

**JOINT POWERS AGREEMENT  
BETWEEN THE MODESTO HIGH SCHOOL DISTRICT AND  
THE SYLVAN UNION SCHOOL DISTRICT**

This JOINT POWERS AGREEMENT, dated 10/11/94 (the "Agreement"), entered into between the MODESTO HIGH SCHOOL DISTRICT ("MHSD") and the SYLVAN UNION SCHOOL DISTRICT ("SUSD"), both school districts duly organized and existing under the laws of the State of California;

**W I T N E S S E T H:**

WHEREAS, development occurring within the territory of both MHSD and SUSD will require the financing of new schools to serve the students generated by that development; and

WHEREAS, MHSD and SUSD intend to use the provisions of the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code) (the "Mello-Roos Act"), among other methods of school impact mitigation, to finance a portion of the costs of the new school facilities required to serve new development; and

WHEREAS, Section 53316.2 of the California Government Code authorizes MHSD and SUSD to enter into a joint exercise of powers agreement pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the California Government Code (the "JPA Act") to exercise any power authorized by the Mello-Roos Act; and

WHEREAS, the JPA Act authorizes MHSD and SUSD to create a separate entity, (herein called the "Schools Infrastructure Financing Agency" or the "Agency") to exercise such powers under the Mello-Roos Act; and

WHEREAS, MHSD and SUSD desire to create and establish the Schools Infrastructure Financing Agency for the purposes set forth herein and to exercise the powers described herein; and

WHEREAS, MHSD and SUSD intend that this Agreement be structured to, upon mutual consent of the parties, allow other school districts to become parties and participate in the activities of the Agency as development in territory of those districts creates the need to finance school facilities; and

WHEREAS, the governing bodies of MHSD and SUSD each have determined that this Agreement would be beneficial to their residents;

NOW, THEREFORE, MHSD and SUSD, for and in consideration of the mutual promises and agreements herein contained, agree as follows:

ARTICLE 1. Definitions.

Unless the context otherwise requires, the terms defined in this Section 1 shall for all purposes of this Agreement have the meanings herein specified.

Agency. The Term "Agency" shall mean the School Infrastructure Financing Agency created by this Agreement.

Agreement. The term "Agreement" shall mean this Agreement as the same now exists or as it may from time to time be amended by any supplemental agreement entered into pursuant to the provisions hereof.

Board. The term "Board" shall mean the governing board of the Agency.

Bonds. The term "Bonds" shall mean bonds or other financing obligations of the Agency issued pursuant to the Mello-Roos Act or the JPA Act.

CFD. The term "CFD" shall mean any community facilities district formed by the Agency pursuant to the Mello-Roos Act.

County. The term "County" shall mean the County of Stanislaus.

Districts. The term "Districts" shall mean MHSD and SUSD and any other parties later added to this Agreement. "District" shall mean any one of the Districts.

Indenture. The term "Indenture" shall mean the resolution or indenture authorizing the issuance of the Bonds.

JPA Act. The term "JPA Act" shall mean Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 thereof.

Mello-Roos Act. The term "Mello-Roos Act" shall mean the Mello-Roos Community Facilities Act of 1982, which is Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the California Government Code.

Project. The term "Project" shall initially mean the acquisition and construction of those facilities set forth in Exhibit A attached hereto and by this reference incorporated herein. The Project may be amended from time to time as additional CFDs may be formed.

ARTICLE 2. PURPOSE

This Agreement is made pursuant to the JPA Act to provide for the joint exercise of the Districts' powers under the Mello-Roos Act, including without limitation the financing, pursuant to the Mello-Roos Act, of the construction and acquisition of the Project. Each District is empowered by the laws of the State of California to exercise those powers assigned to it in this Agreement.

ARTICLE 3. TERM

This Agreement shall become effective as of the date hereof and shall continue in full force and effect until terminated by a supplemental written agreement of the Districts; provided, however, that in no event shall this Agreement terminate while any Bonds or other obligations of the Agency remain outstanding or continue in force under the terms of any instrument pursuant to which such Bonds are issued or obligations undertaken. In any event, the Agency shall cause all records regarding its formation, its existence, the Project, any Bonds issued by it and proceedings pertaining to its termination to be retained for at least six years following termination of the Agency or final payment or satisfaction of any Bonds issued or obligations undertaken by the Agency, Whichever is later.

ARTICLE 4 FORMATION AND OPERATION OF THE AGENCY

Section 4.1 Creation of Agency.

There is hereby created pursuant to the JPA Act an agency and public entity to be known as the "Schools Infrastructure Financing Agency." As provided in the JPA Act, the Agency shall be a public entity separate from the Districts. The debts, liabilities, and obligations of the Agency shall not constitute debts, liabilities, or obligations of the Districts.

By mutual consent of the parties and amendment of this Agreement, other school districts may become parties hereto and participate in the activities of the Agency.

Within 30 days after the effective date of this Agreement or any amendment hereto, the Agency will cause a notice of this Agreement or such amendment to be prepared and filed with the office of the Secretary of State of the State of California in the manner set forth in Section 6503.5 of the California Government Code.

## Section 4.2 Governing Board.

(a) Board members. The Agency shall be administered by the Board, which shall initially consist of five members, each serving in his or her individual capacity as a member of the Board. Each District shall appoint two members of the Board, who shall be persons serving as members of the governing board of such District. If a member of the Board ceases to be a member of the governing board of the District, the District governing board shall appoint a successor at its first opportunity. Each District may also appoint alternate members who may act with full authority for the member in the member's absence. References hereinafter to a member shall include an alternate when acting in such member's stead. The fifth member of the Board shall be a person appointed for a two-year term by the other members of the Board. Each member of the Board who is appointed by a District shall serve until a successor is appointed by such District.

(b) Future changes. If additional Districts become parties to this Agreement, the size and composition of the Board may be adjusted by amendment to this Agreement.

(c) Compensation. Members of the Board shall not receive any compensation for serving as such but shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a member if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

## Section 4.3 Meetings of the Board.

(a) Regular Meetings. The Board shall hold at least one regular meeting each year and, by resolution or minute order, may provide for the holding of regular meetings at more frequent intervals. The date upon which, and the hour and place at which, each such regular meeting shall be held shall be fixed by resolution or minute order of the Board, or by designation of the President.

(b) Special Meetings. Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California.

(c) Legal Notice. All meetings of the Board shall be called, noticed, held and conducted subject to the provisions of the Ralph M. Brown Act (Chapter 9 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, Sections 54950 - 54961) or any successor legislation hereafter enacted.

(d) Minutes. The Clerk of the Agency shall cause minutes of all meetings of the Board to be kept and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each member of the Board and to the Districts.

(e) Quorum. A majority of the members of the Board shall constitute a quorum for the transaction of business, provided that at least one Board member is present from each District. Less than a quorum may adjourn meetings from time to time.

Section 4.4 Officers; Duties; Fidelity Bonds.

(a) Officers. The officers of the Agency shall be a President, a Vice-President, a Treasurer, a Controller, a Secretary and a Clerk. The Board shall elect its President and Vice-President from among its members, each for a one-year term. The President and Vice-President may be re-elected. If either the President or Vice-President shall cease to be a Board member, he or she shall also cease to be an officer and the Board shall promptly elect a replacement officer. The Treasurer, Controller, Secretary and Clerk shall be appointed by the Board and shall serve at its pleasure.

(b) President; Vice-President. The President shall conduct the meetings of the Agency and shall be authorized to sign contracts, certificates, and other appropriate documents on its behalf. The Vice-President shall serve in the President's absence.

(c) Secretary. The Secretary of the Agency shall administer this Agreement, the Agency, and the Agency's program of CFD formation, tax collection, and Bond issuance.

(d) Clerk. The Clerk of the Agency shall cause notice of each meeting to be given and minutes of all meetings of the Board to be kept and shall perform all the functions of the clerk of the legislative body of the Agency.

(e) Treasurer; Controller. The Treasurer is designated as the depository of the Agency to have custody of all the money of the Agency. The Treasurer shall draw checks and pay demands against the Agency when the demands have been approved by the Agency. The Controller shall have custody of and maintain the Agency's financial records and review all disbursements of Agency funds to ensure proper compliance with generally accepted accounting procedures. The Treasurer and the Controller shall also have the respective powers and duties specified in Section 6505.5 of the JPA Act.

(f) Fidelity Bonds. The Treasurer and the Controller of the Agency are designated as public officers or persons who have charge of, handle, or have access to property of the Agency, and each such officer shall file an official bond with the Clerk of the Agency in the amount of \$100,000. To the extent permitted by law, any such officer may satisfy this requirement by filing an official bond obtained in connection with another public office.

(g) Other officers. The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

#### Section 4.5 Powers.

The Agency shall have the power to form and implement CFDs and to finance the Project as it may be amended from time to time through the levy of special taxes, the levy of assessments, the execution of leases, and the issuance of Bonds or other evidences of indebtedness.

The Agency is authorized, in its own name, to do all acts necessary for the exercise of said powers for said purposes, including but not limited to any or all of the following: to make and enter into contracts, to employ agents and employees, and to sue and be sued in its own name.

Section 6509 of the California Government Code requires that the powers of a joint power agency shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed upon one of the contracting parties, which party shall be designated in the joint powers agreement. For purposes of complying with this requirement, MHSD is so designated. Accordingly, the powers of the Agency shall be exercised subject only to such restrictions upon the manner of exercising such powers as are imposed upon MHSD in the exercise of similar powers.

Notwithstanding the foregoing, the Agency shall have any additional powers conferred under the JPA Act, insofar as such additional powers may be necessary to accomplish the purposes set forth in Article 2 hereof.

#### Section 4.6 Fiscal Year.

Unless and until changed by resolution of the Board, the fiscal year of the Agency shall be the period from July 1 of each year to and including the following June 30, except for the first fiscal year, which shall be the period from the date of this Agreement to June 30, 1995.

#### Section 4.7 Accounts and Reports.

(a) Funds and Account. The Agency shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any resolution or indenture of the Agency securing Bonds. The books and records of the Agency shall be open to inspection at all reasonable times by the Districts and their representatives.

(b) Quarterly Reports. The Treasurer of the Agency shall make quarterly reports to the Agency and the Districts in accordance with Section 6505.5(e) of the JPA Act.

(c) Annual Audit. The Controller of the Agency shall arrange for a certified public accountant or public accountant to make an annual audit of the accounts and records of the Agency. The minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the California Government Code and shall conform to generally accepted auditing standards. When such audit of accounts and records is made by the certified public accountant or public accountant, a report thereof shall be filed as a public record with the Districts and also with the County Auditor. Such report shall be filed within 12 months of the end of the fiscal year under examination. If in any year the annual budget of the Agency does not exceed \$50,000, the Board may, by unanimous vote, replace the annual audit for such year with an audit covering a two-year period.

(d) Costs of Audit. Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Agency and shall be a charge against any unencumbered funds of the Agency available for the purpose and may be paid out of special tax revenues.

#### Section 4.8 Conflict of Interest Code.

The Agency shall adopt a Conflict of Interest Code as required by law.

#### Section 4.9 Disposition of Assets Upon Termination of Agreement.

Upon the termination of this Agreement as set forth in Article 3 hereof, all assets of the Agency shall be distributed to the Districts, first to reimburse contributions not previously reimbursed (in proportion to such contributions if the assets are not sufficient to fully reimburse all such contributions) and thereafter in proportion to the amounts allocated to each District for costs of the Project as defined in Exhibit A or as later amended.

#### Section 4.10 Contributions and Advances.

Contributions or advances of public funds and of personnel, equipment, or property may be made to the Agency by the Districts or other persons for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution. Any such advance shall be made subject to repayment, and shall be repaid, in the manner agreed to by the Districts at the time of making such advance. It is mutually

understood and agreed that the Districts have no obligation to make advances or contributions to the Agency to provide for the costs and expenses of administration of the Agency, even though they may do so. The Districts may allow the use of personnel, equipment, or property in lieu of other contributions or advances to the Agency.

#### ARTICLE 5. PROJECT FINANCING.

##### Section 5.1 Allocation and Distribution of Proceeds of Special Taxes Levied and Bonds Issued.

The Agency shall use proceeds of the levy of any special tax in a CFD and the sale of any Bonds issued with respect to a CFD to pay administrative costs associated with the formation of such CFD, the ongoing costs of administering the Agency and such CFD, and costs of issuance of Bonds. The Agency shall allocate tax levies (to the extent not used to pay debt service on Bonds to be issued) for the payment of the costs of the initial Project in accordance with the priorities established in Exhibit B hereto. The Agency shall allocate Bond proceeds to the accounts and for the purposes specified in the Indenture.

##### Section 5.2 Project Priorities.

The Districts agree to finance, pursuant to the Mello-Roos Act, the construction and acquisition of the initial Project in accordance with the priorities set forth in, and subject to the provisions of, Exhibit B attached hereto (the "priority list"). Priorities shall be established for financing of any additional project components as subsequently defined in future CFDs.

##### Section 5.3 Changes to a Project.

The Board may utilize the applicable procedures under the Mello-Roos Act to add facilities to or delete facilities from the Project, subject to the unanimous approval of a quorum of the members of the Board.

##### Section 5.4 Project Budgeting.

Any authorized facilities may be funded not only from the proceeds of the sale of Bonds, but may also be funded from annual Special Tax revenues not needed for debt service on Bonds as may be directed by the Board. The Board shall approve an annual budget for the allocation of annual special tax revenues, and shall also approve a budget for the allocation of the Bond proceeds of each Bond issue. The Board may approve appropriate contingencies in each budget. Exhibit A of this Agreement and the Facilities Report prepared pursuant to Section 53321.5 of the Mello-Roos Act, with its cost estimates (including assumptions for cost inflation), shall provide the basis for establishing the

budget for each component of the Project. To the extent that the number of housing units included within the CFD is increased beyond the numbers shown in Exhibit A, the funding allocated to the appropriate elementary school and to the middle and high schools shall be proportionately increased. To the extent any projects are completed for less than the amount budgeted, or alternate funding is available, the Board may budget subsequent projects at higher levels, provided adequate justification of the added costs can be documented.

#### Section 5.5 Funding Shortfalls.

It is the intent of this financing program that a specific dollar amount, adjusted annually for inflation, be allocated to each project. If any financed facility cannot be completed within its approved share of these budgets:

- (1) The shortfall shall initially be the responsibility of the District that has charge of that facility.
- (2) The District that has charge of the facility may request, and the Board may grant by unanimous vote of all of the members of the Board, a reallocation of funds among its own projects. This reallocation may not be approved, however, if it would result in inadequate funds for the construction of a later facility.
- (3) In any case, the Board may allocate additional Bond and special tax proceeds to any facility on any lawful terms by the unanimous vote of all of the members of the Board.

The Facilities Report prepared pursuant to Section 53321.5 of the Mello-Roos Act, with its cost estimates including assumptions for cost inflation, may be referred to for an indication of the intended scope of any facility.

#### Section 5.6 Other Sources of Funding for Project Costs.

Each District agrees to use its best efforts to secure funding from the State of California for the costs of financing this Project. If either District receives funds from the State of California, or any other source, for facilities included in the initial Project, to the extent that such funds replace amounts originally financed by means of a CFD the District shall make those funds available to the Agency to (a) fund shortfalls in the budget for the Project and (b) reduce the burden on the owners of properties subject to the special tax levied in the affected CFD.

#### Section 5.7 Ownership and Operation of Facilities.

The facilities that compose the Project shall be owned and

operated by the individual Districts as shown on Exhibit A hereto.

Section 5.8 Project Construction.

Each District shall administer the acquisition and construction of its own facilities and shall request that the Agency disburse Bond and special tax proceeds used to finance those facilities in accordance with the specific procedures established in the indenture and in accordance with procedures for the release of funds adopted by the Board.

Section 5.9 Levy of Special Taxes.

The Board shall schedule a meeting each year during the month of July. At this meeting the Board shall receive a report (which may, at the option of the Board, be prepared by an independent consultant) specifying the sources and use of funds to meet the Agency's financial obligations during the fiscal year then commencing, including: Funds available in the various accounts established by the Indenture, funds available from other sources, the debt service requirements for such fiscal year (including for the curing of any delinquencies on the Bonds), the administrative expenses of the Agency (including the fees of consultants) anticipated during such fiscal year, the amount necessary to restore the reserve fund(s) established for any outstanding Bonds to the required amount, the amount anticipated to be necessary to meet expected delinquencies or expected draws on the reserve fund(s) in such fiscal year, the amount necessary to be accumulated for future construction expenditures or debt service payments, and any other expenditures authorized by the Agency pursuant to the Mello-Roos Act. The Indenture may require additional elements to be included in the report. The report shall contain a proposed levy of special taxes in accordance with the special tax formula contained in the Resolution of Formation at the minimum level sufficient to meet the total financial needs of the Agency. The Board shall review the report, make any necessary corrections, and levy the special tax for the fiscal year in accordance with the report as corrected. The Secretary shall convey the ordinance or resolution levying the special tax to the County in sufficient time to allow inclusion of the special tax on the County tax roll for the ensuing tax year.

ARTICLE 6. MISCELLANEOUS

Section 6.1 Agreement Not Exclusive.

This Agreement shall not be exclusive and shall not be deemed to amend or alter the terms of other agreements between the Districts, except as the terms of this Agreement may conflict therewith, in which case the terms of this Agreement shall prevail.

Section 6.2 Breach.

If default shall be made by either of the Districts in any covenant contained in this Agreement, such default shall not excuse either District from fulfilling its obligation under this Agreement and each District shall continue to be liable for the performance of all conditions herein contained. The Districts hereby declare that this Agreement is entered into for the benefit of the Agency created hereby and the Districts hereby grant to the Agency the right to enforce by whatever lawful means the Agency deems appropriate all of the obligations of each of the Districts hereunder. Each and all of the remedies given to the Agency hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Agency to any or all other remedies.

Section 6.3 Mediation.

A District objecting to a determination by the Board may initiate mediation under the auspices of Judicial Arbitration and Mediation Services, Inc., 111 Pine Street, Suite 205, San Francisco, California, 94111, 415-928-5267 (or other mechanism agreed to by unanimous vote of a quorum of the Board). A District dissatisfied with the results of mediation may initiate arbitration under the auspices of the American Arbitration Association (or other mechanism agreed to by unanimous vote of a quorum of the Board).

Section 6.4 Severability.

Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms or provisions hereof shall not be affected thereby.

Section 6.5 Successors; Assignment.

This agreement shall be binding upon and shall inure to the benefit of the successors of the Districts. Except to the extent expressly provided herein, neither District may assign any right or obligation hereunder without the consent of the other District.

Section 6.6 Amendment of Agreement.

This Agreement may be amended by supplemental agreement executed by the Districts at any time; provided, however, that in no event shall this Agreement terminate while any Bonds or other obligations of the Agency remain outstanding or unsatisfied under the terms of any instrument pursuant to which such Bonds or other obligations are issued or undertaken.

Section 6.7 Form of Approvals.

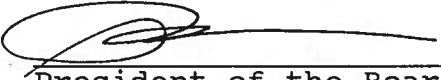
Whenever an approval is required in this Agreement (unless otherwise specified herein), it shall be given by resolution or minute order duly and regularly adopted by the governing body of each of the Districts and, in the case of the Agency, by resolution or minute order duly and regularly adopted by the Board. Whenever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

Section 6.8 Article and Section Headings.

All article and section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

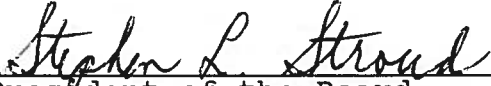
MODESTO HIGH SCHOOL DISTRICT

By   
\_\_\_\_\_  
President of the Board

Attest:

  
\_\_\_\_\_  
Superintendent

SYLVAN UNION SCHOOL DISTRICT

By   
\_\_\_\_\_  
President of the Board

Attest:

  
\_\_\_\_\_  
Superintendent

# EXHIBIT A

This list and description of authorized facilities shall constitute the initial Project. All costs are shown in 1994 dollars. Amounts shown are allowances and include all costs of land acquisition, design and engineering, on and off site improvements, building construction and oversight, and equipment, furnishings and other materials required to establish the initial operation of a new school. The allowances are based on the student enrollment projected to be generated from the initial number of housing units project for Village One: 1691 multi-family units and 5340 single family units. To the extent more units are included in the CFD than initially contemplated, the funding allowance for each facility shall be increased based on the increased number of students to be served.

## SYLVAN UNION SCHOOL DISTRICT

1. Construct and furnish an 800-student year round elementary school, as shown in the Village One Specific Plan, for which land acquisition and design costs have been previously funded through the state school building program.

**Estimated cost to be funded by CFD: \$ 6,600,000**

2. Construct and furnish a 1200-student year round middle school, as shown in the Village One Specific Plan, of which 83% is to be funded by the CFD, unless otherwise adjusted based on the number of housing units. The middle school may be constructed on the site designated in the Specific Plan or on a site in a nearby neighborhood that will also serve Village One students.

**Estimated cost to be funded by CFD: \$ 11,454,000**

3. Construct and furnish an 800-student year round elementary school, as shown in the Village One Specific Plan.

**Estimated cost to be funded by CFD: \$ 7,600,000**

4. Construct and furnish an 800-student year round elementary school, as shown in the Village One Specific Plan, of which 57% is to be funded by the CFD, unless otherwise adjusted based on the number of housing units.

**Estimated cost to be funded by CFD: \$ 4,332,000**

**TOTAL SYLVAN**

**\$ 29,986,000**

**MODESTO HIGH SCHOOL DISTRICT**

1. Construct and furnish a 2600-student year-round comprehensive high school, as shown in the Village One Specific Plan, of which 48% is to be funded by the CFD, unless otherwise adjusted based on the number of housing units. The high school will include a pedestrian bridge across Sylvan Avenue, of which 25% will be funded by the CFD separately from the cost of the high school.

Estimated cost to be funded by CFD:	
High school	\$ 22,424,600
POC	<u>325,000</u>
TOTAL MHSD	\$ 22,749,600
CFD TOTAL	\$ 52,735,600

## EXHIBIT B

### Priority List

Facilities will be funded in the following order, dependent upon the availability of existing CFD cash construction reserves, available state funding, and the bonding capacity of the CFD to complete the project to be funded.

1. Either the first elementary school or the middle school, at the discretion of the Sylvan Union School District and based on the combination of funding available through CFD cash reserves, any state funding available, and the bonding capacity of the CFD.
2. Either the first elementary school or the middle school, whichever was not funded as the first priority.
3. The second elementary school.
4. Either the third elementary school or the high school, at the Board's discretion and based on the funding capacity of the CFD. The determination of which facility shall be funded first shall be based on relative need. In considering relative need and priority for funding, the Board shall consider the number of elementary and high school students already residing in Village One, the relative levels of impact documented by each district, the immediacy of any state participation in funding the facility, and the bonding capacity of the CFD. If high school enrollment within the CFD has reached 900 students and the K-5 student enrollment in the CFD has not reached 1880, then at the request of the MHSD, the high school shall precede the elementary school if adequate funds are available.
5. Either the third elementary school or the high school, whichever has not yet been funded.