

**FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE
CITY OF SUNNYVALE AND CALIFORNIA SPORTS CENTER
FOR THE MANAGEMENT, OPERATION AND SUPERVISION OF
PUBLIC SWIMMING PROGRAMS AT FREMONT HIGH SCHOOL**

This Amendment dated _____, 2017, is by and between the City of Sunnyvale, a municipal corporation of the State of California (hereinafter "CITY"), and California Sports Center ("CONTRACTOR").

Whereas, on September 1, 2013, the parties entered into an Agreement for the Management, Operation and Supervision of Public Swimming Programs at Fremont High School ("the Agreement"); and

Whereas, the Agreement expires on August 31, 2019, and may be extended for two additional three-year periods by mutual agreement of the parties;

Whereas, issues have arisen during the course of the Agreement that parties wish to address via amendment;

NOW, THEREFORE, parties agree to the following Amendment to the Agreement.

1. Section 8 of the Agreement, "Schedule and Fees," Subsection A, is amended to read as follows:

A. Provide a general twelve-month schedule of pool use (January through December) by October 15 for each year this Agreement is in place. The schedule and fees are subject to approval by the Director of Library and Community Services.

2. Section 8 of the Agreement, "Schedule and Fees," Subsection D, is amended to read as follows:

D. Establish all fees on an annual basis (valid January through December of the current year), including a potential range or percentage increase, through a market-based approach and consistent with the CITY's enterprise philosophy, including resident/non-resident fee differentials and other subsidies where appropriate. Provide a draft of proposed fees by October 15 for each year this Agreement is in place. The fees are subject to approval by the CITY and are to include options such as daily punch card and/or monthly rates.

3. Section 9 of the Agreement, "Additional Duties of Contractor", Subsection E is amended to read as follows:

E. Furnish and pay all costs in connection with maintaining the interior of the Pool Building together with routine maintenance thereof, the janitorial services to

include, but not limited to, cleaning of windows (inside and outside), removal of trash , and the routine repair, maintenance, and replacement of locker room wall garment hooks, security covers, hair dryers, and mirrors, shower room fixtures and equipment such as shower heads, ADA wands, control valves, access doors and ADA shower bench, and restroom faucets, flushometers, sink and toilet fixtures and seats, stalls, and all paper product dispensers, surfaces of benches and lockers, locker elements such as hinges, handles, locks, doors, and garment hooks, and any repair or replacement of lockers or benches that becomes necessary as a result of improper maintenance by Contractor. Contractor shall at a minimum provide custodial cleaning services in accordance with Attachment “A” attached and incorporated herein as reference.

4. Section 9 of the Agreement, “Additional Duties of Contractor”, Subsection G is amended to read as follows:

G. CONTRACTOR shall keep the appearance of the Pool and Pool Building locker areas in a safe, clean and sanitary condition and reasonably free from rubbish during operating hours, to the satisfaction of CITY, which expressly retains and reserves the right to inspect the Pool and Pool Building at any reasonable time for this purpose. CONTRACTOR shall provide and maintain high-quality equipment and other interior furnishings or devices equal to or better than existing, required to operate the Pool and Pool Building. CONTRACTOR shall be responsible for all lamp replacements in and on the building with the exception of LED lighting systems.

5. Section 9 of the Agreement, “Additional Duties of Contractor”, Subsection J is amended to read as follows:

J. CONTRACTOR, at CONTRACTOR's own expense, may with the written approval of CITY change the locks on the rooms covered by this Agreement. If CONTRACTOR chooses to change the locks, CONTRACTOR assumes all ongoing maintenance and repair responsibilities for those locks. Two (2) master keys must be submitted to CITY immediately upon making such change. If CITY is or becomes responsible for ongoing maintenance of the building interior, CONTRACTOR will make available to CITY the necessary number of keys for maintenance personnel. CITY, at its option, may make copies of the master keys available to the School District for maintenance and emergency purposes. CONTRACTOR shall comply with all building closure times necessary for CITY and District to complete planned improvements. Schedules for improvements shall be provided to CONTRACTOR well in advance of planned improvements. CITY will use its best efforts to plan and schedule maintenance work in advance and consolidate projects to minimize closures.

6. Section 13 of the Agreement, “Duties of City,” Subsection E is amended to read as follows:

E. Maintain the Pool and appurtenant structures, including but not limited to diving boards, stands, ladders, bleachers, posts and poles, lighting and other plumbing or electrical systems, fences, grounds and adjacent improved off-street parking areas, but only to the extent City is required to maintain such appurtenant structures pursuant to its agreement with Fremont Union High School District.

7. Section 13 of the Agreement, “Duties of City,” Subsection F is amended to read as follows:

F. Be responsible for maintaining the structural elements and systems of the Pool and Pool Building, including the roof, in the condition existing at the time the CONTRACTOR takes possession of the premises, excepting normal wear and tear, consistent with the terms of the City-District Agreement. “Structural elements and systems” includes skylights, foundation, footings, floor slab, flooring, structural framing of walls, parking areas, and plumbing to include delivery of water to fixtures and concealed piping, temperature mixing valves, hot water heaters, sanitary sewer lines, shower room drain stoppages, and other conditions associated with plumbing and piping systems. Electrical systems to include ballasts, wiring, components of interior LED fixtures, electrical panels, relays, contactors and other supporting equipment and parts necessary for identified system. Mechanical equipment to include heater ventilators, exhaust fans, dampers, and all other components necessary to provide comfort to building spaces, provided the components are under the control of the CITY or District. If the state of disrepair (except normal wear and tear) is due to the action of the CONTRACTOR, its agents or clients, necessary repairs or replacements shall be charged to CONTRACTOR as additional rent. CONTRACTOR shall comply with all building closure times necessary for CITY and District to complete planned improvements. Schedules for improvements shall be provided to CONTRACTOR well in advance of planned improvements.

8. Section 6 of the Agreement, “Swim Programs,” Subsection B(4) is amended to read as follows:

(4) CONTRACTOR shall not permit any employee to provide services to CITY under this Agreement until such employee has undergone criminal background screening through the California Department of Justice as provided in Penal Code 11105.3. No person who has been convicted of a violation or attempted violation of any offense specified in Penal Code 11105.3 or Public Resources Code 5164 shall be permitted to provide services to CITY under this Agreement. CONTRACTOR shall provide CITY, upon request, a current list of all employees or other persons acting on CONTRACTOR’s behalf. Notwithstanding the restrictions on sharing and destroying criminal background check information, CONTRACTOR, upon demand, shall make available to CITY evidence of a successful criminal background check clearance and enrollment in subsequent arrest notice service, as provided, for each owner, operator, and employee.

9. Section 6 of the Agreement, "Swim Programs," Subsection B is amended to add subsections 5 and 6 to read as follows:

(5) CONTRACTOR shall comply with all applicable federal, state, land local regulations, ordinances, policies, and procedures regarding employee health and safety. Contractor shall ensure that no person paid or unpaid by Contractor shall be permitted to provide services requiring contact with children unless CONTRACTOR has complied with the TB testing requirements set forth in Section 5163 of the California Public Resources Code, verifying that the person or persons has provided evidence/verification of a negative TB skin test reading less than 2 (two) years old (if newly hired) or within 4 (four) years (if current employee) of the date of execution of this Agreement. For persons with a positive TB skin test reading, a physician's medical clearance must be obtained prior to services being provided as specified above. CONTRACTOR shall keep on file each "Certificate" of clearance for the persons described above, and shall also make available a copy of each Certificate to City, if requested and allowed by law. "Certificate" means a document signed by a licensed examining physician and surgeon or a notice from a public health agency or unit of the tuberculosis association, which indicates freedom from active tuberculosis.

(6) Contractor shall ensure that no person paid or unpaid by Contractor shall be permitted to provide services requiring contact with children or dependent adults until CONTRACTOR has trained that person on mandated child or dependent adult abuse reporting laws, as applicable, and shall maintain documentation, signed by each staff member receiving such training. CONTRACTOR agrees that its obligations to report incidents of abuse or neglect are in addition to, and not in lieu of, CONTRACTOR's obligation to immediately report suspected abuse or neglect to the appropriate public authorities pursuant to applicable provisions of state law. CONTRACTOR shall maintain confidential records of any report of suspected abuse and shall inform the City in writing within 24 hours of becoming aware of circumstances including, but not limited to allegations of abuse involving an employee, volunteer or agent.

10. Section 14 of the Agreement, "Indemnification," is amended to read as follows:

CONTRACTOR shall indemnify and hold harmless the CITY and the School District, their officers, employees and agents, from and against any and all claims, including claims related to suspected child abuse in connection with use of a city facility for Contractor's Services, demands, orders, decrees or judgments for injury or death or damage to person or property, loss, damage and liability (including all costs and attorneys' fees incurred in defending any claim, demand or cause of action), occasioned by, growing out of, or arising or resulting from any act or omission on the part of CONTRACTOR, or its agents or employees, arising or resulting from the performance of any services required herein to be performed by CONTRACTOR or arising from the use of the Pool or Pool Building by CONTRACTOR, or its agents, clients or employees, or arising from the use of any buildings or improvements thereon or therein by any person or

persons, or arising out of the operation or maintenance of dangerous or defective condition of the Pool or Pool Building, or any other structure, facility or thing erected or placed in the Pool or Pool Building and under the control or supervision of the CONTRACTOR.

11. Section 15 of the Agreement, "Insurance," is amended to read as follows:

CONTRACTOR shall and will, during the period commencing on the date on which this Agreement is issued and continuing without interruption until this Agreement is canceled, revoked or otherwise terminated, and at its own cost and expense, provide and maintain in such form and with a company or companies satisfactory to CITY and District, a policy or policies of each of the following types of insurance to wit:

Minimum Scope and Limits of Insurance

CONTRACTOR shall maintain limits no less than:

1. Commercial General Liability: \$5,000,000 per occurrence and \$10,000,000 annual aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 is required.
2. Workers' Compensation: Statutory Limits and Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
3. Abuse & Molestation Liability: Minimum Required Coverage Amounts: \$100,000 limit per occurrence \$300,000 general aggregate. In the event that Abuse & Molestation Liability coverage is provided via a Claims Made Policy, the coverage shall include a minimum of a five year extended reporting clause.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by CITY. The CONTRACTOR shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The general liability policy shall contain or be endorsed to contain the following provisions:

1. The CITY, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the CONTRACTOR; products and completed operations of the CONTRACTOR; premises owned, occupied or used by the CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents or volunteers.
2. For any claims related to this project, the CONTRACTOR's insurance shall be primary. Any insurance or self-insurance maintained by CITY, its officers, officials, employees, agents and volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies

including breaches of warranties shall not affect coverage provided to CITY, its officers, officials, employees, agents or volunteers.

4. CONTRACTOR's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CITY.

6. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT'S policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to CITY.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AMENDMENT.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM: CALIFORNIA SPORTS CENTER
("CONTRACTOR")

By _____
City Attorney

By _____
David M. Peterson, Director

Attachment A

**Fremont High School Pool House
Custodial Cleaning Program Requirements**

Contractor's cleaning shall, at a minimum, include the following tasks on the following schedule:

NIGHTLY CLEANING SCHEDULE**MENS & LADIES LOCKER ROOMS**

- Clean fingerprints and smudges from all entrance glass and entry doors.
- Spot clean all display glass.
- Sanitize the front of the lockers and the seating benches (including bases).
- Empty trash receptacles and wash, if necessary.
- Restock all paper products and hand soap.
- Disinfect door handles, partition handles, and light switches.
- Clean all dispensers, mirrors, and fixtures.
- Clean and disinfect sinks, counters, toilets, toilet seats, and the urinal.
- Spot clean walls and partitions to remove smudges and graffiti.
- Clean and disinfect all tiled and shower areas (including benches, ledges, and walls). Entire area should be free of soap scum, fungi, hair and unpleasant odors. Tiled areas shall be free of streaks and mildew.
- Sweep and mop floor with disinfectant.
- Spot clean carpet to prevent staining.

WEEKLY**MENS & LADIES LOCKER ROOMS**

- Clean and sanitize the outside of trash receptacles and dispensers.
- Polish all dispensers, mirrors, and bright work.
- High dust tops of doors, partitions, mirrors, and air vents.
- Clean and sanitize restroom walls around the toilets and urinal.
- Pour water down the floor drains to prevent the traps from drying out.
- Clean and wipe inside lockers in men and women restrooms.
- Clean fingerprints and smudges from glass entry doors and entry glass.
- Thoroughly dust all horizontal surfaces of furniture, including, counters, desks, tables, computer monitors, file cabinets, TV, wall hangings, windowsills, etc.
- Spot clean horizontal surfaces for removal of spillage, marks, and coffee rings.
- Dust all tops of the lockers.
- Clean and polish chrome and stainless steel fixtures. Use stainless steel polish for all stainless steel fixtures and surfaces. Use a non-corrosive and non-abrasive cleaner such as CLR on chrome surfaces.
- Empty all trash receptacles and remove to a collection point.
- Clean and sanitize all telephone receivers and dust the bases.
- Spot clean fingerprints and smudges from both sides of doors and walls.
- Clean and sanitize the conference table(s).

- Vacuum all carpeted areas wall to wall.
- Clean the interior and exterior of the microwave.

MONTHLY CLEANING SCHEDULE

- Thoroughly dust all vertical surfaces of furniture, including counters, desks, tables, file cabinets, etc.
- High dusting of air vents, tops of doors, door frames, ceiling corners and edges, and restroom air registers.
- Dust all baseboards.
- Vacuum carpet edges and corners along walls.
- Wash all tile floors in both locker room areas. Be sure not to wash lockers and cubbies. Remove all excess water after the washing is done.

QUARTERLY CLEANING SCHEDULE

- Remove shower heads and deep clean. Remove calcium and clear screen of any debris.

NOTES

- A pressure washer may not be used under any circumstances. A garden hose is an acceptable tool to use.
- Use of “Green Seal” or other non-hazardous/biodegradable cleaning products is required.
- Please be advised that cleaning chemicals may cause staining or surface damage. Any costs to repair damages caused by CSC or the work of their contractors will be CSC’s responsibility.