RESOLUTION NO. 2348

A RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, APPROVING AND AUTHORIZING THE MAYOR TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN THE TOWN OF PAYSON AND THE PAYSON UNIFIED SCHOOL DISTRICT RELATING TO THE DEMOLITION, CONSTRUCTION AND/OR REMODELING OF CERTAIN OF ITS SCHOOL BUILDINGS.

WHEREAS, Payson Unified School District ("PUSD") is preparing for the demolition, construction and/or remodeling of certain of its school buildings; and

WHEREAS, PUSD and the Town of Payson desire to enter into a Memorandum of Understanding to provide for cooperative use of property and for the safety of the students, parents and others as they travel to, from, and by the schools.

NOW, THEREFORE, THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, DO HEREBY RESOLVE AS FOLLOWS:

Section 1. That the Memorandum of Understanding between the Town of Payson and the Payson Unified School District, a copy of which is attached hereto as Exhibit "A" and incorporated herein as though set forth in full at this point, be and is hereby approved in substantially the form attached.

Section 2. That F. Robert Edwards, Mayor of the Town of Payson, be and is hereby authorized to execute said Memorandum of Understanding in substantially the form attached as Exhibit "A".

Section 3. That the Town of Payson be and is hereby authorized to take and perform such other and further actions as are necessary or appropriate to carrying out the purposes provided for in this Resolution Number 2348.

PASSED AND ADOPTED BY THE MAYOR AND COMMON COUNCIL OF THE TOWN OF PAYSON, ARIZONA, this _____ day of _____, 2007, by the following vote:

AYES _____ NOES _____ ABSTENTIONS _____ ABSENT _____

_____
F. Robert Edwards, Mayor

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVED AS TO FORM:

_____
Samuel I. Streichman, Town Attorney

Prepared by Town of Payson Legal Department
SIS drs December 5, 2007 (5 11PM)
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EXHIBIT "A"

to Resolution No 2348

TOWN OF PAYSON
AND
PAYSON UNIFIED SCHOOL DISTRICT
MEMORANDUM OF UNDERSTANDING

Julia Randall Elementary School and Rim Country Middle School

This Memorandum of Understanding ("MOU") is made and entered into by and between the Town of Payson ("Town") and the Payson Unified School District ("District") (collectively "the Parties").

Recitals:

1 The District develops, designs, and builds public works projects, including schools, to fulfill its statutory mandate to educate all public-school-age children within its boundaries.

2. The District adheres to building and fire codes and incorporates the intent of local zoning ordinances and regulations to the greatest extent possible given projects constraints.

3. The District is preparing for the demolition of the existing buildings of Julia Randall Elementary School ("JRE") and the construction of the new JRE buildings.

4 The District is preparing to remodel and add an addition to the Rim Country Middle School ("RCMS")

5 A building and several signs at the current JRE encroach on the Town's property.

6. The Town and District have a mutual interest in the safety of the students, parents and others as they travel to, from, and by JRE and RCMS.

Agreements:

Now, therefore, in consideration of the recitals and this MOU's mutual covenants and promises, the Town and District agree as follows.

1. Construction. The District will construct new buildings for JRE in substantial compliance with the Preliminary Site Plan attached hereto as Exhibit A. ("the JRE Site Plan") The District will remodel and add the additions to RCMS in substantial complaince with the Preliminary Site Plan attached hereto as Exhibit B. ("the RCMS Site Plan")

2. **Access.** JRE will have three access points for general traffic and a fire lane, one to the west along Green Valley Parkway, and two to the south along Main Street in the approximate locations designated as number 1 on the JRE Site Plan. The Town agrees to leave these access points designated as driveways.

3 **Bus Lane.** The roadway immediately to the north of JRE (number 2 on the JRE Site Plan) ("the Roadway") will be utilized as a bus lane with turnaround, allowing buses to both enter and exit from Green Valley Parkway.

3.1 The Town agrees to restrict traffic on the Roadway to buses, utility vehicles, and emergency-use vehicles.

3.2 The District agrees to cause the Roadway to be signed and gated to allow appropriate access.

4 **Marquee.** The District has two marquees on the south side of **JRE** on the Town's real property (number 3 on the JRE Site Plan).

4.1 The Town agrees that the marquees can remain in their current location unless the Town, or any other utility provider with utility lines under the one or both of the marquees, determines in its sole discretion that because of utility repairs and/or the replacement or expansion of utilities, the removal or relocation of one or both of the marquees is necessary.

4.2 The Town shall not be responsible for any costs associated with the removal or repair of the marquees for any reason, including but not limited to damage due to utility failure or repair.

4.3 The District agrees to be responsible for any repair to or replacement of either of the marquees.

5. **Demolition.** The District will demolish the existing buildings on the north side of JRE during construction, including one building that is partially on Town property (number 4 on the JRE Site Plan). Once the District or its agent receives the demolition permit, the Town agrees to allow demolition of the portion of the building on the Town's property.

6 **Greenbelt.** The District has utilized and maintained the Town's property along Green Valley Parkway, north of the access point to **JRE** (number 5 on the JRE Site Plan).

6.1 After demolition, the District agrees to clean and landscape this area The District's obligation to landscape shall not exceed $2,500.00.

6.2 After landscaping, the Town will resume responsibility for upkeep and maintenance.

7. **Staging area/construction yard.** The Town agrees to allow use of 10,000 square feet of certain of its property for a staging area and construction yard. The property lies to the north of JRE on the opposite side of Green Valley Parkway (number 6 on the JRE Site Plan).

7.1 The District agrees to pay the Town $250 per month during the period of any use.

7.2 The District or its agent will fence the property during the period of any use in accordance with the Town's then existing fence code.

7.3 The District or its agent will purchase and maintain such insurance in such amounts as the Town requires.

7.4 The District or its agent will return the property to its pre-use condition after the project is complete.

7.5 The Town shall have the sole authority to determine which 10,000 square feet may be used by the District.

7.6 The District's use of the staging area and construction yard shall not exceed thirty (30) total months.

8 **Fees.** Conditioned on the staggered submittal of building plans at least 30 days apart, the Town agrees to waive all in-house review and building and engineering fees for the JRE construction and the RCMS remodel and addition provided no outside consultants are used. The District understands that the Town does not provide sanitary sewer service and therefore any sanitary sewer fees must be arranged with the Northern Gila County Sanitary District.

9. **Permits.** With the submission of 100% construction documents, the Town may review and issue a grading permit for the JRE construction before issuing building permits to accommodate the District's schedule.

10. **Town zoning ordinances and regulations.** Although the District is not obligated to adhere to Town's zoning ordinances, the District agrees that the District's design for the JRE construction and the RCMS remodel and addition will incorporate and comply with the intent of the Town's zoning ordinances (i.e. drainage requirements, tree preservation and landsaping, paved parking, and design review guidelines, etc.) to the greatest extent possible given reasonable project constraints. The District, as a customer of the Town of Payson Water Department, is subject to all of the Town's Water Conservation Ordinances and Rules.

10.1 The District will not submit plans for the JRE construction or the RCMS remodel and addition to the Town Design Review Board.

10.2 The **JRE** classroom building will not exceed forty eight feet in height. All of the other buildings at JRE and RCMS shall not exceed thirty five feet The height of all buildings shall be measured according to the Town's zoning ordinance.

11. **Parking.** Except during school hours and during school events, the Town and the public shall have a nonexclusive right to park in JRE's parking areas.

12. **Modifications**. No provision of this MOU shall be amended or otherwise modified, in whole or in part, except by an instrument in writing duly executed by the Town and the District.

13. **Prior Agreements**. This MOU contains and sets forth the entire and exclusive agreement and understanding between the Parties hereto pertaining to the subject matter and supersedes all prior oral or written agreements between the Parties, if any.

14. **Choice of Law/Dispute Resolution.** This MOU shall be governed and construed in accordance with the internal laws of the State of Arizona. With the written consent of both Parties, any dispute, controversy, claim, or cause of action arising out of or related to this MOU may, but in no event need, be settled by submission to binding arbitration in accordance with the rules of the American Arbitration Association and the Arizona Uniform Arbitration Act, A.R.S. § 12-1501, et seq.; and judgment upon any award rendered by the arbitrator(s), if filed in Arizona Superior Court, shall be filed in the Superior Court of Gila County, Arizona; or any such dispute, controversy, claim, or cause of action may be litigated in the Superior Court of Gila County, Arizona. The venue for any such dispute shall be Gila County, Arizona, and both Parties consent in advance to such venue and jurisdiction and waive any right to object that Gila County is an inconvenient or improper forum based upon lack of venue. Neither Party shall be entitled to recover from the other party any of its attorneys' fees, costs, or expert witness fees incurred in any such dispute, controversy, claim, or cause of action, but each party shall bear its own attorneys' fees without contribution from the other party, whether the same is resolved through arbitration, litigation in a court, or otherwise.

15 **Effective date.** This MOU shall become effective upon execution by both Parties.

16. **Cancellation.** This MOU is subject to the provisions of A.R.S. § 38-511, the terms of which are incorporated herein, and which provides for cancellation of contracts by the municipality for certain conflicts of interest.

17 **Counterparts.** This MOU may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signatures of all parties may be physically attached to a single document.

18 **Construction.** This MOU shall be construed and interpreted according to its plain meaning, and no presumption shall be deemed to apply in favor of or against the party drafting this MOU. The parties acknowledge and agree that each has had the opportunity to seek and utilize legal counsel in the drafting of, review of, and entry into this MOU.

19. **Further Documents.** Each Party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this MOU.

20. **Authority.** The Parties acknowledge and warrant that each of them is fully authorized and empowered to execute this MOU by and through the individual(s) executing hereinafter

21. **Severability.** If any portion of this MOU is found to be invalid, such finding will not affect the validity of the remainder of this MOU and to this end the provisions of this MOU are severable.

22. **No Third Party Beneficiaries.** Except for the right of the public under Paragraph 11 herein above, no term or provision of this MOU is intended to, or shall, be for the benefit of any person, firm, organization, or corporation not a party hereto, and no such other person, firm, organization, or corporation shall have any right or cause of action hereunder

IN WITNESS WHEREOF, the Town and District, having carefully read and reviewed the foregoing paragraphs, have executed this MOU.

PAYSON UNIFIED SCHOOL DISTRICT

By_____ _____
Casey O'Brien, Superintendent Dated

TOWN OF PAYSON,
an Arizona municipal corporation

By_____ _____
F. Robert Edwards, its Mayor Dated

ATTEST:

_____
Silvia Smith, Town Clerk

APPROVAL AS TO FORM

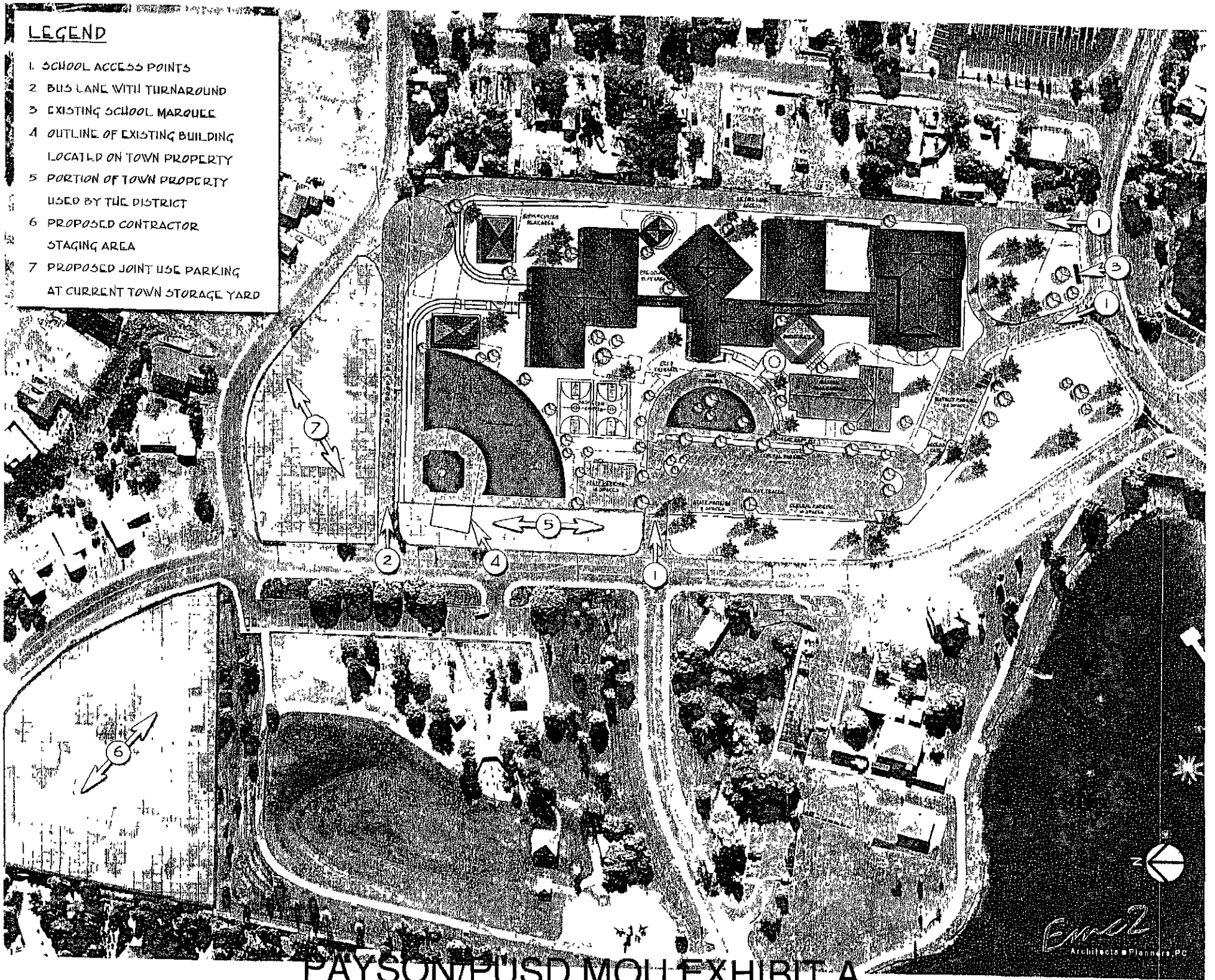
The Town of Payson Legal Department has reviewed this agreement and approved it as to form When reviewing this agreement for form, the Legal Department considers whether the following situations have been addressed:

1 Identification of parties;
2. Offer and acceptance;
3. Existence of consideration (we do not review to determine if consideration is adequate);
4 That certain provisions specifically required by statute are included (i.e., provisions concerning non-availability of funds and conflict of interest, A.R.S. § 38-511).

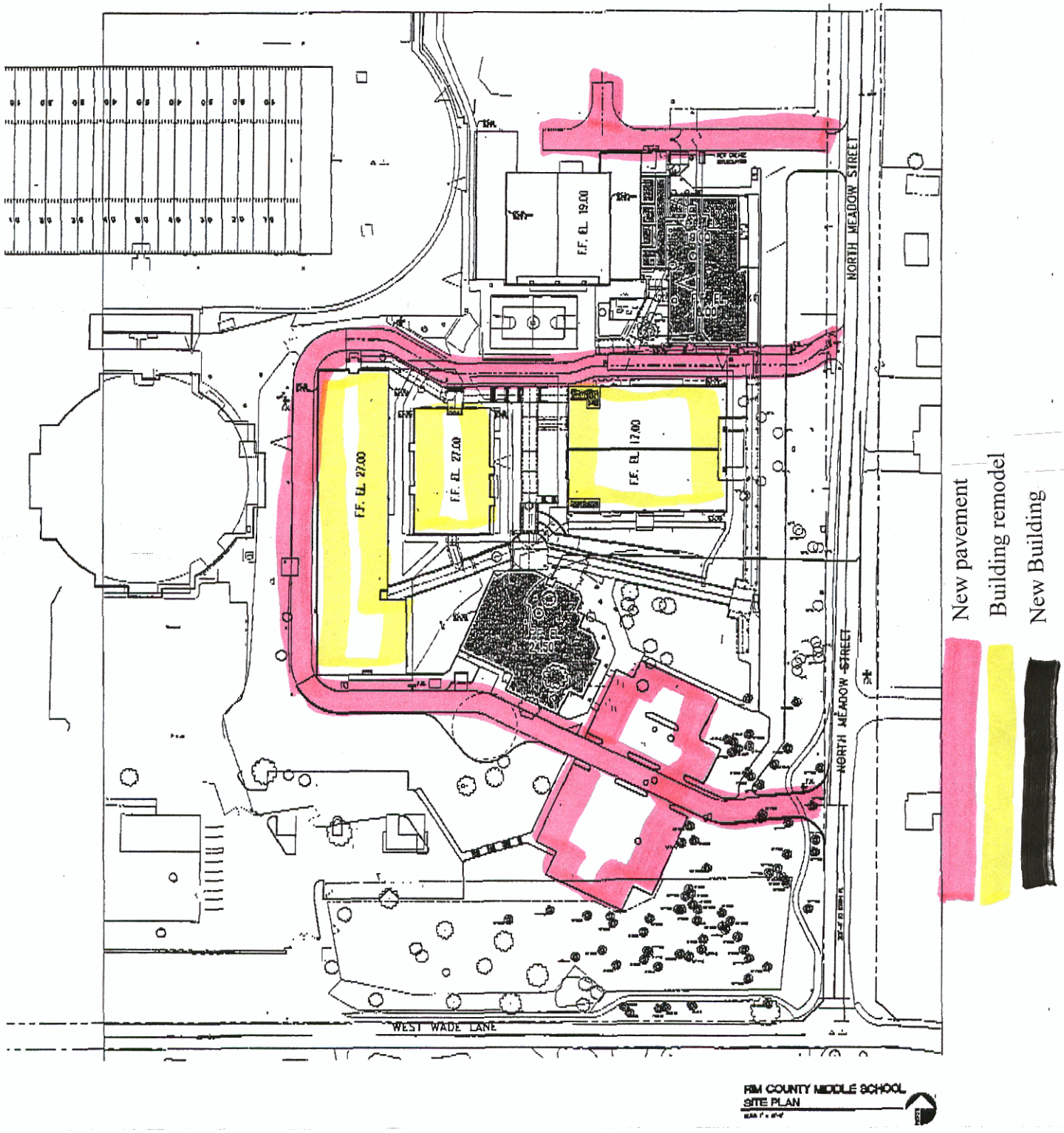
We have not reviewed the agreement for other issues. Therefore, approval as to form should not be considered as approval of the appropriateness of the terms or conditions of the agreement or the underlying transaction. In addition, approval as to the form should not be considered approval of the underlying policy considerations addressed by the agreement.

Dated: _____, 2007

By_____
Samuel I. Streichman, Town Attorney



PAYSON/PUSD MOU EXHIBIT A



PAYSON/PUSD MOU EXHIBIT B