2260113

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

THIS AGREEMENT is made and entered into this 15th day of December 2020, by and between the CITY OF BERKELEY, a municipal corporation ("City"), and the BERKELEY UNIFIED SCHOOL DISTRICT ("District").

RECITALS

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

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

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

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

AGREEMENT

1. **Effective Date.** This Agreement shall be effective on January 1, 2021.
2. **City Use of District Pools and Other Facilities.**
 - a. The District hereby agrees to grant the City exclusive use of the following District facilities for the following terms:
 - i. King Junior High School pool and associated facilities located at 1700 Hopkins Street, Berkeley, California, until January 1, 2051.
 - ii. Martin Luther King Jr. Youth Services Facility (YAP) located at 1730 Oregon Street, Berkeley, California, until January 1, 2051.
 - iii. West Campus pool and associated facilities located at 2100 Browning Street, Berkeley, California, until January 1, 2026.
 - iv. Willard Junior High School pool (former) locker room and shower building, located at 2425 Stuart Street, Berkeley, California, until July 1, 2021.

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

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

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

3. Public Use of District Elementary School Sites.

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

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

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

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

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

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

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

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

- i. King Park
- ii. Thousand Oaks Park

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

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

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

5. District Use of City Parks and Park Facilities.

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

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

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

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

6. Indemnification.

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

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

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

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

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

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

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

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

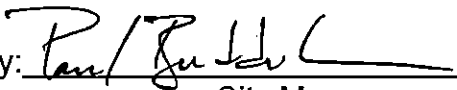
12. **Drafting of Agreement.** The parties and their respective counsel have participated in the drafting and negotiation of this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by all parties.

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

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

CITY OF BERKELEY

Dated: 2/2, 2026

By: 
City Manager

Registered on behalf of the City Auditor by:

By: 
City Clerk

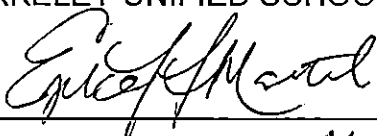
By: 
Finance Department

APPROVED AS TO FORM:

By: 
City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

Dated: 2/7/26, 2026

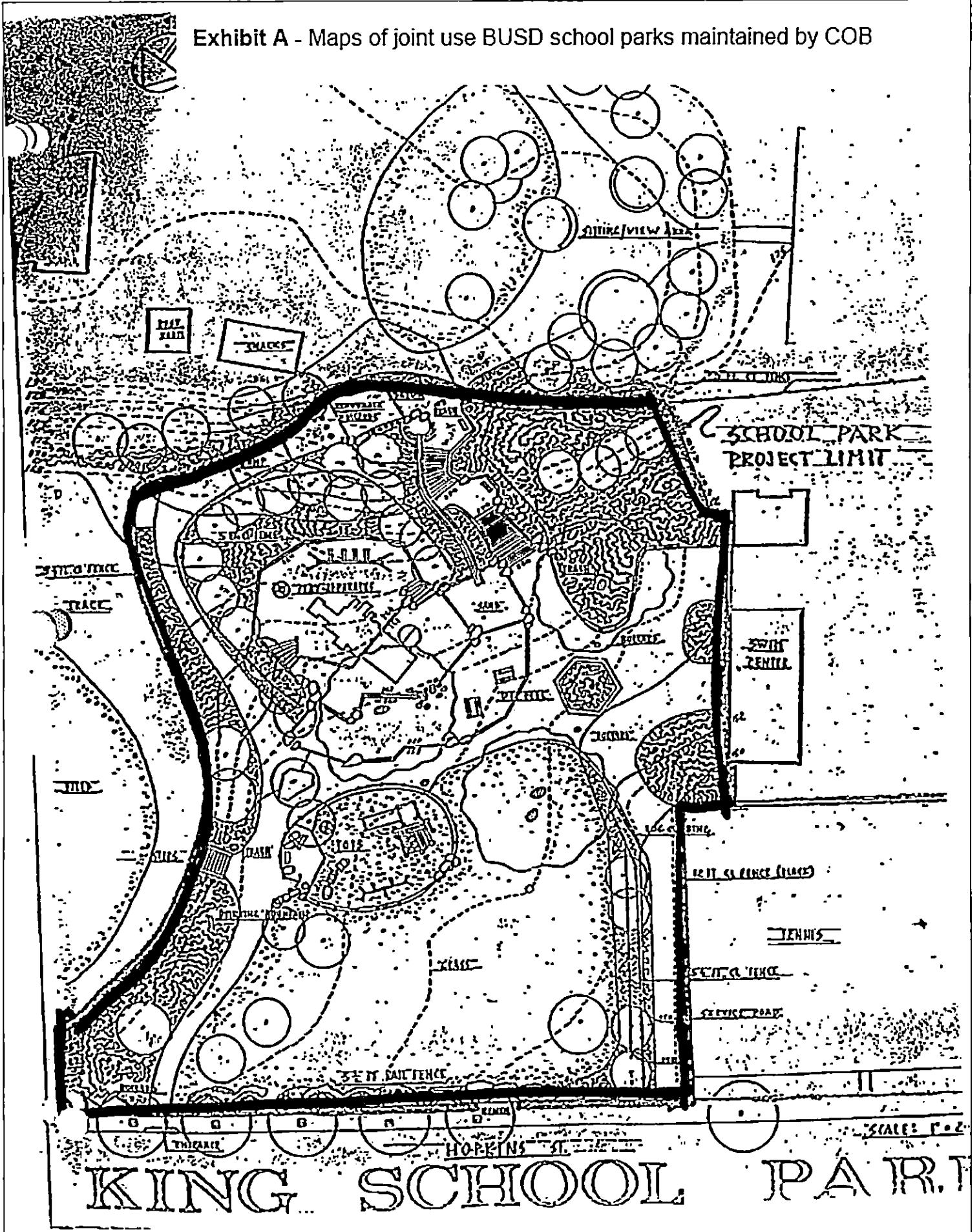
By: 

APPROVED AS TO FORM: ..

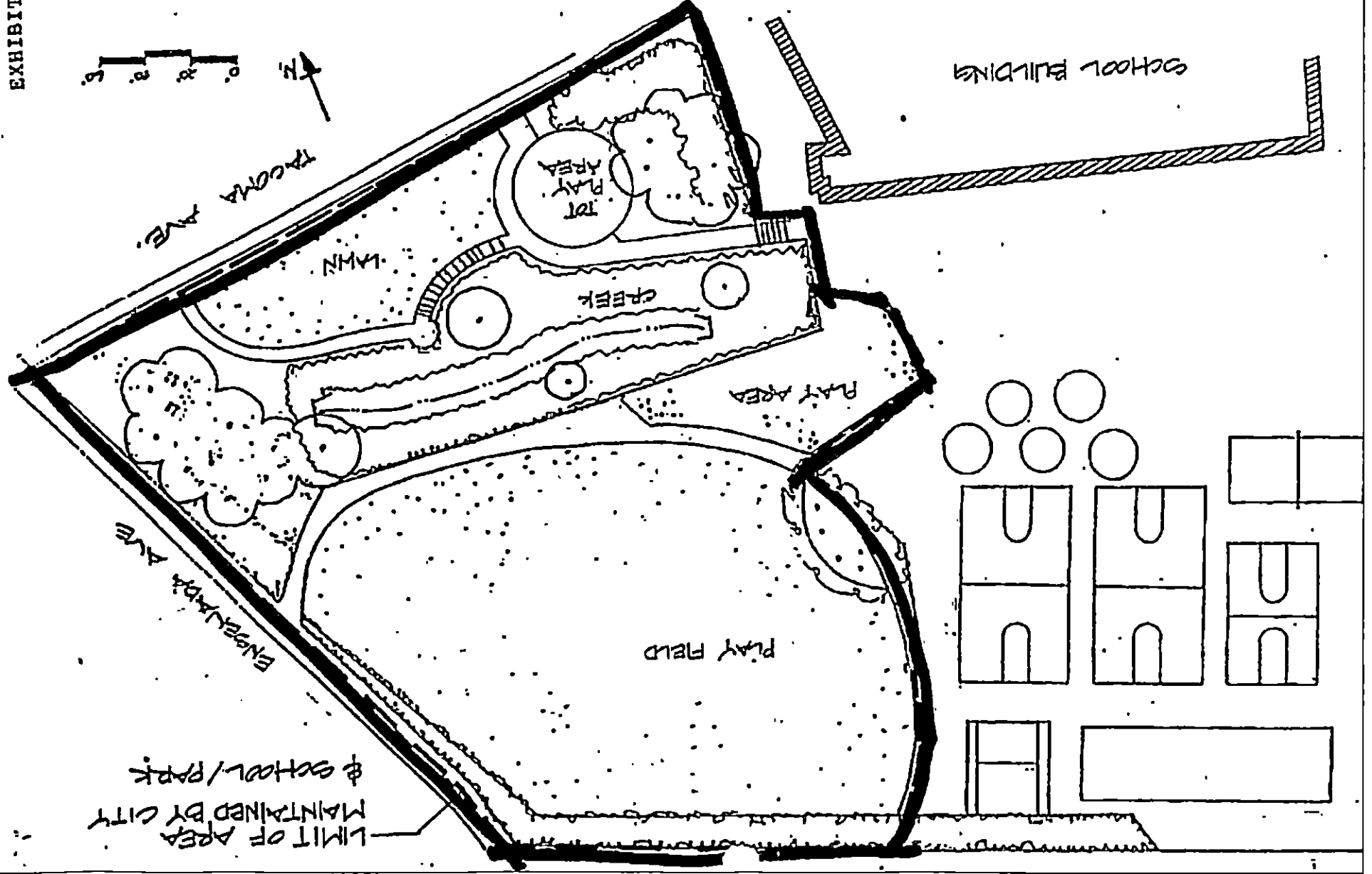
By: _____



Exhibit A - Maps of joint use BUSD school parks maintained by COB



THOUSAND OAKS SCHOOL PARK



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

Attachment 1

City of Berkeley Resolution No. 69,656-N.S

RESOLUTION NO. 69,656-N.S.

AUTHORIZING AN AGREEMENT WITH THE BERKELEY UNIFIED SCHOOL
DISTRICT FOR JOINT FACILITY USE, SITE DEVELOPMENT, SERVICES

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

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

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

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of Berkeley hereby authorizes the City Manager to execute the Joint Facility Use Agreement with BUSD in substantially the same form as the agreement attached hereto as Exhibit A.

The foregoing Resolution was adopted by the Berkeley City Council on December 15, 2020 by the following vote:

Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf,
and Arreguin.

Noes: None.

Absent: None.


Jesse Arreguin, Mayor

Attest:


Mark Numainville, City Clerk

Exhibit A

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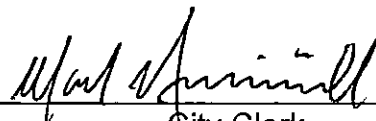
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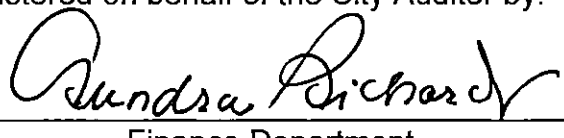
CITY OF BERKELEY

Dated: _____, 2020

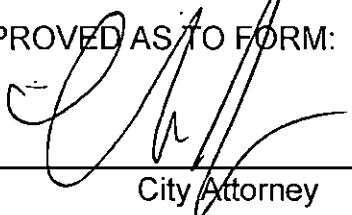
By: 
City Manager

Registered on behalf of the City Auditor by:

By: 
City Clerk

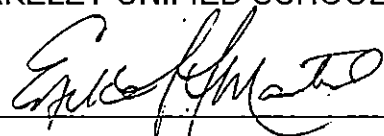
By: 
Finance Department

APPROVED AS TO FORM:

By: 
City Attorney

BERKELEY UNIFIED SCHOOL DISTRICT

Dated: 4/7/20, 2020

By: 

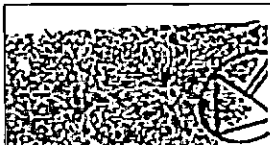
APPROVED AS TO FORM:

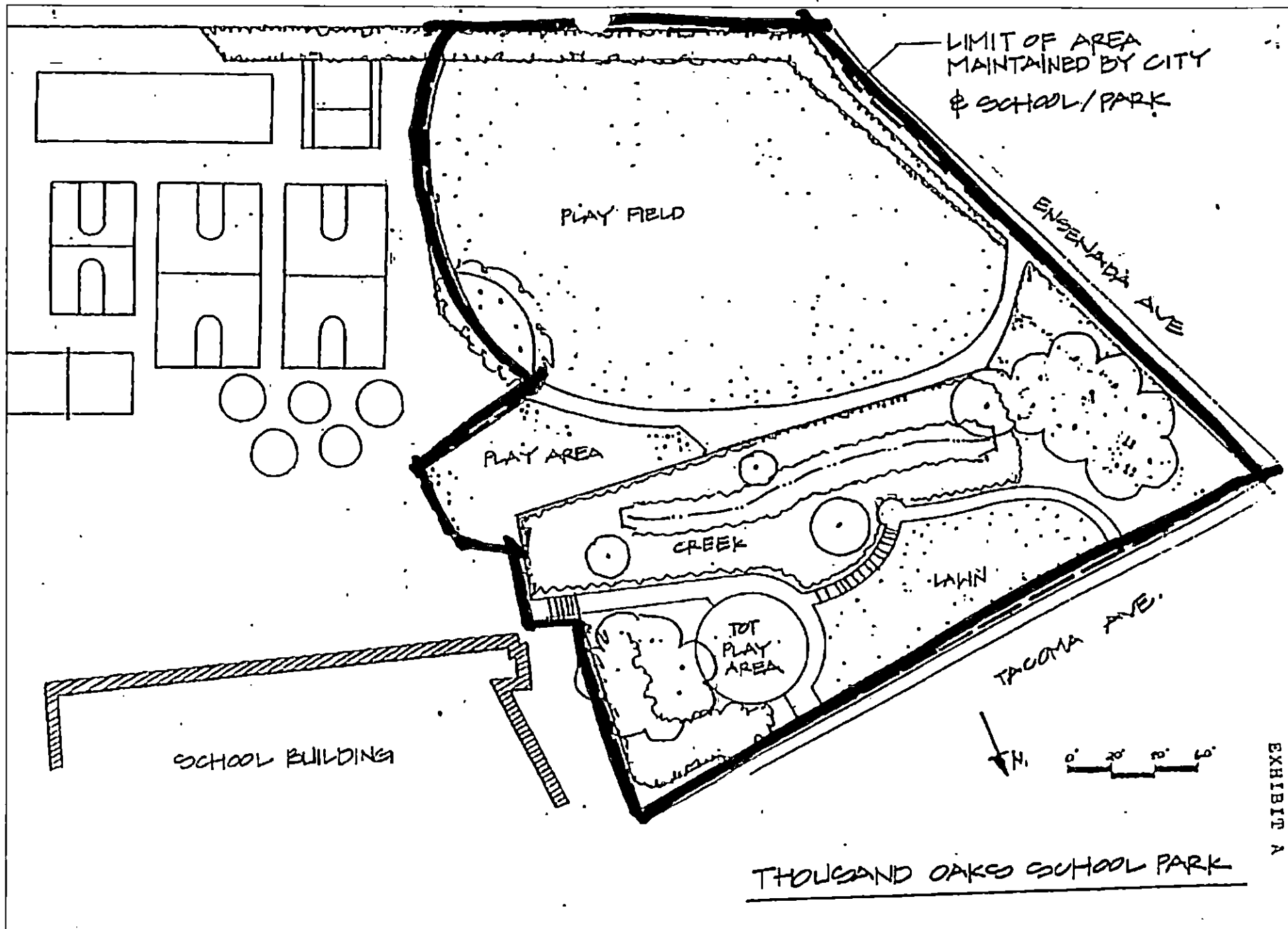
By: _____



Executed

Date: 2/26/2026





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

Attachment 2

Berkeley Unified School District Legislative History Approving Joint Use Agreement

- BUSD Board Agenda – December 9, 2020
- Agenda Item Listing for Item 12.23 Approval of Joint Use Agreement
- Resolution 21-019 (Unsigned)
- BUSD Board Official Minutes – December 9, 2020

BOARD OF EDUCATION

Meeting Location: Zoom Webinar (Instructions on Page 2)

SPECIAL MEETING AGENDA

Wednesday, December 9, 2020

The Berkeley Unified School District intends to provide reasonable accommodations in accordance with the Americans with Disabilities Act of 1990. If a special accommodation is desired, please call the Superintendent's Office 48 hours prior to the meeting at 510-644-6206

El Distrito Escolar Unificado de Berkeley tiene la intención de proporcionar adaptaciones especiales en conformidad con el *Americans with Disabilities Act of 1990* (Ley de Americanos con Discapacidades de 1990). Si usted desea una adaptación especial, por favor comuníquese con el personal de la Oficina del Superintendente 48 horas antes de la reunión al 510-644-6206.

Notice of Non-Discrimination

The Berkeley Unified School District does not discriminate on the basis of race, color, national origin, sex, disability, age, religious creed, gender, sexual orientation, gender expression, marital or parental status, ancestry, national origin, ethnic group identification, disability, medical condition, homelessness or foster status, in its programs and activities, and provides equal access to the Boy Scouts and other designated youth groups. Discrimination based on protected class includes sexual harassment, sexual violence, and bullying. All inquiries or concerns regarding BUSD's nondiscrimination policy 5145.3 or the filing of discrimination complaints should contact:

Stephen Jimenez-Robb
District Compliance Officer & Title IX Interim
Coordinator
2020 Bonar St., Room 117
Berkeley, CA 94702
Phone: 510.486.9352
Email: nondiscrimination@berkeley.net

To access this agenda online, go to: <https://berkeley.agendaonline.net/public/>

NOTICE - COVID-19 PUBLIC HEALTH EMERGENCY:
BOARD MEMBERS TO ATTEND VIRTUALLY

Pursuant to the Governor's Executive Order N-25-20, all members of the Board of Education as well as the Superintendent and District Staff, will join the meeting via phone/video conference and no teleconference locations need be posted.

- To observe the meeting by video conference, please [click here](#) at the noticed meeting time. It may help to [download the Zoom app](#) before the meeting if you don't have it already. Instructions on how to join a meeting by video conference are available at: <https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>.
- To listen to the meeting by phone, please call at the noticed meeting time (669) 900-9128, then enter Webinar ID 837 7062 3343, then press "#". If asked for a participant id or code, press #. Instructions on how to join a meeting by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>.
- To view the meeting after it has been recorded, please go to <https://www.berkeleyschools.net/schoolboard/board-meeting-information/>

There are two ways to make public comment at the prescribed time near the beginning of the meeting, or in extended public comment near the end of the meeting. The Board President will introduce the allotted period of time for Public comments, organize the comments, and indicate who will be speaking next.

- To comment by video conference, click on the Participants button at the bottom of your screen and select the "Raise Your Hand" button to request to speak when Public Comment is being taken on the eligible Agenda item. When called upon, you will be unmuted. After the allotted time, you will then be re-muted.
- To comment by phone, you will be prompted to "Raise Your Hand" by pressing "*9" to request to speak when Public Comment is being taken on the eligible Agenda Item. When called upon, you will be unmuted. After the allotted time, you will then be re-muted. Instructions of how to raise your hand by phone are available at: <https://support.zoom.us/hc/en-us/articles/201362663-Joining-a-meeting-by-phone>.

1. Call to Order

The Presiding Officer will call the meeting to order at 5:30 p.m. The Regular Meeting will convene at 7 p.m.

2. Closed Session Public Testimony

Public Testimony related to closed session items is limited to 15 minutes with a 3-minute limit per speaker per topic, although the time allotted per speaker may be reduced to 2 minutes at the discretion of the President. For instructions on how to make public comment during a Zoom meeting, please refer to page 2 of this agenda.

3. Closed Session

The Board may recess into Closed Session before or after the public meeting under the authority of the Brown Act (including but not limited to Government Code sections 54954.5, 54956.8, 54956.9, 54957, 54957.6, as well as 35146) Under Government Code section 54954.3, members of the public may address the board on an item on the Closed Session agenda.

3.1	Anticipated Litigation – Regarding costs of services provided to student - Two Matters - Ed. Code § 54956.9, subd. (e)(2)
	3.1.1 BUSD Case No. 202021-18
	3.1.2 BUSD Case No. 202021-19
3.2	Existing Litigation -- Conference with Legal Counsel-- (Gov. Code section 54956.9(d)(1).)
	3.2.1 OAH Case No. 2020090310
	3.2.2 OAH Case No. 2020080773
3.3	Conference with Real Property Negotiators (Government Code Section 54956.8)
	3.3.1 District Negotiator: John Calise; Negotiating Party: City of Berkeley; Property: Multiple Properties; Under Negotiation: Use Agreement
3.4	Collective Bargaining - Government Code Section 54957.6(a) (District Negotiator: Samantha Tobias-Espinosa)
	3.4.1 Berkeley Federation of Teachers (BFT)
	3.4.2 Berkeley Council of Classified Employees (BCCE)
	3.4.3 Local 21
	3.4.4 Union of Berkeley Administrators (UBA)

4. Call to Order - 7:00 PM

5. Approve Meeting Agenda for December 9, 2020

6. Report Out on Closed Session

7. Recognition

8. Open Session Public Testimony (1st Opportunity)

Public Testimony is strictly limited to 30 minutes with a 3-minute limit per speaker per topic, although the time allotted per speaker may be reduced at the discretion of the President. For instructions on how to make public comment during a Zoom meeting, please refer to page 2 of this agenda.

9. Union Comments

The chair (or designee) of each District union that includes members of the public is given the opportunity to address the Board on any issue. 5 minutes per union.

Berkeley Federation of Teachers (BFT)
Berkeley Council of Classified Employees (BCCE)
Union of Berkeley Administrators (UBA)
Local 21

10. Committee Comments

Representatives from District committees that include members of the public are given the opportunity to address the Board on any issue. 5 minutes per committee.

11. Board Member and Superintendent Comments

Board members and the Superintendent are given the opportunity to address any issue.

12. Consent Calendar

12.1	Approval of Human Resources Reports
12.2	Approval of Position Control Report
12.3	Approval of Resolution 21-015 to Eliminate/Reduce Positions
12.4	Approve BUSD Calendar for the 2021-2022 School Year
12.5	Approve Appointment of Timothy Davis to the BUSD Personnel Commission
12.6	Approval of MOU with R.T. Fisher
12.7	Approval of Master Contract for Residential Treatment Center for 2020-2021
12.8	Approval of Payroll Warrants Issued in October 2020
12.9	Approval of Payroll Warrants Issued in November 2020
12.10	Approval of Fiscal Warrants Issued in November 2020
12.11	Acceptance of Gifts/Donations
12.12	Approval of Contracts/Purchase Orders for Services Contracts
12.13	Approve Resolution 21-019 in Support of Expedited COVID-19 Vaccinations for Educators
12.14	Approval of a Contract with HY Architects for Architectural Services for the B-Tech Safety & Security and CTE Growing Leaders Project
12.15	Approval of Contract Modification #2 with Crown for Moving Services for the BHS Building A Theater Project
12.16	Approval of Contract Modification #8 with Terracon for Environmental Services for the BHS Building A Theater Project

12.17	Approval of the Pre-Qualified Landscape Architect Pool for Selection on Measure G Projects
12.18	Accept the Completion of the West Campus Parking Lot and Approve Resolution 21-017
12.19	Accept the Annual Developer Fee Reports and Approve Resolution 21-016
12.20	Approval of Outdoor Classroom Budget
12.21	Authorization to Approve a Change Order for the West Campus Project Increment #2 and Approval of Futility Resolution 21-018
12.22	Approve Appointments to the Measure G Citizens' Bond Oversight Committee
12.23	Approval of Joint Use Agreement between BUSD and City of Berkeley and Approval of Resolution 21-019
12.24	Approval of Board of Education Meeting Minutes for October - November 2020
12.25	Approval of New Policy: Transgender and Gender Nonconforming Students
12.26	Approve Amended MOU with Lifelong Medical for Rosa Parks Kids' Village

13. Action Items

13.1	Approve Recommendation for Renaming Jefferson Elementary School as Ruth Acty Elementary School
13.2	Approval of Coordinated Comprehensive Early Intervening Services (CCEIS) Plan
13.3	Approval of First Interim Budget Report
13.4	LCFF Budget Overview for Parents

14. Discussion

14.1	Update on BUSD's Phased Approach to School Reopening
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15. Open Session Public Testimony (2nd Opportunity)

Public testimony is limited to 15 minutes with a 3-minute limit per speaker per topic, although the time allotted per speaker may be reduced to 2 minutes at the discretion of the President. For instructions on how to make public comment during a Zoom meeting, please refer to page 2 of this agenda.

16. Extended Board Member and Superintendent Comments

Board members and the Superintendent are given the opportunity to address any issue.

17. Adjournment

2020 BUSD School Board Calendar Regular Meeting Dates

January	8	22	
February	5	19	
March	11	25	
April	15	22	
May	6	20	27
June	10	24	
July			
August	19		
September	2	16	
October	7	21	
November	4	18	
December	9	16*	

LCFF AND LCAP ACRONYMS

ADA: Average Daily Attendance – the average number of pupils actually attending classes for at least the minimum school day.

API: Academic Performance Index – a measurement of a school’s academic performance and progress.

BASE RATE: state funding allocated to districts under LCFF tied to ADA in grade spans K-3, 4-6, 7-8, and 9-12.

BSEP: Berkeley Schools Excellence Program – funds provided by a local (parcel) tax to the Berkeley Schools.

BUSD: Berkeley Unified School District

CATEGORICAL AID: Funds from the state or federal government for specialized programs such as special education and Gifted and Talented Education (GATE); or special purposes, such as transportation.

CCSS: Common Core State Standards - an education initiative adopted by California and 44 States detailing what K-12 students should know at the end of each grade.

CSR: Class Size Reduction – California provides funds for lower class sizes K-3; the BSEP measure provides additional funding.

CTE: Career Technical Education

COE: County Office of Education

DDF: District Defined Fund for LCAP Supplemental Programs

DELAC: District English Learner Advisory Committee

DISCRETIONARY: refers to funds with some flexibility in use.

EIA: Economic Impact Aid - State categorical aid for districts with concentrations of children who are bilingual, transient and/or from low income families. No longer used under LCFF, which instead uses supplemental and concentration grants.

EL: English Learner

ELPAC: English Learner Parent Advisory Committee (LCFF/LCAP)

FTE: Full Time Equivalent Teacher

FREE AND REDUCED LUNCH: In California public schools, a family of four with income at or below \$43,568 qualifies for reduced price meal, and under \$30,615 for free meals. This guideline defines “low-income” (LI) for purposes of the LCFF.

LCAP: Local Control and Accountability Plan- a plan and budget adopted by a school district that reflects goals and specific actions, based on the 8 state priorities outlined in the LCFF legislation, as well as any locally adopted priorities

LCFF: Local Control Funding Formula – California’s new school finance model for allocation of state funding to local school districts.

PAC: Parent Advisory Committee (for LCFF/LCAP)

REVENUE LIMIT: Prior to LCFF, the amount of revenue that a district could collect annually for general purposes from local property taxes and state aid, calculated per unit of ADA.

SUBGROUPS: The LCAP must address student subgroups, meaning all major racial/ethnic groups as well as low income, English learners, foster youth and students with disabilities.

SUPPLEMENTAL FUNDING: Under LCFF each English Learner (EL), Low Income (LI) or foster youth counts toward funding of an additional 20 percent of the base rate, The count must be “unduplicated”, meaning an EL, LI or foster youth may only be counted once, even if belonging to more than one group.

WILLIAMS REQUIREMENTS/BASIC SERVICES – California legislation established standards for maintaining adequate school facilities, sufficient instructional materials, and qualified teachers.

SCHOOL BOARD GOVERNANCE TEAM NORMS

We agree to:

- Focus on the best interest of students
- Work together as a team
- Respect and listen to all options, opinions, and styles
- Actively participate in board meetings, committees, work groups and district events
- Come to meetings prepared and be fully present and engaged
- Be open to new ideas
- Exhibit positive body language, mannerisms, and tone of voice
- Engage in active listening; do not interrupt; avoid side conversations
- Disagree agreeably
- Assume good will

Begin on time and conduct business efficiently.

12.23. Approval of Joint Use Agreement between BUSD and City of Berkeley and Approval of Resolution 21-019

Rationale:

BERKELEY UNIFIED SCHOOL DISTRICT

TO: Brent Stephens, Ed. D, Superintendent
FROM: John Calise, Executive Director of Facilities
DATE: December 9, 2020
SUBJECT: Acceptance of the Joint Use Agreement Between BUSD and the City of Berkeley and Approval of Resolution # 21-019

BACKGROUND INFORMATION

The current Joint Use Agreement between the City and BUSD that covers pools and parks and has been in place since 1991 will expire on December 31, 2020. A separate agreement for the use of the Martin Luther King Junior Youth Services Center (MLK-YAP) expired in 2019 and is currently in holdover status. A new agreement is needed for BUSD and the City of Berkeley to jointly use facilities. BUSD and City staff have been meeting consistently over the last eight months at the direction of the BUSD Governing Board and the City Council to finalize the details of this Agreement. The proposed new agreement for the use of City Parks and BUSD elementary school playgrounds, pools, and the MLK-YAP center will establish a new Joint Use Agreement between the two entities.

Multiple facilities covered in the expiring 1991 agreement are no longer applicable because either the City has ceased to operate particular facilities or they have been repurposed by BUSD. The remaining facilities that are covered by this new Agreement are properties owned by BUSD and operated and maintained by the City of Berkeley. These properties include three pool sites (King, West Campus, and Willard), two parks (King and Thousand Oaks), and six elementary school site playgrounds that were jointly funded by BUSD and the City. This new Agreement covers these pools, parks and the MLK-YAP facility site.

RECOMMENDATION

Adopt a Resolution executing a Joint Use Agreement between the Berkeley Unified School District (BUSD) and the City of Berkeley (City) for use of BUSD playgrounds, pools and buildings and City park facilities.

Attachments:

△ Resolution 21-019

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

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

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

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

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

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

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

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

RECITALS

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

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

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

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

AGREEMENT

1. **Effective Date.** This Agreement shall be effective on January 1, 2021.
2. **City Use of District Pools and Other Facilities.**
 - a. The District hereby agrees to grant the City exclusive use of the following District facilities for the following terms:
 - i. King Junior High School pool and associated facilities located at 1700 Hopkins Street, Berkeley, California, until January 1, 2051.
 - ii. Martin Luther King Jr. Youth Services Facility (YAP) located at 1730 Oregon Street, Berkeley, California, until January 1, 2051.
 - iii. West Campus pool and associated facilities located at 2100 Browning Street, Berkeley, California, until January 1, 2026.

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

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

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

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

3. Public Use of District Elementary School Sites.

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

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

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

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

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

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

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

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

- i. King Park
- ii. Thousand Oaks Park

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

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

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

5. District Use of City Parks and Park Facilities.

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

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

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

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

6. Indemnification.

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

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

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

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

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

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

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

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

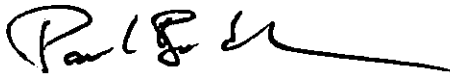
12. **Drafting of Agreement.** The parties and their respective counsel have participated in the drafting and negotiation of this Agreement. For all purposes, this Agreement shall be deemed to have been drafted jointly by all parties.

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

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

CITY OF BERKELEY

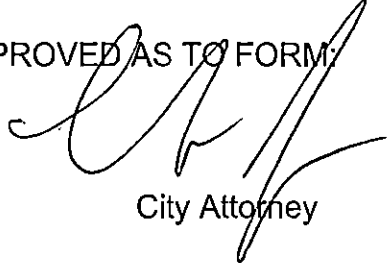
Dated: _____, 2020

By: 
City Manager

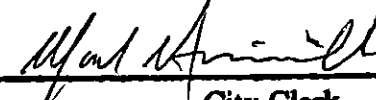
Registered on behalf of the City Auditor by:

By: 
City Clerk

By: 
Finance Department

APPROVED AS TO FORM:
By: 
City Attorney

ATTEST for the City of Berkeley


City Clerk

BERKELEY UNIFIED SCHOOL DISTRICT

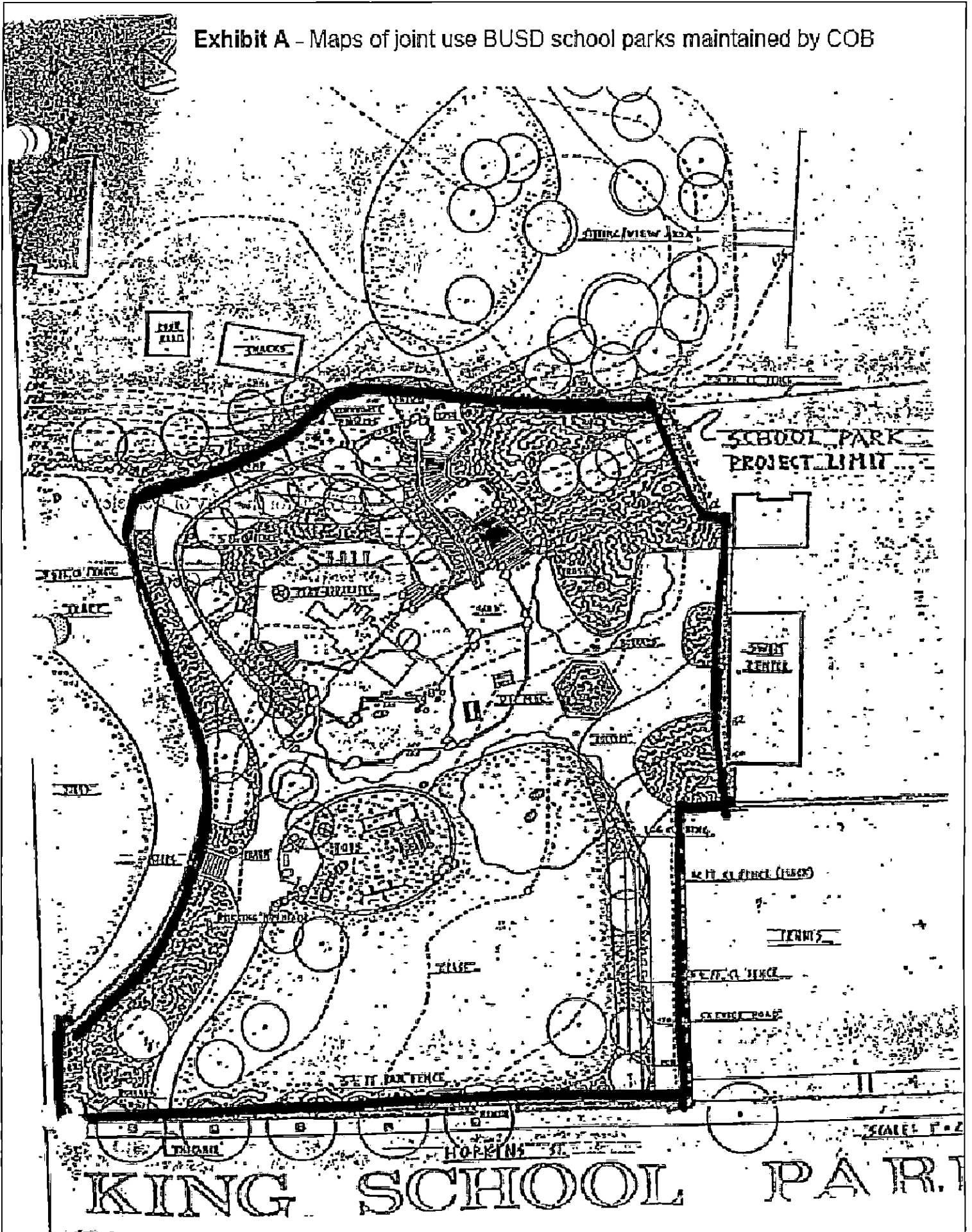
Dated: 4/7/26, 2020

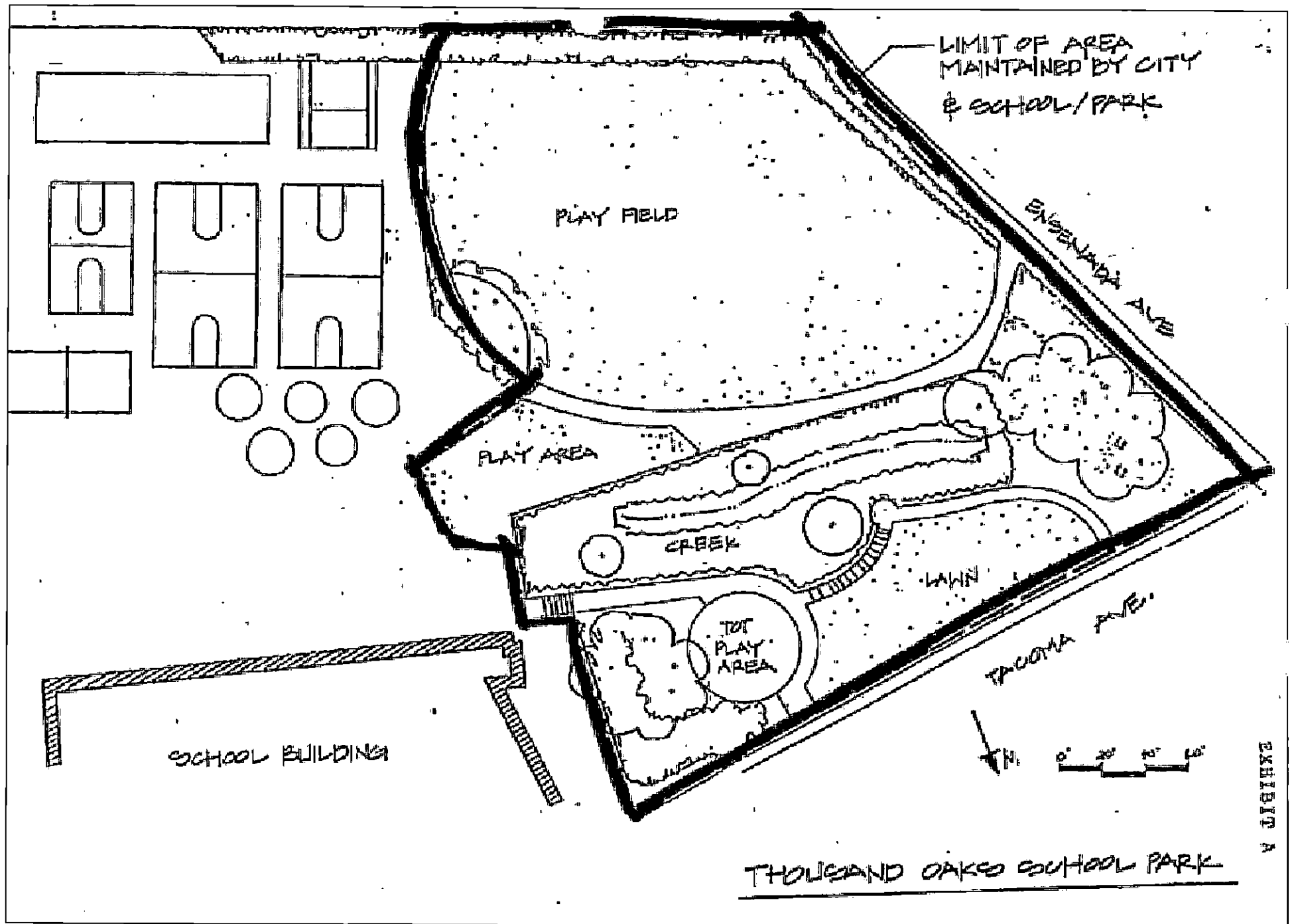
By: 


APPROVED AS TO FORM:

By:

Exhibit A - Maps of joint use BUSD school parks maintained by COB





BERKELEY PUBLIC SCHOOLS
Board of Education
1231 Addison St., Berkeley, CA 94702
510-644-6206

Official Minutes
December 9, 2020

President Judy Appel called the meeting to order at 7:00pm. She reported that the Board convened to Closed Session at 5:30pm.

Roll Call

Board of Education:

Judy Appel, President – Present
Ty Alper, Vice President – Present
Ka'Dijah Brown, Director/Clerk – Present
Beatriz Leyva-Cutler, Director – Present
Julie Sinai, Director -- Present
Miles Miller, Student Director, BHS – Present

Administration:

Brent Stephens, Ed., D, Superintendent
Baje Thiara, Associate Superintendent, Educational Services
Pauline Follansbee, Assistant Superintendent, Business Services
Samantha Tobias-Espinosa, Assistant Superintendent, Human Resources
Lyz Chairez, Recorder

OPEN SESSION

APPROVAL OF REGULAR MEETING AGENDA

Motion to approve agenda as amended:
Alper/Brown and unanimously approved 6-0.

REPORT CLOSED SESSION

President Appel reported out on closed session:

Anticipated Litigation – Regarding costs of services provided to students - Ed. Code § 54956.9, subd. (e)(2)

BUSD Case No. 202021-18

Motion to approve staff recommendation:
Alper/Leyva-Cutler and unanimously approved 5-0

BUSD Case No. 202021-19

Motion to approve staff recommendation:

Alper/Sinai and unanimously approved 5-0.

Existing Litigation -- Conference with Legal Counsel-- (Gov. Code section 54956.9(d)(1))

OAH Case No. 2020090310

Appel/Alper and approved 4-0:

Judy Appel, President – Yes

Ty Alper, Vice President – Yes

Ka'Dijah Brown, Director/Clerk – Yes

Beatriz Leyva-Cutler, Director – Yes

Julie Sinai, Director -- *Recused*

OAH Case No. 2020080773

Motion to approve staff recommendation:

Brown/Leyva-Cutler and unanimously approved 5-0.

Conference with Real Property Negotiators (Government Code Section 54956.8)

District Negotiator: John Calise; Negotiating Party: City of Berkeley; Property: Multiple Properties; Under Negotiation: Use Agreement

The Board heard an update. No action was taken.

Collective Bargaining - Government Code Section 54957.6(a) (District Negotiator: Samantha Tobias-Espinosa)

BCCE

The Board heard an update; no action was taken.

BFT

The Board heard an update; no action was taken.

LOCAL 21

The Board heard an update; no action was taken.

UBA

The Board heard an update; no action was taken.

RECOGNITION

Vice President Alper introduced this time as an opportunity to celebrate departing Directors Judy Appel and Beatriz Leyva-Cutler for their 20 collective years of service to BUSD.

Former and current colleagues, board members, the Superintendent, friends and elected officials shared words in appreciation of outgoing directors.

Board members and the Superintendent took this opportunity to make parting remarks in honor of outgoing Directors Judy Appel and Beatriz Leyva-Cutler .

Director Leyva-Cutler thanked all for sharing their thoughtful words and reflections on her 12 years on the School Board. She congratulated newly elected directors,

Laura Babitt and Ana Vasudeo. She is confident in their leadership and looks forward to their contributions to BUSD. She trusts that the new School Board will continue to keep equity at the forefront as it furthers the work to support DELAC, English Learners, immigrant students and their families, child development programs, community partners, dual immersion programs, bilingual education, adult education, Dreamers, translation services, the Office of Equity and Family Engagement, and the EL master plan. She went on to share how participating on the Student Attendance Review Board (SARB) taught her to see beyond data and numbers as she had the opportunity to listen to the student perspective concerning the number of barriers that often interrupt their education. Chronic absenteeism and truancy are areas in need of resources to more adequately support students and their families. It is her hope that the Board and BUSD will continue to work to identify and dismantle systemic barriers that get in the way of student success.

President Appel also thanked those who shared remarks on her eight years on the Board. She also thanked Director Leyva-Cutler for her words and for being a great ally around important issues in our community. She thanked the Board for its support of her during her leave of absence following her accident. She shared that she is proud of her work in support of the LGBTQ community, restorative justice and facilities. She has dedicated her career to social justice and considers her role on the board her most impactful work around social justice. She is proud of how her board colleagues represent the communities that they each are part of while standing as allies for one another's advocacy of said communities. She is confident that the new Board holds these same values and will continue this very important work.

PUBLIC TESTIMONY

A total of 15 people addressed the Board:

Two comments in support of reopening schools

One student comment thanking Directors Leyva-Cutler and Appel for their 20 years of collective service to the School Board.

One comment sharing how distance learning has negatively impacted their family, and urging the District to look at what is working in different parts of the country in support of reopening schools.

One comment in opposition to reopening due to the number of COVID related deaths.

One comment urging that science guide the District in all of its decision making, and for a viable in-person learning model.

Five comments in opposition to reopening schools.

One comment on a confirmed positive covid case at school site set to host early reopening.

Three comments in support of reopening schools.

UNION COMMENTS

BFT Vice President Janine Waddell endorsed former BFT President Cathy Campbell's remarks in appreciation of departing Directors Appel and Leyva-Cutler. She thanked them for their service to BUSD schools and the community. She also thanked the Board for bringing forth a resolution calling for teachers and classified personnel who work in person with students to be prioritized as essential workers to receive the vaccine. This will address a significant hurdle to returning to in person instruction. Ms. Waddell reported that BFT and BUSD have been meeting consistently in efforts to negotiate the schedule and terms of a possible return to in person learning. BFT is committed to representing the views of its members. The goal is to agree on a schedule that meets the needs of students who will choose to return to in person instruction and of students who opt to stay home.

BOARD MEMBER AND SUPERINTENDENT COMMENTS

Director Sinai thanked everyone who has come out tonight. She looks forward to the forthcoming discussions on Jefferson renaming and school reopening plans.

Vice President Alper thanked everyone for coming out. He also appreciated Ms. Waddell's comments in support of the resolution being presented tonight.

President Appel noted that on the consent calendar there is a request for the Board's approval of a new policy in support of transgender and gender nonconforming students. She is proud of this policy and even more proud to approve it at her very last board meeting.

CONSENT CALENDAR

Motion to approve the Consent Calendar:
Brown/Leyva-cutler and unanimously approved 6-0.

ACTION ITEMS

Approve Recommendation for Renaming Jefferson Elementary School as Ruth Acty Elementary School

Director of BSEP and Community Relations Natasha Beery and GraceKongGrace Khan walked the Board through the timeline and process that has resulted in the recommendation to replace Jefferson Elementary with Ruth Acty Elementary.

First grade teacher Nick Williams explained that a team of 8 staff members made seven different presentations teaching about each of the seven names over the course of three weeks. Students, parents and staff voted on the top three names. Ruth Acty rose to the top. Ruth Acty was the first African American teacher in BUSD where she worked for over 50 year. The naming advisory committee recommends that Jefferson Elementary be renamed Ruth Acty Elementary.

Beery added that the community has expressed interest in renaming parts of the school in honor of the other six names.

The Board expressed its appreciation of the naming committee, Ms. Beery and Ms. Kong for their work.

Motion to approve the recommendation of renaming of Jefferson to Ruth Acty: Sinai/Alper and unanimously approved 6-0.

Approval of Coordinated Comprehensive Early Intervening Services (CCEIS) Plan

Special Education Director Shawn Mansager explained that the purpose of the CCEIS plan is to improve the academic outcomes for the identified group in general education and to decrease the overrepresentation into special education. Mr. Massager provided an overview of the plan development process.

Director of Student Services Dr. Phillip Shelley went on to talk about the identified root causes to the disproportionate representation of African American students in special education. Some of the contributing factors identified included implicit bias and the underutilization of Section 504. This presentation addressed measurable outcomes and highlighted the actions and activities that will be implemented to improve programmatic systems and infrastructure.

President Appel moved to approve the current plan.

Director Sinai proposed a friendly amendment to direct staff to come back in January with an update on how culturally responsive teaching will be addressed, as well as how it will incorporate the power and asset concepts that Director Brown touched on during

the discussion. Motion was seconded by Director Brown and carried unanimously on a 6-0 vote.

President Appel proposed to change order of agenda and jump to the discussion on the phased school reopening plan.

Update on BUSH's Phased Approach to School Reopening

Dr. Stephens reported that there have been a number of confirmed COVID cases at some school sites. All of this information is tracked and accessible to the public online via the COVID-19 Dashboard. There have been a number of changes to the State's health tier system, including a return to the purple level and a continued stay-at-home order that will allow for schools that have already reopened for in-person learning to remain open. Currently, there is a 4-5 week delay between transmission and positivity rate and the possible permission to reopen schools. Dr. Stephens explained that in order for the district to be given permission to reopen its schools, 2-3 weeks in red level are required, and an additional 2 weeks of steady or declining transmission and test positivity rates are also required. January 13 continues to be the Board's target, but it is unlikely that it will be met given what the experts are saying concerning the spike as a result of Thanksgiving travel. A series of town halls have taken place and have facilitated the collection of feedback from students and families. The surveys returned helpful information and made it clear that there is a divide in perspective among the community concerning return to in person instruction. BUSD continues to work with labor partners. With respect to testing, we are currently on the second round of staff testing. The goal is to test all 1500 employees every two weeks. Student testing support is not available, nor is it required for school reopening. Comments and discussion followed.

President Appel moved to extend the meeting to 11:15pm. Director Brown seconded motion and motion carried unanimously with a 6-0 vote.

Approval of First Interim Budget Report

Assistant Superintendent Pauline Follansbee highlighted the district's positive certification, as well as its deficit spending of \$1.1 million and a \$2.3 million Undesignated fund balance. Ms. Follansbee provided a brief overview of the significant changes listed in the variance report which included COLA increase from -8 to 0. Initially additional revenue led to rescinding of cuts. Multi year projections include a budget shortfall as a result of one-time funding loss and increase in expenses. Unless additional State and Federal funding is made available, significant ongoing reductions are projected in the out years. The 2020-21 budget calendar will be presented for approval in January and the Second Interim in March.

Motion to approve the First Interim Budget Report:
Alper/Brown and unanimously approved 6-0.

LCFF Budget Overview for Parents

Ms. Follansbee explained that the LCFF budget overview for parents was created in compliance with SB 820 to provide fiscal transparency to stakeholders.

Motion to approve the LCFF Overview for Parents:

Alper/Sinai and unanimously approved 6-0.

ADJOURNMENT:

11:15pm