

**FOURTH AMENDMENT TO USE AGREEMENT BETWEEN CITY OF SUNNYVALE  
AND FREMONT UNION HIGH SCHOOL DISTRICT FOR THE DEVELOPMENT AND  
OPERATION OF A 50 METER SWIMMING POOL AND RELATED FACILITIES AT  
FREMONT HIGH SCHOOL**

THIS FOURTH AMENDMENT ("Amendment"), dated \_\_\_\_\_, 2014, is made by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "City" and the FREMONT UNION HIGH SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, herein called "District," and amends the Development and Operation Agreement between the parties dated July 18, 2000 ("Agreement"), as last amended on January 8, 2014.

**RECITALS**

WHEREAS, pursuant to the Agreement, the 50-meter pool and ancillary facilities were opened for operation on June 26, 2002; and

WHEREAS, due to deteriorating conditions, the District and City discovered significant repairs that must be performed on the pool bathhouse, also known as the pool house facility ("Pool House"); and

WHEREAS, the District and City executed a Third Amendment to the Agreement on January 8, 2014, in order to share the costs associated with repairing and/or replacing portions of the Pool House; and

WHEREAS, the costs associated with repairing and/or replacing portions of the Pool House ("the Project") were estimated at \$1,586,889.00, including contingencies, with a CITY contribution not exceed to \$793,444.00.

WHEREAS, the costs associated with the Project have now increased; and

WHEREAS, Section 18 of the Agreement provides for amendment by written agreement of the Parties.

NOW, THEREFORE, in light of the foregoing facts, it is mutually agreed as follows:

Section 1: The Agreement is amended to replace Section 22(e), as follows:

**SECTION 22. REPAIRS AND/OR REPLACEMENT OF  
POOLHOUSE**

(a)-(d) [text unchanged]

(e) Project Cost Sharing. DISTRICT and CITY shall each pay fifty percent (50%) of the costs associated with the investigation, design, plans,

specifications and construction of the Pool House Repair Project which includes the damage Assessment Report that was performed in April 30, 2012 and all associated deconstructive testing and investigation ("Pool House Repair Project Costs"). DISTRICT shall be responsible for direct payment of all costs associated with the Pool House Repair Project. Total project costs are currently estimated at **\$2,200,000.00**, including contingencies. The total contribution by CITY shall not exceed **\$1,100,000.00**. DISTRICT shall notify CITY at least five business days in advance of executing any construction change orders in excess of \$5,000 in accordance with Section 1(e) of the Agreement. DISTRICT shall notify CITY monthly about all executed contract changes, and contractor claims for additional compensation. At the beginning of each month, DISTRICT shall submit invoices to the CITY for costs expended in the prior month. CITY shall reimburse DISTRICT within thirty (30) days from the date of the invoice. At any point, should the project costs exceed the current estimate, the parties must meet and confer within 10 days to determine a solution.

(f)-(g) [text unchanged]

Section 2: All other provisions of the Agreement, including Amendments, remain in full force and effect.

**ACCEPTED AND AGREED** on the date indicated below:

Dated: \_\_\_\_\_, 2014

Dated: \_\_\_\_\_, 2014

**FREMONT UNION HIGH SCHOOL  
DISTRICT**

**CITY OF SUNNYVALE**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: Polly Bove  
Print Title: Superintendent

Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_