

AMENDED AND RESTATED JOINT USE AGREEMENT FOR JOINT USE FACILITIES

THIS AMENDED AND RESTATED AGREEMENT is made and entered into on this day of _____, 2016 by and between the CITY OF FOSTER CITY/ESTERO MUNICIPAL IMPROVEMENT DISTRICT, hereinafter called "CITY/EMID", and COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF FOSTER CITY, hereinafter called "AGENCY" and the SAN MATEO/FOSTER CITY SCHOOL DISTRICT, hereinafter called "SCHOOL DISTRICT."

RECITALS

WHEREAS, on or about December 16, 1991, CITY/EMID, AGENCY and SCHOOL DISTRICT, hereinafter referred to collectively as the "PARTIES," executed an agreement in writing by the terms of which they settled between themselves a lawsuit concerning the exchange of real property; and the revision of a 1981 agreement between AGENCY and SCHOOL DISTRICT; and

WHEREAS, said Agreement provided for the joint use of the CITY/EMID and SCHOOL DISTRICT of certain facilities and the joint financing of the cost of maintenance and improvements; and

WHEREAS, the Agreement was amended on November 4, 1993 ("First Amendment"), August 18, 1994 ("Second Amendment"), March 1, 1999 ("Third Amendment") and March 21, 2011 ("Fourth Amendment"); and

WHEREAS, the PARTIES have now agreed to further amend the Agreement and directed staff to draft, instead of a Fifth Amendment, an Amended and Restated Agreement containing all of the agreed-upon provisions.

Based upon the above-referenced Recitals, the PARTIES agree as follows:

TERMS

1. Term of Agreement. The term of this Agreement shall be for three (3) years from the day and date above written. CITY/EMID shall have the option to renew the Agreement for an additional three (3) year term. In order to exercise this option, CITY/EMID shall give SCHOOL DISTRICT written notice of its exercise of this option no later than six (6) months before the end of the initial three (3) year term of this Agreement.
2. SCHOOL DISTRICT Facilities Subject to This Agreement. The SCHOOL DISTRICT agrees that shared usage of the Audubon, Brewer Island, Bowditch and Foster City School, hereinafter "FACILITIES", shall be allowed under the terms and conditions enumerated herein.

- a. Audubon. CITY/EMID is authorized to use the multipurpose room, men's/boy's and women's/girl's bathrooms located adjacent thereto, by scheduling such use as provided below in Paragraph 3.
- b. Brewer Island. CITY/EMID is authorized to use the gymnasium, men's/boy's and women's/girl's bathrooms located adjacent thereto, by scheduling such use as provided below in Paragraph 3.
- c. Bowditch. CITY/EMID is authorized to use the gymnasium, men's/boy's and women's/girl's bathrooms located adjacent thereto during the SCHOOL DISTRICT's summer recess.
- d. Foster City School. CITY/EMID is authorized to use the multipurpose room, men's/boy's and women's/girl's bathrooms located adjacent thereto, by scheduling such use as provided below in Paragraph 3.
- e. No later than September 30 of each year, the above-referenced school sites shall provide to the CITY/EMID their planned school year event calendar. After September 30, changes to the planned school year event calendar shall not exceed 25 changes for the remainder of the school year.
- f. Storage space of at least 150 square feet shall be provided at Audubon and Brewer Island schools. CITY/EMID shall have the option of installing temporary storage containers after the release of students for the summer recess at Foster City School and Bowditch School in areas authorized by the SCHOOL DISTRICT. If CITY/EMID installs temporary storage containers, the containers shall be removed prior to the commencement of the next school year.

3. Access to FACILITIES

- a. CITY/EMID shall schedule all use of DISTRICT facilities through the online civic permits process at www.smfc.civicpermits.com for each proposed use of FACILITIES.
- b. The SCHOOL DISTRICT shall issue one set of keys, a fob key (only at Brewer Island School), and entry codes to CITY/EMID for access to the above-referenced FACILITIES. CITY/EMID will not be charged for issuance of the initial keys or fob key, but the SCHOOL DISTRICT shall charge a lost key fee of \$75.00 and lost fob key fee of \$100.00. Additional keys and fob key may be obtained for an additional cost of \$10 per key and \$50 per fob key.

- c. The SCHOOL DISTRICT will not issue to FACILITIES' renters, users or the public, keys which would allow access to the CITY/EMID's storage areas located at the FACILITIES.
- d. Prior to using the facilities for summer use, CITY/EMID shall schedule a site walk through with District Facilities and M&O staff at least 30 days prior to the requested date of use.

4. Time Period for Usage of FACILITIES

- a. For the Audubon and Foster City School FACILITIES, CITY/EMID shall be entitled to access from 4:30 PM to 11:00 PM daily and from 8:00 AM to 11:00 PM, Saturday and Sunday. At Brewer Island, the access time shall instead be from 4:00 PM to 11:00 PM daily except on Tuesdays, and on the following dates in the 2016-2017 school year: September 9, November 18, December 9, March 17, 29 and 30, and May 12. CITY/EMID shall leave the facility clean and ready for SCHOOL DISTRICT use by 7:00 AM on school days.
- b. The Bowditch site will be made available for CITY/EMID use during summers when any one of the other three sites (Audubon, Brewer Island or Foster City School) is not available.

5. Maintenance and Janitorial Service of FACILITIES

- a. Routine maintenance and janitorial service of the FACILITIES shall be performed by SCHOOL DISTRICT and CITY/EMID shall be billed for its share of the costs on a quarterly basis. These costs shall include cost of routine maintenance of the floors, equipment, lighting, heating/air conditioning, bathrooms in the FACILITIES and costs for janitorial, personnel, consumable supplies, interior painting and utilities calculated as a percentage of the square footage used by the CITY/EMID compared to the FACILITIES total building square footage.
- b. The above-referenced maintenance and janitorial service shall be provided by SCHOOL DISTRICT at Audubon, Bowditch, Brewer Island, and Foster City School so that the FACILITIES are clean and ready for use by the CITY/EMID at 4:30 PM, Monday through Friday or, in the case of Brewer Island, 4:00 PM, and at 8:00 AM Saturday and Sunday for all sites.

It is the responsibility of SCHOOL DISTRICT to provide a clean and ready for use facility at Bowditch during the summer months when CITY/EMID uses Bowditch. It is CITY/EMID's responsibility to provide a clean and

ready for use Bowditch facility prior to its reopening at the end of summer recess if CITY/EMID has made use of the site.

- c. Specifically excluded from maintenance and janitorial service costs to be shared are capital replacement costs associated with the building, exterior painting, roof work, landscaping, sidewalk pathways and parking lot repairs. SCHOOL DISTRICT is solely responsible for the cost of these items unless damage to these items or fixtures results from CITY/EMID use.
- d. Maintenance and janitorial service costs incurred due to the joint use of the FACILITIES by CITY/EMID shall be charged directly to a specific account.
 - i. Maintenance and janitorial service costs as provided shall be shared on a 50/50 basis for the FACILITIES at Foster City School and Audubon School.
 - ii. Maintenance costs shall be shared on a $\frac{2}{3}$ CITY/EMID and $\frac{1}{3}$ SCHOOL DISTRICT basis at Brewer Island.
 - iii. On Monday, Wednesday, Thursday, Saturday and Sunday, CITY/EMID shall provide janitorial services for gym and restrooms at Brewer Island.
 - iv. In the summer months when CITY/EMID uses Bowditch, CITY/EMID shall be responsible for one hundred percent (100%) of the maintenance and janitorial service, and janitorial supply cost for areas used by the CITY/EMID.
 - v. 4th Quarter utility and maintenance billing from the School District is required to be received by the City no later than July 25th each year during the term of this Agreement.
- e. SCHOOL DISTRICT shall provide CITY/EMID with one set of keys to all custodial dispensing equipment such as paper towel holders, toilet paper holders, and soap dispensers at the FACILITIES for re-supply purposes.
- f. CITY/EMID shall leave the FACILITIES in a clean condition after use as specified in Exhibit A, a copy of which is attached hereto and incorporated by this reference. SCHOOL DISTRICT and CITY/EMID jointly developed the standards for cleanliness of the FACILITIES as enumerated *and restated* in Exhibit A.

If CITY/EMID fails to make the Facilities clean and ready for use as required by this paragraph, SCHOOL DISTRICT may undertake work

needed to make the Facilities clean and ready for use and thereafter bill CITY/EMID for the actual cost incurred in this process.

If SCHOOL DISTRICT fails to make the Facilities clean and ready for use as required by this paragraph, CITY/EMID may undertake work needed to make the Facilities clean and ready for use and thereafter bill SCHOOL DISTRICT for the actual cost incurred in this process.

- g. No later than November 30th of each year of this Agreement, the SCHOOL DISTRICT shall meet with the City to review anticipated projects and provide a budget estimate to the CITY/EMID of utility, maintenance, and janitorial service costs itemized and broken out by facility for review by the CITY/EMID.

6. Scheduling Use of FACILITIES

- a. No later than November 30th of each year of this Agreement, CITY/EMID and SCHOOL DISTRICT will meet to review the SCHOOL DISTRICT's construction and major maintenance projects which are scheduled to be performed during the SCHOOL DISTRICT's Fall, Winter, Spring, and Summer breaks with the goal of coordinating this work and with ongoing City programs. The PARTIES, as needed, will have additional meetings if additional time is required by SCHOOL DISTRICT for cleaning and repairs in order to determine the timing and scope of those repairs and the resulting need to reschedule events by CITY/EMID to accommodate District's schedule.
- b. Unless an emergency occurs, SCHOOL DISTRICT will notify CITY/EMID no later than March 1 each year regarding construction or major maintenance projects which are scheduled to be performed during the next year's summer recess.

7. Operational Issues and Emergencies

- a. CITY/EMID shall provide security, supervision and control during its use of the FACILITY.
- b. CITY/EMID shall assign a staff member, or contracted user group, to lock and unlock the FACILITIES for its use.
- c. SCHOOL DISTRICT and CITY/EMID shall provide at least two phone numbers for notification in the event of an emergency and a site contact for CITY/EMID and SCHOOL DISTRICT users. Both a CITY/EMID and SCHOOL DISTRICT emergency contact list will be posted at the FACILITIES for all users to access.

- d. CITY/EMID shall be entitled to make temporary emergency repairs if during its use of the FACILITIES vandalism occurs, bathroom fixtures or athletic equipment becomes inoperative. The CITY/EMID shall then give SCHOOL DISTRICT immediate telephone, email or fax notice of its response to the emergency and the need for the SCHOOL DISTRICT to perform emergency repairs. SCHOOL DISTRICT shall respond and commence necessary repairs within 72 hours. Major repairs may require more than 72 hours to complete.

8. Insurance

- a. SCHOOL DISTRICT shall maintain property damage insurance in an amount equal to the replacement cost of each of the FACILITIES governed by this Agreement. The City will provide the District with proof of property and liability insurance on an annual basis.
- b. CITY/EMID shall indemnify, save and hold harmless SCHOOL DISTRICT, its officers, Board members, agents and employees against any and all claims, causes of action, suits or judgments, including expenses incurred therewith for death or injury to persons, or loss of or damage to property, resulting from negligent acts of CITY/EMID and AGENCY, its officers, agents, employees or invitees in the performance of this Agreement. In the event of any such claims made, or suits filed, SCHOOL DISTRICT shall give CITY/EMID and AGENCY prompt written notice thereof, and CITY/EMID and AGENCY shall have the right to defend or settle the same to the extent of its interest hereunder.
- c. SCHOOL DISTRICT shall indemnify, save and hold harmless CITY/EMID and AGENCY, its officers, Board members, agents and employees against any and all claims, causes of action, suits or judgments, including expenses incurred therewith for death or injury to persons, or loss of or damage to property, resulting from negligent acts of SCHOOL DISTRICT, its officers, agents or employees in the performance of this Agreement. In the event of any such claims made, or suits filed, CITY/EMID and AGENCY shall give SCHOOL DISTRICT proper notice thereof, and SCHOOL DISTRICT shall have to defend or settle the same to the extent of its interest hereunder.
- d. CITY/EMID/AGENCY and SCHOOL DISTRICT shall each maintain public liability insurance of not less than \$1,000,000 per person and \$1,000,000 per occurrence and aggregate coverage of \$2,000,000 insuring against all liability of CITY/EMID/AGENCY and SCHOOL DISTRICT and their authorized representatives arising out of and in connection with CITY/EMID/AGENCY's and SCHOOL DISTRICT's use of the multipurpose rooms, gymnasium facilities, classrooms, and any other District facility. CITY/EMID/AGENCY and SCHOOL DISTRICT shall each

name the other as named insured on their insurance policies. The public liability insurance shall insure performance by each party of the indemnity provisions of paragraph 5 b) and c) above. For non- CITY sponsored users, the CITY will require the user applicant to provide a Certificate of Insurance providing hold harmless coverage for both the CITY and the SCHOOL DISTRICT.

9. Notices. All notices, payments, reports, requests, demands and other communications to be made or given under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service if served personally or on the second day after mailing if mailed to the party to whom notice is to be given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

CITY/EMID	City Manager/Parks and Recreation Director City of Foster City 610 Foster City Boulevard Foster City, CA 94404-2299
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SCHOOL DISTRICT	Chief Business Official San Mateo-Foster City School District 1170 Chess Drive Foster City, CA 94404
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The PARTIES may change the address to which notices are to be sent by notice in writing of the new address.

10. Non-Assignment. Neither party may assign, either in whole or in part, its duty to perform or its right to receive performance of any obligation created by this Agreement.
11. Amendments. This Agreement may be amended or modified only by written agreement signed by both parties.
12. Validity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
13. Governing Law. This Agreement shall be governed by the laws of the State of California and any suit or action initiated by either party shall be brought in the County of San Mateo, California. In the event of litigation between the parties hereto to enforce any provision of the Agreement, the unsuccessful party will pay the reasonable attorney's fees and expenses of litigation of the successful party.
14. Mediation. Should any dispute arise out of this Agreement, the parties shall meet in mediation and attempt to reach a resolution with the assistance of a mutually

acceptable mediator. Neither party shall be permitted to file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of the mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached neither party shall be deemed the prevailing party for purposes of the settlement, and each party shall bear its own legal costs.

15. Entire Agreement. This Agreement, including Exhibit A, comprise the entire Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in that behalf.

CITY OF FOSTER CITY

By: _____
HERB PEREZ, Mayor

Dated: _____

ATTEST:

DORIS L. PALMER, City Clerk

ESTERO MUNICIPAL IMPROVEMENT
DISTRICT

By: _____
HERB PEREZ, President

ATTEST:

DORIS L. PALMER, District Secretary

COMMUNITY DEVELOPMENT AGENCY OF
THE CITY OF FOSTER CITY

By: _____
HERB PEREZ, President

ATTEST:

DORIS L. PALMER, Secretary

SAN MATEO-FOSTER CITY SCHOOL DISTRICT

By: _____
ED COADY, President of the Board of
Trustees

ATTEST:

LORY LORIMER LAWSON, Clerk of the
Board of Trustees

APPROVED AS TO FORM

By: _____
JEAN B. SAVAREE, Attorney for
CITY/EMID and AGENCY Counsel

By: _____
TIMOTHY FOX, Deputy County Counsel
Attorney for SCHOOL DISTRICT

EXHIBIT A

City of Foster City
Parks and Recreation Department
Building Maintenance Division
STANDARDS OF MAINTENANCE
Updated ____/____/16

Overview:

The City of Foster City's Standard of Maintenance for all facilities owned or utilized for City business, events and programs is organized by type of facility and frequency of use. The following standard of maintenance is as follows for the Brewer Island Gymnasium site:

Area 1: Restrooms

Daily: *Clean and disinfect all sinks, commodes, urinals, and counter tops; refill all dispensers; dust mop and wet mop floors* using disinfectant; *empty/clean/reline all trash receptacles*; clean and remove all markings and cobwebs from floors, walls, partitions, stalls and mirrors; inspect and clean lockers as needed; dispose of waste in receptacles.

Area 2: Lobbies, Foyers

Daily: Clean with disinfectant all fixtures; empty and replace liners for waste containers; *dust mop and wet mop floors*; dust furniture.

Area 3: Janitor Closets

Daily: All closets shall be kept clean and neatly arranged; tools and supplies shall be properly stored. Empty and clean mop buckets; clean, sanitize mop heads and hang up to dry; remove trash; maintain MSDS sheets in Janitor's Closet; report safety hazards immediately.

Weekly: Sweep and wet mop floors.

Monthly: Change all dust mop and wet mop heads.

Area 4: Gymnasium Area

Daily: Empty all trash receptacles, *dust mop rubber floor*, vacuum stage floor (spot clean as needed); remove chewing gum on wood floors, carpets, and tile floors as needed; inspect and clean door windows as needed; dust mop tile floor areas on the sides of the stage; inspect disabled stage lift is clean and accessible. Weekly: Wet mop rubber floor (one quarter of the floor is mopped each night to complete weekly mopping of the entire floor).

Frequency of Cleaning:

Monday, Wednesday, Thursday, Friday, Saturday, and Sunday evenings. Timing to be coordinated between the CITY/EMID and SCHOOL DISTRICT. (No cleaning on City observed holidays)