

10-R-0060

(Do Not Write Above This Line)

A RESOLUTION BY COMMUNITY DEVELOPMENT/
HUMAN RESOURCES COMMITTEE

A RESOLUTION AUTHORIZING THE MAYOR OR HIS
DESIGNEE, ON BEHALF OF THE CITY OF ATLANTA,
TO ENTER INTO A JOINT OPERATING AGREEMENT
WITH THE ATLANTA INDEPENDENT SCHOOL SYSTEM
("AISS") SETTING FORTH THE TERMS OF AISS'
AND THE CITY'S UTILIZATION OF THE MARTIN
LUTHER KING, JR. RECREATION CENTER; AND FOR
OTHER PURPOSES.

AS AMENDED

ADOPTED BY

JAN 19 2010

COUNCIL

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee _____
 Date _____
 Chair _____
 Referred to _____

Committee DDA
 Date 1/12/10
 Chair Joyner
 Action: Refer
 Fav, Adv, Hold (see rev. side)
 Other: no friends
 Members [Signature]
 Refer To _____

Committee _____
 Date _____
 Chair _____
 Action: _____
 Fav, Adv, Hold (see rev. side)
 Other: _____
 Members _____
 Refer To _____

FINAL COUNCIL ACTION
 2nd
 1st & 2nd Readings
 Consent
 V Vote
 RC Vote

CERTIFIED

JAN 19 2010

[Signature]

RECEIVED
JAN 19 2010

[Signature]
MUNICIPAL CLERK

MAYOR'S ACTION

[Signature]

**AN AMENDED RESOLUTION BY
COMMUNITY DEVELOPMENT/HUMAN RESOURCES COMMITTEE:**

A RESOLUTION AUTHORIZING THE MAYOR OR HIS DESIGNEE, ON BEHALF OF THE CITY OF ATLANTA, TO ENTER INTO A JOINT OPERATING AGREEMENT WITH THE ATLANTA INDEPENDENT SCHOOL SYSTEM ("AISS") SETTING FORTH THE TERMS OF AISS' AND THE CITY'S UTILIZATION OF THE MARTIN LUTHER KING, JR. RECREATION CENTER; AND FOR OTHER PURPOSES.

WHEREAS, the Martin Luther King Jr. Recreation Center, located at 90 Boulevard NE, Atlanta, Georgia (the "Center") is owned by the City of Atlanta; and

WHEREAS, currently the Atlanta Independent School System ("AISS") and the City of Atlanta both utilize the Center. The City utilizes the Center for after-school, weekend, holiday, and summer youth programming. AISS utilizes the Center during school hours; and

WHEREAS, despite AISS' and the City's joint use of the Center, no written agreement regarding such use has been executed; and

WHEREAS, it is in the City's best interest to continue utilizing the Center, and to have the terms of said use set forth in an executed agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1. The Mayor or his designee, on behalf of the City, is hereby authorized to enter into a Joint Operating Agreement with AISS (the "Agreement") that is substantively similar to the agreement attached hereto as Exhibit "A". The Agreement shall set forth the conditions of the City's and AISS' shared use of the Martin Luther King, Jr. Recreation Center. AISS shall owe no rent to the City for use of the Center, but shall contribute toward certain costs of operating the Center as described in the Agreement, including without limitation the cost of AISS' utility use. The Agreement shall be for a term of ten (10) years, with an option for additional terms of three (3) years upon the mutual consent of the Parties.

SECTION 2. The City Attorney is hereby directed to prepare said Agreement for execution by the Mayor, to be approved as to form by the City Attorney or her/his designee.

SECTION 3. This Agreement shall not become binding on the City of Atlanta, and the City of Atlanta shall incur no liability upon the same until such Agreement has been approved by the City Attorney or her/his designee as to form, executed by the Mayor, attested to by the Municipal Clerk and delivered to AISS.

A true copy


Deputy Clerk

ADOPTED as amended by the Council
APPROVED by Mayor Kasim Reed

JAN 19, 2010
JAN 27, 2010



JOINT OPERATING AGREEMENT

MARTIN LUTHER KING, JR. RECREATION CENTER

THIS JOINT OPERATING AGREEMENT ("Agreement") is made and entered into as of this ___ day of _____, 2010, by and between THE ATLANTA INDEPENDENT SCHOOL SYSTEM (the "AISS") and THE CITY OF ATLANTA, GEORGIA (the "City").

RECITALS

WHEREAS, title to the property described on **Exhibit "A"** attached hereto (the "Property") is currently held in the name of the City of Atlanta, and said Property has an improvement thereon known as the Hope or Martin Luther King Jr. Recreation Center, or as used and defined below, the "Facility"; and

WHEREAS, the City and the AISS both paid for the construction of the Facility; and

WHEREAS, the construction of the Facility is complete; and

WHEREAS, the total cost of construction of the Facility was Three Million Eight Hundred and Eighty-seven Thousand and Nine Hundred and Sixty-three and 00/100 Dollars (\$3,887,963.00); and

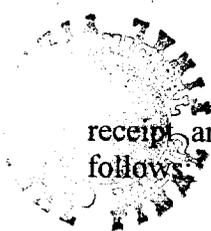
WHEREAS, the City paid One Million Nine Hundred Thousand and 00/100 Dollars (\$1,900,000.00) for the construction of the Facility and the AISS paid One Million Nine Hundred Eighty-seven Thousand and Nine Hundred and Sixty three and 00/100 Dollars (\$1,987,963) for the construction of the Facility; and

WHEREAS, the Parties wish to enter into a Joint Operating Agreement for the purpose of setting forth certain rights and responsibilities with respect to the Property, allocating resources and uses of the Facility, and providing for certain other agreements, all as set forth below; and

WHEREAS, by Resolution approved by the City Council of Atlanta on the ___ day of ___, 2010, approved by the Mayor on the ___ day of ___, 2010, the Mayor is authorized on behalf of the City to enter into this Joint Operating Agreement, a true copy of which Resolution is attached hereto as **Exhibit "B"** and made a part hereof by reference.

WHEREAS, at its _____ legislative meeting, the Board of Education of the City of Atlanta authorized the AISS to enter into this Joint Operating Agreement with the City of Atlanta, and a true copy of said authorization is attached hereto as **Exhibit "C"** and made a part hereof by reference.

NOW, THEREFORE, for and in consideration of the covenants, representations, warranties and agreements set forth herein, and other good and valuable consideration, the



receipt and sufficiency of which are hereby acknowledged, the Parties hereto do agree as follows

ARTICLE I

Definitions

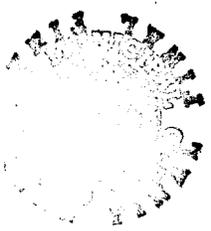
Unless otherwise expressly provided herein, when used in this Agreement, and when capitalized in this Agreement as they are in this Article I, the following words, phrases and terms, shall mean and have reference to the definition set forth below:

“AISS’ Hours of Use” means the time during which the AISS shall have exclusive use of the Facility as described in section 4.1.1 below, said times being specifically 7:30 a.m. to 3:00 p.m., Monday through Friday during the School Year, with the exception of AISS vacation days, as listed in the official Atlanta Public Schools Calendar, including but not limited to the Thanksgiving break, winter break, and spring break. In the event the AISS should ever change its hours of school operations on a system-wide basis (not including the days on which school is regularly held or the seasons during which school is held), AISS shall provide the City with at least sixty days notice prior to the implementation of the change, and said AISS’ Hours of Use shall automatically, without need for amendment hereto, be adjusted to include such revised system-wide hours of school operations. In the event AISS should ever change the days on which school is regularly held or the seasons during which school is held, AISS will notify the City and the parties agree to negotiate, in good faith, an amended agreement.

“Broom Clean” means that all dry debris and trash are removed from the building, all floors are swept, all carpets are vacuumed, and all restrooms are cleaned.

“City Storage Area” means that certain space located in the Facility that has been designated as Room 102, G02, G07, G10, and G04 on Exhibit D, attached hereto and incorporated herein by reference, and of which the City will have exclusive use.

“City’s Hours of Use” means the time during which the City shall have exclusive use of the Facility as described in section 4.1.1 below, said times being specifically: 7:00 a.m. through 9:00 p.m., Monday through Sunday during the Summer; 3:01 p.m. through 8:00 p.m., Monday through Friday during the School Year; 10:00 a.m. through 6:00 p.m. Saturdays and Sundays during the School Year; and 10:00 a.m. through 9:00 p.m. on AISS vacation days, as listed in the Official Atlanta Public Schools Calendar, during the School Year, including but not limited to the Thanksgiving break, winter break, and spring break. In addition, the City shall have the right to use and rent the Facility from 6:00 p.m. Friday nights until 3:00 a.m. Saturday mornings, and from 6:00 p.m. Saturday nights until 3:00 a.m. Sunday mornings throughout the year. AISS shall not have the right to rent the Facility to third parties during these time periods, but may use the Facility during these times if the Facility is available.



“Commissioner” means the Commissioner of the City of Atlanta Department of Parks, Recreation and Cultural Affairs, or her/his designee.

“Exclusive Space” means any and all areas in the Facility where either the City or the AISS has the exclusive right to utilize the area at all times, even during the City’s Hours of Use and the AISS’ Hours of Use.

“Facility” means the approximately 29,036 square foot building, commonly known as the Martin Luther King Jr. Recreation Center, located on the Property.

“Gymnasium” means that certain space located in the Facility that has been designated as Room G03 on Exhibit D, attached hereto and incorporated herein by reference.

“Hours of Use” means the City’s Hours of Use and/or the AISS’ Hours of Use, as determined by the context in which the term arises.

“Kitchen” means that certain space located in the Facility that has been designated as Room 104 on Exhibit D, attached hereto and incorporated herein by reference, and of which the City will have exclusive use.

“Media Center” means the certain rooms, office space, and storage closets located in the Facility that have been designated as Rooms 113, 114, 115, 116, 117, and 121 on Exhibit D, attached hereto and incorporated herein by reference, and of which AISS will have exclusive use.

“Multi-purpose Meeting Room” means that certain space located in the Facility that has been designated as Room 103 on Exhibit D, attached hereto and incorporated herein by reference, and of which the City will have exclusive use. The AISS will be able to use the space for special events and meetings when coordinated through and approved by the principal, and either the Commissioner or the Director of the Office of Recreation or one of their designees.

“Music Room” means that certain space located in the Facility that has been designated as Rooms 110, 111, and 112 on Exhibit D, attached hereto and incorporated herein by reference, and of which AISS will have exclusive use.

“Party” or “Parties” means the City of Atlanta and/or the AISS, as determined by the context in which the term arises.

“Premises,” means, collectively, the Property and the improvements thereon, including but not limited to the Facility. The Premises is held in the name of the City of Atlanta.

“Shared Space” means any and all areas in the Facility where neither the City nor the AISS has the exclusive right to utilize the area at all times, and the time during which



either Party has the right to utilize the space shall be determined as set forth in section 4.1.1 below.

“School Year” means the period of time beginning two weeks prior to the regularly scheduled commencement of classes of each year, and ending one week after the regularly scheduled ending of classes each year, provided that, in the event that this span of time is longer than forty-five weeks, the definition of “School Year” shall be modified, as agreed upon by Principal, AISS Director of Facilities, and the Commissioner, by February 1 of the applicable school year, to provide the City with at least seven weeks of Summer Hours of Use.

“Special Use Permit” means the City of Atlanta form titled “Permit For Use of City Building”, distributed by the Department of Parks, Recreation and Cultural Affairs.

“Summer” means the period of time in the year outside of the School Year, as defined above.

ARTICLE II

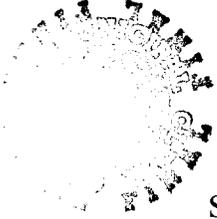
Payment

Payment of City and AISS Contribution. AISS acknowledges that it received the City’s payment of One Million Nine Hundred Thousand and 00/100 Dollar (\$1,900,000.00) toward the cost of construction of the Facility in January 2003, and that AISS applied said payment toward the cost of construction of the Facility. The City acknowledges that AISS paid One Million Nine Hundred Eighty-seven Thousand and Nine Hundred and Sixty three and 00/100 Dollars (\$1,987,963) toward the construction of the Facility.

ARTICLE III

Term

This Agreement shall be for a term of ten (10) years, commencing on the 1st day of July, 2009. The Parties anticipate that the shared use of the facility will be indefinite, based on the shared cost. Accordingly, this Agreement may be extended for additional terms of three (3) years each, upon mutual agreement between the Parties hereto and upon adoption of appropriate authorizing legislation by each. The Parties agree to negotiate in good faith for an extension of this Agreement prior to the expiration hereof.



ARTICLE IV

Use of Improvements

Section 4.1. Exclusive vs. Shared Space.

- 4.1.1 The City and the AISS acknowledge and agree that, with the exception of those areas of the Facility that are listed in this paragraph and/or in Article I above as being Exclusive Space, the Facility shall be deemed Shared Space. The AISS shall have the exclusive right to use the Shared Space during the AISS' Hours of Use for the duration of the Term, and the City shall have the exclusive right to use the Shared Space during the City's Hours of Use during the Term. The City and the AISS acknowledge and agree the Kitchen, the Multi-purpose Meeting Room, and the City Storage area shall be the City's Exclusive Space, whereby the City shall have an exclusive right to use the space at all times. Likewise, the Media Center and the Music Room shall be the AISS' Exclusive Space, whereby the AISS shall have an exclusive right to use the space at all times. In addition, the entire downstairs of the Facilities shall be the City's Exclusive Space, whereby the City shall have the exclusive right to use the space at all times, with the exception of the Gymnasium, and the rest rooms, which shall be deemed Shared Space.
- 4.1.2 Section 4.1.1 notwithstanding, the AISS and the City acknowledge and agree that due to the size and configuration of the Facility, there may be times that different areas of the Facility can be utilized simultaneously by the Parties hereto without imposing an undue burden or otherwise interfering with the Party holding exclusive use rights during such time. Accordingly, each Party agrees that they shall act in good faith in processing requests by the other for use of the Facility during their Hours of Use and, to the extent such requested use would not materially interfere with the intended use of the Facility by the Party receiving the request, shall grant such request. These requests for use shall include but are not limited to requests by the AISS to utilize the Facility for summer school during the Summer, and to the extent such requested use would not materially interfere with the City's intended use of the Facility, the City shall grant such request. As to those hours falling outside of both Parties' respective Hours of Use, each Party shall have a right to use the Facility; provided, however, in the event both Parties desire to use the Facility during any such hours, the Parties agree to negotiate and cooperate in good faith in an effort to prioritize such usage based upon the overall benefits to the community at large which might reasonably be expected as a result of such respective usage.
- 4.1.3 In relation to each Party's agreement to cooperate in good faith toward the shared use of the Facility, each Party agrees to provide the other on at least a bi-annual basis on or before August 15th and November 15th of each year a generalized schedule indicating such Party's times of use of the Facility as well as any special events of which the Party is aware at that time which fall outside of the Party's



normal Hours of Use. In addition to the schedule exchange occurring each August, the Parties shall provide each other with a tentative schedule of use on or before June 15th. Furthermore, each Party acknowledges and agrees that they shall cooperate with each other in generating and updating administrative guidelines addressing the day-to-day usage of the Facility by the Parties.

- 4.1.4 Each Party acknowledges and agrees that all proposed usage of the Shared Space will be supervised at all times by the party authorizing the use. There shall not be any unsupervised activities in the Facility at any time. The party authorizing shall be responsible for security being provided for the activity.
- 4.1.5 Each Party hereby grants and conveys to the other, for the benefit of its employees, agents, students and invitees, a non-exclusive easement of access, ingress, egress and use for the term of this Agreement over the Property and in and to the Facility for the purposes set out herein.
- 4.1.6 Each Party acknowledges and agrees that following its Hours of Use of the Facility, it shall store any and all recreational and athletic equipment owned by it within its respective Storage Area.
- 4.1.7 The Parties acknowledge that the City is not required to provide janitorial services after its Hours of Use Monday through Friday during the School Year. In addition, there may be other times when one of the Parties utilizes the Facilities, or some portion thereof, and is not required to provide janitorial services at the conclusion of its use. Without waiving the requirements of section 6.5.2 below, both Parties agree that, at the conclusion of their use of the Facilities, or any portion thereof, they shall leave the Facilities in a broom clean condition, though other than the times set forth in section 6.5.2 and Article XI below, they need not provide janitorial services.
- 4.1.8 AISS shall have the right to use of the playing fields during their Hours of Use. In the event that the AISS elects to utilize the playing fields during one or more of those times, its use shall be confirmed via a Special Use Permit issued by the Commissioner within five business days of the AISS' request.

Section 4.2 Compliance with Laws. The AISS and the City shall take such reasonable measures as are necessary to assure that the Facility is maintained, improved, managed, operated, and utilized in material compliance with all applicable laws, ordinances, rules, orders and regulations.

ARTICLE V

Alterations to the Improvements

Section 5.1 Ownership of Improvements. The AISS acknowledges and agrees that the Facility shall be titled in and owned by the City at all times.

Section 5.2 Alterations and Additions. The City shall have the right at any time and from time to time during the term of this Agreement to make alterations and/or additions to the Facility, and to temporarily close all or any portion of the Facility to facilitate the construction of such alterations and/or additions, provided that: 1) the City provides the then principal of the Hope Elementary School with no less than two weeks advance written notice of work being performed on or in the Facility that may impact the AISS' use of the Facility; 2) the work being performed on or in the Facility does not cause the AISS to have to relocate some or all of its Facility activities for more than one week; and 3) such alterations and/or additions do not materially adversely affect the overall quality or functionality of, or the AISS' ability to utilize the Facility. In performing such alterations and/or additions, the City will use reasonable efforts to minimize any interference with the AISS' programs being conducted at the Facility. In the event that the work being performed causes the AISS to have to relocate some or all of its Facility activities for more than one week, the City shall submit its alteration and/or addition construction plans to the AISS for review and approval. The AISS and the City shall work cooperatively to find a manner and time of performing the construction that is acceptable to both Parties. The City shall not begin said construction until after the then principal of the Hope Elementary School and the Director of Facilities Services approves said work in writing.

Section 5.3 Right to Remove Trade Fixtures. Each Party may, at its option and at its sole cost and expense, at any time and from time to time, install and remove from the Facility trade fixtures, equipment, furniture and furnishings owned by it; provided, however, the Party so removing said items must repair any and all damage to the Facility occasioned thereby.

ARTICLE VI

Utilities and Janitorial Services

Section 6.1. Each Party acknowledges and agrees that it shall limit its usage of all utility services to that which is reasonably necessary to conduct its activities within the Facility.

Section 6.2. The City agrees to provide water, gas, electric and sewer services to the Premises, subject to the AISS' reimbursement of the City for its pro rata share of the cost of such services as set forth below in this Section 6.

Section 6.3. The AISS' pro rata share of the cost of providing the water, gas, electric, and sewer services to the Premises shall be 50% of the total cost during the School Year and 20% of the total cost during the Summer of each year. In the event that the AISS utilizes the Facility for summer school, pursuant to Section 4.1.2 above, the AISS' pro rata share of the cost of providing the water, gas, electric, and sewer services to the Premises during any such Summer shall be 40% rather than 20%.



Section 6.4. The AISS agrees that it shall pay uncontested invoices for its pro rata share of such utility service costs within thirty (30) days of the date it receives the bill for said services. The City shall be entitled to bill the AISS for the AISS' pro rata share of such costs, in arrears, but no more frequently than quarterly. All City invoices shall provide the AISS with evidence of the actual cost of such services, and will include supporting documentation, including any supporting documentation reasonably requested by the then principal of the Hope Elementary School or the Director of Facilities. Where the AISS questions or challenges any invoice, the AISS shall submit payment to the City within thirty (30) days after the AISS and the CITY reach agreement regarding the amount owed, said agreement to be memorialized by letter from the AISS to the City.

Section 6.5. Janitorial Services. In addition to the above, janitorial service for the Facility shall be provided by the Parties as follows:

- 6.5.1 The AISS, exclusively, will provide year round, at its sole cost and expense, the janitorial services for the AISS' Exclusive Space, and specifically the Media Center and Music Room. The City, exclusively, will provide year round, at its sole cost and expense, the janitorial services for the City's Exclusive Space, and specifically the Kitchen, the Multi-purpose Meeting Room, the City Storage Area, and the downstairs area of the Facility with the exception of the Gymnasium and the rest rooms. Janitorial Services for the Exclusive Space shall be provided at a minimum of once per week, and the Exclusive Space shall be in a Broom Clean condition at the conclusion of each Party's Hours of Use.
- 6.5.2 On Monday through Friday during the School Year, the AISS shall provide, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Shared Space, such that the Shared Space is left in a Broom Clean condition prior to the commencement of the City's Hours of Use.
- 6.5.3 On Saturdays and Sundays during the School Year, the City shall provide, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Shared Space, such that the Shared Space is left in a Broom Clean condition prior to the commencement of the AISS' Hours of Use.
- 6.5.4 During the Summer, the City shall provide, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Shared Space, except that in the event that the AISS utilizes the Facility for summer school, pursuant to Section 4.1.2 above janitorial services shall be provided by the Parties as they are provided during the School Year, as set forth in sections 6.5.2 and 6.5.3 above.

ARTICLE VII

Repairs and Maintenance

Section 7.1 Condition of Premises. The City acknowledges and agrees that it shall, throughout the Term of this Agreement, maintain the Premises in a good, tenantable and safe condition and shall promptly make any and all repairs and replacements required to maintain such condition. This duty shall include, but not be limited to performing routine upkeep and maintenance of all of the outdoor areas of the Premises so that they remain in a safe and attractive condition.

Section 7.2 Repairs and Maintenance. The AISS shall have the obligation of advising the City in a timely manner of the need for any repair, maintenance, or restoration that comes to its attention. The AISS shall notify the City of a need for repair or restoration by contacting the Department of Parks, Recreation and Cultural Affairs Work Order Desk (404.817.6813) via telephone, and requesting the repair and/or maintenance work as needed.

7.2.1 In the event that a problem needing repair creates a safety or health hazard, the repair shall be deemed an emergency, and the City shall use a good faith effort to repair the problem within three (3) hours of receiving notice thereof if it has the financial resources available to do so, as determined by the Commissioner at her/his sole discretion. Where the City is unable to eliminate the hazard, either because it cannot make the repair for financial reasons, or because it cannot find an immediate solution to removing the hazard, the City shall close the Facility until the hazard to safety and/or health is eliminated. The Parties shall then proceed as set forth in section 7.2.2 below.

7.2.2 In the event that a problem needing repair causes the AISS to be unable to use the Premises as previously planned, the City shall make the repair contingent upon having the financial resources available to do so, where such availability shall be determined by the Commissioner at her/his sole discretion. The AISS may also repair said problem after consulting with and receiving approval from the Commissioner or her/his designee. Where the City is not able to make the repair, and the AISS is not able and/or willing to make the repair, the City or the AISS shall have the right to terminate this Agreement by written notice to the other, and the termination shall be at no cost to either of the Parties. In addition, the City shall have the right to close the Facility, in which case neither Party shall have responsibility or liability with respect to the needed repair.

Section 7.3 Cost of Maintenance and Repairs. All Premises maintenance costs shall be paid by the City. The cost of repairs to the Premises shall be borne by the Parties as follows: In the event the subject repair is necessitated due to normal wear and tear, the cost thereof shall be paid by the City. In the event the subject repair is necessitated due to the negligence or intentional acts of either of the Parties or their agents, employees, students or invitees, then, such Party shall be solely responsible for the cost of making such repair

Section 7.4 Payment of Repair Costs. The City shall send an invoice to the AISS for any repair costs for which the AISS is responsible, pursuant to Section 7.3 above. All invoices will include supporting documentation, including any supporting documentation reasonably requested by the AISS. The AISS will pay any uncontested invoices in full within thirty (30) days of receipt. Where the AISS questions or challenges any invoice, the AISS shall submit payment to the City within thirty (30) days after the AISS and the CITY reach agreement regarding the amount owed, said agreement to be memorialized by letter from the AISS to the City.

ARTICLE VIII

Insurance

Section 8.1 "All Risk" Property Insurance. Throughout the Term of this Agreement, the City shall carry and maintain a policy of "all risk" property insurance (naming the AISS as loss payee) covering the Facility against loss or damage by fire, collapse and other risks now or hereafter customarily embraced by an "all risk" policy in an amount not less than one hundred percent (100%) of the full replacement value of the Facility, less and except the foundation thereof and less and except a commercially reasonable deductible.

Section 8.2 Evidence of insurance. If requested by the AISS, the City shall deliver to the AISS certificates of insurance evidencing the insurance required hereunder. The City shall procure and pay for renewals of such insurance from time to time before the expiration thereof, and the City shall deliver to the AISS such renewal certificates at least thirty (30) days before the expiration of any existing policy, if requested by the AISS.

Section 8.3 Waiver of Claims. All policies covering real or personal property which the City or the AISS obtains affecting the Premises shall include a clause or endorsement denying the insurer any rights of subrogation against the other such Party to the extent rights have been waived by the insured before the occurrence of injury or loss, if same is obtainable without unreasonable cost. The City and the AISS each hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under the releasing Party by way of subrogation or otherwise for any loss or damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other Party, or anyone for whom such Party may be responsible; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time and in any event only with respect to loss or damage occurring during such time as the releasing Party's applicable policies shall contain a clause or endorsement to the effect that any such release shall not adversely affect or impair said policies or prejudice the right of the releasing Party to recover thereunder and then only to the extent of the insurance proceeds payable under such policies.

Section 8.4 Cost of Insurance. The City agrees to be solely responsible for the cost of the all risk policy insurance required under this Article VIII.

ARTICLE IX

Access to Premises

Upon the execution of this Agreement, the AISS will be provided key entry and security access to the Premises, including but not limited to the Facility. The City shall not change or re-key any locks to the Premises, or any portion thereof, including but not limited to the Facility, nor change any Premises security codes, without immediately providing the AISS with new and functional keys and/or security codes so that there is no lapse in the AISS' ability to enter the Premises, or any portion thereof, without assistance. The AISS shall not change or re-key any locks to the Premises, or any portion thereof, including but not limited to the Facility, nor change any security codes, nor do anything else to limit the City's access to the Premises or any portion thereof. This Article IX shall not apply to those locks or security codes providing access to Exclusive Space only.

ARTICLE X

Casualty

In the event the Facility is damaged by fire or other casualty in any material respect during the term of the Agreement, the City shall cause the damages to be repaired within a reasonable period of time, subject to delays which may arise by reason of adjustment of loss under insurance policies, and for unavoidable delays. Notwithstanding the foregoing, the City's obligation to perform such repairs and restoration work shall, at all times, be limited to the amount of insurance proceeds actually received as a result of such casualty event.

ARTICLE XI

Assignment and Subletting.

Each Party acknowledges and agrees that it shall not assign or sublet its rights of use in and to the Facility to any person or entity without the prior written consent of the other Party to this Agreement. Section 6.5 notwithstanding, in the event that either Party assigns or sublets its right of use in and to the Facility, the assigning or subletting Party shall be responsible for providing, at its sole cost and expense, janitorial services (including providing general supplies and dumpster services) for the Facility such that the Facility is left in a Broom Clean condition, prior to the commencement of the other Party's Hours of Use.

The restriction on assignment and subletting shall not in any way be deemed to restrict or limit each Party's right to conduct activities within the Facility in accordance with the terms of this Agreement, or to allow third parties to utilize the Facility in accordance with the terms of section 4.1.4 above. Furthermore, the AISS acknowledges and agrees that, pursuant to the terms of section 4.1.4 above, the City shall have the right, from time to time, to rent out the Facility at all times that the Premises are not in use by the AISS and that the City shall be entitled to retain all revenues generated therefrom. The City acknowledges and agrees that, pursuant to the terms of section 4.1.4 above, the AISS shall have the right, from time to time, to rent out the

Facility at all times that the Premises are not in use by the City and that the AISS shall be in entitled to retain all revenues generated therefrom.

ARTICLE XII

Events and Default and Remedies

Section 12.1. In the event that either Party should fail to perform any of its obligations hereunder, or shall fail to perform its obligations in the manner required hereunder, the non-defaulting Party shall provide written notice to the defaulting Party specifying the precise failure and the corrective action required. The non-defaulting Party shall state the number of days that the defaulting Party shall have to implement the corrective action, and shall make such determination based upon the seriousness of the matter, the safety implications of the matter, and the amount of time that it would reasonably take to implement that type of correction. The non-defaulting Party shall be reasonable with regard to granting extensions of time if the defaulting Party indicates that it needs additional time and is making a good faith effort to implement the corrective action.

Section 12.2. The defaulting Party shall use its best efforts to implement the corrective action within the time set forth by the non-defaulting Party in its written notice. In the event that the defaulting Party needs additional time to implement the corrective action, it shall request an extension of time for a defined time period. In no event shall the extension of time be greater than thirty (30) days from the date that the defaulting Party received the non-defaulting Party's written notice.

Section 12.3. In the event that the corrective action is not implemented and completed by the time set forth in the non-defaulting Party's written notice, or by the time set forth in a written extension of time, if applicable, the non-defaulting Party shall have the right to perform such corrective action on behalf of the defaulting Party, in which case all documented and reasonable costs and expenses so incurred shall be reimbursed to the non-defaulting Party by the defaulting Party. The non-defaulting Party shall submit invoices for the costs and expenses to the defaulting Party. All invoices will include supporting documentation, including any supporting documentation reasonably requested by the defaulting Party. The defaulting Party will pay any uncontested invoices in full within thirty (30) days of receipt. Where the defaulting Party questions or challenges any invoice, the defaulting Party shall submit payment to the non-defaulting Party within thirty (30) days after the AISS and the CITY reach agreement regarding the amount owed, said agreement to be memorialized in writing.

Section 12.4. In addition to the foregoing right to perform on behalf of the defaulting Party, each Party shall have a right of specific performance to enforce the full performance and compliance of the other Party under this Agreement.

Section 12.5. The City and the AISS acknowledge and agree that their sole and exclusive remedies for a default by the other Party shall be aforesaid right to perform on behalf of the other Party, as set forth above, and the right of specific performance.

ARTICLE XIII

Entire Agreement

This Agreement, including any exhibits hereto, constitutes the entire agreement between the Parties hereto, and there are no other agreements or understandings, either oral or written, between them concerning the subject matter of this Agreement other than those herein set forth. No amendment, change, waiver or modification to this Agreement shall be binding upon the Parties hereto, unless in writing and signed by the Parties hereto.

ARTICLE XIV

Headings

The headings, captions, numbering system, etc., are inserted only as a matter of convenience and may not be considered as interpreting the provisions of this Agreement.

ARTICLE XV

Binding Effect

All of the provisions of this Agreement shall be binding upon and inure to the benefit of the representatives, heirs, successors, and assigns of the Parties hereto.

ARTICLE XVI

Time of Essence

Time is of the essence of this Agreement.

ARTICLE XVII

Unenforceable or Inapplicable Provisions

If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

ARTICLE XVIII

Counterparts

This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original and shall be construed together and shall constitute one instrument. In the event the Parties hereto execute and deliver this Agreement by signing and delivery by facsimile transmission, such signing and delivery of facsimile signatures shall be

effective and shall have the same effect as if original signatures were delivered and each such Party signing and delivering by facsimile transmission shall immediately thereafter provide original signed copies to the other Parties hereto.

ARTICLE XIX

Construction

The Parties acknowledge that each Party and its counsel have reviewed and approved this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

ARTICLE XX

Third Parties

Except as otherwise specifically provided for to the contrary herein, the terms of this Agreement are for the sole benefit of the Parties hereto and their successors and assigns and shall not confer any rights in any other party and no other party shall be entitled to rely thereon.

ARTICLE XXI

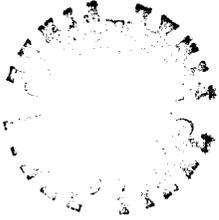
Notices

Notices to be effective must be in writing and either delivered personally, sent by overnight express, courier, telecopier, other expedited mail service or by certified mail, postage prepaid, addressed to the appropriate Party at its address below. Notices are effective when delivered personally or telecopied, or five (5) business days after being sent by other means authorized above.

If to the City: Department of Parks, Recreation and Cultural Affairs
 ATTENTION: Commissioner
 Suite 800, City Hall East
 675 Ponce de Leon Avenue, N.E.
 Atlanta, Georgia 30308

If to the AISS: The Atlanta Independent School System
 ATTENTION: Superintendent
 130 Trinity Avenue
 Atlanta, Georgia 30303

with a copy to: The Atlanta Independent School System
 Law Department, General Counsel
 130 Trinity Avenue
 Atlanta, Georgia 30303



The Atlanta Independent School System
Facilities Services, Executive Director
1631 La France Street
Atlanta, Georgia 30307

Principal, The Hope Elementary School
112 Boulevard, NE
Atlanta, GA 30312

Any Party, may from time to time, change the address to which notices shall be sent by like notice given, except that no Party may change its address to other than a street address. Any notice given that does not conform to this paragraph shall be effective only upon receipt.

ARTICLE XXII

Governing Law

The interpretation, enforcement and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Georgia.

ARTICLE XXIII

Relationship of the Parties

Nothing set forth in this Agreement shall be construed as creating a partnership, joint venture, franchise, or agency relationship between the Parties hereto, and neither Party shall be generally liable for the debts or obligations of the other Party.

ARTICLE XXIV

Power and Authority

The undersigned representative of the AISS and the Mayor represent and warrant to the other that they have all requisite power and authority to enter into this Agreement and convey the rights granted hereunder.

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

ATTEST:

CITY OF ATLANTA:

Municipal Clerk

Mayor (Seal)

APPROVED:

APPROVED:

Commissioner, Department of Parks,
Cultural Affairs

Chief Procurement Officer

APPROVED AS TO FORM:

Senior Assistant City Attorney

Signed, sealed and delivered in
the presence of:

THE ATLANTA INDEPENDENT SCHOOL SYSTEM

Unofficial Witness

By: _____
Its: _____

Notary Public

[SEAL]

My Commission Expires: _____

Approved as to form by:

(AFFIX NOTARIAL SEAL)



Exhibit D

RCS# 17
1/19/10
1:54 PM

Atlanta City Council

REGULAR SESSION

CONSENT I

10-R-0145

ADOPT EXCEPT

YEAS: 14
NAYS: 0
ABSTENTIONS: 0
NOT VOTING: 1
EXCUSED: 0
ABSENT 1

Y Smith	Y Archibong	Y Moore	Y Bond
Y Hall	Y Wan	Y Martin	Y Watson
Y Young	Y Shook	Y Bottoms	Y Willis
B Winslow	Y Adrean	Y Sheperd	NV Mitchell

CONSENT I