

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF MINNEAPOLIS
AND
SPECIAL SCHOOL DISTRICT NO. 1
FOR CITY CONSULTING SERVICES TO ASSIST
THE SALE OF EXCESS SCHOOL PROPERTY**

1. INTRODUCTION:

The City of Minneapolis ("CITY"), acting through its Community Planning and Economic Development (CPED) Department, and the Special School District No. 1 ("SSD1"), as of _____, 2009, enter into this Agreement so that the CITY can assist SSD1 in the disposition of excess school property. This Agreement describes the services the CITY will provide to SSD1 related to the disposition of the Howe and Northrop school sites (the "Project"). This Agreement does not discuss other Project related tasks that are contemplated by the CITY and/or SSD1 to be completed by other parties, such as the eventual buyer of either school site, including but not limited to, completing additional property analyses and the public development review process.

2. TIME OF PERFORMANCE:

The time of performance of this agreement shall commence as of the date of this Agreement and continue until the earlier of (i) the date when all of the services to be performed by the City as herein described are completed; or (ii) the effective date the Agreement is terminated as provided in Section 12 herein; or (iii) July 31, 2009.

3. CONTACT PERSON

For all communications and notices associated with the Agreement, the respective contact persons shall be as noted.

For SSD1, the contact person is:

David Richards, Manager
Planning Engineering and Real Estate
807 NE Broadway

Minneapolis, MN 55413
Telephone: 612-668-0300 Fax: 612-668-0275
E-mail: david.richards@mplsk12.mn.us

For CITY, the contact person is:

Wesley Butler, Manager
CPED Multifamily Division
105 5th Ave. S., Suite 200
Minneapolis, MN 55401
Telephone: 612-673-5194 Fax: 612-673-5248
E-mail: wesley.butler@ci.minneapolis.mn.us

4. CITY AGREES TO:

- 4.1. Undertake the CPED responsibilities shown on the attached **Exhibit A**.
 - a. It is anticipated that a fully executed purchase agreement will be completed by February 28, 2009.
 - b. The Closing Date for both the Howe and Northrop school sites must occur within 90 days after the full execution of a purchase agreement or agreements subject to unavoidable delays and the completion of the General Land Use Application process as guided by Chapter 525 of the Minneapolis Zoning Code by the respective developer or developers of the Howe and Northrop school sites.
- 4.2. Monitor the disposition costs and notify SSD1 if the costs are anticipated to exceed those costs described in **Exhibit A**.
- 4.3. Provide City staff representation at all Project meetings where necessary.

5. SSD1 AGREES TO:

- 5.1. Provide CITY with copies of the development proposals and all related correspondence.
- 5.2. Pay all invoices submitted by CITY or directly from consultants for costs of services associated with the use of qualified consultants as described in Section 6, and other expenses incurred by the CITY that are directly related to the sale of excess public property within 35 days of submission.
- 5.3. Provide timely approvals and appropriate direction to CITY.
- 5.4. Provide SSD1 staff representation at all meetings where necessary.

5.5. Provide pertinent background documents related to the Community Asset Development Process as it relates to the Howe and Northrop school sites.

5.6. Provide available background information on the features, use and operation of the Howe and Northrop school sites including but not limited to the following:

- a. Prior applicable SSD1 Board actions;
- b. Property disclosures;
- c. Property maintenance and repair logs and summaries;
- d. Property operational cost information;
- e. Property explorations and analyses;
- f. Property title insurance policy information, property title and/or deed information, and related title work information;
- g. Existing property surveys, legal descriptions, site plans, architectural drawings and related sketches; and
- h. Disposition of all personal property on premises.

5.7. Provide purchase agreement template in an electronic format that is compatible with Microsoft Word.

5.8. Execute right of entry permits to provide access to each school site for site investigation.

5.9. Arrange for release of each school site from bonds, loans, liens, grants and other encumbrances to title.

5.10. Cancel any existing leases and contemplated lease documents related to potential future tenants.

5.11. Prepare closing documents and related due diligence.

5.12. Schedule and attend closing for each property.

5.13. Complete seller's post-closing duties.

6. FEES FOR SERVICE:

CITY staff will record time spent on the project at the applicable CITY hourly rate per staff position in effect at the time the work is performed by CITY staff. This rate will include benefits and indirect costs. SSD1 shall make payments to CITY within thirty-five (35) calendar days after submission by the CITY or qualified professional of a monthly invoice or disbursement request to SSD1 for payment of administrative and professional costs as described more fully below.

The responsibilities described in Exhibit A do not contemplate the CITY using outside consulting professionals not directly employed by the CITY. However, in those instances where the CITY elects to use qualified outside professionals, the CITY will provide SSD1 with a preliminary written scope of services describing the specific tasks and estimated fee. SSD1 will promptly review the draft scope of services with a fee and within 30 calendar days SSD1 will either (1) approve the draft scope and fee as presented, authorize the CITY to execute an agreement to receive the specified services and SSD1 will pay invoices submitted by the CITY or outside professionals within 35 days; or (2) request modifications to the draft scope and fee so a future draft may be approved; or (3) deny the draft scope and fee.

The CITY's estimate on the number of hours plus the professional services costs for the project is attached as **Exhibit A**. Total reimbursable costs to the CITY will not exceed \$19,994.90 (232 hours billed at \$86.18 per hour on average) plus the mutually agreed upon costs of outside professional services provided by qualified outside professionals at the expense of a party other than the CITY. The invoice or disbursement requests from the CITY will be provided monthly to SSD1 and will include the number of hours spent on this project by CITY staff and a supplemental narrative summarizing the tasks that are associated with the hours being billed. The amount due during each billing period will be calculated by multiplying the number of total hours spent on the project by the average hourly rate described above.

Additional expenditures beyond this initial estimate will require an amendment to this Agreement executed by the CITY and SSD1. The services described herein are above and beyond the standard services and procedures that are related to the processing of a complete General Land Use Application as guided by Chapter 525 of the Minneapolis Zoning Code.

7. DATA PRIVACY:

CITY and SSD1 agree to abide by all applicable state and federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and/or data including but not limited to information made nonpublic by such laws or regulations.

8. RECORDS-AVAILABILITY:

CITY agrees that SSD1, the State Auditor, or any of their duly authorized representatives at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of the CITY and involve the Project transactions relating to this Agreement.

9. MERGER AND MODIFICATION:

- 9.1. It is understood and agreed that the entire Agreement between the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and are deemed to be a part of this Agreement.
- 9.2. Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties hereto.

10. DEFAULT AND CANCELLATION:

If either party fails to perform any of the provisions of this Agreement or so fails to administer the work as to endanger the performance of the Agreement, this shall constitute a default. In such case, the Agreement may be cancelled as provided for herein.

11. INDEPENDENT CONTRACTOR:

CITY shall select the means, method, and manner of performing the services herein. Nothing is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the CITY as the agent, representative or employee of the SSD1 for any purpose or in any manner whatsoever. CITY is to be and shall remain an independent contractor with respect to all services performed under this Agreement. Any and all personnel of CITY or other persons while engaged in the performance of any work or services required by CITY under this Agreement shall have no contractual relationship with the SSD1, and shall not be considered employees of the SSD1. Any and all claims that may or might arise under the Minnesota Economic Security Law or the Workers' Compensation Act of the State of Minnesota on behalf of said personnel, arising out of employment or alleged employment, including, without limitation, claims of discrimination against CITY, its officers, agents, contractors, or employees shall not be the responsibility of the SSD1. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the SSD1, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Re-employment Insurance, disability, severance pay, and PERA.

12. CANCELLATION:

This Agreement may be cancelled by either party, with or without cause, upon thirty (30) days written notice to the other party. In the event of cancellation, CITY shall be paid for all outstanding costs that have been performed to the date of the cancellation. This Agreement may be amended at any time by agreement of both parties.

The CITY, having signed this Agreement, and the SSD1 Board having duly approved this Agreement on the ____ day of _____, 2009 and pursuant to such approval, the proper SSD1 officials having signed this contract, the parties hereto agree to be bound by the provisions herein set forth.

THE CITY OF MINNEAPOLIS (CITY)

**SPECIAL SCHOOL DISTRICT NO. 1
(SSD1)**

By: _____
Charles T. Lutz
CPED Deputy Executive Director

By:  _____

Title: Chief of Policy & Operations

Approved as to form:

Assistant City Attorney

And: _____

Title: _____

ATTEST: 
Clerk of SSD1 Board

