

**MEMORANDUM OF UNDERSTANDING
PERTAINING TO THE APPROXIMATELY 110 ACRE APS RECREATIONAL
SITE**

This Memorandum of Understanding (“MOU”) pertaining to the approximately 110 Acre Recreational Complex Site (“Recreational Site”), is entered into by and between the City of Albuquerque, a New Mexico municipal corporation (“City”), and the Albuquerque Municipal School District No. 12, Counties of Bernalillo and Sandoval, State of New Mexico, a political subdivision in the State of New Mexico, a/k/a Albuquerque Public Schools (“APS”), (City and APS are herein each a “Party” and are collectively, the “Parties”).

RECITALS

WHEREAS, on March 1, 2011, APS as contract purchaser entered into a purchase agreement with Western Albuquerque Land Holdings LLC (“Western”) to purchase the APS Recreational Site and an approximately 110 Acre High School and Middle School/Elementary School Site (“Educational Site”) located within the City limits and more generally shown on Exhibit “A” attached hereto; and

WHEREAS, the Recreational Site will be developed by APS as a stadium and other athletic facilities; and

WHEREAS, APS plans to develop and construct the Recreational Site in a phased manner over time, with the construction of a stadium, parking and other related infrastructure as phase one of the development (“Phase 1”); and

WHEREAS, APS plans to develop an elementary school, a middle school and a high school on the Educational Site; and

WHEREAS, the Recreational Site is a portion of the property shown and described on the Westland North Plat recorded in the office of the County Clerk of Bernalillo County, New Mexico on December 27, 2000 in Book 2000C, page 316 (the “Westland North Plat”); and

WHEREAS, APS is not generally subject to land use, zoning, subdivision and construction regulations, ordinances and procedures of local jurisdictions such as the City (“Local Development Approvals”), however, the City regulates access from the City’s public street system to APS property; and

WHEREAS, the entire community will benefit from the development of the Recreational Site, and the Educational Site as depicted on the attached Exhibit “A”; and

WHEREAS, the Educational Site is a portion of the property shown and described on the Watershed Subdivision Plat recorded in the office of the County Clerk of

Bernalillo County, New Mexico on June 9, 2005, in Book 2005C, page 198 (the "Watershed Plat"); and

WHEREAS, to accommodate APS' development of the Recreational Site and the Educational Site, Western has (i) contracted to sell these properties to APS and (ii) authorized APS, as an equitable interest owner, and its agent, to make or continue application to the City, as the "subdivider" to replat the properties shown on the Westland North Plat and the Watershed Plat to create the Recreational Site and the Educational Site, and to vacate portions of the Tierra Pintada right-of-way and certain public and/or private easements (the "Subdivision Actions"); and

WHEREAS, the Parties wish to expedite the platting and development of the Recreational Site and the Educational Site; and

WHEREAS, the purpose of this MOU is for the Parties to define and contractually agree on the development process and procedures associated with the site planning, platting, vacation of rights of way and easements, engineering, architecture and planning design for the Recreational Site as well as the guaranty, permitting, construction and installation of the infrastructure necessary to access and service the Recreational Site; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The Recitals are hereby restated and incorporated herein as part of this MOU.

2. Except as provided for herein no change in zoning or other land use approval is necessary for the subdivision, platting and development of the Recreational Site.

3. APS as contract purchaser of the Recreational Site, and as the "subdivider", with the consent of Western, shall submit to the City applications for the Subdivision Actions. The proposed plat for the Recreational Site is attached to this MOU as Exhibit "B" ("Recreational Site Plat").

4. APS will not request, nor will the City require, a bulk land variance for the Recreational Site because APS has not subjected itself to the City's jurisdiction regarding public infrastructure construction obligations, nor is a site plan of the Recreational Site required as a condition of the Recreational Site Plat because APS has not subjected itself to the City's site plan approval requirements. However, APS will make application to the City for a bulk land variance for the portions of the Recreational Site Plat not within the Recreational Site (the "Bulk Land Variance"). APS believes that the Bulk Land Variance is justified because the portions of the Recreational Site Plat property not within the Recreational Site shall require additional public agency review in the form of site

development plan review as required by Section 14-14-6-2(c) of the Subdivision Ordinance. However, the Bulk Land Variance decision is a "governmental decision" to be made by the City's Development Review Board following notice and public hearing.

5. Notwithstanding that APS is not subject to the City's Local Development Approvals, specifically public infrastructure construction obligations, APS agrees that in the event of acquisition of the Recreational Site by APS that public improvements necessary to serve the Recreational Site, as described in Section 6 hereof, will be constructed by APS.

6. Prior to starting, or concurrent with the construction of the Recreational Site, APS, shall construct the following infrastructure ("APS Infrastructure"):

- a. Arroyo Vista Blvd, from Ladera Drive to Tierra Pintada Blvd, Roadway infrastructure: 3 western (SB) lanes w/standard curb and gutter, median curb, 8' shoulder (44ft f-f), 10 ft bike/pedestrian path (in lieu of sidewalk).
 - b. Arroyo Vista Blvd, from Ladera Drive to Tierra Pintada Blvd, Storm Drainage infrastructure: 18"-36" storm drain lines w/inlets.
 - c. Arroyo Vista Blvd, from Tierra Pintada Blvd to west property line of Recreation Site, Roadway infrastructure: 2 southern (EB) lanes w/standard curb and gutter, asphalt median curb, 8' shoulder (32ft f-f), 10ft bike/pedestrian path.
 - d. Arroyo Vista Blvd, from Tierra Pintada Blvd to west property line of Recreational Site, Storm Drainage infrastructure: 18"-36" storm drain w/inlets.
- Roadway cross-sections will comply with the applicable portion of the Westland Sector Plan (no transit lanes at this time).
 - Water and sanitary sewer infrastructure requirements will be coordinated separately with ABCWUA.
 - Final storm drainage requirements will be per approved site/roadway drainage report.

7. In the event the Subdivision Actions are approved, no site plans, archaeological mitigation or infrastructure lists shall be required to complete or record the Recreational Site Plat. All other City regulations, processes and procedures for the approval of the Recreational Site Plat shall be required. The Recreational Plat will be reviewed and a decision by the City either approving or disapproving the Recreational Site Plat will be made at a publicly noticed hearing.

8. Prior to starting construction on the Recreational Site, APS and the City will execute a Procedure A Public Improvements Agreement ("Procedure A") in similar form to past Procedure A's executed by APS and the City. A list of the APS Infrastructure associated with the Recreational Site shall be included and attached to the Procedure A. Notwithstanding anything to the contrary, under no circumstances will APS be required to post a financial guaranty in connection with the Procedure A or the installation of the APS Infrastructure. The Procedure A will not be required to record the Recreational Site Plat.

9. APS agrees to comply with all City procedures and requirements, including archaeological mitigation (if required) to obtain: (a) City issued building permits prior to construction of each phase of construction of the Recreational Site; and (b) City issued certificates of occupancy at the end of each phase of construction of the Recreational Site. APS will provide to the City supporting plans, reports and documents required to ensure the safe development, construction and operation of the Recreational Site.

10. The City will expedite all City reviews and approvals, as well as any appeals of such reviews and approvals, of all platting and permitting procedures associated with the Recreational Site.

11. A drainage plan and report for the Recreational Site will be submitted to the City for review and approval prior to the building permit approval for the Recreational Site

12. Prior to approval of the building permit for the Recreational Site, APS will submit to the City a trip generation comparison study ("Comparison Study") between the existing and proposed land uses and an access study ("Access Study") analyzing the impacts of the Recreational Site on area traffic flows. If further analysis is required, a traffic impact study ("TIS") will be provided. The Comparison Study, Access Study and TIS will be subject to the review and approval of the City Engineer, which approval shall not be unreasonably withheld. Any City infrastructure identified in the TIS or Access Study shall be a condition of a Certificate of Occupancy for the Recreational Site.

13. The City agrees to consider an application to vacate certain utility and floodplain (drainage) easements and the Tierra Pintada right-of-way consisting of approximately 10.15 acres and the 86 foot temporary floating access easement across Parcel C and Parcel D as part of the Parcel C and D Plat Action.

14. APS agrees that the Recreational Site Plat may be conditioned by the DRB upon the sale of the Recreational Site to APS, and if so conditioned, the Recreational Site Plat shall be recorded contemporaneously with the closing of the purchase of the Recreational Site by APS.

15. This MOU shall expire one (1) year after the City engineer's acceptance of the APS Infrastructure to be dedicated to the City. Notwithstanding anything herein to the

contrary, in the event the Recreational Site Plat is not approved, or APS' contract to purchase the Recreational Site terminates without APS having purchased the Recreational Site, either Party may terminate this MOU and the Parties shall have no further rights, responsibilities or liabilities under this MOU. In the event APS or the City chooses to terminate this MOU pursuant to this Paragraph 15, APS shall cause the Recreational Site Plat to be withdrawn as a condition to termination of the MOU.

16. Nothing in this MOU shall be construed (i) to waive any rights, claims or defenses asserted heretofore or hereafter by any of the Parties or (ii) to require APS to install infrastructure improvements to standards and conditions more restrictive or intensive than the City's current standards and conditions or (iii) to require APS to complete platting and/or entitlement processes or procedures that are more restrictive or intensive than the City's current platting and entitlement process and procedures.

17. All notices and other communications under this MOU shall be in writing and shall be deemed duly given: (a) when delivered personally or by prepaid overnight courier, with a record of receipt, (b) the third day after mailing, if mailed by certified mail, return receipt requested, (c) the day of transmission, if sent by facsimile or telecopy during regular business hours or the day after transmission, if sent after regular business hours, provided that, in either event, the completed transmission is electronically verified, or (d) the day of transmission, if sent electronically, if there is proof of receipt on the day of transmission or the first day thereafter on which receipt can be verified, to the Parties at the following addresses, telecopy number, or e-mail addresses (or to such other address, telecopy number, or e-mail address as a Party may have specified by notice given to the other Party pursuant to this provisions):

If to the City: Robert J. Perry
Chief Administrative Officer
City of Albuquerque
City / County Bldg. – 11th Floor
Albuquerque, NM 87102
Facsimile: (505) 768-3019
Telephone: (505) 768-3000
E-mail: rjperry@cabq.gov

With a copy to: Robert Kidd
Acting City Attorney
City of Albuquerque
One Civic Plaza, NW
City / County Building
4th Floor, Room 4015
Albuquerque, NM 87102
Facsimile: (505) 768-4525
Telephone: (505) 768-4500
E-mail: rkidd@cabq.gov

Richard Dourte
City Engineer
600 2nd Street NW
Suite 201
Albuquerque, NM 87102
Facsimile: (505) 924-3864
Telephone: (505) 924-3999
E-mail: rdourte@cabq.gov

If to APS: Albuquerque Public Schools
P.O. Box 25704
Albuquerque, New Mexico 87125-0704
Attention: Winston Brooks, Superintendent
Facsimile: (505) 872-8855
Telephone: (505) 880-3706
E-mail: superintendent@aps.edu

With copies to: Martin W. Eckert
Real Estate Department
915 Locust St. S.E. Room 8
Albuquerque, New Mexico 87106
Facsimile: (505) 768-1583
Telephone: (505) 765-5950 ext 265
E-mail: eckert_m@aps.edu

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Albuquerque, New Mexico 87103-2168
Facsimile: (505) 848-1891
Telephone: (505) 848-1820
E-mail: rschifani@modrall.com

18. This MOU may be executed in one or more counterparts, including facsimile counterparts, each of which shall be a fully binding and enforceable contract and agreement against the party signing such counterpart, but all such counterparts shall together constitute but one agreement.

19. This MOU may be amended, upon mutual agreement of the Parties, by written agreement executed by each of the Parties.

20. The Parties agree to hereafter negotiate and enter into such further and more definitive mutually acceptable agreements, as may be necessary, to effectuate the transactions contemplated by this MOU.

21. This MOU is signed, sealed, executed and delivered by the Parties as of the date indicated next to the respective signatures below, with the "Effective Date" to be the date of the last signature affixed hereto.

22. If a Party fails to perform its obligations under this MOU, a non-breaching Party may provide written notice describing the breach and requesting that the breaching Party cure the breach within no more than thirty (30) days from the date of the written notice. If the breaching party does not cure the breach within the time period provided in the written notice, the Party giving the written notice may request termination of this MOU upon not less than ten (10) days' prior written notice to the other Parties to this MOU. In the event the other Party agrees in writing with the requested termination, this MOU shall terminate and the Parties shall have nor further rights, responsibilities or liabilities under this MOU. If the Parties do not agree the dispute shall be referred to non binding mediation.

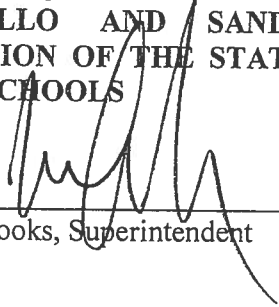
IN WITNESS WHEREOF, the Parties hereto hereby execute this MOU in multiple originals:

CITY OF ALBUQUERQUE
A New Mexico municipal corporation,

By:  _____
Robert J. Perry, Chief Administrative Officer

Date: 8/26/11

ALBUQUERQUE MUNICIPAL SCHOOL DISTRICT NO. 12, COUNTIES OF BERNALILLO AND SANDOVAL, NEW MEXICO, A POLITICAL SUBDIVISION OF THE STATE OF NEW MEXICO A/K/A ALBUQUERQUE PUBLIC SCHOOLS

By:  _____
Winston Brooks, Superintendent

Date: August 26, 2011

WJ
8/26/11
JP
8-26-11

BDG

Exhibit "A"
Recreational Site and Educational Site

