

**MEMORANDUM OF AGREEMENT
BETWEEN
FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT
AND THE
CITY OF SUNNYVALE**

THIS MEMORANDUM OF AGREEMENT (hereinafter referred to as the "Agreement") regarding certain activities to be undertaken at Onizuka Air Force Station ("OAFS") in Sunnyvale, California, is entered into on this 15th day of May, 2013 ("Effective Date"), by and between **FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT** ("District"), and **CITY OF SUNNYVALE** ("City"). The District and the City are each sometimes referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, as required by Base Realignment and Closure law, the U.S. Air Force ("USAF") is required to deactivate and excess certain properties, including OAFS, and USAF elected to subdivide OAFS into four (4) smaller parcels for conveyance to four (4) entities as depicted in the map attached hereto and incorporated herein as "Exhibit A" ("Map");

WHEREAS, Parcels D and E on the Map represent the land transferred to the City by USAF, and Parcel C on the Map represents the land transferred to the District by USAF;

WHEREAS, USAF drew the boundary lines for the parcels to be transferred, in a location such that a portion of Buildings 1004, 1005 and 1042, as shown on the Map, extend into Parcel D while the majority of those buildings lie within Parcel C;

WHEREAS, Buildings 1007, 1009, 1012 and 1013 on the Map are located fully on Parcels D and E;

WHEREAS, the City and the District desire to demolish and remove buildings on parcels C, D and E completely once they have assumed control of their respective parcels, and both parties agree that it is not practicable nor feasible to demolish the portions that lie on their respective parcels independently of one another;

WHEREAS, The City and the District agree that demolition activities should occur as soon as reasonably possible after the District receives control of Parcel C;

NOW, THEREFORE, in consideration of the foregoing premises and the respective representations, agreements, covenants and conditions herein contained,

and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

AGREEMENTS

ARTICLE 1.

The District hereby agrees to:

A. Contract for and manage, at minimum, the demolition activities described in the scope of work attached to this Agreement as "Exhibit B"

B. Manage and conduct the remediation of any discovered hazards in City buildings to be demolished (such as asbestos and lead paint), including but not limited to development of hazardous materials surveys and abatement specifications;

1. Should the District discover hazardous materials other than asbestos and/or lead paint, the District shall notify the City before proceeding with its removal or abatement of such materials;

2. If removal of such hazardous materials are likely to cause the cost of the District's Work to exceed the City's Proportionate Share (as defined below), the District shall not proceed with related demolition activities unless the work and additional funding are authorized by the City;

C. Remove Buildings 1004, 1005 and 1042, which lie on the property boundary between Parcel C and Parcels D;

D. Remove Buildings 1007, 1009, 1012 and 1013, which lie entirely on the City's parcels D and E;

E. Disconnect utilities on Parcel C that serve all buildings on Parcels C, D and E;

F. Once field demolition is complete, erect and maintain a fence that delineates the property boundary between Parcel C and Parcels D;

G. During the time the revocable license is in effect, provide security services for the portion of Parcels C, D and E that lie within the demolition construction area of work (all of the foregoing, the "District's Work"); and

H. Perform the District's Work in accordance with all applicable laws, codes, ordinances, and permitting requirements, including any and all environmental preservation or abatement or historic preservation requirements.

ARTICLE 2. City hereby agrees:

A. Upon District request, the City will grant to the District and its contractors a revocable license in the form attached to this Agreement as "Exhibit C" that allows the District and its contractors to enter Parcels D and E to undertake the District's Work.

B. The City shall assign a representative to act as its agent for acceptance of the District's Work as it is completed and communicate the City's approval of any proposed changes to the District's Work; provided, however, that only a City representative with the proper warrant shall be authorized to make any such acceptance decisions or otherwise legally bind the City.

ARTICLE 3. The District and the City hereby mutually agree:

A. The City shall reimburse the District for the City's Proportionate Share (as defined below) of demolition costs in an amount not to exceed Four Hundred Thousand Dollars (\$400,000), which demolition costs (the "Demolition Costs") shall include but not limited to:

1. Design and management costs: architect and project manager costs, consultants, contractor pre-construction costs, and District Bond Measure C overhead; and
2. Field demolition costs: contractor and subcontractor direct costs, construction services, contractor's overhead, and profit.
3. The City's contribution for Contractor Demolition Direct Costs are calculated per the following percentages:
 - a) 32% of the cost of building 1004
 - b) 52% of the cost of building 1005
 - c) 62% of the cost of building 1042
 - d) 100% of the cost of buildings 1007, 1009, 1012, 1013
4. City will also be responsible for the following Additional Costs required by the contractor. The percentages are applied to the City's contribution to the Contractor Demolition Direct Costs:
 - a) 5% for General Conditions
 - b) 2% for Trade Bonds and Insurance
 - c) 2.03% Contractors fee
5. The City's contribution for Hazmat Remediation Costs are calculated per the following percentages:
 - a) 32% of the cost of building 1004

- b) 52% of the cost of building 1005
- c) 100% of the cost of building 1013
- d) No hazmat remediation is anticipated for buildings 1007, 1009, 1012, 1042

6. The City's contribution for a Hazmat Remediation Consultant is estimated to be \$36,000, including \$22,150 in lump sum fees, plus hourly on-site services.

7. City is responsible for Demolition Design Services. This cost is 5% of the City's contribution to the Contractor Demolition Direct Costs and Additional Costs

8. City is responsible for Project Management Costs and District Overhead Cost. The Project Management Cost is 5% and the District Overhead Costs are 6.24% of the Contractor Demolition Direct Costs, Additional Costs, Hazmat Remediation Cost and Hazmat Consultant Cost.

9. Exhibit D provides a sample calculation. The actual costs will be based on actual construction costs.

B. The District shall support its estimated Demolition Costs by submitting documentation to the City, including, but not limited to a scope of work and a cost estimate produced by the District's contractor or prospective contractor.

C. The City shall conduct an independent estimate of the Demolition Costs and confirm them as reasonable. The District shall not finalize any contract for the District's Work that includes the City's share of costs, without first receiving prior written approval from the City that it agrees to the estimate of costs included therein. The final City-approved amount shall constitute the City's "Proportionate Share" of the field demolition costs, not to exceed Four Hundred Thousand Dollars (\$400,000).

D. Should the District, at any time during the completion of the District's Work, reasonably anticipate that the City's Proportionate Share (as defined below) of the Demolition Costs will exceed Four Hundred Thousand Dollars (\$400,000), the District shall submit a revised cost estimate and supporting documentation to the City for its review. The District shall not expend any funds described in the revised cost estimate until the City has approved of such increased costs in writing.

E. As the District progresses with the District's Work, it shall submit "invoices" to the City for the City's Proportionate Share of the District's Work that has been completed, with backup documentation evidencing the same. However, the District agrees to defer City's payment of its Proportionate Share until three years after the date of this Agreement or upon the sale of Parcel D by the City to a third party, whichever

event occurs earlier.

F. The District's Work shall be completed within one hundred eighty (180) calendar days of the date on which the District acquires control of Parcel C or of the date the District receives a revocable license from the City to conduct the District's Work, whichever is later, which completion date may be extended at the City's discretion, upon the District's request.

G. Upon notification by the District that the District's Work is complete, the City shall conduct an inspection with District personnel. Within ten (10) days of such inspection, the City shall confirm the City's acceptance of the District's Work, or shall communicate any issues preventing acceptance, in writing. Until the District's Work has been accepted as satisfactory by the City, the City and the District shall cooperate to resolve issues preventing acceptance.

H. To the extent a revocable license exists for the purposes of the District's Work, it shall be mutually terminated once the City accepts the District's Work. Provision of security for Parcels C and D shall revert to the City upon withdrawal of the revocable license.

ARTICLE 4. District's Representations. The District hereby represents to the City on and as of the Effective Date of this Agreement, the District has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the District pursuant hereto, and all required action and approvals therefore have been duly taken and obtained. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the District shall be duly authorized to sign the same on the District's behalf and to bind the District thereto. This Agreement and all documents to be executed pursuant hereto by the District are and shall be binding upon and enforceable against the District in accordance with their respective terms.

ARTICLE 5. City's Representations. The City hereby represents to the District on and as of the Effective Date of this Agreement, the City has full capacity, right, power and authority to execute, deliver and perform this Agreement and all documents to be executed by the City pursuant hereto, and all required action and approvals therefore have been duly taken and obtained with the exception of those actions that require USAF approval. The individuals signing this Agreement and all other documents executed or to be executed pursuant hereto on behalf of the City shall be duly authorized to sign the same on the City's behalf and to bind the City thereto. This Agreement and all documents to be executed pursuant hereto by City are and shall be binding upon and enforceable against the City in accordance with their respective terms.

ARTICLE 6. Notices. Notices shall be deemed sufficient under this Agreement and made in writing and submitted to the following addresses (or to any new or

substitute address hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure set forth herein by the intended recipient of such notice):

If to District: Charles Allen, Executive Director
Foothill – De Anza Community College District
12345 El Monte Road
Los Altos Hills, CA 94002
650-949-6150

If to City: Office of the City Manager
Attn: Gary Luebbers, City Manager
456 W. Olive Avenue, PO Box 3707
Sunnyvale, CA 94088

ARTICLE 7. Modification; Waivers. This Agreement contains the entire agreement and understanding of the Parties, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the Parties. A waiver of a specific provision shall not be deemed a waiver of any subsequent provision. The Parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

ARTICLE 8. Interpretation. The headings and captions herein are inserted for convenient reference only and the same shall not limit or construe the paragraphs or sections to which they apply or otherwise affect the interpretation hereof.

(a) The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term “heretofore” shall mean before, the date of this Agreement.

(b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of other genders, and words importing the singular number shall mean and include the plural number and vice versa.

(c) Words importing persons shall include firms, associations, partnerships (including limited partnerships), trusts, corporations and other legal entities, including public bodies, as well as natural persons.

(d) The terms “include,” “including” and similar terms shall be construed as if followed by the phrase “without being limited to.”

(e) Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing party, such time for performance shall be extended to the

next business day. Otherwise all references herein to "days" shall mean calendar days.

(f) If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(g) Time is of the essence for this Agreement.

ARTICLE 9. Further Assurances. The District and the City shall, upon the reasonable request of the other Party, execute, cause to be executed, acknowledged or delivered any and all such further instruments and documents as may be necessary or proper, in order to carry out the intent and purpose of this Agreement.

ARTICLE 10. Miscellaneous.

(a) Counterparts. This Agreement may be executed in multiple counterparts and/or with the signatures of the Parties set forth on different signature sheets and all such counterparts, when taken together, shall be deemed one original.

(b) Disputes. Any provision in this Agreement that purports to assign liability or require expenditure of funds to the Government shall be governed by applicable State or Federal law.

(d) Governing Law and Parties in Interest. This Agreement shall at all times be subject to and governed by the laws of the State of California.

(e) Jurisdiction and Venue. This Agreement shall be governed by the law of California.

ARTICLE 11. Attachments. This Agreement shall include the following Attachments:

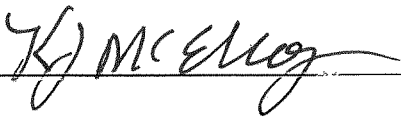
- Exhibit A: Map
- Exhibit B: Demolition Scope of Work
- Exhibit C: Revocable License
- Exhibit D: Demolition Estimate

ARTICLE 12. Termination and Expiration. This Agreement shall automatically

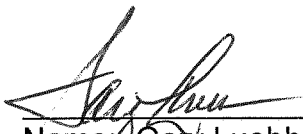
expire upon written notice from the City to the District that the demolition has been successfully completed, or upon thirty (30) days advance written notice from either party to the other party.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused their duly authorized representative to execute and deliver this Agreement as of the date first above written.

FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT


Name: _____
Title: Kevin McElroy
Vice Chancellor of Business Services

CITY OF SUNNYVALE


Name: Gary Luebbers
Title: City Manager

APPROVED AS TO FORM



for City Attorney

EXHIBIT "A"

MAP

Onizuka Building Locations

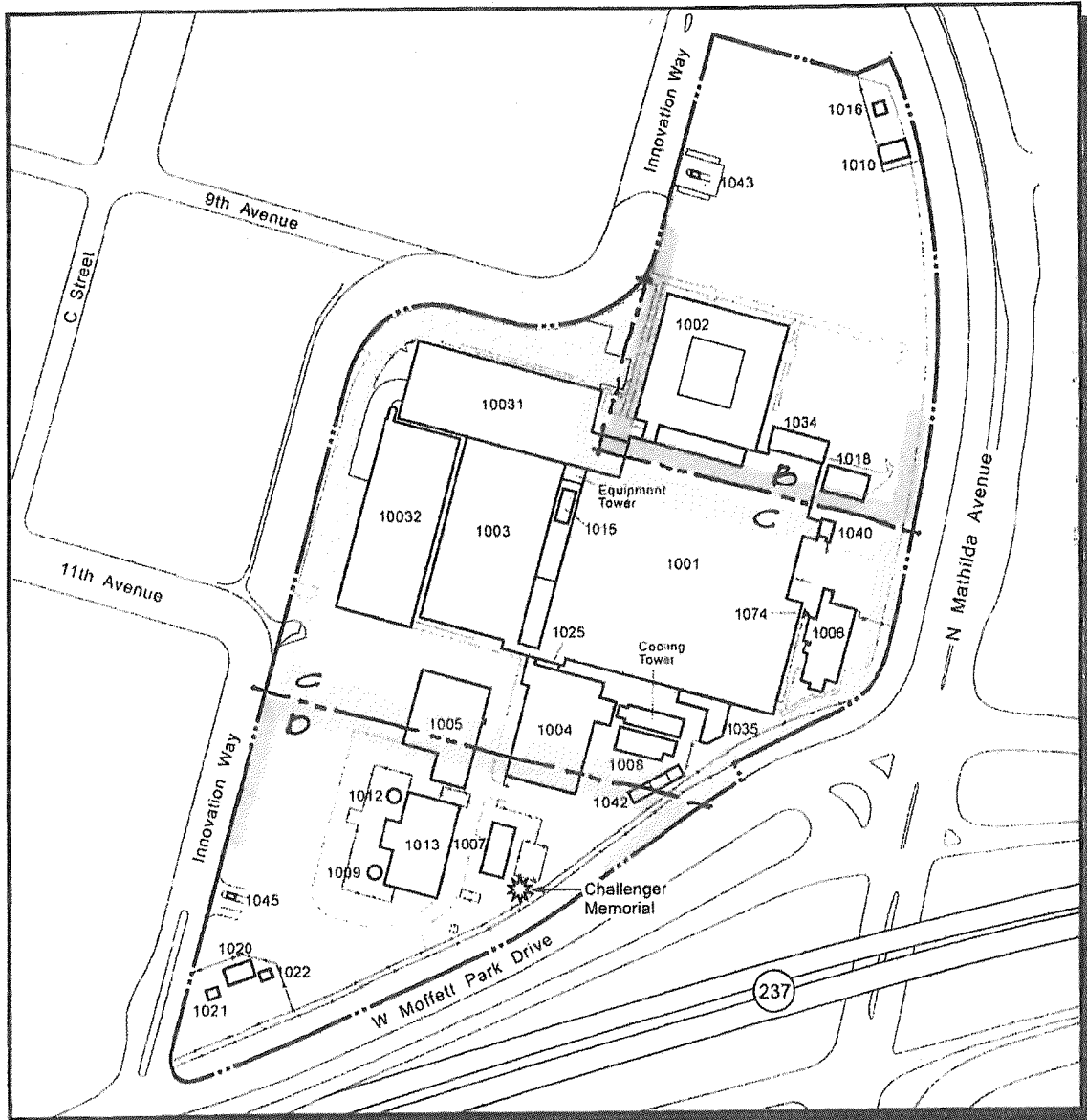


EXHIBIT “B”Demolition Scope of Work

The District’s field demolition scope of work shall include:

SITE DEMOLITION

- Field Engineering: Establish and protect survey monuments; confirm property line locations; mark utilities to remain/remove/abandon;
- Improvements to remain: all structures and improvements on City’s property except those described to be removed in this Scope of Work, including but not limited to: surrounding fences and walls; Innovation Way right-of-way and sidewalk; paving not affected by demolition; buildings/improvements to be repurposed; storm drains; water supplies and hydrants needed during construction when possible;
- Electrical: Terminate power to entire Onizuka AFS site at north vault & install temporary 12kv transformer for construction power; reconnect street lights; remove unused traffic signals; power supply to City’s Parcels D and E will be terminated by the District’s Work and responsibility for providing an alternative power source, if required, shall be City’s;
- Other Utilities: Protect utilities to remain; terminate other active utilities at property line or as indicated; pull back underground electrical as found. Utilities supplying service to buildings on City’s Parcels D and E will be terminated by the District’s Work and responsibility for providing alternative service, if required, shall be City’s;
- Temporary Facilities: Temporary fence and storm drainage control at FHDA property line after field demolition is complete; new vehicle and pedestrian gate for FHDA site; construction signage; field offices for demolition and construction; minimal site lighting; temporary power as needed for construction and temporary facilities;
- Related Work: Produce and maintain accurate as-built documents; separate costs (including change order work) and invoicing for work not on District property; meet with City, VA, utility providers, SamTrans, Juniper Networks and other related entities affected by the work; track recycling and reuse for LEED certification; SWPPP for District’s parcel; clear and maintain existing storm drains on District’s parcel C.

1004 DEMOLITION

- Remove all of 1004 on both City and District property;
- Fill foundation voids on City property with clean uncompacted soil sloped to drain toward City property.

1005 DEMOLITION

- Remove all of 1005 on both City and District property;
- Fill foundation voids on City property with clean uncompacted soil sloped to drain toward City property.

1042 DEMOLITION

- Remove all of 1042 on both City and District property;
- Remove adjacent hazardous materials containment structures and improvements;
- Fill foundation voids on City property with clean uncompacted soil sloped to drain toward City property.

1007 DEMOLITION

- Remove the superstructure of 1007 to the foundation slab – slab and foundation is to remain;
- Remove adjacent fences and minor improvements and fill resulting depressions with uncompacted soil;

1009 & 1012 DEMOLITION

- Remove the superstructure of 1009 and 1012 to the foundation slab – slab and foundation is to remain;
- Remove adjacent fences and minor improvements and fill resulting depressions with uncompacted soil;

1013 DEMOLITION

- Remove the superstructure of 1013 to the foundation slab – slab and foundation is to remain;
- Remove adjacent fences and minor improvements and fill resulting depressions with uncompacted soil;

End of Exhibit "B"

EXHIBIT C

FORM OF REVOCABLE LICENSE

CITY OF SUNNYVALE, CALIFORNIA ("City")

REVOCABLE LICENSE TO

FOOTHILL-DE ANZA COMMUNITY COLLEGE DISTRICT ("DISTRICT")

**FOR ENTRY ONTO AND USE OF PROPERTY CONTROLLED BY CITY, FORMERLY A
PORTION OF THE ONIZUKA AIR FORCE STATION ("OAFS"),**

SUNNYVALE, CALIFORNIA

The City, hereinafter referred to as the "Grantor" hereby grants to the District, hereinafter referred to as the "Grantee" a revocable license ("License") for Grantee's entry onto and use of the property identified as Parcels D and E in Exhibit "A" attached hereto and made a part hereof, as set forth in that certain Memorandum of Agreement between the City and the District dated May 15, 2013 ("Agreement"), over, across, in and upon such land, hereinafter referred to as the "Premises."

THIS LICENSE is granted subject to the following conditions.

1. This License is hereby granted for a term of up to one (1) year, beginning upon execution by the Grantor, and shall be revocable upon written notice from Grantor to Grantee.
2. All correspondence and notices to be given pursuant to this License shall be addressed, if to the Grantor, to City Manager Gary Luebbers, 456 W. Olive Ave., P.O. Box 3707, Sunnyvale, CA 94088, and if to the Grantee, Director, Foothill College Bond Funded Projects, Foothill – De Anza Community College District, 12345 El Monte Road, Los Altos Hills, California 94002, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service, private courier, or delivery service.
3. The use and occupation of the Premises shall be without cost or expense to the Grantor, and under the general supervision and subject to the approval of the City or its duly authorized representative, and to such rules and regulations as may be prescribed from time to time by the City. The terms or duration of this License may be modified by the City should the agreed upon services outlined in the Agreement require such modification.
4. The Grantee acknowledges that it has inspected the Premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever, and without any obligation on the part of the Grantor.

5. Except for the activities permitted under the Agreement, any interference with the use of or damage to property under control of the Grantor, incident to the exercise of the privileges herein granted, shall be promptly corrected to the original state, by the Grantee, to meet the reasonable satisfaction of the City.

6. Upon the date of expiration of this License or its relinquishment by the Grantee, the Grantee shall vacate the Premises and remove its property therefrom. If, however, this License is revoked, the Grantee shall vacate the Premises and remove its property therefrom within such time as mutually agreed by the parties.

7. During the term of this License, the Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the Premises are located.

8. Except as specifically provided in the Agreement, it is understood that the requirements of this License pertaining to maintenance, repair, protection, and restoration of the premises shall be effective only insofar as they do not conflict with any agreement, pertaining to such matters made between local representatives of the Grantor and Grantee in accordance with existing regulations.

9. This revocable license shall be interpreted and subject to applicable Federal, State, and local law. Where State law is applicable, it shall be the law of California.

IN WITNESS whereof, I have hereunto set my hand this 16 day of MAY, 2013.

CITY OF SUNNYVALE


By: Gary Luebbers
Title: City Manager

THIS PERMIT is also executed by the Grantee this 30 day of May, 2013.

FOOTHILL – DE ANZA COMMUNITY COLLEGE DISTRICT

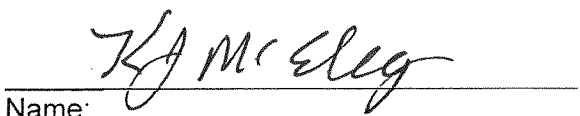

Name: Kevin McElroy
Title: Vice Chancellor of Business Services

EXHIBIT D**Proportionate Share Cost Example**

All costs are for informational purposes only. Actual costs will be determined per bid prices. This example does not include contingencies.

Contractor Demolition Direct Costs

Building	Bid Cost	City Share	City Share (\$)
1004	\$113,000	32%	\$36,160
1005	\$60,000	52%	\$31,200
1042	\$4,000	62%	\$2,480
1007,9,12,13	\$84,000	100%	\$84,000
		Total	\$153,840

Additional Costs (Based on \$153,840)

Additional Costs	Percentage	City Share (\$)
General Conditions	5%	\$7,692
Trade Bonds and Insurance	2%	\$3,077
Contractors Fee	2.03%	\$3,123
	Total	\$13,892

Hazmat Remediation Costs

Building	Bid Cost	City Share	City Share (\$)
1004	\$95,000	32%	\$30,400
1005	\$51,500	52%	\$26,780
1013	\$6,850	100%	\$6,850
1007,9,12,	\$0	100%	\$0
		Total	\$64,030

Demolition Design Services

	Percentage	City Share (\$)
Contractor Demolition Direct Costs (\$153,000)	5%	\$7,650
Additional Costs (\$13,892)	5%	\$695
	Total	\$8,345

Project Management Costs and Direct Overhead Costs

Contractor Demolition Direct Costs	\$153,840
Additional Costs	\$13,892
Hazmat Remediation Costs	\$64,030
Hazmat Consultant Costs	\$21,430
Total	\$253,192

Projects Management Cost (\$253,192)	5%	\$12,660
District Overhead Costs (\$253,192)	6.24%	\$15,799
Total		\$28,459

TOTAL SUNNYVALE DEMOLITION COSTS*

Contractor Demolition Direct Costs	\$153,840
Additional Costs	\$13,892
Hazmat Remediation Costs	\$64,030
Hazmat Remediation Consultant	\$21,430
Demolition Design Services	\$8,345
Project Management Costs and Direct Overhead Costs	\$28,459
Total	\$290,086

*Does not include Hazmat Remediation Consultants hourly on-site services