

**AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND CUPERTINO UNION  
SCHOOL DISTRICT PERTAINING TO THE USE, MAINTENANCE AND  
IMPROVEMENT OF CERTAIN OPEN SPACE AREAS AND BUILDINGS WITHIN  
CERTAIN SCHOOL SITES**

This AGREEMENT PERTAINING TO OPEN SPACE AREA AND BUILDING USE, MAINTENANCE AND IMPROVEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2014, the date of the last signature on the signature page, (the "effective date") by and between the CITY OF SUNNYVALE, a California chartered municipal corporation (the "CITY") and the CUPERTINO UNION SCHOOL DISTRICT, a school district organized and existing under the Laws of the State of California (the "DISTRICT"), (individually a "Party" and, collectively, the "Parties"), in reference to the following facts and circumstances:

**Recitals:**

A. Section 10900 et seq. of the California Education code authorizes public authorities (e.g., cities and school districts) to organize, promote and conduct programs of community recreation, establish systems of playgrounds and recreation, and acquire, construct, improve, maintain and operate recreation centers within or without the territorial limits of such public authorities.

B. Section 10905 of the California Education Code authorizes public authorities to enter into agreements with each other for the maintenance of recreation centers.

C. Section 10910 of the California Education Code provides that the governing body of any school district may use or grant the use of any ground 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 those Facilities for any other purpose of the public school system.

D. The Parties have jointly kept open for school student and general public use in Sunnyvale certain open space areas at the elementary and middle schools, and they desire to continue arrangements for their common use.

E. The Parties are interested in continuing a long-term, joint funding arrangement under which the CITY will undertake the maintenance of certain open space areas at four elementary schools and 1 middle school to enhance their usability by school students and the general public, and the DISTRICT will make such areas available to the general public when school is not in session.

**Agreement:**

NOW, THEREFORE, in consideration of the Recitals A through E, inclusive, which are made a substantive part of this Agreement, and the Provisions of this Agreement, the Parties agree:

**SECTION 1.                    DEFINITIONS**

The terms used in this Agreement will have the meanings set forth below, unless context clearly indicates otherwise.

“Board of Education” means the Board of Education of the DISTRICT.

“Business Manager” means the Chief Business Official of the DISTRICT, including any authorized representative.

“Capital Improvement” means any Improvement which has a stand alone cost exceeding \$20,000, or which has a useful life of, or whose useful life can be extended, at least five to seven years, or which has a useful life of at least five to seven years after it is capable of providing a functional use.

“Improvement” means any physical addition, alteration, or betterment to the Facilities.

“Capital Improvement Zone” means areas of the Facilities as noted in attachment 1 that the DISTRICT may construct capital improvements without the CITY’s approval.

“Site Plan” designates the limit of the Facilities at each location and as shown in Attachment 1. Note that the site plans for the elementary schools reflect current conditions. The site plan for Cupertino Middle School contains two changes from the preceding agreement including the elimination of .3-acre site between the east side of the new multi-purpose building and the eastern property line of the school and .5-acre site between the lit ballfield and Bernardo Ave.

“City Manager” means the City Manager of the CITY, including any authorized representative.

“Superintendent” means the Superintendent of schools for the DISTRICT, including any authorized representative or designee.

“Council” means the City Council of the CITY.

“Director” means the Director of Public Works of the CITY, including any authorized representative or designee.

“Facilities” means the open space areas including athletic fields and related amenities, the dimensions of which for reference purposes are outlined below limits of which are shown in Attachment 1:

| <u>School Site Plans</u>      | <u>Facilities</u> | <u>Exhibit</u> |
|-------------------------------|-------------------|----------------|
| Cupertino Middle School       | 11.1 acres        | A              |
| Nimitz Elementary School      | 3.8 acres         | B              |
| Serra Elementary School       | 5.8 acres         | C              |
| Stocklmeier Elementary School | 3.4 acres         | D              |
| West Valley Elementary School | 4.6 acres         | E              |

“Field” (collectively, the “Fields”) means any one of the athletic field areas referred to in the description of “Facilities”.

“Law” (collectively, the “Laws”) means any code, statute, constitution, ordinance, resolution, regulation, rule, judicial decision, administrative order, or other requirement of and municipal, county, state, federal, or other governmental agency or authority having jurisdiction over the parties or the Schools, in effect at the time of execution of the Agreement or at any time during the term hereof, including without limitation, any regulation or order of an official entity or body.

“Maintenance” means the care and servicing on an ongoing and repeating basis by personnel for the purpose of maintaining Facilities in proper condition, proper working order, sound upkeep, a safe condition, in good repair, by providing for systematic inspection, detection, and correction of incipient failures either before they occur or before they develop into major defects. It includes the inspection, replenishment, preservation, adjustments, and replacement of unserviceable parts and components, including, but not limited to irrigation and drainage systems.

“Preventive maintenance” means any and all maintenance activities that could reasonably be predictive. The CITY specifically and intentionally excludes the replacement of entire systems or Facilities that would constitute an “infrastructure” investment (capital investments for Facilities or structures with a life cycle beyond five years).

“Provision” (collectively, the “Provisions”) means any agreement, clause, condition, covenant, qualification, recital, restriction, reservation, term, or other stipulation in this Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Agreement. All Provisions,

whether covenants or conditions, which are applicable to the DISTRICT, will be deemed to be both the covenants and conditions.

“School” (collectively, the “Schools”) means any one of the following elementary or middle schools: Cupertino Middle School, Nimitz Elementary School, Serra Elementary School, Stockmeir Elementary School and West Valley Elementary School.

## **SECTION 2. TERM AND TERMINATION**

2.1 The term of this Agreement will be for ten (10) years commencing at 6:00 a.m. on the effective date indicated on Page 1 of this Agreement, and expiring at 12:00 a.m. midnight on June 30, 2024 subject to the earlier termination of this Agreement by any Party hereto upon one-hundred and eighty (180) days’ written notice. This Agreement may be extended for five years on mutually agreed upon terms and conditions beyond the term described above. If the parties reach agreement, a written amendment to the agreement shall be executed by both parties. The preceding notwithstanding, this Agreement is subject to the fiscal provisions of the Charter of the CITY and other laws of the CITY and the DISTRICT, and this Agreement will terminate without any penalty (a) at the end of any fiscal year in the event that funds are not appropriated by the Council or Board of Education for the following fiscal year, or (b) at any time within a fiscal year in the event that funds are not appropriated by the Council or Board of Education for a portion of the fiscal year and funds for this Agreement are no longer available. The CITY or DISTRICT will use reasonable efforts to give the other Party reasonable notice of termination in the event that funds will not be appropriated. No provision is made for the automatic extension or renewal of the term.

2.2 DISTRICT shall not sell, convey, or otherwise dispose of the Facilities during the term of this Agreement.

2.2 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 may be amended only by written instrument, signed by both CITY and DISTRICT. All provisions of this Agreement are expressly made conditions.

## **SECTION 3. PERFORMANCE OF MAINTENANCE BY THE CITY**

3.1 Commencing on the effective date indicated on Page 1 of this Agreement, the CITY, at its sole cost and expense, will mow, trim, fertilize, and perform other maintenance work of a general nature at the Facilities in accordance with the CITY’s

quality standards for parks and at a level that is equivalent with other Facilities maintained by the CITY. The CITY will directly pay for the cost of electricity associated with Facilities at Cupertino Middle School. Any or all services required to maintain and renovate the Facilities may be performed by licensed contractors hired and managed by the CITY.

3.2 In performing its Maintenance obligations the CITY will use its best efforts to prevent interference with the DISTRICT's use of the Facilities during regular school hours but priority shall be given to CITY maintenance personnel and equipment between the hours of 6:00 a.m. to noon. CITY may access Facilities at any time for routine and emergency maintenance purposes and will provide the DISTRICT with a mowing schedule for Facilities annually. All gates providing access to Facilities shall be double-locked with both CITY and DISTRICT locks in a manner that provides dual access. In the case where only a single lock can be used, the DISTRICT shall supply the lock and provide the CITY with two (2) keys for each lock used.

3.3 For the purpose of preventing or abating hazardous conditions, the CITY may curtail DISTRICT use of Facilities at any time and without prior notification. In such cases the CITY will minimize the DISTRICT's lack of access to the facility. In the case of planned closures to Facilities for maintenance or management purposes the CITY will provide the DISTRICT with a minimum of two weeks' notice. Fields are closed to public use by the CITY from December through February; however DISTRICT may continue to use fields at their discretion and only if conditions are safe and use will not damage field to the extent that non-routine maintenance is required to repair damage or unless otherwise notified by the CITY. DISTRICT shall not use fields that the CITY has notified them specifically to not use and are fenced off and signed as closed.

3.4 The CITY may apply pesticides to Facilities only on days when school is not in session and students will not be using the Facilities. A minimum of one week's advance notification will be provided by the CITY to the DISTRICT for every occasion a pesticide is applied to any facility.

3.5 CITY personnel must be wearing a uniform shirt or jacket showing them to be CITY employees at all times they are accessing Facilities, but do not have to register when accessing Facilities or otherwise provide notification to the DISTRICT. CITY will provide advance notification when a contractor managed by the CITY will access Facilities for maintenance purposes. Contractor personnel must be in their company's standard uniform at all times they are maintaining facilities and directly supervised by CITY personnel.

3.6 At all times during the term of this Agreement, the CITY will timely notify the DISTRICT of any condition of the Facilities, of which it has actual or constructive

knowledge, which may constitute or present a danger or threat to person or property. The tender of such timely notice shall not compromise any Provision of indemnification set forth in Section 11.

3.7 The CITY, at its sole cost and expense, will directly pay for water use associated with Facilities at all five sites and electricity use associated with Facilities at Cupertino Middle School including the auxiliary restroom building, irrigation controllers and athletic field lighting.

#### **SECTION 4. PERFORMANCE OF MAINTENANCE BY THE DISTRICT**

4.1 Any areas of the Facilities and all other areas of the Schools, including, without limitation, the turf, grounds, landscaped areas, buildings, parking lots, fences, walkways, and trees, not expressly identified in the Attachments or in the Agreement as areas to be maintained by the CITY will be maintained or cause to be maintained by the DISTRICT, at its sole cost and expense, in accordance with the DISTRICT's standards. Facilities perimeter fences, gates, signs with DISTRICT rules concerning Facilities use, bleachers, soccer goals, storage buildings and any other fixtures or structures purchased, used and stored by the District within the Facilities, shall be maintained at the sole cost of the DISTRICT.

4.2 The DISTRICT, at its sole cost and expense will, directly pay for electricity use associated with Facilities at the four elementary schools.

4.3 Notwithstanding any Provision to the contrary, the DISTRICT, at its sole cost and expense will provide or cause to be provided special preparation and maintenance services with respect to any of the Facilities to be used in connection with special events or other similar functions staged by the DISTRICT, including, without limitation, graduation ceremonies, athletic events, walkathons and other inter-scholastic activities.

4.4 The DISTRICT, at its sole cost and expense, will continuously provide services in connection with the removal of garbage, refuse, debris, rubbish, litter and other solid waste which have accumulated at the Facilities due to DISTRICT use from activities that have occurred anywhere on DISTRICT property.

4.5 At all times during the term of this Agreement, the DISTRICT will timely notify the CITY of any condition of the Facilities and all other areas of the Schools, of which it has actual or constructive knowledge, which may constitute or present a danger or threat to person or property. The tender of such timely notice shall not compromise any Provision of indemnification set forth in Section 11.

4.6 The DISTRICT will reimburse the CITY annually in January of each year for the cost of water according to the following amounts:

| Year | Cost     |
|------|----------|
| 2015 | \$60,000 |
| 2016 | \$62,400 |
| 2017 | \$64,896 |
| 2018 | \$67,492 |
| 2019 | \$70,192 |
| 2020 | \$72,999 |
| 2021 | \$75,919 |
| 2022 | \$78,955 |
| 2023 | \$82,114 |
| 2024 | \$85,398 |

## **SECTION 5. CAPITAL IMPROVEMENTS**

5.1 The DISTRICT may, at its sole cost and expense, make temporary or permanent capital improvements in those areas of the Facilities identified as Capital Improvement Zones on the Facilities Site Plans without approval by CITY. DISTRICT shall provide a minimum of six (6) months' notice to CITY of all capital improvements. The DISTRICT, at its sole cost and expense, will maintain and repair any capital improvements.

5.2 The DISTRICT may, at its sole cost and expense, make temporary or permanent capital improvements in those areas of the Facilities not identified as Capital Improvement Zones on the Facilities Site Plans only with approval by CITY. DISTRICT shall provide a minimum of six (6) months' notice to CITY of all capital improvements. The DISTRICT, at its sole cost and expense, will maintain and repair any capital improvements.

5.3 The CITY may, at its sole cost and expense, make temporary or permanent capital improvements in all areas of the Facilities only with approval by Council and Board of Education. CITY shall provide a minimum of six (6) months' notice to DISTRICT of all capital improvements. The CITY, at its sole cost and expense, will maintain and repair any capital improvements.

## **SECTION 6.          USAGE OF FACILITIES**

6.1 The DISTRICT will have use priority of the elementary and middle school Facilities between the hours of 8:00 a.m. and 4:00 p.m. on scheduled school days. Use priority will be extended to interscholastic activities occurring at the Facilities until the completion of those scheduled activities, even if such activities are completed after 4.00 p.m. This priority will apply Mondays through Fridays during each regular academic school year. Any activities that extend beyond 4:00 p.m. shall be permitted through the CITY at no cost to the DISTRICT. The DISTRICT has sole responsibility to restrict public access to Facilities during those times.

6.2 The CITY will have use priority of the elementary and middle school Facilities after 4:00 p.m. on scheduled school days and at all other times, including weekends, holidays and summer vacation periods. Exceptions to this use priority schedule may be agreed upon, in writing, by the Director and the Business Manager. The CITY will cooperate with the DISTRICT in any manner which will afford the DISTRICT an adequate opportunity to use the Schools for its activities, programs and other needs.

6.3 The CITY, at its sole cost and expense, will administer public exclusive use permits of the elementary and middle school Facilities in accordance with the CITY's permit policies. All permit holders will be notified of DISTRICT rules concerning use of the Facilities. The CITY will solely be responsible for determining the parameters of the use priority system and schedule, as well as permit or user fees to be charged to members of the general public, including individuals and organized groups, for the use of the Facilities during such times as the CITY may exercise use priority. Such fees will conform to the Laws governing school grounds and those which are applicable to the CITY's property. The CITY will retain all fees collected for the use of the Facilities covered by the Agreement. Any person or group permitting Facilities shall have equal access to parking on school property on a first-come, first-served basis and according to any use restrictions posted by DISTRICT.

6.4 The CITY shall monitor and enforce the use of the Facilities to determine whether such uses comply with conditions of the permits and DISTRICT rules concerning use of the Facilities. If such use of a Facility does not comply with the conditions of the particular permit or other applicable Laws, the CITY shall terminate the further use of the Facility by the user.

6.5 Any person or group who leases a School building of the DISTRICT may use Facilities, including fields, on a casual or drop-in basis and shall share them with members of the public also using them on a casual or drop-in basis. Any person or



group will be required to secure a permit for the Facilities from the CITY if they desire to have exclusive use and shall respect the exclusive use of Facilities by any person or group that has obtained a permit from the City for such use.

6.6 The DISTRICT shall provide use of the existing gymnasium at the middle school to the CITY after DISTRICT's use for all school activities and events and after community groups who are currently using the gymnasium on a regularly scheduled basis. The DISTRICT and the CITY shall meet annually in March to determine the schedule for the next twelve (months). CITY may request additional use throughout the year. All CITY use will be for directly operated Library and Community Services Department programs. The CITY shall acquire permits at no cost except for custodial care during permitted times and will follow all DISTRICT permit rules and obligations including bearing the sole cost and expense for the repair of any damage to Facilities caused by CITY use. The new multi-purpose building at the middle school will not be available in its first year of operation while the school identifies its needs/utilization throughout an entire year's cycle of use. The District shall provide priority use to the CITY of the new multi-purpose building after District's use for all school activities and events and will meet in March 2015 to discuss the availability and schedule of use for the 2015-2016 school year. Permits and conditions imposed for use of the Multi-Purpose Building will be the same as those applicable to gymnasium use.

## **SECTION 7. ASSIGNMENT; SUBCONTRACTORS; EMPLOYEES**

7.1 The Parties shall give their personal attention to the faithful performance of this Agreement and shall not assign, transfer, convey, or otherwise dispose of this Agreement or any right, title or interest in or to the same or any part thereof without the prior written consent of the other Party, and then only subject to such terms and conditions as the other Party may require. The consent to one assignment shall not be deemed to be consent to any subsequent assignment. Any assignment without such approval shall be void and, at the option of the other Party, shall terminate this Agreement and any license or privilege granted herein. This Agreement and any interest herein shall not be assignable by operation of law without the prior written consent of the other party.

7.2 The DISTRICT shall be responsible for employing or engaging all persons necessary to perform the services of the DISTRICT hereunder. The CITY shall be responsible for employing or engaging all persons necessary to perform the services of the CITY hereunder.

## **SECTION 8.**            **INDEMNITY**

8.1 The CITY shall protect, indemnify, defend, and hold harmless the DISTRICT, its employees, agents, and Board members from and against any 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 under this Agreement except for any claims or liability, or portions thereof, arising from the concurrent or sole negligence or intentional malfeasance of the DISTRICT, its directors, officers, employees or agents.

8.2 The DISTRICT shall protect, indemnify, defend, and hold harmless the CITY from and against any 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 the DISTRICT's operations, possession, use, management, maintenance, improvement, renovation, repair or alteration or control of the DISTRICT's property, including the Facilities, under this Agreement, except for any claims or liability, or portions thereof, arising from the concurrent or sole negligence or intentional malfeasance of the CITY, its directors, officers, employees or agents.

## **SECTION 9.**            **INSURANCE**

9.1 The 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:

- Commercial General Liability insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, insuring the Parties, and their officers, employees, and agents, and each of them with respect to the DISTRICT's participations and the services performed by the DISTRICT under this Agreement.
- Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000).
- Workers' Compensation with statutory limits and Employers' Liability with limits of one millions dollars (\$1,000,000) per accident for bodily injury or disease.

Concurrently with the execution of this Agreement, a certificate of insurance will be filed with the CITY's Risk Manager 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.

9.2 Certificates of the DISTRICT's insurance, required by Section 9.1 hereof, shall be filed with the CITY, to the attention of the CITY's Risk Manager, concurrently with the execution of this Agreement. The certificates shall be subject to the approval of the CITY's Risk Manager and shall contain endorsements stating that said insurance will cover the DISTRICT and the CITY for any claims or liability arising from the DISTRICT's participation, activities, and services performed under the Provisions. Current certificates of such insurance shall be kept on file at all times during the term of this Agreement with the City Clerk.

9.3 The CITY, at its sole cost and expense, will self-insure for the following coverages:

- General Liability insurance coverage in the amount of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, insuring the Parties, and their officers, employees, and agents, and each of them with respect to the CITY's participation and the services performed by the CITY under this Agreement.
- Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000).
- Workers' Compensation with statutory limits and Employers' Liability with limits of one millions dollars (\$1,000,000) per accident for bodily injury or disease.

A letter regarding self-insurance or a certificate of insurance will be filed with the DISTRICT's Risk Manager, and will contain the endorsements which state that the CITY will insure the Parties, and each of them, for any claims or liability arising from the CITY's participation and services performed hereunder, and will not be canceled by the insurer except after the filing with the Superintendent thirty (30) days prior written notice of cancellation or alteration, and that the DISTRICT is named as an additional insured under the CITY's self-insurance program.

9.4 The CITY shall provide the DISTRICT with written proof of the CITY's self-insurance program, required by Sections 9.3 hereof, concurrently with the execution of this Agreement. Proof of the self-insurance program shall be subject to approval by the DISTRICT's Risk Manager and shall contain language stating that said insurance will cover the CITY and the DISTRICT for any claims or liability arising from the CITY's participation, activities and services performed under the Provisions and will not be cancelled or altered by the CITY expect after thirty (30) days' written notice to the DISTRICT of such cancellation or alterations, The language shall also state that the

DISTRICT is named as an additional insured under the CITY's self-insurance program under Section 9.3.

#### **SECTION 10.**      **WAIVERS**

10.1 The waiver by either party of any breach or violation of any terms, covenant, or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, ordinance, or law or of any subsequent breach or violation of the same or of any other terms, covenant, condition, ordinance, or law.

#### **SECTION 11.**      **NOTICES**

11.1 All notices, demands, requests, consents, approvals, or other communications required to be given will be in writing and may be delivered personally, or sent by the United States mail, postage prepaid by certified mail, or by private express delivery service to the addresses set forth below or to any other address as may be noticed by a party:

|              |                                 |
|--------------|---------------------------------|
| To CITY:     | City of Sunnyvale               |
|              | Office of the City Manager      |
|              | P.O. Box 3707                   |
|              | Sunnyvale, CA 94088-3707        |
| To DISTRICT: | Cupertino Union School District |
|              | Office of the Superintendent    |
|              | 1309 S. Mary Avenue Suite 150   |
|              | Sunnyvale, CA 94087             |

#### **SECTION 12.**      **MISCELLANEOUS PROVISIONS**

12.1 Time is of the essence. For the purposes of this Agreement, all times of the day are determined according to Pacific Time.

12.2 No party will be deemed in default on account of any delay or failure to perform its obligations under this Agreement, where the delay or failure is the direct result of an event of force majeure. For the purposes of this Agreement, the term "force

majeure” will mean an event which is not within the reasonable control of a party claiming the existence of such event.

12.3 No Party will discriminate in the employment of persons engaged in the performance of this Agreement on account of race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, or familial status in violation of state or federal law, or on any basis otherwise prohibited by state or federal law.

12.4 If a question arises regarding interpretation of this Agreement of 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 its Chief Business Official 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

12.5 The prevailing party in any action brought to enforce the provisions of this Agreement or arising out of this Agreement may recover its reasonable costs and attorneys' fees expended in connection with such an action from the other Party.

12.6 All attachments referred to in this Agreement and any addenda, appendices, exhibits, and schedules which, from time to time, may be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and will be deemed to be part of this Agreement.

12.7 This Agreement constitutes the entire agreement between the Parties concerning its subject matter, and there are no other oral or written agreements between the parties not incorporated in this Agreement.

12.8 This Agreement will 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 will have any right of action herein for any cause whatever. The terms, covenants, and conditions of this Agreement shall apply to, and shall bind, the heirs, successors, executors, administrators, assigns and subcontractors of each Party.

12.9 This Agreement may be amended only by a written instrument signed by both parties. The City Manager and Superintendent are duly authorized to negotiate and execute any amendment to this Agreement.

12.10 Any agreement, covenant, condition, clause, qualification, term or other stipulation in this Agreement will define or otherwise control, establish, or limit the performance required of or permitted by any party. All provisions of this Agreement, whether covenants or conditions, will be deemed both covenants and conditions.

12.11 This Agreement confers no legal or equitable rights until it is approved by the CITY's Council and the DISTRICT's Board of Supervisors at lawfully conducted public meetings.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have duly executed this Agreement as of the Effective Date.

CITY OF SUNNYVALE

CUPERTINO UNION SCHOOL  
DISTRICT

APPROVED AS TO FORM:

APPROVED

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JOAN BORGER

City Attorney

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BEN LIAO

President, Board of Education

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DEANNA J. SANTANA

City Manager

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CHRIS JEW

Chief Business Official

ATTEST:

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KATHLEETN FRANCO-SIMMONS

City Clerk



# EXHIBIT A: CUPERTINO MIDDLE SCHOOL SITE PLAN

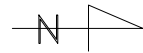




# EXHIBIT B: NIMITZ ELEMENTARY SCHOOL SITE PLAN

## LEGEND:

- PROPERTY LINE
- FACILITIES LIMITS
- CAPITAL IMPROVEMENT ZONE

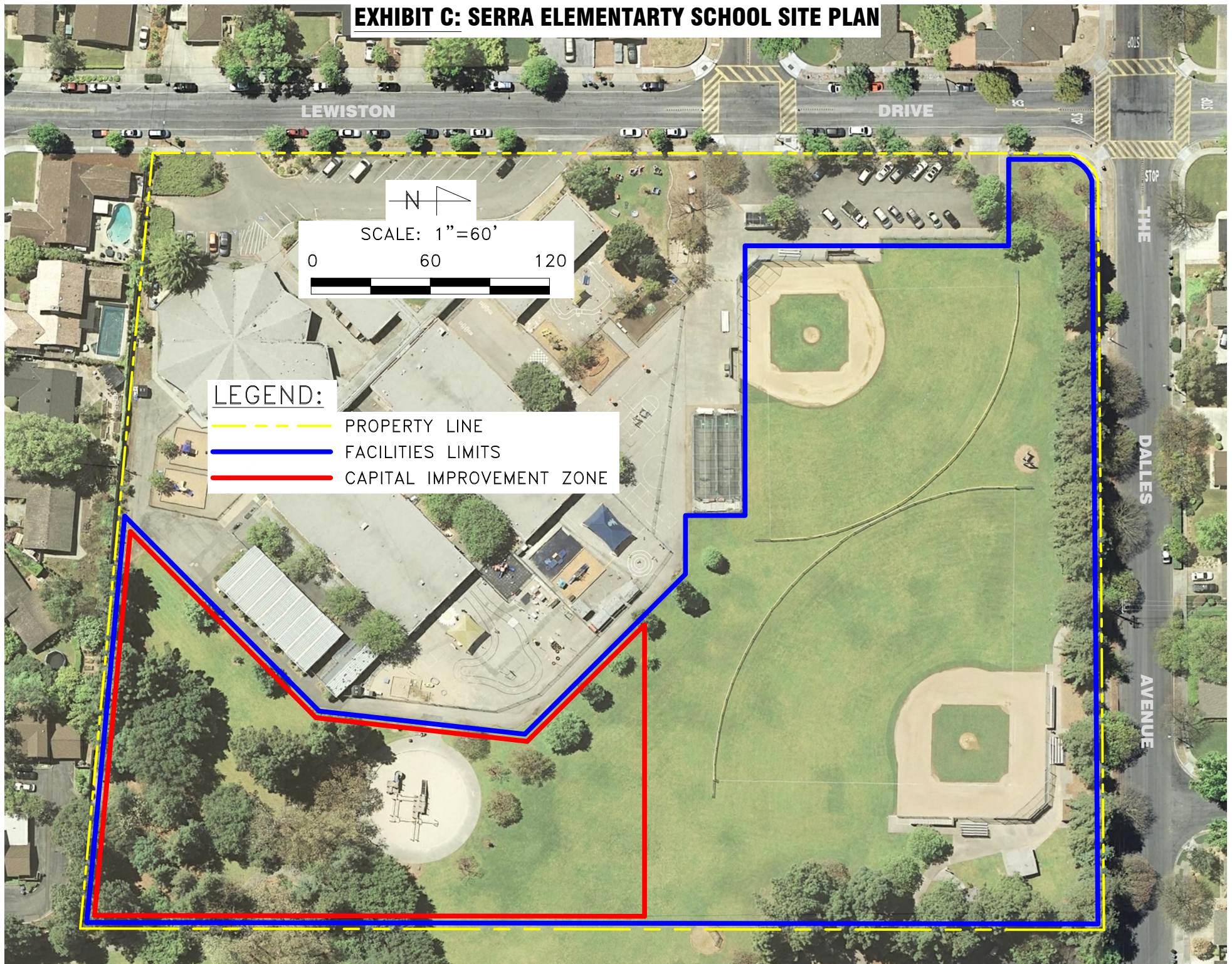


SCALE: 1"=100'



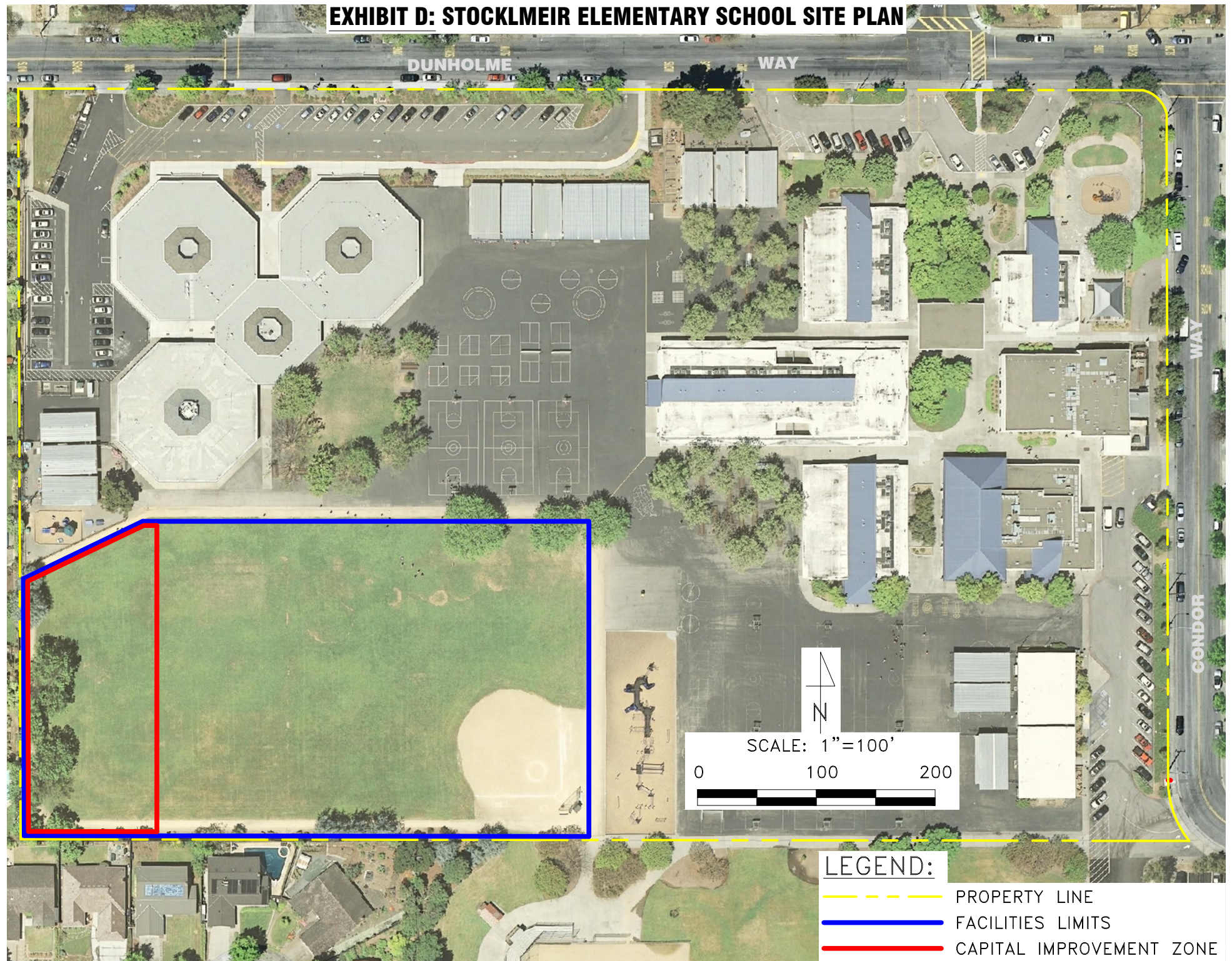


# EXHIBIT C: SERRA ELEMENTARY SCHOOL SITE PLAN





# EXHIBIT D: STOCKLMEIR ELEMENTARY SCHOOL SITE PLAN





# EXHIBIT E: WEST VALLEY ELEMENTARY SCHOOL SITE PLAN

