

**AGREEMENT BETWEEN CITY OF SUNNYVALE AND FREMONT
UNION HIGH SCHOOL DISTRICT FOR THE MAINTENANCE
AND USE OF TENNIS COURTS AT FREMONT HIGH SCHOOL**

THIS AGREEMENT, made and entered into this 22nd day of June, 2011,
by and between CITY OF SUNNYVALE, a municipal corporation of the State of California,
herein after referred to as "CITY", and FREMONT UNION HIGH SCHOOL DISTRICT, a
public school district organized and existing under the laws of the State of California (hereinafter
referred to as "DISTRICT"; CITY and DISTRICT may also be referred to herein individually as
a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Section 10900 et. seq. of the 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 public agencies 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, the parties desire to provide for the operation and maintenance of seven (7) lighted tennis courts (hereinafter, "the Tennis Courts") located at Fremont Union High School in order to serve the general public of CITY and the students of DISTRICT;

NOW, THEREFORE, in consideration of the covenants and conditions set forth in this Agreement, and pursuant to the provisions of the Education Code referred to above, the parties agree as follows:

SECTION 1. USE OF TENNIS COURTS

A. DISTRICT shall be entitled to the exclusive use of the Tennis Courts for physical education classes and other related school purposes each day school is in session and students are present during the nine-month school year, between the hours of 7:30 a.m. and 4:00 p.m., Monday through Friday.

B. CITY shall be entitled to the exclusive use of the Tennis Courts for community recreational purposes each day school is in session after 5:00 p.m. and until 10:00 p.m. On the days when the Fremont High School Boys and/or Girls Tennis Team practices, have matches or other events, the CITY will have exclusive use after 6:00 p.m. and until 10:00 p.m.

C. CITY shall be entitled to exclusive use of the Tennis Courts on Saturdays and Sundays and each day commencing on the day after school recesses for summer vacation and continuing until the end of the last week of summer recess before Fremont High School reconvenes for the new school year unless there is a school sponsored tournament or playoffs. CITY is responsible for the condition of the courts while it is in their care, custody and control.

D. Any adjustment in this use by either CITY or DISTRICT for summer school or special uses for tournaments, etc., will be agreed upon between the Director of Community Services of CITY ("Director") and the Superintendent of DISTRICT ("Superintendent"), or designee.

SECTION 2. PARKING & FACILITIES

A. DISTRICT will provide sufficient vehicular and pedestrian access for the use of patrons of the Tennis Courts, together with the use of the student parking lots on Fremont Avenue at Fremont High School. The City will be responsible for making sure all gates are open for use.

SECTION 3. OPERATIONS AND MAINTENANCE

A. DISTRICT shall provide at its sole cost and expense trash pick-up, sweeping and/or washing of the Tennis Courts monthly.

B. CITY shall provide at its sole cost and expense the following:

1. Cost of all electricity for the Tennis Courts' lights. The District shall invoice the City once a year based on meter readings and the average cost of kilowatts used by the lighting system.

2. Cost of the maintenance of the lights, fixtures and lighting equipment, including labor.

3. Lamp replacement and repair, including labor.

4. Sweeping and/or washing of the courts at times that the CITY deems necessary.

C. DISTRICT and CITY shall equally share all the cost of repairing and/or replacing nets, posts, and windscreens and the cost of painting court lines and resurfacing when necessary. Costs to be shared equally shall include all costs associated with supplies and labor for maintenance and repair of nets, posts, windscreens, painting court lines and court resurfacing. DISTRICT shall be responsible for commencement of maintenance and replacement of nets, posts, windscreens and resurfacing.

E. The amounts of all fees or charges required for CITY operation or tennis lessons or tournaments for recreation purposes shall be the decision of CITY. All revenues derived by CITY from operation of CITY tennis programs shall belong to CITY.

F. CITY and DISTRICT shall meet annually on or about the anniversary date of the agreement to determine if mutually accepted revisions should be made in (a) use schedules, (b) payment for utilities and/or (c) responsibility for maintenance and repair.

SECTION 4. INDEMNIFICATION

A. DISTRICT shall indemnify and hold harmless CITY, its officers, employees, agents and representatives ("CITY's Indemnified Parties") from any liability, including but not limited to, property damage, bodily injury or death, arising out of any dangerous or defective condition of the Tennis Courts, negligent maintenance of the Tennis Courts by DISTRICT as required by Section 3 of this Agreement, or arising out of incidents occurring during DISTRICT's hours of use of the Tennis Courts as specified in this Agreement, and DISTRICT shall defend at its sole expense and pay all costs and fees, including but not limited to, attorneys' fees, costs of investigation, defense and settlements or awards, on behalf of CITY's Indemnified Parties in any claim or action based upon such liability.

B. CITY shall indemnify and hold harmless DISTRICT, its officers, employees, agents, and representatives ("DISTRICT's Indemnified Parties") from any liability, including but not limited to, property damage, bodily injury, or death, arising out of the negligent maintenance of the Tennis Courts by CITY as required by Section 3 of this Agreement, or arising out of incidents occurring during CITY's hours of use of the Tennis Court as specified in this Agreement, including while conducting any community recreation program or activity at the Tennis Courts, and CITY shall defend at its sole expense and pay all costs and fees, including

but not limited to attorneys' fees, costs of investigation, defense and settlements or awards, on behalf of the DISTRICT's Indemnified Parties in any claim or action based upon such liability.

SECTION 5. INSURANCE

Without limiting the indemnification of either party to this AGREEMENT, each party shall maintain or cause to be maintained the following insurance coverage: (1) a policy of commercial general liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate; (ii) a policy of workers' compensation providing statutory coverage; and (iii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement. Insurance afforded by the commercial general liability policy shall be endorsed to provide coverage to the other party of the Agreement as an additional insured. Each party to this AGREEMENT shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. The requirements of this section may be satisfied by the provision of similar coverage through a self-insurance program.

SECTION 6. 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 either party which makes performance of any of its obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

SECTION 7. 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,

disability, sexual orientation, or medical condition in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 8. NOTICES

All notices shall be given in writing and mailed, postage prepaid, by certified mail, personally delivered, sent by overnight courier service, sent by facsimile or electronic mail addressed as follows:

To CITY: Superintendent of Recreation
 City of Sunnyvale
 P.O. Box 3707
 Sunnyvale, California 94088-3707

To DISTRICT: Chief Business Official
 Fremont Union High School District
 589 W. Fremont Ave.
 Sunnyvale, California 94087

SECTION 9. 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 that 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 10. 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 11. PREVIOUS AGREEMENTS

This Agreement supersedes all prior agreements between CITY and DISTRICT concerning the use, operation and maintenance of tennis courts belonging to DISTRICT, including the Agreement dated October 9, 1973; the Agreement dated June 24, 1980; the First Amendment to the Agreement dated December 4, 1984; and the Second Amendment to the Agreement dated July 17, 1997.

SECTION 12. AMENDMENT OF AGREEMENT.

This Agreement may be amended only by written instrument, signed by both CITY and DISTRICT.

SECTION 13. TERM OF AGREEMENT; TERMINATION.

The term of this Agreement shall commence as of July 1, 2011 and shall remain in effect until June 30, 2025 ("Termination Date"), unless extended or sooner terminated pursuant to this section. The Parties to this Agreement recognize that, to be enforceable, this Agreement must be approved or ratified by the District's governing board at a lawfully calendared meeting. CITY and DISTRICT may by mutual consent amend the terms of this Agreement, or terminate it effective as of the 30th day of June of any year hereafter upon either party giving written notice to the other of its intention to so terminate, not later than the 2nd day of January of the same year.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Agreement on the day and year first above written.

ATTEST:

City Clerk


By


Deputy City Clerk

CITY OF SUNNYVALE ("CITY")

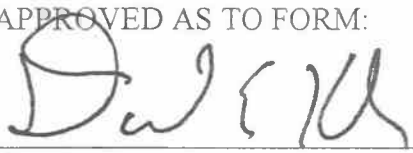

City Manager

FREMONT UNION HIGH SCHOOL
DISTRICT ("DISTRICT")



Superintendent

APPROVED AS TO FORM:



City Attorney

APPROVED AS TO FORM

Legal Counsel for DISTRICT