



# SACRAMENTO CITY UNIFIED SCHOOL DISTRICT BOARD OF EDUCATION

Agenda Item No.: 11.1g

**Meeting Date:** December 15, 2022

**Subject:** Approve Sacramento Metropolitan Air Quality Management District Site Use Agreement for Outdoor Air Quality Monitoring at Fern Bacon Middle School

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

**Department:** Facilities Support Services

**Recommendation:** Approve Sacramento Metropolitan Air Quality Management District Site Use Agreement for Outdoor Air Quality Monitoring at Fern Bacon Middle School

**Background/Rationale:** The Sacramento Metropolitan Air Quality Management District (SMAQMD) has an obligation through Assembly Bill (AB) 617 (C. Garcia) to monitor for air pollution and reduce exposure in communities that show a higher air pollution burden. SMAQMD desires to park an air monitoring trailer at a certain and specific location on Fern Bacon Middle School in order to best monitor outdoor air quality within the neighborhood. The trailer will be placed on the site as indicated in Exhibit A included within the Agreement attached, and SMAQMD, site staff, and the facilities department jointly identified the location. Furthermore, the location was identified by finding a location that was close enough to a power source, but far enough away from any buildings that might influence wind circulation that might adversely impact proper air monitoring. The location was also selected in order to not interfere with student or site programming, and where SMAQMD may secure the trailer in order to eliminate student dangers or reduce potential vandalism. The trailer would be parking in the outlined location for 5 years.

**Financial Considerations:** SMAQMD to pay for site improvements required to power the trailer, a percentage of the site's utilities, and \$25 per month for the placement of the air monitoring trailer for the next five years.

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

**Documents Attached:**

1. Air Monitoring Site Agreement

**Estimated Time of Presentation:** NA

**Submitted by:** Rose Ramos, Chief Business and Operations Officer  
Nathaniel Browning, Director of Facilities

**Approved by:** Jorge A. Aguilar, Superintendent

**AIR MONITORING SITE AGREEMENT  
BETWEEN  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT AND SACRAMENTO  
METROPOLITAN AIR QUALITY MANAGEMENT DISTRICT**

This Site Use Agreement ("Agreement") is entered into on December 31, 2022 ("Effective Date"), by and between the Sacramento City Unified School District, a public school district, ("District") and Sacramento Metropolitan Air Quality Management District, a California local public agency, ("Licensee"). The District and Licensee are collectively referred to as the "Parties."

**RECITALS**

- A. **WHEREAS**, District is the owner of certain real property, Fern Bacon Middle School, located at 4140 Cuny Avenue, Sacramento, California 95823 ("Property");
- B. **WHEREAS**, Licensee has an obligation through Assembly Bill (AB) 617 (C. Garcia, Chapter 136, Statutes of 2017), to monitor for air pollution and reduce exposure in communities that show a higher air pollution burden.
- C. **WHEREAS**, Licensee wishes to operate an air monitoring trailer at a certain location on the Property, which is further described in *Exhibit A* hereto ("Premises");
- D. **WHEREAS**, the Premises would contain an air monitoring trailer and certain air monitoring equipment that will be installed and maintained by Licensee;
- E. **WHEREAS**, the air monitoring trailer and equipment will be installed and maintained in accordance with District Standards and Specifications;
- F. **WHEREAS**, Licensee may need to update and/or replace its air monitoring equipment located on the Premises during the duration of this agreement; and
- G. **WHEREAS**, the Parties now desire to enter into this Agreement permitting Licensee to install, maintain, update, or replace air monitoring equipment on the Premises and to utilize the Premises for the purpose of monitoring the air quality.

**NOW THEREFORE**, in consideration of the covenants and conditions of this Agreement, including the recitals hereof, which are incorporated herein by this reference, the Parties agree as follows:

**AGREEMENT**

1. **Grant of License.** District hereby grants use to Licensee, and Licensee hereby accepts from District, a revocable non-exclusive license ("License") to access and use the Property under the terms and conditions of this Agreement.
2. **Permitted Uses of Premises.** Licensee may only use the Premises, subject to the terms and conditions of this Agreement, for purposes consistent with air quality management. Licensee shall be responsible for use and development of the Property for the intended purposes.
  - a. District permits use of all air monitoring equipment installed and maintained by Licensee, including compressed gas cylinders. Licensee agrees to handle and maintain all compressed gas cylinders in compliance with all applicable federal, state, or local laws and regulations.
3. **Ongoing Access to Premises.** Licensee, Licensee's employees, and agents, shall have access to the Premises only for air monitoring purposes and for replacement of air monitoring equipment. District reserves the right to refuse Licensee access to the Premises at particular times and particular dates, when such access will interfere with the District's use of the Property. District grants to Licensee and Licensee's employees and agents, a non-exclusive right of access for pedestrian and vehicular ingress and egress across the Premises. Any access by Licensee, Licensee's employees, and agents will be arranged and approved by District staff beforehand.
  - a. Licensee shall install any warning signs on or about the Premises required by federal, state or local law.
  - b. In exercising its right of access to the Premises herein, Licensee agrees to cooperate with any reasonable security procedures utilized by District on the Premises and further agrees not to unduly disturb or interfere with the business or other activities of District or other occupants of the Property.
  - c. District shall maintain all existing access to roadways or driveways extending from the nearest public roadway to the Premises in a manner sufficient to allow for Licensee's access to the Premises. District shall be responsible for maintaining and repairing such roadways and driveways at District's sole expense, except for any damage caused by Licensee's use of such roadways or driveways. If Licensee causes any such damage, Licensee shall promptly repair the same at its sole expense.
4. **Term.** The term of this Agreement shall commence on July 25, 2022 ("Effective Date") and shall be for five (5) years ("Term"). The term shall not automatically renew at the end of the initial term. Additional terms may be negotiated.

5. **License Fee.** Licensee may use the Premises for **\$25** per month, to be paid annually by December 31. District reserves the right, after the Term, to impose fees for use of the Premises by Licensee, in accordance with applicable law.
6. **Taxes, Assessments and Other Charges.** Although this Agreement creates no interest in the Property, Licensee acknowledges that, pursuant to California Revenue and Taxation Code section I 07.6, under some circumstances, Licensee's use of the Property may be subject to property taxation. District makes no representation as to whether or not taxes are due. Licensee shall be solely responsible for any property taxes arising out of Licensee's use of the Property, including delinquent taxes. If District receives a notice of property tax liability arising out of Licensee's use of the Property, District shall immediately send the notice to Licensee, pursuant to Section 26 of this Agreement, so Licensee may timely address the notice and pay any associated property tax liability.
7. **Non-Exclusive Use of Property.** District retains for the Term of this Agreement, the non-exclusive right to use of the Premises. District's right to use the Premises pursuant to this Agreement is non-exclusive, and shall in no way unreasonably interfere with Licensee's rights under this Agreement.
8. **Assignment.** Unless expressly stated herein, neither party may assign, delegate, sublicense, or otherwise transfer their rights and obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Any transfer, assignment, delegation or sublicense by a party without such prior written consent is invalid.
9. **Prohibited Use.** Licensee shall not place upon the Premises any hazardous materials and shall properly dispose of all wastes in a legal manner and in appropriate receptacles. Licensee shall not create a nuisance or perform any other act or thing which interferes with the quiet enjoyment of the surrounding property by District or any sublicensee. For purposes of this Agreement, hazardous materials mean any materials or substances defined as hazardous materials, substances or waste, or toxic materials, substances or hazardous waste as those terms or similar terms are defined by any other federal, state or local law, rule, regulation, ordinance or order.
10. **Conditions of Property.** Licensee accepts use of the Premises in its existing "AS IS" condition on the Effective Date, without any representations or warranties of any kind express or implied, with respect thereto. Licensee also assumes the risk of any damage to property or injury to persons which may be caused by Licensee's use of the Premises. Except as expressly permitted by this Agreement and any Exhibits attached hereto, Licensee shall not make any alterations, renovations or improvements ("Improvements") to the Property without the prior written consent of

District. If District authorizes any Improvements, Licensee shall pay for all such Improvements, and shall indemnify, defend and hold District harmless with respect to any claim for mechanics' or materialmen's liens for work performed, services rendered, and materials provided or delivered to or for Licensee for such purpose.

Licensee will have a licensed contractor connect to existing power at the building just East of the trailer location. The power lines will be routed through an existing buried pipe that is already installed on site. Minimal trenching and backfilling in the grass area just West of the air monitoring trailer will be needed. Licensee will also have a contractor install 6-foot-tall temporary chain link fencing around the entire air monitoring trailer.

11. **Maintenance.** Licensee, at its sole cost and expense, shall at all times during the Term of this Agreement, keep and maintain the Premises in good order and condition, and free from rubbish, debris and brush.
12. **Utilities.** Licensee will pay all utilities necessary to operate and maintain the Premises including, without limitation, water, gas, and electricity. Licensee will pay the District a monthly fee of **\$390.00** per month for the use of electricity. District reserves the right, after a year, to renegotiate a monthly fee for the use of electricity.
13. **Improvements.** With the prior written approval of District, Licensee may, at its sole cost and expense, construct or cause to be constructed on the Premises those alterations, additions, and improvements ("Improvements") which Licensee deems necessary to its permitted uses of the Premises, subject to local site, zoning, and design review and other required approvals. Upon Licensee's request for the District's written approval, Licensee shall provide District all drawings from any schematic design phase of a proposed Improvement to District for review and approval. District may require additional information and drawing prior to providing its approval.
  - a. Licensee shall be solely responsible, at its own cost and expense, for securing and maintaining all applicable local, State and governmental permits and approvals necessary for the completion of any Improvements undertaken by Licensee on the Premises. All Improvements shall be reviewed and approved by the District for compliance with Division of State Architect requirements. All Improvements constructed on the Premises by Licensee shall remain the sole property of Licensee during the Term of this Agreement and upon expiration of the Agreement or earlier termination as herein provided.
14. **Title to Property.** Licensee acknowledges the legal title of District to the Property and agrees never to deny such title or to claim title in Licensee's name. Licensee shall exercise the privilege granted in this Agreement at Licensee's own risk, and hereby waives any and all claims for damages against District for any injuries or damages

suffered because of the exercise of such privilege.

15. **Liens and Claims.** Licensee shall not suffer or permit to be enforced against District's title to the Property any lien, claim or demand arising from any construction activities conducted under the terms of this Agreement. Licensee shall pay all such liens, claims or demands before any action is brought to enforce any such lien, claim or demand against the Property together with all costs and expenses in connection therewith.
16. **License Subject to Existing Rights of Others.** This License is subject to all existing easements, servitudes, licenses, rights of ways for canals, ditches, levees, roads, highways, and telegraph, telephone, electric power lines, pipelines, and other appurtenances, whether recorded or not.
17. **Termination.** Either party may terminate the License and this Agreement at any time by providing thirty (30) days' written notice to the other party. Upon termination or expiration of the Agreement, Licensee shall return the Premises to its original condition, normal wear and tear excepted. All authorized Improvements to the Premises shall remain the sole property of the District. Licensee is responsible for the cost of any damage caused to the Property resulting from Licensee's use or access.
18. **Indemnification.** District shall indemnify, defend, and hold harmless Licensee and its governing body and each member thereof, officers, employees and agents, from every expense, cost, loss, claim, demand, suit, action, judgment, liability, or payment, including but not limited to attorneys' fees, arising from or relating to District's operation, use or occupancy of the Premises, or otherwise arising from this Agreement and the subject matter thereof, except to the extent that said expense, cost, loss, claim, demand, suit, action, judgment, liability, or payment was caused by Licensee's wrongful or negligent actor omission. Licensee shall indemnify, defend, and hold harmless District, its employees, agents, consultants, independent contractors, governing board, and board members, from every expense, cost, loss, claim, demand, suit, action, judgment, liability, or payment, including but not limited to attorney's fees, arising from or relating to Licensee's use, occupancy, or possession of the Premises, or otherwise arising from this Agreement and the subject matter thereof, except to the extent that said expense, cost, loss, claim, demand, suit, action, judgment, liability, or payment was caused by District's wrongful or negligent act or omission. This Section shall survive termination, cancellation, or expiration of this Agreement.
19. **Insurance.** Licensee shall, at all times during the term of this Agreement, and at its own cost and expense, procure and continue in force the following insurance coverage: Bodily Injury and Property Damage Liability insurance with a combined single limit for bodily injury and property damage of not less than Two Million Dollars (\$2,000,000) per occurrence and not less than Four Million Dollars (\$4,000,000) for property damage, and shall be maintained on an occurrence basis.

Such minimum limits of policies shall in no event limit the liability of Licensee hereunder. Such insurance shall name the District as an additional insured. Insurance, shall be with companies having a rating of not less than A- in "Best's Insurance Guide". Licensee shall furnish from the insurer or cause the insurer to furnish certificates of coverage to the District. No such policy shall be cancelable or subject to reduction of coverage or other modification or cancellation except after thirty (30) days prior written notice to the District by the insurer and with the consent of the District thereto.

- a. In the event of property damage or personal injury caused by Licensee, its officers, employees or agents, all such policies shall be considered primary policies not contributing with and not in excess of the coverage that the District must carry. In the event property damage or personal injury is caused by the District, its officers, employees, or agents, or any unaffiliated third party, Licensee policies shall be secondary and in excess of the coverage that the District may carry. Licensee shall, at least twenty (20) days prior to the expiration of such policies, furnish the District with renewals or binders. Licensee agrees that if Licensee does not take out and maintain such insurance, then the District may (but shall not be required to) procure said insurance on Licensee's behalf and charge Licensee the premiums together with a 15% handling charge, payable upon demand.
  - b. Licensee shall have the right to provide such insurance coverage pursuant to blanket policies obtained by Licensee provided such blanket policies expressly afford coverage to the Premises and to Licensee as required by this Agreement.
  - c. During the term of this Agreement, the District shall continue to maintain insurance against claims for injuries to persons or damages to property (real and personal), including any personal property of the District in amounts equal to that maintained by the District prior to Licensee's occupancy.
20. **Safety.** Licensee 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 Licensee to avoid the creation of an attractive nuisance or other hazardous condition. Licensee, 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. Neither Licensee, nor any of its agents, employees, invitees, volunteers, and independent contractors will have contact with District students.
21. **Severability.** If any clause, sentence, term or provision of this Agreement shall be



held by any court of competent jurisdiction to be illegal, invalid, or unenforceable for any reason, the remaining portions of this Agreement shall nonetheless remain in full force and effect. This Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against either of the parties who jointly prepared this Agreement.

22. **Governing Law.** This 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. Any action or proceeding seeking any relief under or with respect to this Agreement shall be brought solely in the Superior Court of the State of California for Sacramento County, subject to any motion for transfer of venue.
23. **No Partnership/Joint Venture.** This Agreement does not and shall not evidence a partnership or joint venture between the District and Licensee.
24. **Third Party Beneficiaries.** Unless specifically set forth herein, nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.
25. **Voluntary Agreement.** Licensee and District each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The Parties further declare that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including consultation with counsel of their choosing if desired, in deciding whether to execute this Agreement.
26. **Entire Agreement.** This Agreement, along with any Exhibits referenced herein and attached hereto, constitutes the entire agreement and understanding between the parties regarding the subject matter hereof and supersedes all offers, negotiations and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any modifications or amendments to this Agreement shall not be effective unless in writing and executed by authorized representatives of both parties.
27. **Notice.** Whenever under this Agreement one party is required or permitted to give notice to the other, such notice will be in writing, addressed as follows, and deemed given upon the earlier of delivery or five (5) calendar days after such notice is mailed by registered or certified United States mail, return receipt requested, postage prepaid to the individual at the address identified with the signatures below. A party may change its address for notices by providing notice to the other parties as provided below.

<p><b>To the District:</b></p> <p>Sacramento City Unified School District  Attn: Rose F. Ramos  Chief Business &amp; Operations Officer  5735 47<sup>th</sup> Avenue  Sacramento, CA 95818</p>	<p><b>To the Licensee:</b></p> <p>Sacramento Metropolitan Air Quality  Management District  Attn: Levi Ford  Program Supervisor  777 12<sup>th</sup> Street, Suite 300  Sacramento, CA 95814</p>
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28. **Waiver.** No delay or omission by District in exercising any right under this Agreement shall operate as a waiver of that or any other right and no single or partial exercise of any right shall preclude District from any or further exercise of any right or remedy.
29. **Successor and Assigns.** The covenants and conditions herein contained, subject to the provisions as to assignment, apply and bind the heirs, successors, executors, administrators and assigns of the Parties hereto.
30. **Amendments.** No provision of this Agreement may be amended or modified except by an agreement in writing signed by the Parties hereto.
31. **Construction.** Each of the Parties acknowledges and agrees that this Agreement is to be construed as a whole according to its fair meaning and not in favor of nor against any of the Parties as draftsman or otherwise.
32. **Prevailing Authority.** In the event of a conflict between the law and the terms of this Agreement, the law shall prevail, and any such conflicting terms shall be severed from this Agreement and nullified.
33. **Subject to Approval by Governing Board.** This Agreement shall become effective upon ratification by the District's Governing Board.
34. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original of the Agreement. Signatures transmitted via facsimile or portable document format ("pdf") to other Parties to this Agreement shall be deemed equivalent to original signatures on counterparts.
35. **Warranty of Authority.** Each of the persons signing this Agreement represents and warrants that such person has been duly authorized to sign this Agreement on behalf of the Party indicated, and each of the Parties by signing this Agreement warrants and represents that such Party is legally authorized and entitled to enter into this Agreement.

**APPROVED AND RATIFIED**, this \_\_\_\_ day of \_\_\_\_\_, 2022, the Board of Trustees of the Sacramento City Unified School District by the following vote:

AYES: \_\_\_\_

NOES: \_\_\_\_

Abstentions: \_\_\_\_

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

**DISTRICT:**

Sacramento City Unified School District

By: \_\_\_\_\_  
Jorge A. Aguilar, Superintendent

Date: \_\_\_\_\_

**LICENSEE:**

Sacramento Metropolitan Air Quality Management District

By: \_\_\_\_\_  
Alberto Ayala, Executive Director/APCO

Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_  
Kathrine Pittard, District Counsel

# Exhibit A

