

**COOPERATIVE AGREEMENT**

**FOR**

**COMMUNITY LEARNING CENTERS**

**Between**

**CITY OF AKRON, OHIO**

**And**

**BOARD OF EDUCATION**

**Of The**

**AKRON CITY SCHOOL DISTRICT**

**Dated: December 15, 2003**

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# **COOPERATIVE AGREEMENT FOR COMMUNITY LEARNING CENTERS**

This Cooperative Agreement for Community Learning Centers (the “Agreement”) is made and entered into as of December 15, 2003, by and between the BOARD OF EDUCATION (the “Board of Education”) of the AKRON CITY SCHOOL DISTRICT (the “District”), a school district duly organized and validly existing under the laws of the State of Ohio, and the CITY OF AKRON (the “City”), a municipal corporation duly organized and validly existing under its Charter and the laws of the State of Ohio, pursuant to a resolution duly adopted by the Board of Education on December 8, 2003 and Ordinance No. 653-2003 enacted by the City Council on December 8, 2003.

## **RECITALS**

A. Pursuant to Section 718.01 of the Revised Code, at an election on May 6, 2003, the voters of the City approved and, on June 2, 2003, City Council enacted, Ordinance No. 282-2003 (the “CLC Ordinance”), levying an additional 0.25% municipal income tax to provide funds for the purpose of acquiring, constructing, renovating, repairing, enlarging, adding to, reconstructing, maintaining, equipping, furnishing, acquiring interests in real property in connection therewith, improving the sites thereof, and otherwise improving community centers (the “Community Learning Centers”), in accordance with Section 755.16 of the Revised Code, and paying debt service and other costs relating to the financing thereof. In accordance with the CLC Ordinance, this Agreement and that Section 755.16, the Community Learning Centers shall be used for governmental, civic or educational operations or recreational activities or for such other purposes as permitted by law.

B. The City and the Board of Education have entered into a Memorandum of Understanding, dated April 1, 2003, in which they memorialized their preliminary agreements with respect to the Community Learning Centers and agreed to develop a mutually acceptable Cooperative Agreement relating to the Community Learning Centers.

C. The Board of Education will enter into an agreement for each Segment of the Project (collectively, the "Project Agreement") with the Ohio School Facilities Commission (the "Commission"), which Project Agreement includes a schedule for the Project.

D. The Board of Education and the Commission have determined, based on the cost estimates set forth in the Master Facilities Plan, that the Local Share of the Basic Project Cost and the cost of the Locally Funded Initiatives of the Project will be approximately \$365,000,000.

E. The Board of Education and the City recognize that new, renovated and improved facilities are needed for governmental, civic, educational and recreational purposes of the Akron community and that the sharing of the proposed Community Learning Centers will contribute substantially to fulfilling those needs and the purposes and functions contemplated by Section 755.16 of the Revised Code.

F. The Board of Education and the City have determined that it is necessary and appropriate to coordinate their efforts and to cooperate in the acquisition, construction, financing, operation, maintenance and use of the Community Learning Centers in order to achieve cost and other efficiencies and to maximize the benefit of the provision of such facilities to all those who work and reside in the District and the City.

**NOW, THEREFORE,** in consideration of the mutual covenants and conditions herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the Board of Education covenant and agree as follows:

## **ARTICLE I**

### **Definitions**

Capitalized terms in this Agreement shall have the same meaning as those defined in Chapter 3318 of the Revised Code, unless otherwise defined herein or another meaning is clearly indicated by the context. As used in this Agreement, the following terms have the following meanings as set forth in this Article unless the context clearly indicates otherwise. Terms defined in the singular have the same meaning when used in the plural and vice versa. References to a Section or an Article shall mean a Section or an Article of this Agreement.

“Agreement” means this Cooperative Agreement for Community Learning Centers.

“Akron Share” means the sum of the cash amounts necessary to pay for the Local Share and for the Locally Funded Initiatives.

“Architect” means the architect or architects retained by the Board of Education to design the Community Learning Centers.

“Auxiliary-users” means persons who use the Community Learning Centers in accordance with procedures established for such use and who are not City-users or School-users.

“Basic Project Cost” has the same meaning as provided in Chapter 3318 of the Revised Code.

“Board of Education” means the Board of Education of the District.

“Board of Education Representative” means the Superintendent or person(s) so designated from time to time by the Board of Education.

“City” means the City of Akron.

“City Council” means the City Council of the City.

“City-owned Property” means lands, buildings, facilities or other property owned by the City, including, but not limited to, streets, sidewalks, driveways, rights-of-way, parks, easements, parking areas or utilities that are part of the CLC Project.

“City Public Infrastructure Improvements” means improvements to City-owned Property or School-owned Property, in accordance with the CLC Ordinance, which improvements are directly related to the CLC Project.

“City Representative” means the Mayor or person(s) so designated from time to time by the Mayor.

“City Securities” means the bonds, notes or other obligations issued or to be issued by the City to pay costs of the CLC Project and to refund outstanding City Securities issued in accordance with this Agreement.

“City-use” means use of a Community Learning Center for a governmental, civic, educational or recreational program, activity or event authorized by the City.

“City-users” means persons who reside in or are employed in the City and who use the Community Learning Centers pursuant to a City-use.

“CLC Advisory Committee” means the Community Learning Center Advisory Committee created pursuant to Article X.

“CLC Income Tax” means the City’s additional 0.25% municipal income tax levied pursuant to the CLC Ordinance and, as applicable, the revenues generated therefrom.

“CLC Income Tax Fund” means the Community Learning Center Income Tax Fund established and maintained by the City in accordance with the CLC Ordinance, separate from other funds of the City, to account for the receipt and payment of money relating to the CLC Project, as set forth in Section 5.4 and elsewhere in this Agreement.

“CLC Land” means the land upon which the Community Learning Centers are or are to be located, as depicted in the Site Plan.

“CLC Ordinance” means Ordinance No. 282-2003 enacted by the Council on June 2, 2003, following approval by voters of the City on May 6, 2003.

“CLC Project” means acquiring, constructing, renovating, repairing, enlarging, adding to, reconstructing, maintaining, equipping, furnishing, acquiring interests in real property in connection therewith, improving the sites thereof, and otherwise improving Community Learning Centers, and making City Public Infrastructure Improvements, as provided in this Agreement and the CLC Ordinance.

“Commission” means the Ohio School Facilities Commission.

“Community Learning Centers” means the buildings and facilities described in the Master Facilities Plan, together with equipment, furnishings and other appurtenances thereto and any replacements thereof.

“Community-users” means Auxiliary-users, City-users and School-users.

“Construction Budget” means the Construction Budget for each Segment of the Project established by the Board of Education and the Commission in the Master Facilities Plan.

“Construction Manager” means the construction manager or construction managers retained by the Commission.

“Day-to-Day Operations” means the decisions relating to the use, staffing and such other matters occurring on a regular and routine basis regarding the operation, maintenance and management of the Community Learning Centers.



“Debt Charges” means the principal, including any mandatory sinking fund deposits and mandatory redemption payments, interest and any redemption premium payable on the City Securities as those payments come due and are payable.

“Design Manual” means the Design Manual of the Commission.

“Director of Finance” means the Director of Finance of the City.

“District” means the Akron City School District, which is constituted and organized as required by the statutes of the State of Ohio.

“Joint Board” means the Joint Board of Review established pursuant to Section 4.4.

“Local Share” means the Board of Education’s portion of the Basic Project Cost.

“Locally Funded Initiatives” or “LFI” means those portions of the Project that are not funded as a part of the Basic Project Cost, including, but not limited to, real property acquisition, auditoriums and expansions of classroom facilities beyond sizes specified in the Design Manual.

“Local Initiative Fund” means the fund that may be established by the Board of Education to account for the local revenues supporting the Locally Funded Initiatives.

“Master Facilities Plan” means the District’s Master Facilities Plan for the Project, approved by the Board of Education on May 28, 2002 and by the Commission on July 23, 2002, and as it may be amended from time to time.

“Mayor” means the Mayor of the City.

“Parties” means the City and the Board of Education.

“Project” means the Project defined and described in the Project Agreement and the Master Facilities Plan.

“Project Agreement” means, collectively, the Project Agreements between the Board of Education and the Commission for each of the Segments of the Project, provided for in Section 3318.08 of the Revised Code.

“Project Construction Fund” or “Fund No. 010” means the fund established by the Board of Education to account for resources supporting the Project.

“Pupils” means those persons who are, or who are permitted under Section 3313.64 of the Revised Code to be, enrolled as students of the District, including adult education students.

“Regular School Hours” means normally 7:30 a.m. to 4:30 p.m., Monday through Friday, during the School Year.

“Revised Code” means the Revised Code of the State.

“School Contribution” means the amount deposited, contributed or transferred by the Board of Education pursuant to Sections 5.2 and 5.3.

“School-owned Property” means lands, buildings, facilities or other property owned by the Board of Education, including, but not limited to, streets, sidewalks, driveways, rights-of-way, parks, easements, parking areas or utilities that are part of the CLC Project.

“School-use” means a use of a Community Learning Center for a governmental, civic, educational or recreational program, activity or event authorized by the Board of Education.

“School-users” means persons who are Pupils, teachers, administration, Staff, employees, parents, volunteers and invitees of the Board of Education and who use the Community Learning Centers pursuant to a School-use.

“School Year” means the term during which classes in the District are in session as determined by the Board of Education in accordance with State law, including any summer school programs offered by the Board of Education for Pupils.

“Segment” means one of the Segments of the Project.

“Segment I” means that portion of the Project described as Segment I in the Master Facilities Plan.

“Segment II” means that portion of the Project described as Segment II in the Master Facilities Plan.

“Segment III” means that portion of the Project described as Segment III in the Master Facilities Plan.

“Segment IV” means that portion of the Project described as Segment IV in the Master Facilities Plan.

“Site Monitor” means a person designated by the City to provide Supervision while the Community Learning Centers are in use by City-users.

“Site Plan” means the site plan jointly established by the Board of Education and the City and as approved by the Commission pursuant to the Master Facilities Plan.

“Staff” means the regularly employed full-time and part-time employees of the Board of Education responsible for performing and/or overseeing the Day-to-Day Operations of the Community Learning Centers.

“State” means the State of Ohio.

“State Share” means the State’s portion of the Basic Project Cost.

“Superintendent” means the Superintendent of Schools of the District.

“Supervision” means having on-site an adequate number of trained persons to properly oversee the activities in the portions of the Community Learning Centers that are then being used.

“Treasurer” means the Treasurer of the Board of Education.

“Trust Agreement” means the trust agreement entered into by the City in connection with the issuance of the City Securities.

“Trustee” means the trustee under the Trust Agreement.

(End of Article I)

## **ARTICLE II**

### **Term**

Section 2.1 Term of Agreement. The initial term of this Agreement shall commence on the date this Agreement is signed by the Parties and shall terminate on December 31, 2033, unless the Parties mutually agree upon the earlier termination of this Agreement. The term of this Agreement may be extended pursuant to Section 2.2.

Section 2.2 Renewal Provisions. The City has the right to renew and extend this Agreement for a 20-year period. In addition, the Parties may mutually agree at any time to amend this Agreement to further extend its term.

(End of Article II)

### **ARTICLE III**

#### **Ownership**

Section 3.1 Ownership of the Land. The Board of Education shall be the record owner of the CLC Land, unless other ownership is clearly specified in the Site Plan. The City shall, however, have an undivided ownership interest in the CLC Land during the initial term of this Agreement, such that during the initial term of this Agreement the Board of Education and the City shall each have all rights of ownership of the CLC Land. The City's ownership interest in the CLC Land shall cease and shall revert to the Board of Education immediately upon the occurrence of either of the following: (i) the City Securities have been fully paid and the CLC Income Tax is no longer being levied or (ii) the expiration of the initial term of this Agreement. Notwithstanding the reversion of the City's ownership interest in the CLC Land to the Board of Education, the City shall continue to have all the rights of access to and use of the CLC Land during the remainder, if any, of the initial term of this Agreement and any renewal or extension thereof, in accordance with this Agreement.

The Parties recognize that the Commission will have an ownership interest in the CLC Land in accordance with Chapter 3318 of the Revised Code and the Project Agreement, and the Parties agree that the City's ownership interest in the CLC Land shall not be inconsistent with that ownership interest of the Commission.

Section 3.2 Ownership of the Community Learning Centers. The Board of Education shall be the record owner of the Community Learning Centers, unless other ownership is clearly specified. The City shall, however, have an undivided ownership interest in the Community Learning Centers during the initial term of this Agreement, such that during the initial term of this Agreement the Board of Education and the City shall each have all rights of ownership in the

Community Learning Centers. The City's ownership interest in the Community Learning Centers shall cease and shall revert to the Board of Education immediately upon the occurrence of either of the following: (i) the City Securities have been fully paid and the CLC Income Tax is no longer being levied or (ii) the expiration of the initial term of this Agreement. Notwithstanding the reversion of the City's ownership interest, the City shall continue to have all the rights of access to and use of the Community Learning Centers during the remainder, if any, of the initial term of this Agreement and any renewal or extension thereof, in accordance with this Agreement. For accounting or other purposes, the City may measure its interest in the Community Learning Centers in accordance with Section 5.1(c), as allocated to any particular Community Learning Center if necessary.

The Parties recognize that the Commission will have an ownership interest in the Community Learning Centers in accordance with Chapter 3318 of the Revised Code and the Project Agreement, and the Parties agree that the City's ownership interest in the Community Learning Centers shall not be inconsistent with that ownership interest of the Commission.

Section 3.3 Public Property. Notwithstanding Sections 3.1 and 3.2, the ownership of any City-owned Property, shall remain with and in the City, unless otherwise determined by the City, provided that the City shall not dispose of any such City-owned Property if such disposition would materially or substantially affect the Board of Education's use of any Community Learning Center.

In the event that any Community Learning Center is to be built upon City-owned Property, the City agrees to enter into a written agreement leasing that property to the Board of Education upon mutually agreeable terms. The City and the Board of Education may also jointly agree to exchange City-owned Property for School-owned Property in order to permit the use of

that City-owned Property for the CLC Project. The City may, with the approval of the Board of Education, contribute City-owned Property, or the use thereof, as part of the Project upon mutually agreeable terms.

Section 3.4 Community Learning Centers. Each facility that is part of the CLC Project shall be considered a Community Learning Center and shall be so referred to in documents and signage for that facility.

(End of Article III)



## **ARTICLE IV**

### **The Project**

Section 4.1 Master Facilities Plan; Amendments. The plan for improvements for each Community Learning Center is set forth in the Master Facilities Plan, which is approved and incorporated herein. Any changes to the Master Facilities Plan must be approved (i) jointly by the Board of Education and the City and (ii) by the Commission as required under Chapter 3318 of the Revised Code.

Section 4.2 Site. The Board of Education or the Board of Education Representative shall propose sites for the Community Learning Centers to the City Representative in sufficient time to allow the City Representative to review those sites and to suggest any alternatives. The City Representative shall investigate the sites and give a recommendation to the Mayor and City Council. The City, acting through the legislation process set forth in the Akron Charter, must approve the proposed site of each Community Learning Center before final site selection occurs or the Architect begins its schematic design. If the City does not approve a proposed site for a Community Learning Center, the City Representative must, within 30 days of receiving notice from the Board of Education of the proposed site, indicate such disapproval in writing to the Board of Education, stating the reasons therefor. The City Representative shall then provide a list of three suggested alternative sites for consideration by the Board of Education, the City and the Commission. No site shall be finally selected without the approval of the Board of Education and the City, acting through the legislation process set forth in the Akron Charter.

The Board of Education shall be responsible for all property acquisition and any demolition or other site improvement and, if applicable, any relocation, consistent with the Master Facilities Plan.

Section 4.3     Construction Budget; Plans and Specifications.

(a)     Construction Budget. The Parties agree that the proposed Budget for each Segment of the Project is as established in the Master Facilities Plan.

The Construction Budget (and any part thereof) as set forth in the Master Facilities Plan may be revised pursuant to Chapter 3318 of the Revised Code and the rules of the Commission.

(b)     Project Agreement. Prior to entering into a Project Agreement as provided in Section 3318.08 of the Revised Code, the Board of Education shall first submit to the City a proposed form of that Project Agreement for review and comment.

(c)     Architect. The Board of Education and the City shall jointly select and negotiate a contract with the Architect for each Segment pursuant to the procedures set forth under State law. The Board of Education shall cause plans and specifications for the Community Learning Centers to be prepared by the applicable Architect. Those plans and specifications shall be based on the Construction Budget, the Master Facilities Plan and the Design Manual. If the Architect for any Segment is terminated, the Board of Education and the City shall jointly select and negotiate a contract with the successor Architect pursuant to the procedures set forth under State Law.

(d)     Cost Estimates. If, after receiving any estimate from the Architect or Construction Manager or bids for construction of the Community Learning Centers, the estimated cost of the Project (or each Segment, as applicable throughout this Section 4.3(d)) exceeds the Construction Budget, the Joint Board, the Architect, the Construction Manager and the Commission shall work together to bring the costs of the Project within the Construction Budget or identify the source of revenue to meet such increased costs. The Board of Education, consistent with the procedures set forth in Section 4.6, will be responsible for awarding all

contracts recommended for approval by the Joint Board and as required by the Commission for the Project or as otherwise necessary for carrying out the Project.

Section 4.4 Joint Board. A Joint Board of Review shall be established with ten members. Each member of the Joint Board shall possess one vote in making all recommendations by the Joint Board provided for in this Agreement. The Joint Board shall be composed of ten members, as follows:

- (i) five members appointed by the Board of Education; and
- (ii) five members appointed by the City, one of whom shall be the President of City Council, one of whom shall be the Chairman of the Finance Committee and three of whom shall be appointed by the Mayor.

In the event that a member of the Joint Board is unable to attend a meeting, that member may designate an appointee, who shall possess the right to vote, to attend that meeting in the member's place. No member of the Joint Board shall receive any payment for service on the Joint Board. The Joint Board shall establish its own procedures. The Joint Board shall comply with the requirements of Section 121.22 of the Revised Code. In the event of an inability of the Joint Board to achieve a majority agreement on a particular matter, it shall immediately notify the Board of Education and the City. The Board of Education and the City shall agree upon a neutral person to join the Joint Board as a special member to determine the matter. If the Board of Education and the City cannot agree on a neutral person, they shall select such a person from the American Arbitration Association in accordance with its rules. That person shall join with the Joint Board as a special member to determine the matter.

Except as otherwise stated in this Agreement, the Joint Board shall be responsible for making recommendations to the Board of Education and the City regarding site selection, design

and construction of the Project and any enhancements and changes to the Master Facilities Plan and the Project. The Board of Education and the City will cooperate in such matters by providing the Joint Board with any assistance reasonably needed by the Joint Board in order to carry out its responsibilities herein.

Any action taken by the Board of Education on a recommendation by the Joint Board shall occur at a regular or special meeting. If the Board of Education intends to take action that is different than the recommendation of the Joint Board and if such action will materially or substantially affect the City's use of a Community Learning Center, the Board of Education shall obtain the written consent of the City prior to taking such action, which consent shall not be unreasonably withheld. The Board of Education otherwise may take action to accept, reject or modify a recommendation of the Joint Board, or request that the Joint Board provide the Board of Education with a revised recommendation.

The Joint Board's advisory role with respect to each Community Learning Center will end upon completion of that Community Learning Center, as evidenced by the issuance by the City of a Permanent Certificate of Occupancy for that Community Learning Center. The Joint Board will automatically dissolve upon completion of the Project.

The City and the Board of Education, as mutually agreed upon, may provide legal counsel to assist the Joint Board in performing its obligations under this Agreement.

Section 4.5 Approval by Joint Board, City and Board of Education. The roles of the Board of Education, the City and the Joint Board for the design and construction phases of the Project (and each Segment, as applicable throughout this Section 4.5) shall be as follows.

- (a) Program of Requirements Phase. During the development of a Program of Requirements of the Project, the Board of Education Representative and the City

Representative shall cooperate in allocating square footage to the various intended building uses (“bracketing”) for the Community Learning Centers. The Board of Education Representative shall give reasonable prior notice to the City Representative of all meetings related to the Program of Requirements and to bracketing in particular. The Architect shall compile the Program of Requirements in accordance with Commission practices and deliver a copy thereof to the City Representative and the Board of Education Representative. If acceptable to the Board of Education and the City, the Board of Education shall provide its written approval thereof. Upon receipt of that approval, the Architect shall deliver a copy of the approved Program of Requirements to the Commission and the Construction Manager. If any changes or adjustments to the Program of Requirements are desired at any time after the Program of Requirements has been delivered to the Commission, the Architect shall prepare a written amendment to the Program of Requirements describing the changes or adjustments, deliver copies to the City Representative, the Board of Education Representative and the Construction Manager for review and comment. If acceptable to the Board of Education and the City, the Board of Education shall provide its written approval thereof and deliver the amendment to the Commission for approval.

(b) Schematic Design Phase (Preliminary Drawings). Based upon the Program of Requirements, the Project Schedule and Construction Budget requirements, the Architect shall prepare Schematic Design Documents consisting of architectural drawings and other documents illustrating the scale of the Project and the relationship of components of the Project to one another and of the Project to surrounding properties. The Board of Education Representative and the City Representative shall work with the

Architect and the Construction Manager in the development of Schematic Design Documents. The Board of Education Representative shall request the Construction Manager to provide the Board of Education and the City with a revised Construction Budget based on the Schematic Design Documents. The Board of Education Representative shall give reasonable prior notice to the City Representative of all meetings relating to the development of the Schematic Design Documents. Upon completion of the Schematic Design Phase, the Architect shall provide a copy of the Schematic Design Documents to each of the Construction Manager, the City Representative, the Board of Education Representative and the Commission. A meeting will then be held with the Architect, the Construction Manager, the City Representative, the Board of Education Representative and the Commission at which the Construction Manager, the City Representative, the Board of Education Representative and the Commission may make comments or suggestions to the Architect. After receiving these comments and suggestions, the Architect shall submit an amended set of Schematic Design Documents to the Board of Education and the City. If acceptable to the Board of Education and the City, the Board of Education and the City shall provide their written approval thereof. The City's written approval shall be through the legislation process set forth in the Akron Charter. The Architect shall forward the approved amended Schematic Design Documents to the Construction Manager for submission to the Commission for its final review and approval.

(c) Design Development Phase (Basic Drawings).

(1) Design Development Documents. Based on the approved Schematic Design Documents, the Program of Requirements, the

approved Statement of Probable Construction Cost and the approved Project Schedule, the Architect shall prepare Design Development Documents consisting of drawings, outline specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other essential elements as may be appropriate. The Joint Board shall work with the Architect and the Construction Manager on the development of the Design Development Documents. The Board of Education shall request the Construction Manager to provide the Joint Board, the City and the Board of Education with a revised Construction Budget based on the Design Development Documents. Upon completion of the Design Development Phase, the Architect shall provide a copy of the Design Development Documents to each of the Construction Manager, the Joint Board and the Commission. A meeting will be held between the Architect, the Construction Manager, the Joint Board and the Commission, at which the Construction Manager, the Joint Board and the Commission may make comments or suggestions to the Architect. After receiving these comments and suggestions, the Architect shall submit an amended set of Design Development Documents to the Board of Education and obtain its approval in writing. The Construction Manager shall then forward the approved set of Design Development Documents to the Commission for final revision and approval.

(2) Cost Estimate and Project Schedule. Based upon the Program of Requirements and the Design Development Documents, the Architect shall assist the Construction Manager in preparing and submitting a Detailed Estimate of Construction Cost and an updated Project Schedule, indicating milestone completion dates for approval by the Board of Education. In establishing the Detailed Estimate of Construction Cost, the Construction Manager shall include reasonable contingencies for design, bidding and price escalation and determine in conjunction with the City Representative, the Board of Education Representative and the Architect the materials, equipment, component systems and types of construction to be included in the Contract Documents. The Architect and the Construction Manager shall review any difference between the Construction Budget, the Statement of Probable Construction Cost and the Detailed Estimate of Construction Cost, identify reasons for any difference and recommend means to eliminate the difference, if necessary. The Architect, the Construction Manager, the City and the Board of Education shall agree upon the means to eliminate any difference between the Construction Budget and the Detailed Estimate of Construction Cost, and the Construction Manager shall prepare a report describing the agreed upon means. The Architect and the Construction Manager shall review any differences between the initial Project Schedule and the updated Project Schedule, identify reasons for the differences and recommend whether the differences should be



eliminated and the means to eliminate the differences. If the Architect, the Construction Manager, the City and the Board of Education agree to eliminate any such differences, the Construction Manager shall prepare a report describing the agreed upon means.

(d) Construction Document Phase. Based on the approved Design Documents, the Program of Requirements, the approved Detailed Estimate of Construction Cost and the approved Project Schedule, the Architect shall prepare Construction Documents for approval by the Board of Education and the Commission, consisting of detailed construction drawings, specifications and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other essential elements as may be appropriate. The Board of Education Representative and the City Representative shall work with the Architect and the Construction Manager on the development of the Construction Documents. The Board of Education Representative shall give reasonable prior notice to City Representative of all meetings related to the development of the Construction Documents. The Architect shall provide seven copies of the Construction Documents to the Construction Manager, who shall submit two copies each to the City Representative, the Board of Education Representative and the Commission. A meeting will then be held between the Architect, the Construction Manager, the City Representative, the Board of Education Representative and the Commission, at which the Construction Manager, the City Representative, the Board of Education Representative and the Commission may make comments or suggestions to the Architect. After receiving these comments and suggestions, the Architect shall submit an amended set of

Construction Documents to the Board of Education and the City. If acceptable to the Board of Education and the City, the Board of Education shall provide its written approval thereof. The Construction Manager shall then forward the approved set of Construction Documents to the Commission for final revision and approval.

Section 4.6 Construction Matters.

(a) The Board of Education shall have primary responsibility for advertising for bids, the award of contracts pursuant to law and in accordance herewith and such other matters relating to the Project as may arise from time to time, with the assistance of the Joint Board as set forth herein. Prior to the award of a contract for the Project, the Joint Board shall present to the Board of Education for its review and approval the following: (i) the bid documents, (ii) the Construction Documents, (iii) a bid summary and (iv) the bidder to be recommended to the Board of Education for award. The Board of Education and the City shall (i) be invited to attend all meetings relating to the Project, (ii) provide updates to the Joint Board, as applicable, as to the progress of construction and (iii) provide any other financial reports not already required under this Agreement to each other in a form and at a time mutually agreeable to the Parties.

(b) The approval of the Board of Education, the Joint Board and, if applicable, the Commission will be required to authorize any material change to the approved design and any change order that materially increases a contract amount. The Board of Education shall establish a procedure for approving all requests for any other changes to the approved design and all other change orders after considering any recommendations from the City and the Joint Board and, if applicable, the Commission concerning that procedure. As soon as practicable, the Board

of Education Representative shall provide the City Representative and the Commission with notice of any approved design change or change order.

(c) In the event that (i) the Project incurs unforeseen, extraordinary or other additional costs exceeding the Construction Budget that cannot be met from proceeds of the CLC Income Tax or (ii) proceeds of the City Securities are not sufficient to pay the Akron Share or (iii) the State does not provide sufficient money to pay the State Share of the Project, the City and the Board of Education shall redefine the CLC Project, based upon mutual agreement, to conform to the available funds and to make further revisions to this Agreement as deemed appropriate by the Parties.

Section 4.7 Fiscal Management. Upon completion of each Community Learning Center, the Board of Education shall be primarily responsible for the fiscal management of that Community Learning Center. For purposes hereof, completion of each Community Learning Center shall be deemed to have occurred upon the issuance by the City of a Permanent Certificate of Occupancy therefor.

Section 4.8 Programs Fostering Local and Disadvantaged Businesses and Workers. The Board of Education and the City agree to appoint by February 1, 2004 a Disadvantaged Business Enterprise (“DBE”) and Workforce Development Advisory Committee comprised of leaders from business and labor to develop and recommend to the Board of Education and the City a plan to foster the involvement of local and disadvantaged businesses and workers in the Project. The Board of Education and the City each shall appoint an equal number of persons to the DBE and Workforce Development Advisory Committee, at least one of whom shall be a

member of City Council or a designee of that member and one of whom shall be a member of the Board of Education or a designee of that member.

(End of Article IV)

## **ARTICLE V**

### **Funding**

#### Section 5.1 Financing by the City.

(a) City Securities. By entering into this Agreement, the City has made a good-faith commitment, consistent with available City income tax revenues and the obligations and limitations set forth in this Agreement and under State and federal law, to issue City Securities in an amount sufficient to fund the Akron Share. As soon as practicable after the signing of this Agreement, the City shall timely issue City Securities in an amount sufficient to fund the Akron Share of Segment I of the Project. Prior to the commencement of each subsequent Segment, the City shall issue City Securities sufficient to fund the respective Akron Share to the extent it is economically feasible, unless it is not legally feasible to do so, all as reasonably determined by the City. With respect to each issue of City Securities, the City shall promptly provide the Board of Education with written notice of the amount of the City Securities to be issued to fund all or a portion of the Akron Share of one or more Segments. To the extent determined economically advisable and as permitted under federal tax laws, the City may issue City Securities in an amount to fund all or a portion of the Akron Share of one or more Segments of the Project and the cost of City Public Infrastructure Improvements at any one time. Thus, for example, the first issue of City Securities will include funding for the Akron Share of Segment I and, if so determined by the City, may also include all or a portion of the Akron Share of Segments II and III. The City's obligation to issue the City Securities is premised and conditioned upon, as applicable: (i) the signing by the City and the Board of Education of this Agreement and all ancillary agreements in forms acceptable to the City and (ii) the absence of

any material default on the part of the Board of Education under this Agreement or any of those other agreements.

(b) Flow of Funds. Proceeds of issuance of the City Securities for any given Segment shall be promptly transferred by or on behalf of the City to the Board of Education for deposit, as applicable, in the Project Construction Fund for payment of the Local Share related to that Segment and in the Local Initiative Fund for payment of the related Locally Funded Initiatives. Prior to such transfer, the City may deduct and use a portion of those proceeds to pay all normal, reasonable and customary costs (including legal costs) incurred by the City relating to the issuance of the City Securities and the security thereof. Those proceeds transferred to the Board of Education (i) for deposit in the Project Construction Fund shall be used solely to pay the Local Share of the Segment for which those proceeds were intended and (ii) for deposit in the Local Initiative Fund shall be used to pay for the Locally Funded Initiatives for which those proceeds were intended. The transfer of all such proceeds shall be irrevocable for purposes of Section 3318.084(C) of the Revised Code. If the amount so transferred to the Board of Education exceeds the amount needed to pay the Akron Share of that Segment, the excess amount shall be retained by the Board of Education to be used for subsequent Segments or, in the case of the final Segment, transferred to the CLC Income Tax Fund to pay Debt Charges. If City Securities are issued to fund more than one Segment, the City may retain the proceeds allocated to the subsequent Segments in the CLC Project Fund as that term is defined in the Trust Agreement until those proceeds are requested by the Board of Education to provide for the Akron Share of those Segments pursuant to Commission procedures and requirements. Upon such a request and so long as there is no material default on the part of the Board of Education under this Agreement or any of the ancillary agreements referred to in Section 5.1(a), the City

shall promptly transfer those proceeds to the Board of Education for deposit in the Project Construction Fund and the Local Initiative Fund, as applicable. Proceeds of City Securities held by the City in the CLC Project Fund may be used to pay reasonable costs relating to City Public Infrastructure Improvements in accordance with this Agreement and, if necessary, Debt Charges in accordance with the Trust Agreement.

(c) Accounting of Ownership Interests. For accounting purposes during such time as the City has an ownership interest in the CLC Land and Community Learning Centers under Sections 3.1 and 3.2, the Parties agree that they will follow the State Auditor's requirements for completing their respective financial reports. From time to time, to comply with accounting requirements relating to the Project, the Parties further agree to cooperate with each other to achieve that compliance. Accounting procedures shall reflect the ownership interest of the Commission as set forth in Sections 3.1 and 3.2 and in accordance with Section 3318.08(F) of the Revised Code.

On or before February 15 and August 15 of each year, the Board of Education shall provide to the City a statement of revenues and expenditures and fund balance (as of December 31 and June 30, as applicable) of the Project Construction Fund and the Local Initiative Fund for the preceding six-month period.

(d) Locally Funded Initiatives. The amount of the proceeds of the City Securities transferred to the Board of Education that is allocated to the Locally Funded Initiatives shall be deposited into the Local Initiative Fund, a separate fund established by the Board of Education for that purpose. In accordance with the Project Agreement, the Board of Education shall obtain the approval of the Commission to the incorporation of the design and construction of the Locally Funded Initiatives into the Project. The Board of Education will enter into a

written agreement with the Commission relating to the Locally Funded Initiatives pursuant to the Project Agreement.

(e) Investment Earnings. Earnings on the investment of proceeds of City Securities (and on earnings thereon) while held by the City may either be transferred by the City to the Board of Education to pay the Akron Share of a Segment or be used by the City to pay Debt Charges or other charges required under the Trust Agreement including but not limited to rebate payments to the U.S. Treasury. All earnings on the investment of the money deposited with the Board of Education and held in the Project Construction Fund shall be (i) retained in that fund and used by the Board of Education to pay for the Project and (ii), after all costs of the Project have been met, transferred to the Board of Education's maintenance fund in accordance with Section 3318.12 of the Revised Code. All earnings on the investment of the money deposited with the Board of Education and held in the Local Initiative Fund shall be (i) retained in that fund and used by the Board of Education to pay for the Locally Funded Initiatives or (ii), after all costs of the Locally Funded Initiatives have been met, transferred to the CLC Income Tax Fund to pay Debt Charges, as agreed to by the City and the Board of Education. The Board of Education has received the written approval of the Commission for the expenditures and transfers as set forth above. The City and the Board of Education shall cooperate to ensure compliance with federal and State law with regard to the investment of these funds, including any restrictions on those investments pursuant to the Trust Agreement.

Section 5.2. Other Sources of Funds. In the event that other funding for Community Learning Centers or related educational facilities becomes available to the Board of Education for the specific purpose of providing Community Learning Centers or related purposes from the County through sales tax proceeds or otherwise or from the State or federal government beyond



the amount of the State funds currently allocated for permanent improvements to the Board of Education, those additional funds (i) if available prior to the transfer to the Board of Education of the proceeds of the City Securities issued for Segment IV, shall be deposited by the Board of Education into the Project Construction Fund or the Local Initiative Fund, as applicable, and (ii) if available after the transfer to the Board of Education of the proceeds of the City Securities issued for Segment IV, shall be transferred by the Board of Education to the City for deposit into the CLC Income Tax Fund to be used to pay Debt Charges. As applicable, the CLC Income Tax shall be adjusted in accordance with the CLC Ordinance. Any such “other funding” as described in this Section shall be considered an amount contributed by the Board of Education for purposes of this Agreement if it results in reduction in the amount of City Securities that are needed to fund the Akron Share.

Section 5.3    Contribution by the Board of Education.

(a)    The Board of Education covenants to and shall continue to levy its general on-going permanent improvement levy and to contribute and transfer \$3,000,000 from that permanent improvement levy each year from 2004 through 2033 or until the City Securities are fully paid, whichever shall come first, to the Trustee for deposit in the Bond Fund created under the Trust Agreement to pay Debt Charges, provided that, if determined advisable by the City and the Board of Education, the \$3,000,000 shall be transferred to the City for the deposit in the CLC Income Tax Fund for the purpose of paying Debt Charges as determined by the City. To make its annual contribution, the Board of Education shall transfer to the Trustee or the City, as applicable, \$1,500,000 on or before February 15 of each year and \$1,500,000 on or before May 15 of each year. Such payments will not count as a credit toward the Board of Education’s obligation to the Commission to pay the Local Share, or the Board of Education’s ongoing

maintenance obligation under Section 3318.05 of the Revised Code, to the extent such payments by the Board of Education are used to pay Debt Charges.

(b) The Board of Education shall apply to the Commission for and receive credit for allowable capital expenditures for the Project funded by the Board of Education, in accordance with the Project Agreement.

(c) In accordance with Section 3318.06(A)(2) of the Revised Code, the Board of Education shall annually deposit into the District maintenance fund the equivalent of at least one-half mill for each dollar of valuation from its permanent improvement levy for a period of 23 years to satisfy its local maintenance requirement under the Project Agreement or such other amount as required under State law.

Section 5.4 Community Learning Center Income Tax Fund. The City shall deposit into the CLC Income Tax Fund on a monthly basis all CLC Income Tax revenues received by the City and payments, if any, received from the Board of Education pursuant to this Agreement. The CLC Income Tax Fund may be used by the City to pay (i) the Akron Share, (ii) the Debt Charges, (iii) the cost of City Public Infrastructure Improvements and (iv) other costs that are directly related to the CLC Project and are permitted by the CLC Ordinance, including, but not limited to, financing, legal and administrative costs; provided that no part of the Board of Education's payment made under Section 5.3 shall be used to pay the costs identified in items (iii) and (iv) above. On or before February 15 and August 15 of each year, the City shall provide to the Board of Education a statement of revenues and expenditures and fund balance (as of the preceding December 31 and June 30, as applicable) of the CLC Income Tax Fund and the CLC Project Fund for the preceding six-month period.

Section 5.5    Citizens Monitoring Committee.    The City and the Board of Education shall appoint a ten-member Citizens Monitoring Committee by June 1, 2004, comprised of leaders from business, labor and finance to monitor and report to the community regarding the expenditure of funds collected under the CLC Ordinance or received from the State for the Project. The Board of Education and the City each shall appoint five persons to the Citizens Monitoring Committee.

(End of Article V)

## **ARTICLE VI**

### **Use of the Community Learning Centers**

Use of the Community Learning Centers by the Parties shall be established and governed by the provisions of this Article VI, subject to the limitations on such use set forth in the Project Agreement that are agreed to by the City.

#### **Section 6.1    Shared Use Schedule.**

(a)    Priority Use.    The Community Learning Centers will be used by Community-users. To reflect the Parties' commitment to provide for the educational needs of the Pupils, the School-users will have priority use of the Community Learning Centers during Regular School Hours and at other times as necessary for the governmental, curricular, extracurricular, educational and/or athletic programs or operations of the Board of Education, as provided herein. The City-users will have priority use of the Community Learning Centers at all other times to meet the governmental, civic, educational and recreational needs of the City, as provided herein. The Auxiliary-users shall have no priority use of the Community Learning Centers, but will be permitted use of the Community Learning Centers as set forth below or as otherwise agreed to by the Parties.

(b)    Scheduling. Prior to the start of each School Year, the City Representative and the Board of Education Representative shall establish the schedule for the use of the Community Learning Centers for that School Year based on these priorities for City-use and School-use (the "Shared Use Schedule"). Prior to its adoption, the Shared Use Schedule shall be given to the CLC Advisory Committee for its review and recommendations for revisions. The City Representative and the Board of Education Representative shall consider any such recommendations, adopt the Shared Use Schedule and provide it to the City, the Board of

Education and the CLC Advisory Committee. If the City Representative and the Board of Education Representative are not able to agree on specific items within the Shared Use Schedule, then the scheduling of those items shall be determined by the CLC Advisory Committee.

The Parties shall be bound by the scheduling commitments established by the Shared Use Schedule. Any request for a modification of the Shared Use Schedule shall be determined by the City Representative and the Board of Education Representative consistent with the priorities set forth herein. Those Representatives may ask the CLC Advisory Committee for advice and recommendations in connection with the requested modification. If the Board of Education Representative and the City Representative are not able to agree on a proposed modification, then the following shall control: (i) if the proposed modification deprives a Party of the use of that part of the Community Learning Center for which the modification is requested, then the modification shall be denied and (ii) if the proposed modification will not so deprive a Party of the use of that part of the Community Learning Center for which the modification is requested from that Party's scheduled use of that Community Learning Center, then the modification will be permitted. No such modification of the Shared Use Schedule shall be interpreted as a modification of this Agreement.

In the event that both Parties inadvertently are scheduled to use the same Community Learning Center area at the same time under the Shared Use Schedule, and in the event that the Parties are unable to determine which Party shall have the use of the Community Learning Center, then the matter shall be determined by a coin-toss procedure established by the Board of Education Representative and the City Representative.

The Parties acknowledge that the use of the Community Learning Centers is subject to unanticipated temporary closings due to snow days and other similar emergencies experienced by the District and the City from time to time.

(c) Use by Auxiliary-users. During such times that neither Party is scheduled to use a Community Learning Center under the Shared Use Schedule for a City-use or a School-use, an Auxiliary-user may apply for permission to use a Community Learning Center. The CLC Advisory Committee shall consider and make recommendations regarding all applications for use of the Community Learning Centers by Auxiliary-users, which will be subject to the approval of the Board of Education Representative and the City Representative.

(d) Nature of Community Learning Centers. The Parties expressly state, acknowledge and agree that (i) the joint usage of the Community Learning Centers is the hallmark of this Agreement, (ii) each Community Learning Center is and shall be a “community center” as that term is used under Section 755.16 of the Revised Code and (iii) the Community Learning Centers will contain “schoolhouses” and are and shall be “school buildings,” “school grounds,” “school premises,” and “school property” for purposes of State and federal civil and criminal law as described below.

The Board of Education will operate its public schools in the Community Learning Centers in accordance with its State mandate and this Agreement. To the extent permitted by law, the Parties will work cooperatively to insure the quiet enjoyment of each Party’s use of each Community Learning Center.

Section 6.2 Fees. The City may establish and collect fees for attendance at City-sponsored activities at Community Learning Centers. The Board of Education may establish and collect fees for attendance at District-sponsored activities at Community Learning Centers. The

Board of Education may establish a fee schedule for use of the Community Learning Centers by Auxiliary-users. Such fee shall be used to pay all or a portion of the maintenance, utility, security, custodial and other reasonable costs incurred by the Board of Education as a result of such use by an Auxiliary-user.

Section 6.3 Vending Machines. The Board of Education shall control the sale of food, beverages and other items from vending machines in the Community Learning Centers and may place vending machines in the Community Learning Centers or such locations determined appropriate by the Board of Education.

Section 6.4 Supervision. The Parties acknowledge the need for Supervision during use of the Community Learning Centers, and agree that each Party shall be responsible for providing Supervision during its use of the Community Learning Centers. The City shall designate Site Monitors to be present at the Community Learning Centers when in use by City-users. The City shall have access to the Community Learning Centers as provided in this Agreement. Any such Site Monitors, City Representatives or other persons employed by the City who will have access to the Community Learning Centers shall undergo a BCII background check at the City's expense, consistent with that required under Ohio law of any employee of a board of education. The Board of Education shall oversee the Day-to-Day Operations of the Community Learning Centers. Notwithstanding the foregoing, however, neither the Board of Education nor the City shall be obligated to supervise the activities and programs conducted by the other Party, and the Board of Education and the City shall not have any liability arising in connection with the activities and programs conducted by the other Party.

To the extent that any damages are not covered by insurance as set forth in Article VIII, (i) the City will be responsible for any injury to persons, or damage or destruction of the

Community Learning Centers, all fixtures attached thereto, and all personal property contained therein, caused by its use or by the City-users, and (ii) the Board of Education will be responsible for any injury to persons, or damage or destruction of the Community Learning Centers, all fixtures attached thereto, and all personal property contained therein, caused by its use or by the School-users.

Section 6.5 Policies, Rules and Regulations. The Parties acknowledge that the Revised Code regulates the use and operation of public schools in the State in various respects including, but not limited to the following:

Section 3313.74	Certain institutions and establishments not permitted near schools
Section 3313.75	Use of schoolhouses generally
Section 3313.751	Smoking and possession of tobacco prohibited, enforcement policy
Section 3313.752	Posting anabolic steroid warnings in athletic facilities
Section 3313.753	Prohibition against carrying electronic communications devices
Section 3313.76	Schoolhouses available for education and recreational purposes
Section 3313.77	Use of school property for public functions; board to adopt policy
Section 3313.78	Political meetings in schoolhouses and on grounds; liability for damage
Section 3313.79	Responsibility for damage; payment of actual expenses
Section 3313.80	Display of the national flag

The Parties further acknowledge that federal law regulates the use and operation of public schools in the State in various respects including, but not limited to the following:

18 U.S.C. §1701 <i>et seq.</i>	Children's Internet Protection Act
20 U.S.C. §3351 <i>et seq.</i>	Gun Free Schools Act of 1994
20 U.S.C. §4071 <i>et seq.</i>	Equal Access Act
20 U.S.C. §6301 <i>et seq.</i>	No Child Left Behind Act
20 U.S.C. §7101 <i>et seq.</i>	Safe and Drug Free Schools and Communities Act
41 U.S.C. §701 <i>et seq.</i>	Drug Free Workplace Act of 1988

The Board of Education may adopt or prescribe policies, rules and regulations governing its use and operation of the Community Learning Centers in accordance with its obligations, responsibilities, powers and limitations under State and federal law, including but not limited to those cited above, provided that any such policy, rule or regulation that materially and significantly affects the City must be approved by the City prior to its adoption or prescription.



The City may also adopt policies, rules and regulations governing its use and operation of the Community Learning Centers in accordance with its obligations, responsibilities, powers and limitations under its Charter and Code of Ordinances and State and federal law, provided that any such policy, rule or regulation that materially and significantly affects the Board of Education must be approved by the Board of Education prior to its adoption or prescription. Prior to the final adoption of those policies, rules and regulations, the Board of Education and the City, respectively, shall deliver one copy each of any such policies, rules or regulations to the other Party and to the CLC Advisory Committee. The CLC Advisory Committee shall review, and may recommend revisions to, those policies, rules and regulations.

The Board of Education Representative and the City Representative shall make a joint recommendation to the Board of Education and the City regarding rules governing the use of the Community Learning Centers by Auxiliary-users. A copy of that recommendation shall be provided to the CLC Advisory Committee. The Board of Education shall, subject to the approval of the City, adopt rules governing the use of the Community Learning Centers by Auxiliary-users based upon this recommendation, although they shall not be bound by such recommendation.

Section 6.6 Access. The City and the Board of Education shall restrict keys and security cards to their respective employees who have responsibility for Supervision of the Community Learning Centers, and such other persons as reasonably determined by the City and the Board of Education, provided that all such persons undergo a BCII background check, consistent with that required under Ohio law of any employee of a board of education.

Section 6.7 Non-Liability in the Event of Work Stoppage. Neither the Board of Education nor the City shall be liable to the other Party or to any Community-user for damages

of any kind in the event that access to any Community Learning Center is impeded, restricted or prohibited due to picketing, a strike or any other work stoppage by the employees of the Board of Education or the City, respectively. Such an event shall not be deemed a breach of this Agreement.

(End of Article VI)

## **ARTICLE VII**

### **Alterations and Improvements, Utilities, Maintenance and Repairs of the Community Learning Centers**

Section 7.1 Alterations and Improvements. The Board of Education shall be responsible for making all alterations and improvements to the Community Learning Centers after consultation with the City Representative. The City Representative shall be invited and may attend all meetings of the Permanent Improvement Panel of the Board of Education. If a proposed alteration or improvement materially or substantially affects the City's use of a Community Learning Center, that alteration or improvement shall be made only with the written approval of the City.

If an alteration or improvement to the Community Learning Centers is necessary (i) to protect the health and safety of the users of the Community Learning Centers or (ii) to comply with applicable local, State or federal laws, rules or regulations, then such alteration or improvement shall be deemed accepted and approved by the Parties hereto, and thereafter maintenance of that alteration or improvement shall be in accordance with this Agreement.

Notwithstanding the foregoing, an alteration or improvement to one or more Community Learning Centers may be made by the City without the approval of the Board of Education if (i) the City is willing to pay the entire cost of such alteration or improvement and the entire cost of any increase in the cost of maintaining those Community Learning Centers as a result of such alteration or improvement during the term of this Agreement and (ii) such alteration or improvement does not materially or substantially affect the Board of Education's use of those Community Learning Centers.

In the event an alteration or improvement to the Community Learning Centers is to occur, the City and the Board of Education will agree on a construction schedule that will minimize

disruptions to the operations of the Board of Education. If the City Representative and the Board of Education Representative do not agree within 30 days, the CLC Advisory Committee shall develop the Construction Schedule.

Section 7.2    Utilities. The Board of Education shall pay the cost of water, sewer, gas and electric utility services provided to the Community Learning Centers, subject to Section 7.5.

Section 7.3    Maintenance.

(a)    The Board of Education shall maintain the Community Learning Centers in a safe and serviceable manner, provide regular custodial services and make all necessary repairs and replacements to the Community Learning Centers, including but not limited to window glass, walls, floor coverings, doors, heating, ventilating and air conditioning systems (HVAC), plumbing and all other building systems serving the Community Learning Centers, subject to Section 7.5.

(b)    The Parties will cooperate to define the Community Learning Center's needs for scheduled and unscheduled maintenance so as to maximize the time that the Community Learning Centers will be available for use.

(c)    The Board of Education shall submit to the Commission for approval a plan for the preventative maintenance of each Community Learning Center in accordance with the Project Agreement. Prior to its submission, the Board of Education shall deliver a copy of such plan to the City Representative and to the CLC Advisory Committee.

Section 7.4    Security Services. Security services as deemed reasonably necessary and appropriate will be provided by the Party using the Community Learning Centers during its period of use. The Parties shall cooperate in arranging for security services during periods of joint use. Auxiliary-users shall be responsible for providing security services acceptable to the

Board of Education Representative and the City Representative during the use of the Community Learning Centers by those Auxiliary-users.

Section 7.5 City Share of Costs. On or before December 1 of each year from 2006 through the term of this Agreement, the City shall pay to the Board of Education to assist in the costs of utility services and maintenance for the Community Learning Centers an amount of \$30,000, which amount shall be adjusted each year based on the percent change in the Consumer Price Index (or similar index selected by the City), but not to exceed 6% in any year.

(End of Article VII)

## **ARTICLE VIII**

### **Insurance**

Section 8.1 Community Learning Centers. Each Party shall be responsible for providing for its liability insurance coverage in the manner it deems appropriate and shall name the other Party as an Additional Insured under any insurance policy. The Board of Education shall be responsible for providing property and casualty insurance. Each Party shall be named as insured as their interests appear. Each Party shall provide the other Party with copies of such policies upon request.

Section 8.2 Equipment Insurance. The Board of Education shall maintain insurance on the equipment used in the Community Learning Centers in an amount sufficient to provide for replacement of that equipment.

Section 8.3 Subrogation. To the extent permitted by law, the Parties hereby release each other from any and all liability or responsibility (to the other or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to property caused by fire or other casualties insured against or required to be insured against hereunder, even if such fire or other casualty shall have been caused by the fault or negligence of the other Party, or anyone for whom such Party may be responsible, and each Party hereby waives any right of subrogation for all or any insurance maintained by either Party. Each Party shall cause any insurance policy carried by it hereunder to be written in such a manner to provide that the insurer waives all right of recovery by way of subrogation against the other Party hereunder in connection with any loss or damage covered under such policy.

Section 8.4 Damage or Destruction of Community Learning Centers. Unless the Parties hereto agree otherwise, in the event of material damage or destruction of all or a portion

of the Community Learning Centers, insurance proceeds shall be applied to the repair or restoration of the same. If the repair or restoration is determined not to be economically feasible by either Party hereto, then the insurance proceeds shall be distributed based on the following: to the City, an amount equal to the total insurance proceeds multiplied by a percentage computed as (i) the Akron Share less the School Contribution divided by (ii) the sum of the Akron Share and the State Share; and to the Board of Education, the remaining amount of the insurance proceeds. In the event that the Board of Education declines to repair or restore a Community Learning Center after damage to or destruction of all or part of it, the City shall have the right, but not the obligation, to repair or restore the Community Learning Center, at the City's sole cost and expense.

(End of Article VIII)

## **ARTICLE IX**

### **Transfer of Community Learning Centers**

Section 9.1 Transfer of Community Learning Centers. For purposes of this Article IX, the term “transfer” shall include and mean: to sell, assign, convey, transfer or otherwise dispose of or to create or suffer to be created any lien or other encumbrance. Neither the Board of Education nor the City shall transfer any Community Learning Center or any part thereof without the written consent of the other Party. During the initial term of this Agreement, the Board of Education and the City may jointly transfer any Community Learning Center or any part thereof. During any renewal term of this Agreement, the Board of Education may transfer any Community Learning Center or any part thereof with the consent of the City, which shall not be unreasonably withheld. Upon request of either Party, the CLC Advisory Committee may make recommendations regarding any such transfer.

Section 9.2 Proceeds of Transfer. The proceeds resulting from transferring any Community Learning Center or any part thereof (except to another Party) shall be distributed based on the following: to the City, an amount equal to the total of those proceeds multiplied by a percentage computed as (i) the Akron Share less the School Contribution divided by (ii) the sum of the Akron Share and the State Share; and to the Board of Education, the remaining amount of those proceeds.

(End of Article IX)



## **ARTICLE X**

### **Community Learning Center Advisory Committee**

Section 10.1 City and Board of Education Representatives. It is the understanding of the Parties that the success of the Community Learning Centers will depend, in part, on the ability of the City Representative and Board of Education Representative to cooperate on the Day-to-Day Operations of the Community Learning Centers. To that end it is understood that the City Representative and Board of Education Representative will need to communicate frequently with each other and work cooperatively on Community Learning Centers issues.

Section 10.2 Composition. A CLC Advisory Committee with the following members shall be established. Each member of the CLC Advisory Committee shall possess one vote in making all recommendations and taking other actions by the CLC Advisory Committee provided for in this Agreement. The Committee shall be composed of nine members, as follows:

- (a) four members designated by the Board of Education, to serve staggered two-year terms, each of whom may be reappointed;
- (b) four members designated by the City, to serve staggered two-year terms, each of whom may be reappointed; and
- (c) a member at large appointed by a majority vote of the members identified in (a) and (b) above, to serve a two-year term, who may be reappointed.

The members shall elect a Chairperson and Vice Chairperson from among the members. The Chairperson shall conduct the meetings of the CLC Advisory Committee. The Vice Chairperson shall act as Chairperson in the absence of the Chairperson.

No member shall receive any payment for service on the CLC Advisory Committee.

Section 10.3 Role of CLC Advisory Committee. The CLC Advisory Committee shall review documents and provide advice and recommendations to the City and the Board of Education as provided in this Agreement or as may otherwise be requested by the City or the Board of Education with respect to matters concerning the Community Learning Centers.

Section 10.4 Nonliability of Members of CLC Advisory Committee. No member of the CLC Advisory Committee shall be personally liable for a claim based upon an act or omission of the person in the discharge of the person's duties, except for acts or omissions that involve intentional misconduct or knowing violation of the law, or in a transaction from which the person draws an improper personal benefit; provided, however, that nothing in this Agreement shall be construed as constituting the waiver of any immunity from liability available to the Parties, the CLC Advisory Committee members or their officials, officers, employees, agents, members or volunteers pursuant to any applicable provision of law.

Section 10.5 Open Meetings. The CLC Advisory Committee shall comply with the requirements of Section 121.22 of the Revised Code.

(End of Article X)

## **ARTICLE XI**

### **Joint Obligations, Representations and Warranties; Default**

Section 11.1 Mutual Assistance. Each Party shall cooperate with the other and shall at its own cost and expense provide reasonable assistance to the other to aid the other Party in fulfilling its obligations under this Agreement.

Section 11.2 Authority. The Parties have taken all required action to approve and adopt this Agreement. This Agreement is a duly authorized, valid and binding Agreement of the Parties, enforceable against them in accordance with its terms. Further, the representatives signing this Agreement have the requisite authority to do so.

Section 11.3 Absence of Required Consents or Contractual Restrictions. No consent or approval that has not been obtained is required to be obtained in connection with the signing and delivery of this Agreement or the performance of the transactions contemplated hereby. No contract or agreement by which the Parties are bound will restrict their ability to fulfill their obligations and responsibilities under this Agreement or any related agreement or to carry out the activities contemplated herein. The Board of Education has obtained the written approval of the Commission to use the Community Learning Centers (to the extent that they constitute Classroom Facilities as defined in Chapter 3318 of the Revised Code) for purposes other than solely an education purpose.

Section 11.4 Representations and Warranties. Each Party hereto warrants and represents to the other that the signing and delivery of this Agreement by such Party:

- (a) does not and will not violate or conflict with any statute, regulation, judgment, order, writ, decree or injunction applicable to them; and

(b) does not and will not violate or conflict with any charter provision or by-law of the Parties, or any existing mortgage, indenture, contract, licensing agreement or other agreement binding on such Party.

Section 11.5 Default. In the event of a default by a Party in performing any of the monetary or nonmonetary obligations imposed hereunder, the nondefaulting Party shall give written notice to the other specifying the nature of the default. In case of nonmonetary default, the defaulting Party shall have 60 days after receipt of the written notice of default to cure said nonmonetary default (or such period of time thereafter as is reasonably necessary in order to diligently pursue and complete said cure).

In the event of a monetary default, the Parties hereto shall agree upon a repayment schedule, and the defaulting Party shall make payments in accordance therewith until such time as the monetary default is cured. Thereafter, if the defaulting Party fails to timely cure a monetary default or fails to make payments in accordance with the repayment schedule, then the defaulting Party's right to use the Community Learning Centers as well as the defaulting Party's membership on the CLC Advisory Committee shall be suspended until such time as the monetary default is cured or repayment is made in accordance with the repayment schedule.

Section 11.6 Dispute Resolution. In the event of a dispute or claim by either Party against the other Party arising under this Agreement that cannot be determined pursuant to a resolution procedure previously set forth in the Agreement or otherwise pursuant to good faith negotiations by the Parties using their best efforts to expeditiously resolve the matter, such dispute or claim shall then be submitted for mediation before a mediator mutually selected by the Parties. If the Parties are unable to mutually select a mediator, then either Party may request that

a mediator be provided by the American Arbitration Association. The Parties shall share equally the cost of the services of a mediator.

(End of Article XI)

## ARTICLE XII

### Miscellaneous

Section 12.1 Further Assurances. The Parties hereto, and each of them agree at the time and from time to time, to sign any and all documents reasonably requested by the other to carry out the intent of this Agreement. In connection with the ownership interests set forth in Sections 3.1 and 3.2, the Parties agree that, if necessary to preserve the purposes of this Agreement, the issuance and validity of the City Securities or the levy and collection of the CLC Income Tax, they will cooperate to enter into and record, if necessary, any such instruments that are needed to evidence the ownership interest of the City in the CLC Land and/or the Community Learning Centers.

Section 12.2 Captions. The captions of this Agreement are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this Agreement or any other provisions hereof.

Section 12.3 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns.

Section 12.4 No Partnership. Nothing contained in this Agreement or any of the documents to be signed pursuant hereto shall be interpreted so as to create a partnership or any other arrangement whereby one of the Parties is authorized to act as an agent for another.

Section 12.5 Third-Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto, and no other person or entity shall have a right of action hereunder or the right to claim any right or benefit from the terms contained herein, or be deemed a third-Party beneficiary hereunder.

Section 12.6 Governing Law. The governing law of the validity, meaning and effect of this Agreement shall be determined in accordance with the laws of the State of Ohio.

Section 12.7 No Assignment. Neither Party to this Agreement may assign, transfer or otherwise convey any or all of its rights or obligations hereunder without the prior written consent of the other Party.

Section 12.8 Entire Agreement; Amendment. This Agreement with any exhibits attached hereto sets forth the entire understanding between the Parties relating to the subject matter contained herein and merges and supercedes all prior discussions between them, including the Memorandum of Understanding. No amendment to this Agreement shall be effective unless it is in writing and signed by the Parties hereto.

Section 12.9 Severability. If any one or more of the provisions contained in this Agreement or in any document signed in connection herewith (other than provisions constituting a material consideration to a Party's entering into this Agreement or such other document) shall be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired; provided, however, that in such case the Parties shall use their best efforts to achieve the purpose of the invalid provision.

Section 12.10 Notices. All notices, certificates, requests, demands and other communications hereunder shall be in writing and may be personally served or sent by telefax or certified or registered mail. All such notices, certificates, requests, demands and other communications shall be delivered to the Party to receive the same at the addresses indicated below (or at such other address(es) as a Party may specify in a written notice):

To: Akron City School District  
Administration Building  
70 North Broadway  
Akron, Ohio 44308  
Attention: Superintendent

With a copy to: General Counsel  
Akron City School District  
Administration Building  
70 North Broadway, Room 300  
Akron, Ohio 44038

To: City of Akron  
200 Municipal Building  
166 South High Street  
Akron, Ohio 44308  
Attention: Mayor

With a copy to: Director of Law  
City of Akron  
202 Ocasek Government Office Building  
161 South High Street  
Akron, Ohio 44308

Section 12.11 Waiver. No failure on the part of a Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy by a Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy available at law or in equity.

Section 12.12 No Construction Against Drafter. This Agreement shall be interpreted to give it fair meaning, and any ambiguity shall not be construed for or against any Party.

(End of Article XII)



IN WITNESS WHEREOF, this Agreement is signed the day first written above.

**BOARD OF EDUCATION OF  
THE AKRON CITY SCHOOL DISTRICT**

By: Linda J. R. Ombien  
President

By: John L. Pearson  
Treasurer

APPROVED AS TO FORM:

Stephen F. DeVita  
General Counsel for the Akron City  
School District Board of Education

**CITY OF AKRON**

By: Andrew Chynoweth  
Mayor

APPROVED AS TO FORM AND  
CORRECTNESS:

Wm. R. Roth  
Director of Law  
City of Akron, Ohio  
ebe

STATE OF OHIO )  
 ) SS:  
COUNTY OF SUMMIT )

**BEFORE ME**, a Notary Public in and for said County and State, did personally appear the BOARD OF EDUCATION OF THE AKRON CITY SCHOOL DISTRICT, by LINDA F.R. OMOBIEN, its President, and JOHN L. PIERSON, its Treasurer, who acknowledged to me that they did sign the foregoing instrument as such President and Treasurer and that the same is their free act and deed, both individually and as such officers and the free act and deed of said Board of Education.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Akron, Ohio this 15<sup>th</sup> day of December, 2003.

Stephen C. DeVita  
NOTARY PUBLIC

STATE OF OHIO )  
 ) SS:  
COUNTY OF SUMMIT )

**BEFORE ME**, a Notary Public in and for said County and State, did personally appear the CITY OF AKRON, by DONALD PLUSQUELLIC, its Mayor, who acknowledged to me that he did sign the foregoing instrument and that the same is his free act and deed, both individually and as such authorized agent of said City.

**IN TESTIMONY WHEREOF**, I have hereunto set my hand and official seal at Akron, Ohio this 15<sup>th</sup> day of December, 2003.

Cheryl B. Cunningham Casale  
NOTARY PUBLIC

## CERTIFICATION OF FUNDS

The undersigned, being the Treasurer of the Akron City School District (the "District"), hereby certifies that the money required to meet the obligations of the District under the foregoing Cooperative Agreement in the current fiscal year has been lawfully appropriated for such purposes and is in the treasury of the District or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances, and that the use of said funds for this purposes shall not prevent the District from carrying on its lawful activities.

AKRON CITY SCHOOL DISTRICT

By: John L. Pearson  
Treasurer

Date: December 15, 2003

## CERTIFICATION OF FUNDS

The undersigned, being the Director of Finance of the City of Akron, Ohio (the "City"), hereby certifies that the money required to meet the obligations of the City under the foregoing Cooperative Agreement in the current fiscal year has been lawfully appropriated for such purposes and is in the treasury of the City or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances, and that the use of said funds for this purposes shall not prevent the City from carrying on its lawful activities.

CITY OF AKRON

By: Catherine H. Watson  
Director of Finance

Date: December 15, 2003