

**TEMPORARY CONSTRUCTION AGREEMENT BETWEEN SAN MATEO-FOSTER CITY SCHOOL DISTRICT
AND CITY OF SAN MATEO**

This agreement (“Temporary Construction Agreement”) is made this _____ day of _____, 2019, by and between the City of San Mateo, a municipal corporation of the State of California (“City”), and the San Mateo-Foster City School District, a public school district in the County of San Mateo (“District”).

RECITALS

- A.** District is the Owner of a certain real property site located within the City of San Mateo, County of San Mateo, State of California, within the Bayside Academy property, situated adjacent to the northerly boundary of City’s Joinville Park property and Bayside Academy, the relevant portions of which are fully described as Parcels A, B, and B1 in Exhibit 1 (the “Property”), attached hereto and by this reference made a part hereof.
- B.** In 1985, District and City (the “Parties”), consistent with their collaborative relationship, entered into a lease agreement (“Lease”), attached hereto as Exhibit 2, wherein District leased the Property to City for a nominal fee for the construction by City of a park, athletic fields, and parking to be used by City and recreation organizations which conduct athletic programs for youth and adults during non-school hours and by District during school hours.
- C.** In 2015, the voters of the San Mateo-Foster City School District approved Measure X to provide bond funding for District improvement projects. District has determined that construction of a gymnasium and locker rooms (“Gym”) on Parcel B1 of the Property (the “Project”) would allow for continued use of the athletic fields for both the City and the District and meet the needs of the students of Bayside Academy.
- D.** This Agreement is intended to address the impacts on park facilities of Project construction impacts.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants herein, the Parties agree as follows:

SECTION 1. TERMS

- A.** After selection of the General Contractor and prior to commencing Project construction, District shall notify City of District’s intention to commence work and schedule a pre-construction meeting to include City and District representatives to review the general construction schedule. The District and City agree to meet during the construction period to attempt in good faith to resolve issues as needed.
- B.** District or its contractor will notify the City of San Mateo Police Department at (650) 522-7700, Fire JPA at (650) 522-7940, San Mateo County Communications at (650) 363-4915, and Public Works Department Inspection Division at (650) 522-7522 ext. 6900, at least 48 hours in advance of any lane closures or detours and immediately upon removal of lane closure or detour. District will obtain an encroachment permit prior to work in the public right-of-way.

- C. At least 72 hours prior to the initial commencement of Project construction, District shall provide all residences and businesses within 1000 feet of the Project a written notice that includes a description of the proposed work, an anticipated schedule with dates, and the name and cell phone number of the on-site project manager.
- D. Construction staging and storage shall be on the District property within the perimeter fencing and/or asphalt areas.
- E. Once the construction work begins, District shall act with reasonable diligence to complete all construction of the Project. If District does not prosecute the Project to completion and abandons the Project determining that it will not complete construction of the Gym, District shall remove any partially constructed improvements and return any affected areas of Parcel B1 to their prior condition.
- F. District shall include in its contract with its General Contractor a requirement to comply with the City's ordinance regulating the hours of construction. The permissible hours of construction on site are: 7:00 a.m. to 7:00 p.m. Monday-Friday, 9:00 a.m. to 5:00 p.m. on Saturdays, and 12:00 p.m. to 4:00 p.m. on Sundays. No earth hauling is allowed from 7:30 a.m. to 8:30 a.m. or from 4:00 p.m. to 5:30 p.m. Changes to these work hours require City approval.
- G. The hauling routes for the Project will be: (1) To the Project site: U.S. 101 North to Kehoe Avenue to the site and U.S. 101 South to 3rd Avenue to S. Norfolk to Kehoe to the site; (2) From the Project site: Kehoe Avenue to U.S. 101 North and Kehoe to Norfolk S. to Fashion Island Boulevard West to U.S. 101 South. Any deviations to the haul route require City approval.
- H. Prior to the commencement of construction, and through construction as necessary and appropriate, District shall require, through terms in the General Contractor's contract, the General Contractor to install perimeter fencing around the work site. The City shall be noticed in advance of any relocation of perimeter fencing that may impact access to or use of those portions of the property identified as Parcel B in Exhibit 1.
- I. The cul-de-sac roundabout will remain open during Project construction, except during construction of the new roundabout curb and gutters. Any closure of this area will be during construction hours only and the roundabout will remain open outside of construction hours.
- J. To ensure the safety of pedestrians, District shall require, through terms in the General Contractor's contract, the General Contractor to provide a flagman, as needed, in the shared parking lot during non-school periods when construction vehicles are in movement within the shared parking lot. For purposes of this provision, the term "construction vehicle" shall exclude cars, pick-up trucks, light-duty vans, and other vehicles used primarily for the transportation of persons.
- K. The District will include in the General Contractor's contract that construction staging, and associated trailers may only park on the construction site. With regard to construction worker parking, construction workers may park: (a) on site; (b) when school is in session, during school hours in the eastern parking area adjacent to the school and Joinville Swim Center so long as all vehicles are removed by 3:30 P.M. and in the Bayside Academy parking lot after 3:30 p.m.; and (c) when school is not in session, in the Bayside Academy parking lots.

- L. The existing storm drain system and field irrigation system within the limits of work will be relocated and reconnected to the existing infrastructure in order to maintain their current function serving the soccer field. District or its contractor will locate, protect, and avoid damage to existing utilities to remain, including but not limited to, electrical systems, sewer, storm drain, soccer field drainage, and soccer field irrigation. District shall maintain the existing street light located at the end of the cul-de-sac in operation except as reasonably necessary to complete Project construction work. In the event that the streetlight is disabled for more than one week, District will install temporary lighting in that area. Scheduled disruption of street light operation shall require 96-hour prior notice to City. In the event of unanticipated disruption, the City will be notified immediately
- M. To document the existing condition, District or its contractor shall video inspect storm drainage systems that are accessible and of a size that will reasonably allow possible video inspection for sections that will be impacted by Project construction. The cost to District of such video-inspection shall not exceed \$5,000. Sections that cannot be video inspected shall be flow-tested if accessible. The same sections of the drainage system will be video-inspected or flow tested after construction to verify post-construction operation. City staff will be notified in advance of the inspection and testing so that they may be present during such inspection.
- N. District or its contractor will test field drainage and irrigation systems prior to and after construction to ensure remaining systems have not been damaged by Project Construction work. City staff will be notified in advance of the inspection and testing so that they may be present during such inspection. For the existing field drainage and irrigation that will be removed for the Gym, District or its contractor will confirm Parcel B field drainage and irrigation are operational during and upon Project completion.
- O. District will replace, in kind or better, any landscaping, irrigation, or drainage outside of Parcel B1 that is damaged by Project construction activity. Pursuant to the City's Heritage Tree Ordinance, any removal or loss of trees on Parcel B whose diameter in 10 inches or more 4 feet above ground for specified trees and those whose diameter is 16 inches or more 4 feet above ground for all other non-specified trees resulting from gymnasium construction shall be replaced with a 24" box tree at the ratio of 1:1 to be located on Parcel B in a location determined by City.
- P. If, during construction, the District cannot provide access for the City to the soccer fields for mowing and maintenance and community use of the fields during non-school hours through the eastern side of the Bayside site adjacent to the eastern driveway/parking area, the District will provide access from the western side of the site adjacent to the theater. In such instances, the District shall allow parking in the school's parking lots for community field users. District will provide advance notification to City, through its representatives, not less than 48 hours in advance if access is to be modified unless such notification cannot be reasonably accomplished due to unexpected events or circumstances beyond the District's control.
- Q. District is responsible to repair and restore to previous conditions, any damage resulting from construction activity that may occur to the premises outside of area designated as B-1 prior to the gymnasium's opening.
- R. District will provide City with as-builts for any impacted underground utilities prior to Project close-out.

SECTION 2. NOTICES

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered, sent by overnight courier, or sent by registered mail, postage prepaid or return receipt requested to the addresses set forth below.

City: City Manager, City of San Mateo
330 West 20th Avenue
San Mateo, CA 94403

District: Superintendent, San Mateo-Foster City School District
1170 Chess Drive
Foster City, CA 94404

SECTION 3. DISPUTE RESOLUTION

The dispute resolution provisions set forth in this Section shall apply to all disputes between the Parties relating in any way to this Agreement.

- A. Meet and Confer. The Parties shall endeavor to resolve any disputes relating to this Agreement through reasonable business-like dispute resolution procedures without resort to litigation. If a dispute arises, either Party may call a special meeting of the Parties by written request specifying the nature of the issue. The meeting shall be held at the offices of City or District and shall be attended by representatives of City and District who have authority to resolve the dispute. The representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both Parties concludes that the dispute will not be resolved through additional meetings.
- B. Mediation. If a matter in dispute is not resolved through the special meeting, either Party may initiate mediation by delivering written notice to the other. Both Parties shall attend and participate in the mediation, which shall be non-binding and without prejudice to any other rights or remedies which any Party may have. Unless the Parties agree otherwise, the mediation proceedings shall be conducted by an independent mediator acceptable to both Parties who shall be a retired judge of the California State Courts.

SECTION 4. GENERAL PROVISIONS

- A. Construction of Language. In all cases the language in all parts of this Agreement shall be construed according to its fair meaning and not strictly for or against City or District.
- B. Merger Clause. This Agreement, including the Exhibits and Attachments, constitute the sole agreement of the Parties and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the Parties not expressly stated in this document are not binding. Modifications or amendments shall be in writing and signed by the Parties.

- C. Severability. If any provision, covenant or condition of this Agreement or any application thereof, to any extent, is found invalid, void, or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby and will be valid and enforceable as permitted by law.
- D. Controlling Law; Venue. The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued in the San Mateo County Superior Court.
- E. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.
- F. Signature and Effective Date. This Agreement shall be effective upon the signature of both Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this agreement between the CITY OF SAN MATEO and San Mateo-Foster City School District has been duly executed by the parties hereinabove named, as of the day and year first above written.

CITY OF SAN MATEO

SAN MATEO-FOSTER CITY SCHOOL DISTRICT

Drew Corbett
City Manager

<Insert Name>
Its Authorized Agent
<Insert Title>

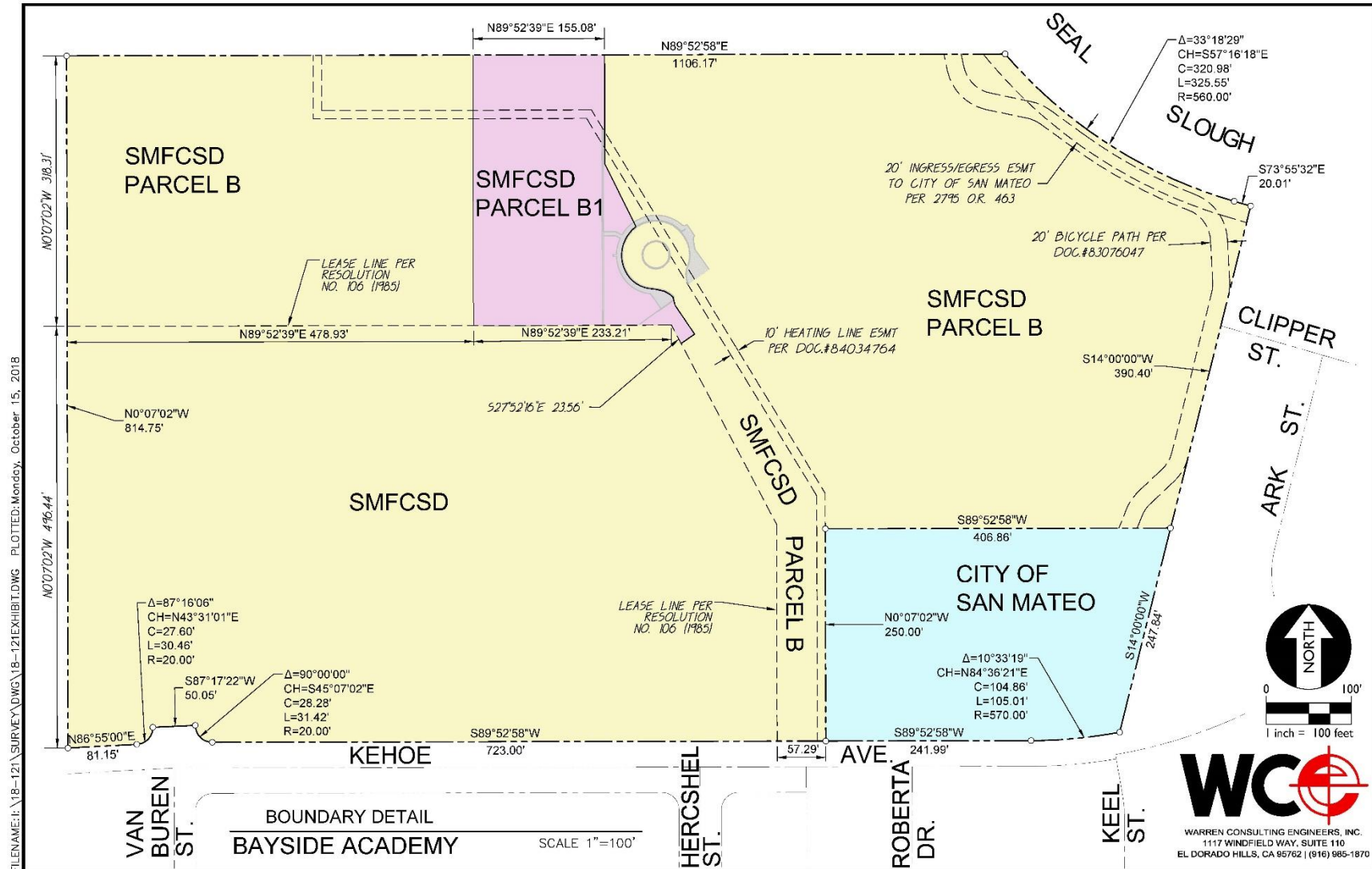
APPROVED AS TO FORM

APPROVED AS TO FORM

Gabrielle P. Whelan
Assistant City Attorney

Adam Ely
Attorney for District

EXHIBIT 1



LEASE
OF PARK SITE
WITHIN BAYSIDE MIDDLE SCHOOL BOUNDARY

THIS LEASE AGREEMENT, made and entered into this 19th day of AUGUST, 1985, by and between the SAN MATEO CITY SCHOOL DISTRICT, hereinafter called "District", and the CITY OF SAN MATEO, hereinafter called "CITY".

WITNESSETH:

WHEREAS, District is the owner of a certain real property site, within the Bayside Middle School boundary, situated adjacent to the northerly boundary of City's Joinville Park property and Bayside Middle School which site is fully described as Parcels A and B in Exhibit A attached hereto, and by this reference, made a part hereof; and

WHEREAS, in accordance with Section 10900 et. seq. of the Education Code, District wishes to lease said property to City for the purpose of construction and use of a multi-purpose park, night-lighted athletic field, and parking thereon for use by the City and recreation organizations which conduct athletic programs for youth and adults; and

WHEREAS, the District will accrue benefits from the use of the improvements made by the City;

NOW, THEREFORE, District does hereby lease to City the said property site upon the following terms and conditions:

1. Term. The term of this lease agreement shall be 55 years, commencing on November 1, 1985, and ending on October 31, 2040.
2. Rent. The annual rental for said property site to be paid by City shall be \$1.00, payable on the effective date hereof and on each succeeding anniversary date thereafter.
3. Construction, Maintenance and Repair. City agrees to construct a park, athletic field and parking upon said property and thereafter to assume full responsibility for all further construction, maintenance and repair of such park, athletic field, and parking during the term of this lease. It is understood and agreed by the parties that this obligation of City is dependent upon available City and grant funds. City agrees to make good faith efforts to obtain necessary funds. City retains discretion to appropriate its own funds in accordance with the decisions of the City Council. If no funds are committed by City or construction commenced within 10 years after the execution of this agreement, the parties shall negotiate such new terms of this lease as may be agreed upon or this agreement shall terminate.

3a. Maintenance Closure of Fields. The parties agree that it may be necessary to completely close a field for major maintenance or renovation. In such event the City shall notify the District 30 days in advance if field closure is necessary. The City shall only close one of the leased fields at a time so that use can be accommodated on the other fields.

4. Utilities. City shall pay for all water, gas, heat, light, power, scavenger service or any other service supplied to the property herein leased on Parcel A. The SMCSD shall continue to pay for such services on Parcel B.

5. Use of Premises. District retains the right to use and control the use of the park and athletic field at all times while school is in session during the regular school year. City retains the right to use and control the use of the park, athletic field and parking at all times while school is not in session during the regular school year and during the summer recess months. For purposes of this section, the term, "school in session" shall be defined as the hours 8 a.m. to 4:30 p.m., Monday through Friday, between September 1 - June 15, excepting school vacations such as Christmas, Thanksgiving, Spring break, etc. In the event that summer school is held at Bayside and the District requires the use of Parcel B, District shall notify City and thereafter be accorded such use during summer school hours as defined above.

6. Subleasing. City shall not assign or sublet its rights under this agreement for the use of the park and athletic field without the written consent of District.

7. Destruction of Facilities. If the park and athletic field become partially or totally destroyed or use is abandoned during the term of this agreement, either party may thereupon terminate this agreement upon the giving of 30 days' written notice of termination to the other party.

8. Sale of Property. Pursuant to Section 39500 et. seq. of the Education Code, if during the term of this lease, the District determines that said leased property is surplus and shall be disposed of by sale or lease, then the District shall offer to sell such leased property as described as Parcel A to the City for the sum of \$1.00, in consideration of the City's improvements to these lands and the benefits to students during the term of the lease and the District's use of the improved areas.

9. Insurance. During the term of this lease, City shall provide public liability and property damage insurance against risks arising from the use, operation and construction of the park, athletic fields, and parking while the same are being used and controlled by City. District shall provide said insurance coverage for the periods during which the park, athletic fields and parking are being used and controlled by District. It is understood that both parties are self-insured and that each carries umbrella insurance policies above such self-insured retention.

10. Adverse Affect. Neither the District nor the City shall undertake any activity on its property that is the subject of this lease that shall adversely affect the terms herein e.g., building structures or grading land that drains to fields leased by City or vice versa. The City or the District may terminate this lease if such adverse activities are undertaken by either party and not corrected within 60 days upon written request. Further, either party may specifically enforce the other's obligation herein.

11. Renewal. This lease shall be automatically renewed for an additional term of 55 years unless written notice of termination at the end of the initial term is provided in writing not later than July 31, 2040.

12. Notices. All notices hereunder shall be in writing, addressed as follows:

Lessor: San Mateo City School District
P. O. Box K
300 28th Avenue
San Mateo, CA 94402
349-9922

Lessee: City of San Mateo
Office of the City Manager
330 West 20th Avenue
San Mateo, CA 94403
377-3300

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their duly authorized representatives on the day and year first above written.

Lessee

CITY OF SAN MATEO

By *Robert Long*
City Manager

ATTEST:

Maria Amoroso Deputy
City Clerk

Lessor

SAN MATEO CITY SCHOOL DISTRICT

By *Sergio R. Botch*
President, Board of Trustees

ATTEST:

Dwight W. Clark
Clerk of said Board

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RESOLUTION NO. 106 (1985)

APPROVING AND AUTHORIZING EXECUTION OF
LEASE AGREEMENT BETWEEN CITY OF SAN MATEO
AND SAN MATEO CITY SCHOOL DISTRICT FOR
LANDS ADJACENT TO JOINVILLE PARK
AS A MULTIPURPOSE PARK

RESOLVED, by the Council of the City of San Mateo,
California; and it does hereby FIND, DETERMINE and ORDER, that:

1. The public interest and convenience require that the lease agreement, cited in the title above, be executed.
2. Said lease agreement is hereby approved and the City Manager is authorized to sign and execute it on behalf of the City.
3. The City Clerk is instructed to attest the signature of the City Manager and affix the corporate seal of said City.

/s/ JANE M. POWELL
Deputy Mayor

ATTEST:

(SEAL) /s/ DORIS CHRISTEN
City Clerk