



SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item 10.1k

Meeting Date: June 15, 2017

Subject: Approve Joint Venture and License Agreement between Sacramento City Unified School District and Asian Resources, Inc.

- Information Item Only
- Approval on Consent Agenda
- Conference (for discussion only)
- Conference/First Reading (Action Anticipated: _____)
- Conference/Action
- Action
- Public Hearing

Division: Facilities Support Services

Recommendation: Approve Joint Venture and License Agreement between Sacramento City Unified School District and Asian Resources, Inc.

Background/Rationale: SCUSD recently posted a Request for Proposals (RFP) for the use of the former CB Wire School site. Five proposals were received and reviewed by the Facilities Committee on May 22, 2017. A recommendation was made to the full Board on June 1, 2017 to allow Asian Resources, Inc. to use approximately 9,041 square feet of the facility. The term is proposed for 7 years at a rate of \$2.06 per square foot. The fee is to be waived for the first twenty-four months in exchange for the payment of \$44,970 for the installation of six heating, ventilating and air conditioning units.

Financial Considerations: TBD

LCAP GOAL (s): College, Career and Life Ready Graduates; Safe, Emotionally Healthy and Engaged Students; Family and Community Empowerment; Operational Excellence

Documents Attached:

1. Joint Venture and License Agreement

Estimated Time of Presentation: NA

Submitted by: José L. Banda, Superintendent
Cathy Allen, Chief Operations Officer
Facilities Support Services

Approved by: José L. Banda

JOINT VENTURE AND LICENSE AGREEMENT
BETWEEN SACRAMENTO CITY UNIFIED SCHOOL DISTRICT
AND ASIAN RESOURCES, INC.

THIS JOINT VENTURE AND LICENSE AGREEMENT ("Agreement" or "License") is made and entered into upon approval between the parties below ("Effective Date"), by and between the Sacramento City Unified School District ("District") and Asian Resources, Inc. a California nonprofit corporation ("ARI") (collectively, the "Parties"). The operative date ("Operative Date") shall be the date of occupancy by ARI which is estimated to be June 16, 2017 (the "Occupancy Date").

WHEREAS, the District owns property at 5100 El Paraiso Avenue, in the City of Sacramento which was previously known as Clayton B. Wire Elementary School ("CB Wire"); and

WHEREAS, the District and ARI desire to enter into a joint venture and license relationship for the use of the premises at CB Wire described below (the "Premises"); and

WHEREAS, the Agreement sets forth the terms and conditions for such use.

NOW, THEREFORE, the Parties agree to the following terms and conditions:

ARTICLE I

JOINT VENTURE AND LICENSE USE

1.1 **Joint Venture and License; Premises.** The Parties enter into a joint venture and license relationship for the use of the Premises. The District, as Licensor, hereby grants to ARI, as Licensee, a license (the "License") for the mutual benefit of the community and children served by both the District and ARI. Pursuant to the License, ARI shall have the right to use, subject to the terms and conditions herein, the Premises at CB Wire as more particularly described in Attachment A incorporated herein by this reference. The square footage of requested space is approximately 9,041 square feet. The Premises, for the purpose of the License, may be adjusted from year to year. The license year shall be the fiscal year from July 1 to June 30 (the "License Year"). For the first year, the License Year is estimated to commence on June 16, 2017 and shall end on June 30, 2018. The Premises as described in Attachment A shall be the Premises for the first License Year. Thereafter, from year to year, the Premises may be adjusted by the Parties. During the course of a License Year, the Premises may be increased on the providing of written notice as set forth in section 5.11 below. Any adjustments, as described in the Agreement, shall be negotiated at least 90 days before the end of the License Year (the "Negotiation Period").

1.2 **License Fee.** The initial License Fee shall be \$2.06 per square foot per year for the Premises. After the first License Year, any adjustments to the License Fee may not be increased more than 10% above the prior year's License Fee. Any decreases to the initial License Fee may be proposed by ARI based on such considerations as its enhancements or improvements to the Premises, its repairs to the Premises, and the benefits to the District and the community it serves, including student populations. Nothing herein shall commit the District to accepting such

proposals by ARI. The License Fee shall be negotiated each year, after the first License Year during the Negotiation Period. The License Fee shall be paid by the fifteenth of the month, on a quarterly basis, or be subject to a late payment fee of \$50 for each week of delinquency. Except as noted in Section 1.5 below, for the first License Year, and assuming occupancy on or about June 16, 2017 ARI shall pay quarterly payments by September 15, 2017, December 15, 2017 and March 15, 2018 and June 30, 2018 for the year ending June 30, 2018. For subsequent License Years, quarterly payments shall be made. Any quarterly payment shall be subject to the same late payment and interest calculation set forth above. Acceptance of payment of a delinquent License Fee, and late payment fee plus interest, shall not waive other remedies of the District to terminate or revoke the License granted herein.

1.3 **License Deposit.** To assure that ARI performs its obligations under the License, and as a source for the payment of any delinquent License Fee due, Licensee agrees to deposit with the District an amount of \$2,500 (the “License Deposit”). The License Deposit shall be made with the District in a fund which will bear interest at the same rate as District funds pursuant to deposit requirements imposed on public school districts. Any unused License Deposit plus interest earned shall be remitted to ARI.

1.4 **Sublicense.** Subject to approval by the District of any sublicense agreement, ARI, as the holder of the master license, may sublicense occupancy to other organizations within the Premises that provide services compatible with the goals and policies of the District. The District shall have the right to approve any sublicense agreement and the terms and conditions stated therein, which shall include, but not be limited to, Article II (Term of License) and Article IV (Insurance and Safety). The sublicense fee may be collected by either ARI, or assigned by ARI to the District if consented to in writing by the District. Any fees, charges, or costs collected by the sublicensee which are over and above defraying program and related development costs and are conducted at the Premises resulting in a surplus, may be subject to collection by the District. ARI shall be responsible to insure that the terms and conditions of any sublease agreement are complied with. ARI shall terminate any sublicensee that is in breach of its material obligations of the sublicense. Failure to enforce the obligations of the sublease agreement may be grounds for revocation of ARI’s License. The sublicense agreement shall not exceed the Term as described in Article II.

1.5 **Repairs and Alterations.** ARI accepts occupancy of the Premises in “as is” condition, except that the District shall ensure that electrical and plumbing systems are in working condition prior to the Occupancy Date. District will also ensure the operation of any existing heating, ventilating and air condition units (HVAC) that are currently serving the space requested. ARI acknowledges that six of the rooms requested do not have any HVAC units. ARI has agreed to provide funding for the installation of six (6) units. The estimate for this work provided by Mechanical Systems Installation dated January 17, 2017 totals \$44,970. In exchange for ARI providing funding six units, District agrees to twenty-four (24) months of zero License Fee. ARI shall remit \$44,970 to the District no later than July 31, 2017. Failure to remit shall void this Agreement. The District shall be responsible for the installation of the HVAC units and shall be the owner of the installed HVAC units. At the end of 24 months, ARI’s monthly License Fee will be the rate as allowed by the License Agreement. During the 24 month period, ARI will be charged the actual cost of repairs for both labor and materials for regular routine maintenance requested by ARI at the facility. Any repairs or improvements undertaken by ARI (collectively, “ARI Improvements”) shall be submitted to the District for review and

approval. The District reserves the right to require, depending on the nature and scope of ARI's improvements, lien releases, bonding requirements, insurance during construction, and compliance with other legal obligations associated with such improvements on school property. After the initial 24 month period, and in consideration of the payment of the License Fee, the District shall conduct necessary maintenance of the Premises ("District Maintenance") such as repairing leaks, plumbing, and HVAC systems. Other routine maintenance such as repairing windows, minimal landscaping and general maintenance, may be done at the discretion of the District, associated with preserving the structures and other improvements at the Premises. The District shall have the right to recover any costs caused by any licensee committing waste or causing destruction or dilapidation, normal wear and tear excepted.

1.6 **Premises Inspection.** During normal business hours, the District may enter and inspect the Premises for compliance under the License and for compliance by any sublicensee. Such entry shall not unreasonably interfere with the activities being conducted at the Premises. All licensees shall conduct their activities without causing waste, vandalism, or a nuisance at the Premises. ARI waives any claim for damages for injury, inconvenience or interference with ARI's activities, or any loss of occupancy or quiet enjoyment, caused by such entry, except to the extent caused by the gross negligence, recklessness or willful misconduct of District or any person under its explicit direction or control. District shall have keys, or key cards, to unlock all doors on the Premises and the right to enter by any means necessary for entry. Any entry to the Premises obtained by District by any means shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into the Premises, or a constructive or actual ejection of ARI from the Premises or any portion thereof.

ARTICLE II

TERM OF LICENSE

2.1 **Term.** The term ("Term") of the License and Agreement shall commence on the Effective Date and shall terminate, unless terminated pursuant to this Article II on June 30, 2024 ("Termination Date"). Upon mutual consent, in writing between the Parties, the Term may be extended.

2.2 **Termination for Convenience.** The Agreement may be terminated by either Party for convenience. Notice of such termination shall be given at least ninety (90) days before the end of a License Year and shall be effective at the end of the following License Year.

2.3 **Termination for Cause.** The Agreement may also be terminated by either Party at any time for cause. "Cause" shall consist of a breach of any non-technical provision of the Agreement, and the failure of the breaching party to cure the breach within sixty (60) days of being notified of the breach, or such other date as the Parties may agree or a reasonable time to cure the breach not to exceed one hundred and twenty (120) days. If District terminates the Agreement for cause, it may bring an action to recover any damages from ARI including any unpaid License Fee and to revoke the License. Notwithstanding the foregoing, the failure to pay a quarterly License Fee after being delinquent for a period of sixty (60) days or the failure to make payments pursuant to Article III for a period of sixty (60) days, shall entitle the District to terminate the Agreement, including any sublicense agreement, without complying with this section or section 5.12 (Alternative Dispute Resolution), and if the Premises are not vacated within fifteen (15) days notice of termination by the District, shall entitle the District to any and

all remedies at law or in equity, including damages and payment of delinquent amounts due, to remove or eject ARI and its subtenants.

2.4 **Vacation of Premises.** On or before the Termination Date, ARI shall return the Premises and the affected portions of the Premises to District in a clean condition, ordinary wear and tear excepted. ARI shall be responsible for the cost of any damage caused to the Premises and/or the affected portions of the Premises resulting from ARI's surrender of the Premises. On or before the Termination Date, ARI and ARI's agents, officers, employees, volunteers and independent contractors shall immediately vacate the Premises. ARI shall have the right to remove furnishings and equipment. Any fixtures may be removed as long as damage is not caused to buildings or other structures.

ARTICLE III

ASSESSMENTS, TAXES, FEES, CHARGES, AND UTILITIES

ARI shall pay or cause to be paid, and hold District and the property of District, including the Premises, free and harmless from all assessments, taxes, fees, and charges, including but not limited to, charges for the furnishing of telephone services and other public utilities, including internet access and use. District shall charge ARI for actual electric, gas, water, irrigation, sewer, storm water, trash, and recycle utility fees on a pro rata share based on the use of 9,041 square feet. The pro rata share will be adjusted on an annual basis if the square footage is increased or decreased. District shall not be liable in damages or otherwise for any interruption in the supply of any utility services to the Premises nor shall any such interruption constitute any ground for an abatement of ARI's obligations under the Agreement, unless such is the result of the gross negligence or willful misconduct of District. The use of tax exempt property, such as the Premises, may subject persons or entities occupying the Premises to a "possessory interest tax." To the extent ARI is subject to a possessory interest tax for its use, the tax shall be paid by ARI.

ARTICLE IV

INSURANCE AND SAFETY

4.1 **Insurance Requirements.** ARI shall maintain insurance in the minimum amounts as required by the District. For the first License Year, there shall be a minimum of \$1,000,000 per occurrence for both Premises liability and personal liability. In subsequent License Years, the insurance requirements may be adjusted depending on the scope of uses by ARI and scope of uses by sublicensees. ARI shall submit evidence of such insurance and shall name the District as an additional insured prior to occupancy. As an additional insured, ARI's policy requirements shall: (i) name District as an additional insured and be provided on an occurrence basis; (ii) state that such policy is primary, excess, and non-contributing with any other insurance carried by District; (iii) state that the naming of an additional insured shall not negate any right the additional insured would have had as claimant under the policy if not so named; and (iv) state that not less than 30 days written notice shall be given to District before the cancellation or reduction of coverage or amount of such policy.

A certificate issued by the carrier, or carriers, of the policies described herein shall be delivered

to District prior to ARI's, its employees, volunteers and/or its independent contractors first entry onto the Premises. Each such certificate shall set forth the limits, coverage, and other provisions required under this section. A renewal certificate for each of the policies described above shall be delivered to District not less than thirty (30) days before the expiration of the term of such policy. Coverage shall be subject to District's approval and shall carry a rating of A:X or higher and the insurance carrier shall be admitted in California to provide insurance coverage and issue policies.

The policy requirements may be made part of a blanket policy of insurance so long as such blanket policy contains all of the provisions required herein and does not reduce the coverage, impair District's rights under the Agreement, or negate, or decrease, ARI's obligations under the Agreement.

4.2 **Safety**. ARI shall be solely and completely responsible for conditions of the Premises, including safety of all persons and property. The foregoing shall include but not be limited to ensuring that the installation of any improvements to the Premises are adequately secured by ARI to avoid the creation of an attractive nuisance or other hazardous condition. ARI, its agents, employees, invitees, volunteers and independent contractors shall fully comply with all state, federal and other laws, rules, regulations, and orders relating to safety. All materials, equipment, and supplies provided for the Premises and services provided shall fully conform to all applicable State, local and Federal safety laws, rules, regulations, and orders.

4.3 **Occurrence of a Casualty**. If at any time during the Term, the Premises and any related improvements are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of District or any person or entity under its explicit direction or control, if caused in whole or in part by ARI, its employees, agents, invitees, guests, vendors, or any other person acting under ARI's control or direction, the Agreement shall continue in full force and effect and ARI, at its sole cost and expense, shall be responsible for repairing and restoring the damaged Premises and related improvements and shall diligently proceed with such repairs and/or restoration until completion. If at any time the Premises and any related improvements are destroyed in whole or in part by fire, theft, the elements, or any other cause not the fault of ARI, its employees, agents, invitees, guests, vendors, or any other person acting under ARI's control or direction, then at its option the District may terminate this License upon written notice to ARI and may at its option proceed with repairs and/or restoration of the Premises.

4.4 **Indemnity By ARI**. Except to the extent caused by the gross negligence, recklessness or willful misconduct of District or any person or entity under its explicit direction or control, ARI shall indemnify and hold District, its officers, agents, employees, members of its Board of Education free and harmless from any and all liability, claims, loss, damages, or expenses resulting from ARI's occupation and use of the Premises, specifically including, without limitation, any liability, claim, loss, damage, or expense arising by reason of:

4.4.1 The death or injury of any person who is an employee, guest, invitee, or agent of ARI, or by reason of the damages to or destruction of any property, including property owned by ARI or by any person who is an employee or agent of ARI, from any cause whatsoever as a direct result of operating the Program Services or ARI's use and/or occupancy of the Premises while that person or property is in or about the Premises or in any way connected with the Premises or with any of ARI's improvements or personal property on the Premises;

4.4.2 The death or injury of any person, including any person who is an employee, guest, invitee, or agent of ARI, or by reason of the damage to or destruction of any property, including property owned by ARI or any person who is an employee or agent of ARI, caused or allegedly caused by either (1) the condition of the Premises or improvements on the Premises; or (2) any act or omission on the Premises by ARI or any person in or about the Premises with the permission and consent of ARI;

4.4.3 Any work, including alterations, performed on the Premises or materials furnished to the Premises at the instance or request of ARI or any person or entity acting for or on behalf of ARI; and

4.4.4 ARI's failure to perform any provision of the Agreement or to comply with any requirement of applicable law or any requirement imposed on ARI or the Premises by any duly authorized agency or political subdivision.

4.5 **Limitation of Liability.** Neither District, nor any of its officers, agents, employees, and members of its Board of Education, shall be personally liable in any manner or to any extent under or in connection with the Agreement. ARI waives any and all such personal liability against the District and the individuals stated herein.

ARTICLE V

GENERAL TERMS AND PROVISIONS

5.1 **Entire Agreement.** The Agreement constitutes the sole and entire agreement between the Parties with respect to the subject matter dealt with in the Agreement and all understandings, oral or written, with respect to the subject matter of the Agreement are hereby superseded.

5.2 **Future Assurances.** Each Party hereto shall cooperate and take such actions as may reasonably be required by the other Party hereto in order to carry out the provisions of the Agreement and the transactions contemplated by the Agreement.

5.3 **Amendment of Agreement.** No modification of, deletion from, or addition to the Agreement shall be effective unless made in writing and executed by both District and ARI.

5.4 **Waiver.** The failure by either Party to enforce any term or provision of the Agreement shall not constitute a waiver of that term or provision, or any other term or provision. No waiver by either Party of any term or provision of the Agreement shall be deemed or shall constitute a waiver of any other provision of the Agreement, nor shall any waiver constitute a continuing waiver unless otherwise expressly provided in writing.

5.5 **Severability.** In the event any clause, sentence, term or provision of the Agreement shall be held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of the Agreement shall nonetheless remain in full force and effect.

5.6 **Construction of Agreement.** The terms and provisions of the Agreement shall be liberally constructed to effectuate the purpose of the Agreement.

5.7 **Governing Law and Venue.** The Agreement shall be governed by and interpreted under the laws of the State of California applicable to instruments, persons, transactions and subject matter which have legal contacts and relationships exclusively within the State of California. Subject to the alternative dispute resolution provision set forth in section 5.12, any action or proceeding seeking any equitable remedies or remedies at law with respect to the provisions of the Agreement shall be brought in the Superior Court for the County of Sacramento.

5.8 **Assignment.** ARI shall not have the right to assign the Agreement or any interest in the Agreement, without District's prior written consent. A sublease by ARI shall not be considered an assignment. Any assignment made without such prior written consent shall be void, and at the option of District, shall terminate the Agreement. No right under the Agreement, nor claim for any money due or to become due hereunder shall be asserted against District, or persons acting for District, by reason of any assignment of the Agreement without District's written consent. Consent to one assignment, or other transfer shall not be deemed to constitute consent to any subsequent assignment, or other transfer.

5.9 **Binding Effect.** The Agreements, conditions, and provisions contained in the Agreement shall, subject to provisions for assignment, apply to and bind the heirs, executors, administrators, successors, and assigns of the parties to it.

5.10 **Independent Contractor.** ARI is an independent contractor, not an officer, employee or agent of District.

5.11 **Notices.** Any notice required or desired to be given pursuant to the Agreement shall be in writing, duly addressed to the Parties below. By written notice in conformance herewith, either Party may change the address to which notices to said party must be delivered. Any notice deposited with the United States Postal Service shall be deemed to have been duly given upon confirmed receipt, if sent by certified or registered mail, postage prepaid, addressed as set forth below or as changed as set forth herein. Notice may also be given by facsimile with proof of transmission, or by express mail with proof of delivery. Notice sent by any other manner shall be effective only upon actual receipt thereof.

District:

Chief Operations Officer,
Facility Support Services
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824
Ph: (916) 643-9233

ARI:

Stephanie Nguyen
Executive Director
Asian Resources, Inc.
5709 Stockton Blvd.
Sacramento, CA 95824
Ph: (916) 454-1892

If facsimile transmission is made, each Party shall supply a fax number to the other Party.

5.12 **Alternative Dispute Resolution.** In the event of any dispute regarding the provisions of the Agreement, the Parties shall attempt to mediate a resolution. If mediation is not successful, the Parties agree to submit their dispute to binding arbitration with an acceptable third party, or if the Parties cannot agree, with either the American Arbitration Association (“AAA”) or JAMS in Sacramento County. Each Party shall share the cost of the mediator/arbitrator and each Party shall bear their respective attorneys fees and costs.

5.13 **Incorporation of Attachments.** Attachment A is incorporated in the Agreement as though set forth fully and at length herein. Any subsequent attachments through amendments shall be deemed to be incorporated herein by reference.

5.14 **Headings and References.** The headings of the Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions of the Agreement.

5.15 **Signature In Counterparts.** The Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute the same instrument. A copy, original or facsimile with all signatures appended together shall be deemed a fully executed Agreement. Electronic signatures, and copies of all signatures, shall have the same force and effect as original signatures.

5.16 **Remedies.** The remedies of the District shall not be exclusive but shall be cumulative and in addition to all remedies now or hereafter available at law or in equity.

5.17 **Warranty of Authority.** The signatories of ARI warrant they have full authority to bind the corporation known as Asian Resources, Inc. and to execute and deliver the Agreement on behalf of the corporation.

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the Effective Date.

DISTRICT:

Sacramento City Unified School District

By: _____
José L. Banda
Its: Superintendent

ARI:

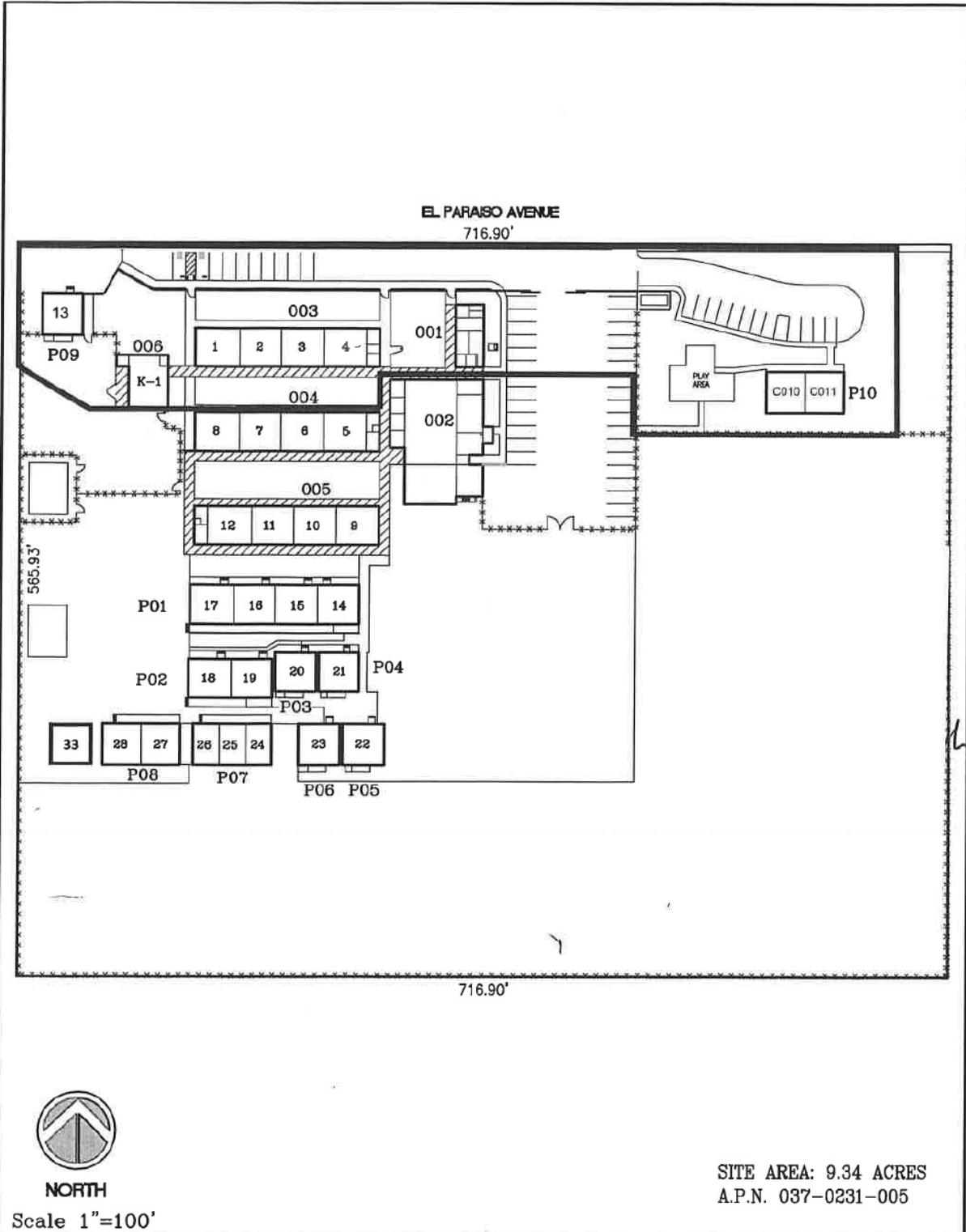
Asian Resources, Inc.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTACHMENT A
Pages 1 and 2

CB Wire
5100 El Paraiso Avenue
City of Sacramento



040 - Clayton B. Wire Elementary School
5100 El Paraiso Avenue
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT

EXISTING SITE DIAGRAM

OCTOBER 2001

Site C.B. Wire

Building	Room	Square Feet
P09	13	960
006	K-1	1,077
003	1	959
003	2	952
003	3	952
003	4	952
001	Administration	990
002	Restroom Women	72
002	Restroom Men	72
002	Vestibule	74
002	Closet/Storage	61
P10	CO10	960
P10	CO11	960

Total 9,041