

**SECOND 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 Second Amendment dated _____, 2019, 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 amended in June 2017 to address various administrative issues.

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, CITY and CONTRACTOR wish to extend their business relationship for one additional three-year period;

NOW, THEREFORE, the parties hereby agree to amend the Agreement as follows:

1. The Parties agree to extend the Agreement for a period of three years from September 1, 2019. The Agreement will have a new termination date of August 31, 2022.

2. Section 11(A) of the Agreement is amended to read as follows:

A. CONTRACTOR, in consideration of the privileges and rights allowed by this Agreement, shall pay to the CITY a fee of \$50,000 for the first year with an additional 2.5% of the previous year's payment added to each of the following annual payments, including any extension periods.

3. 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: \$1,000,000 limit per occurrence \$2,000,000 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.

Verification of Coverage

Contractor shall furnish the City of Sunnyvale with an original Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

Subcontractors

CONTRACTOR shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONTRACTOR to verify existence of sub-contractor's insurance shall not relieve CONTRACTOR from any claim arising from sub-contractors work on behalf of CONTRACTOR.

4. All of the terms and conditions of the Agreement not specifically modified by this Amendment shall remain in full force and effect.

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