

**AGREEMENT BETWEEN CITY OF SUNNYVALE AND SUNNYVALE
SCHOOL DISTRICT PERTAINING TO THE USE, MAINTENANCE AND
IMPROVEMENT FOR PUBLIC RECREATIONAL PURPOSES OF VARIOUS
BUILDINGS AND OPEN SPACE AREAS AT SCHOOL SITES OWNED BY
SUNNYVALE SCHOOL DISTRICT**

THIS AGREEMENT is made and entered into this 27 day of May, 2016, by and between CITY OF SUNNYVALE, a chartered municipal corporation of the State of California, (herein called "CITY"), and SUNNYVALE SCHOOL DISTRICT OF SANTA CLARA COUNTY, (herein called "DISTRICT"), (individually a "Party" and collectively, the "Parties").

RECITALS

WHEREAS, Section 10900, *et. seq.* of the California Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, construct, improve, maintain and operate recreation centers, including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums; and

WHEREAS, Section 10905 of the Education Code authorizes cities and school districts to enter into agreements with each other for the maintenance of recreation centers; and

WHEREAS, Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public authority for the organizing, promoting and conducting of community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system; and

WHEREAS, since 1991, the CITY and DISTRICT have, in accordance with the "Comprehensive 1991 Open Space Agreement", dated June 25, 1991, and a series of amendments thereto, collaboratively and jointly improved, developed, maintained and kept open for public use sports and recreational facilities on the following school or middle school sites in the City of Sunnyvale: Adair, Bishop, Cherry Chase, Columbia, Cumberland, De Anza, Ellis, Fairwood, Hollenbeck, Lakewood, San Miguel, Sunnyvale Middle, and Vargas school sites (the "School Sites") and;

WHEREAS, the Comprehensive 1991 Open Space agreement established a “reserve bank” of 8 acres of school open space areas that DISTRICT would make available for acquisition by CITY in consideration for City’s agreement to construct certain improvements at the School Sites; and

WHEREAS, CITY and DISTRICT are interested in continuing their arrangement under which CITY maintains the open space and recreational areas of the school sites to enhance their usability by students and by the general public, and DISTRICT will make such areas available to the general public at times when such areas are not being used for school purposes; and

WHEREAS, prior to the sale, lease, conveyance, transfer or disposition of open space or recreational areas among most of the school sites within the territory of DISTRICT, DISTRICT is willing to make available to CITY for acquisition a portion of such sites pursuant to the Naylor Act (Ed. Code, §17485, *et seq.*); and

WHEREAS, this Agreement shall supersede and replace the Comprehensive 1991 Open Space Agreement and all amendments thereto and to individual Master Plans approved pursuant to the former agreement.

NOW, THEREFORE, in consideration of the covenants and conditions herein set forth, and pursuant to the provisions of the Education Code hereinabove referred to, it is agreed as follows:

SECTION 1. DEFINITIONS

(a) School Open Space and Recreational Areas. There are attached to this Agreement and incorporated by reference herein certain exhibits, to which reference is made in this Paragraph and throughout the Agreement. Each of said exhibits contains a diagram showing real property encompassing each school site’s school facilities and open space areas. Each Exhibit shall be referred to herein as a “Master Plan” for the specific site to which it refers, and collectively in this Agreement, the open space areas and recreational facilities depicted in and described in the Master Plans shall be referred to herein as “Open Space/Recreational Area(s)”, and school facilities outside of the Open Space/Recreational Areas shall be referred to herein as the “School Facilities”. For purposes of this Agreement, Exhibit references are as follows:

<u>Name of Site</u>	<u>Exhibit Reference</u>
Bishop	"A"
Cherry Chase	"B"
Columbia	"C"
Cumberland	"D"
De Anza	"E"
Ellis	"F"
Fairwood	"G"
Hollenbeck	"H"
Lakewood	"I"
San Miguel	"J"
Sunnyvale Middle	"K"
Vargas	"L"
Washington Park-Adair School Site	"M"

SECTION 2. MAINTENANCE OBLIGATION FOR OPEN SPACE/RECREATIONAL AREAS

(a) City Maintenance of Open Space Sites. CITY shall be responsible for the mowing, trimming, fertilization, irrigation, repair and related maintenance at the expense of CITY of turf, grounds and landscaped Open Space/Recreational Areas. In addition, CITY shall be responsible for paving and upkeep of the parking lot at the Adair school site. CITY shall maintain such Open Space/Recreational Areas consistent with standards of like classification of CITY parks.

(b) City and District Maintenance Responsibilities for Sunnyvale Middle School Pool.

(1) CITY shall provide at its sole expense the maintenance at the Sunnyvale Middle School swimming facility. As used herein, maintenance of a swimming facility includes cleaning, chemical treatment and water filtration. DISTRICT shall provide at its sole expense the gas, electricity and water utilities for the swimming pool and the maintenance, gas, electricity and water utilities for the locker and shower rooms at the Sunnyvale Middle school site. (2) Pool Supervision During City Use. CITY shall provide at its sole expense all lifeguards and other supervisory personnel at the times during which City is using the Sunnyvale Middle pool facility.

(3) Option to Terminate City's Pool Obligations and Use. At any time during the term of this Agreement, CITY may choose to terminate its obligations under this section and its use of the Sunnyvale Middle School swimming facility by providing notice to district of its intention to terminate such obligations and use one year in advance of the termination.

(c) City Maintenance of Sunnyvale Middle Tennis Courts. CITY shall provide at its sole expense the maintenance, gas, electricity and water utilities for the tennis courts at the Sunnyvale Middle school site. Maintenance of tennis courts shall be consistent with standards of like classification for City tennis courts.

(d) City Maintenance of De Anza Parking Lot. CITY shall provide at its sole expense the maintenance of the parking lot at the De Anza school site.

(e) City Maintenance of Adair School Site Parking Lot. CITY shall provide at its sole expense the maintenance of the parking lot at the Adair School Site Parking Lot.

(f) CITY shall demolish the abandoned swimming pool at the Lakewood site and return the area to its original turfed condition by December 31, 2018.

(g) Notwithstanding any other provision of this Agreement to the contrary, DISTRICT shall be responsible for preparation and maintenance of buildings and Open Space/Recreational Areas at the expense of DISTRICT in connection with special events or other functions of DISTRICT, including but not limited to graduation ceremonies and athletic events.

(h) CITY shall have no obligation for the mowing, trimming, fertilization, irrigation, repair or related maintenance at the expense of CITY of turf, grounds, landscaped areas, buildings, parking lots, fences, sidewalks, trees or other facilities owned by DISTRICT that are not Open Space/Recreational Areas as depicted/described on the attached Master Plans.

(i) DISTRICT shall provide for the removal of garbage, refuse, debris, rubbish, litter and other solid waste produced on each school site as a result of DISTRICT activities.

(j) CITY will determine the location of portable backstops as required in order to maintain acceptable field condition standards.

(k) In undertaking its maintenance obligations under this Agreement, CITY shall minimize the impact on DISTRICT use of facilities during school hours, but priority shall be given to CITY maintenance personnel and equipment between the hours of 6:00 a.m. to noon as to all Open Space/Recreational Areas. The authorized representatives of CITY and DISTRICT shall meet annually and review scheduling of maintenance at the various school sites. For the purposes of providing required turf and grounds maintenance, and with two

weeks advance notice, CITY may curtail all DISTRICT use of those areas maintained by CITY four times during the school year. CITY shall attempt to schedule such maintenance in coordination with school calendars, and on days when school is not in session, where possible. CITY shall curtail DISTRICT use only if necessary, and for a maximum of one day each time. General maintenance schedules shall be coordinated by the Superintendent of Parks of CITY and the District Site Administrator of DISTRICT.

(l) For the purpose of abating hazardous conditions on the various school sites, CITY may curtail DISTRICT use of Open Space/Recreational Areas maintained by CITY at any time and without prior notification in which case CITY will minimize DISTRICT's lack of access to the grounds or facilities; provided, however, that CITY shall provide DISTRICT with notice at least 72 hours in advance of application of pesticides or other substances subject to notification requirements of the Healthy Schools Act (Ed. Code, section 17608 et seq.) in order to ensure that DISTRICT is able to provide legally-required notice to parents, for which notice DISTRICT takes full responsibility assuming timely notice by CITY.

(m) At least once annually, the Director of Public Works of CITY and the Superintendent of DISTRICT, or their authorized representatives shall meet to discuss the use and maintenance of those areas maintained by CITY pursuant to this Agreement.

(n) Except issues concerning safety, any and all concerns or issues of DISTRICT governing the general maintenance or use of those areas maintained by CITY pursuant to this Agreement, or performance of any duties described in this Agreement, shall be communicated to CITY by the Superintendent of School or the Director of Operational Services of DISTRICT and shall be communicated with the Director of Public Works of CITY or his or her authorized representative.

SECTION 3. IMPROVEMENTS TO SCHOOL SITES

(a) Master Plans for each Open Space/Recreational Areas subject to this Agreement, including a description of the facilities, buildings and improvements that are included with such Open Space/Recreational Areas are attached to this Agreement as Exhibit A. The Master Plans for Cumberland, Cherry Chase, and Ellis denote areas of each campus that may be needed during the Term for expansion of School Facilities Areas If, during the Term, the DISTRICT will require those areas for School Facilities, DISTRICT shall notify CITY but shall not be required to comply with any other requirements of this section regarding amendment of Master Plans.

(b) The Master Plan for each school site shall be the governing document which determines the specific Open Space/Recreational Areas subject to this Agreement.

(c) (1) CITY and DISTRICT agree that CITY may construct special recreational improvements for exclusive or primary use of DISTRICT if desired, consistent with applicable Master Plans and the agreement of both parties.

(2) CITY and DISTRICT agree that City may construct special recreational improvements for exclusive or primary use of CITY if desired, consistent with applicable Master Plans and the agreement of both parties. In the event of CITY-constructed improvements, CITY shall provide DISTRICT with a copy of the plans and specifications for any such improvements for its review prior to their construction. Any such special improvement shall be designated as such in the Master Plan, which shall be kept updated by CITY. CITY shall be responsible for all capital costs, including cost of installation, and all costs of maintenance with respect to such improvements.

(3) CITY and DISTRICT agree that capital improvements to the tennis courts and Columbia and Sunnyvale Middle School pools and pool facilities may be required during the term of this agreement and agree to cooperate to develop capital improvement plans for those facilities. Funding and construction of such capital improvements shall be subject to agreement, appropriation and approval as required by the rules, ordinances, policies and procedures for CITY and DISTRICT.

(d) CITY and DISTRICT acknowledge that DISTRICT may need to amend Master Plans in the future when necessitated by student growth, to add capacity, reconfigure sites or buildings to meet student needs, meet State of California legal mandates for facilities or programs, or provide new facilities of a type or size that could affect the Open Space/Recreational Areas subject to this Agreement. In the event DISTRICT anticipates the need to amend any Master Plan in a manner that proposes to reduce the Open Space/Recreational Area on a specific campus in order to add School Facilities to serve school programs and meet student needs, District shall immediately notify CITY of any such proposals, including a description of the proposal, the extent of open space/recreational area proposed to be impacted, and a detailed description of reasons for the proposal, including an explanation of why District does not believe the change can occur within District's existing School Facilities area. The parties shall in good faith work to minimize the impact of such need on the amount of Open Space/Recreational Area so as not to significantly impede community use and access. District agrees that it shall first consider all available alternatives, and any alternatives proposed by City, to confine the need to existing School Facilities Areas. After consideration of the foregoing, DISTRICT may amend a Master

Plan for the purposes described in this subsection without the approval of CITY, provided, however, that City Council approval shall be required for proposals affecting open space/recreation areas for which the City issues permits for organized youth sports or athletic leagues (for example, soccer or baseball fields) or for proposals to remove areas totaling five thousand (5,000) square feet or more on a single master plan site, either individually or combined with any other area removal during the term of this agreement. DISTRICT shall be responsible for the preparation of any amended Master Plan necessitated by a proposal pursuant to this section.

(e) Other Amendments to Master Plans. If either party during the term of this Agreement seeks changes to any approved Master Plan other than as described in subsection (d) above, CITY shall prepare an appropriate amendment to the pertinent Master Plan. CITY and DISTRICT shall appoint representatives to consult and coordinate on any proposed amendment to a Master Plan purpose of such consultation and coordination. The cost and expense of preparation of such amendment shall be by the party proposing it, or shall be borne jointly if CITY and DISTRICT jointly propose it. The cost of installation and maintenance of any such improvement shall be borne by the party which proposed it, or shall be borne jointly if CITY and DISTRICT jointly proposed it. All amendments to the Master Plans shall not be effective unless and until approved by the governing boards of CITY and DISTRICT.

(f) No contract for construction of any school building, as defined in Chapter 2 of Part 23 of Title 2 of the Education Code, shall be awarded without the prior approval of the State Architect, where required.

(g) DISTRICT recognizes that the construction of improvements pursuant to this Agreement may occur during times of the year when its schools are in session. CITY will endeavor to schedule construction activities so as to cooperate with DISTRICT and will assure that adequate safety precautions are in place. CITY shall consult with DISTRICT as to the scheduling and timing of construction of the improvements so as to minimize any adverse impact such construction may have on the instructional program of DISTRICT.

SECTION 4. FACILITY USAGE POLICY FOR OPEN SPACE/RECREATIONAL AREAS

(a) The following usage policy shall be effective upon execution of this Agreement with respect to school Open Space/Recreational Areas at all school sites.

(b) The items contained in this section are intended to define basic guidelines in order to maximize recreational opportunities for both students of DISTRICT and residents of CITY.

(c) The policy set forth in this section may be modified from time to time by agreement of the Director of Library and Community Services of CITY and the Superintendent of DISTRICT or their authorized representatives. Either party may recommend to the other modifications to this policy.

(d) (1) DISTRICT shall have priority use of school Open Space/Recreational Areas, between the hours of 8:00 a.m. to 4:00 p.m. on days during which school is in session, except as set forth in subsection (f). Generally, this will apply to Monday through Friday from mid-August to mid-June of each year. CITY will have priority use of facilities after 4:00 p.m. on days when school is in session and all other times, including weekends, holidays and summer vacation. Exceptions to this schedule can be agreed upon by the Director of Library and Community Services of CITY and the Superintendent of DISTRICT or their authorized representatives. CITY will cooperate with DISTRICT so as to give DISTRICT adequate opportunity to use each school site for its activities, programs and needs.

(2) CITY shall have exclusive use of the swimming pools on the Columbia and Sunnyvale Middle school sites on days during which school is not in session and between 4:00 p.m. and 8:00 a.m. on days during which school is in session. Special exceptions to this schedule can be agreed upon by the Director of Library and Community Services of CITY and the Superintendent of DISTRICT or their authorized representatives.

(e) DISTRICT shall have priority use of facilities during days and times other than those listed in subsection (d) for DISTRICT activities such as summer school, school special events, afterschool athletics, and similar activities. Specific schedules shall be agreed upon by the Director of Library and Community Services of CITY and the Superintendent of DISTRICT or their authorized representatives. Non-school related groups will be notified of school priority and, provided DISTRICT gives notice at least thirty (30) calendar days in advance, may be required to relocate due to school special events.

(f) During school hours, Open Space/Recreational Areas may be used for public related recreational activities, only with the express permission of the Superintendent of the DISTRICT.

(g) CITY shall be responsible for administering facility reservations for public use of Open Space/Recreational Areas. CITY shall be solely responsible for determining a priority use system, as well as fees to be charged to the public and/or organized groups for use of Open Space/Recreational Areas during such times that the sites are under control of CITY.

Such fees shall be required to conform to all applicable rules, regulations, ordinances and/or laws governing school grounds in addition to those applicable to CITY property. All fees collected shall be the property of CITY. Copies of CITY's reservation and priority use policy will be provided to DISTRICT.

(h) When school buildings are under lease by DISTRICT to private users for education purposes between the hours of 8am and 4 pm, such private users shall have access to the Open Space/Recreational Areas on the same basis as the DISTRICT.

SECTION 5. USE OF CITY AND DISTRICT FACILITIES

CITY shall provide to DISTRICT, at no cost, after CITY-scheduled activities and consistent with CITY policy on facility use, the use of a reasonable number of reserved park picnic areas in various CITY parks on weekdays for each class in each DISTRICT school site, from May 15-June 15 each year for the purpose of end of school year celebrations. DISTRICT shall provide CITY by February 1 of each year, a written request stating the specific dates and times picnic facilities are to be reserved for use by the DISTRICT. Any picnic facilities that are requested after the February 1 deadline will be subject to all regular facility reservation policies including rental fees, according to the facility rental rate schedule in effect at that time. All facilities requested by DISTRICT shall be used only by organizations under the direct control of the DISTRICT or a school site, and shall be only for the use of student celebrations.

(a) City Use of District Facilities.

DISTRICT and CITY will continue to meet as needed to schedule the CITY use of DISTRICT facilities, including but not limited to gyms, technology labs, and other meeting and programming spaces for summer programs.

SECTION 6. OBLIGATION OF DISTRICT NOT TO SELL, LEASE OR DISPOSE OF CERTAIN OPEN SPACE/RECREATIONAL AREAS FOR 25 YEARS WITHOUT GRANTING CITY RIGHT OF ACQUISITION.

(a) Restricted Sites. As used in this section, the term "restricted site" shall mean any school open space area or portion thereof at the Bishop, Cherry Chase, Columbia, Cumberland, Ellis, Fairwood, Lakewood, San Miguel, Sunnyvale Middle, or Vargas school sites, or any swimming pool, locker room, shower room, or tennis court facility at the Columbia, Lakewood, or Sunnyvale Middle School sites.

(b) Reserve Bank. The 1991 Agreement established a reserve bank consisting of eight (8) acres of DISTRICT real property which the Parties intended to transfer to CITY during the original term of the Agreement on a right-of-first-refusal basis. The Parties agree that the reserve bank shall continue through the term of this Agreement as described herein. The reserve bank shall never exceed eight (8) acres. The reserve bank shall be deemed satisfied to the extent of the amount of land acquired by City pursuant to this section.

(c) Unless inconsistent with Education Code section 17485, *et seq.*, DISTRICT shall not sell, lease, convey, transfer, or otherwise dispose of any school site subject to District's jurisdiction that includes Open Space/Recreational Areas, or portion thereof, for purposes other than public education during the term of this Agreement without following the procedure set forth in this section.

(d) Prior to selling, leasing, conveying, transferring or otherwise disposing of any Open Space/Recreational Areas, or portion thereof, which is not already leased to another party or needed for public education purposes, DISTRICT shall first give CITY written notice of its intent to sell, lease, convey, transfer or otherwise dispose of such property in accordance with Education Code section 17489.

(e) Not more than sixty (60) days after the date of the written notice of intent CITY may give DISTRICT written notice that CITY is interested in exercising its rights of acquisition under this section for open space or recreational purposes. If CITY fails to give DISTRICT timely notice pursuant to this subsection with respect to a school site or portion thereof, it shall have no further rights with respect to such site or portion.

(f) If CITY gives DISTRICT timely notice of interest in exercising its right of acquisition pursuant to subsection (c), CITY and District shall enter into an agreement granting to City, at no cost to City in consideration of the public recreational interests and the City's maintenance and construction of improvements at the school sites, a permanent open space easement for recreational use over the applicable site or other such alternative agreement for the disposition of property as provided in Education Code section 17498. City shall be responsible for any transactional expenses such as recording fees associated with the agreement. Notwithstanding any provision of this Agreement to the contrary, the City shall have no further right to acquire real property from District pursuant to this section, and District shall have no obligation to notify City pursuant to this section once City shall have acquired, by easement or other agreement made pursuant to this section, an aggregate of real property sufficient to have satisfied the reserve bank; to wit: eight (8) acres. CITY's obligations regarding disposal of any real property acquired from DISTRICT

pursuant to this section shall be subject to the provisions Education Code section 17485 et seq.

SECTION 7. DUTY OF PARTIES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS

(a) CITY shall protect, defend, indemnify and hold harmless DISTRICT, its officers, agents and employees from and against any and all demands, claims, liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of or in any way connected with the CITY's negligent performance or nonperformance under this Agreement, including CITY's operations on, possession, use, management, alteration or control of the DISTRICT's property, except for any claims, causes of action or liability, or portions thereof, arising from the concurrent or sole negligence or intentional malfeasance of DISTRICT, its officers, agents or employees.

(b) DISTRICT shall protect, defend, indemnify and hold harmless CITY, its officers, agents and employees from and against any and all demands, claims, liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of or in any way connected with the DISTRICT's negligent performance or nonperformance under this Agreement, including DISTRICT's operations on, possession, use, management, alteration or control of the DISTRICT's property except for any claims, causes of action or liability, or portions thereof, arising from the sole negligence or intentional malfeasance of CITY, its officers, agents or employees.

(c) CITY shall defend, indemnify and hold harmless DISTRICT, its officers, agents and employees from any claims or causes of action for death or injury to persons, or damage to or loss of property accruing on or after July 1, 1991, attributable to the physical condition of any school Open Space/Recreational Area site for which CITY has undertaken responsibility for maintenance, improvement or rehabilitation under this Agreement arising out of the maintenance of such site by CITY, except for those claims or causes of action to which DISTRICT is responsible pursuant to subsections (a) and (b).

SECTION 8. INSURANCE

(a) DISTRICT, at its sole cost and expense, will obtain and maintain, in full force and effect, during the term of this agreement the following insurance:

(1) Commercial General Liability insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, insuring both

parties, their officers, employees, agents, and each of them with respect to DISTRICT's participation and the services performed by DISTRICT under this Agreement.

(2) Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000).

(3) Workers' Compensation with statutory limits and Employers' Liability with limits of one million dollars (\$1,000,000) per accident for bodily injury or disease.

Concurrently with execution of this Agreement, DISTRICT will file with CITY's Risk Manager a certificate of insurance showing evidence that the coverage above is in place. The Commercial General Liability policy shall include an additional insured endorsement that names the City of Sunnyvale, its officers, agents, employees and volunteers as additional insureds.

(b) CITY, at its sole cost and expense, will obtain and maintain, in full force and effect, during the term of this Agreement the following insurance:

(1) Commercial General Liability insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, insuring both parties, their officers, employees, agents, and each of them with respect to CITY's participation and the services performed by CITY under this Agreement.

(2) Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000).

(3) Workers' Compensation with statutory limits and Employers' Liability with limits of one million dollars (\$1,000,000) per accident for bodily injury or disease.

Concurrently with execution of this agreement, CITY will file with DISTRICT a certificate of insurance showing evidence that the coverage above is in place, or a letter regarding self-insurance. The Commercial General Liability policy shall include an additional insured endorsement that names the Sunnyvale School District, its officers, agents, employees and volunteers as additional insureds.

SECTION 9. TIME OF THE ESSENCE. Time is of the essence with respect to this Agreement.

SECTION 10. FORCE MAJEURE. If, due to act of God; fire; flood; storm; inclement weather; earthquake; drought; acute restrictions or riot; war or insurrection; plant or animal infestation or disease; sudden or severe energy shortage; strike; work stoppage;

work slowdown or other concerted job action; or other condition of emergency or disaster beyond the control of CITY which makes performance of its construction, rehabilitation and/or maintenance obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

SECTION 11. DISCRIMINATION PROHIBITED. Neither CITY nor DISTRICT shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, sex, physical handicap, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 12. NOTICES. All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY City Manager
 City of Sunnyvale
 P.O. Box 3707
 Sunnyvale, CA 94088

To DISTRICT Superintendent
 Sunnyvale School District
 819 West Iowa Avenue
 Sunnyvale, CA 94088

SECTION 13. EFFECT OF WAIVER OF BREACH OR VIOLATION. The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision of law shall not be deemed to be a waiver of any other term, covenant, or condition or law. The subsequent acceptance by either party of any money which may become due hereunder shall not be deemed a waiver of any preceding breach or violation by the other party of any term or condition of this Agreement, or of any applicable law.

SECTION 14. DISPUTES; LEGAL ACTIONS; ATTORNEY FEES; SPECIFIC PERFORMANCE.

(a) If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The parties shall promptly meet in an effort to resolve the issues raised. The CITY hereby appoints its Director of Public Works or designee as its representative and the DISTRICT hereby appoints the Superintendent or designee as its representative. If the parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the maximum extent possible that litigation be avoided as a method of dispute resolution.

(b) If the parties are unable to resolve a dispute as provided in subsection (a), the dispute(s) regarding this Agreement shall be resolved according to the laws of the State of California. Any legal proceedings shall be instituted in the courts of the State of California and County of Santa Clara, irrespective of any claim of diversity of citizenship or other possible jurisdictional conditions.

(c) The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

(d) In any action to enforce the provisions of Section 6 of this Agreement, specific performance shall be a remedy available in addition to any other remedies provided by law.

SECTION 15. INTEGRATED AGREEMENT. This document represents the entire and integrated Agreement between CITY and DISTRICT and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement shall not be construed as nor deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatever.

SECTION 16. AMENDMENT OF AGREEMENT. This Agreement may be amended only by written instrument, signed by both CITY and DISTRICT.

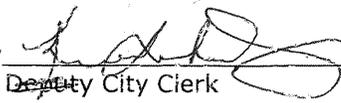
SECTION 17. ALL PROVISIONS OF AGREEMENT ARE CONDITIONS. All provisions of this Agreement are expressly made conditions.

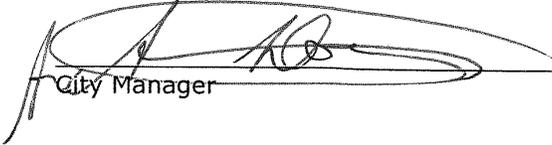
SECTION 18. TERMINATION OF AGREEMENT. This Agreement shall terminate on June 30, 2041, unless extended by mutual agreement of the parties.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Agreement on the
27th day of May, 2016.

ATTEST:
City Clerk

CITY OF SUNNYVALE ("CITY")

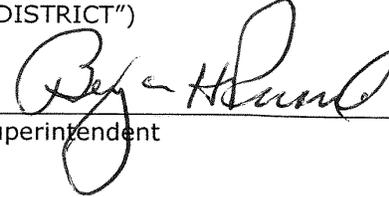
By 
Deputy City Clerk


City Manager

APPROVED AS TO FORM:

SUNNYVALE SCHOOL DISTRICT
("DISTRICT")


City Attorney


Superintendent

