

AGREEMENT BETWEEN SAN MATEO-FOSTER CITY SCHOOL DISTRICT AND CITY OF SAN MATEO AND AMENDMENT OF 1985 LEASE OF PARK SITE WITHIN BAYSIDE MIDDLE SCHOOL BOUNDARY

This agreement ("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. This attachment replaces Exhibit 1 in the 1985 lease with all property covered by the lease now identified as Parcel B.

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 School.

D. The Parties through their respective governing bodies authorized to enter into this Agreement, have determined that this Agreement for a new gym will provide public benefit and complement existing recreational and educational uses on the Property and within the community.

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

SECTION 1. CONSTRUCTION OF THE GYMNASIUM

A. The Parties are executing this Agreement to enable District to construct and operate, at its sole cost and expense, a new Gym and locker rooms on Parcel B1 of the Property, as shown on Exhibit 1. The Parties anticipate it will be an approximately 13,840 square foot building. District shall have sole responsibility for the design, construction, and operation of the Gym.

B. Prior to commencing construction, the Parties will negotiate a temporary construction agreement.

- C. During the preconstruction and construction phases of the Project, City will share relevant construction documents and utility maps that it has (or has reasonable access to) due to work City has completed on the Property.
- D. Prior to the start of construction, City will install a crosswalk and stop sign at the corner of the driveway that intersects with Kehoe Avenue on the eastern portion of the Bayside Campus.

SECTION 2. POST-CONSTRUCTION

- A. Once the Gym has been certified for occupancy, District shall provide City access to the fields located adjacent to the Gym for scheduled non-school use and for field maintenance and mowing through entrance gates adjacent to the Gym.
- B. District shall be responsible for scheduling all uses of the Gym. The Gym shall be primarily for school use with use by other entities, both public and private, to be determined by District with fees for usage as established by District.
- C. District acknowledges City's concern regarding potential impacts of the combined uses of the Gym, Joinville Swim Center, and athletic fields and park during non-school times. It is the intent of the District to provide priority usage of the Gym for District and school-related activities and to limit the non-school uses through June 30, 2023 as follows:
 - 1. In the first full year of occupancy, District shall use the Gym only for District and school-related purposes, as determined by District.
 - 2. For the period beginning on July 1, 2021 and ending on June 30, 2022, District shall schedule the Gym for no more than 16 individual non-school uses, as determined by District.
 - 3. For the period beginning on July 1, 2022 and ending on June 30, 2023, District shall schedule the Gym for no more than 30 individual non-school uses, as determined by District.
- D. City shall receive priority for scheduling fifty percent (50%) of non-school uses of the Gym for City-operated activities/programs. The City's scheduling priority is to be given after school scheduling, and to be completed once each year by the end of June for the next school year. The City's priority for scheduling shall be effective for the period of July 2021 through June 30, 2032.
- E. All non-school uses shall be limited to Gym-related activities during which time users shall be required to wear rubber soled shoes and to observe a no-food/no-beverage, except water, policy.

- F.** For the purposes of this section, “individual non-school uses” shall be defined as the number of individual days or parts of days that non-school use is scheduled by the District or the City. Each separate activity in a day shall be considered an “individual non-school use.” By way of illustration, but not limitation, if City schedules a non-school use of the Gym for three (3) hours on single day, this would constitute one (1) individual use if it is for one specific activity; in the case of two specific activities scheduled on the same day or partial day, they shall be considered two individual non-school uses.
- G.** Beginning no later than June 30, 2023, the Parties shall consult annually regarding the total number of individual non-school uses of the Property during the years after the Gym is certified for occupancy and the cumulative impact of individual non-school uses on the site, traffic, and parking. Following this consultation, District shall determine the number of individual non-school uses of the Gym to be allowed and the City shall determine the number of individual non-school uses of Parcel B to be allowed.
- H.** City shall have use of designated classrooms, fields, and the multipurpose room on the Bayside campus for the operation of the City’s summer program (“Summer Program Facilities”). The City’s right to reserve the Summer Program Facilities shall continue until August 2032 but shall be exercised no more than once every three years beginning no earlier than Summer 2021. City’s use shall be pursuant to the terms of District’s standard facilities use agreement in place at the time of use of the Summer Program Facilities and shall be for a use fee as shown on Exhibit 3 which is the Summer Use Fee for the City for summer 2018 which shall be adjusted annually by the change in the Bay Area Cost of Living Index. The City shall notify the District in writing of its intent to exercise this right once every three years by no later than December 1 of each year preceding the summer use. By way of illustration, should City wish to reserve the Summer Program Facilities for summer 2025, City would need to notify District no later than December 1, 2024.
- I.** Post-construction, District will restore the same number of parking spaces as existed prior to construction.

SECTION 3. AMENDMENT NO. 1 TO THE CURRENT LEASE (Exhibit 2)

The Lease is amended as stated in paragraphs A through F of this Section 3:

- A.** All references to the San Mateo City School District in the Lease shall be considered references to the San Mateo-Foster City School District.
- B.** A portion of what is described as Parcel B in the Lease and its exhibits shall be re-designated as Parcel B1, as more particularly described in Exhibit 1 to this Agreement. Effective at the commencement of construction, Parcel B1 shall be exempted from all provisions of the Lease and City’s lease of, use of, interest in, and responsibilities related to Parcel B1 shall immediately terminate.

- C. Exhibit A to the Lease shall be replaced with Exhibit 1 of this Agreement.
- D. Parcel A in the 1985 Lease has been incorporated into Parcel B as shown on Exhibit 1 of this Agreement. All references to Parcel A in the 1985 lease are deleted.
- E. Notwithstanding anything to the contrary contained in this Agreement or the Lease, the termination of City's lease of Parcel B1 shall be irrevocable and shall survive termination, except in the event the District determines that it will not proceed with the Project, in which case this Agreement, including Amendment No. 1 to the Lease, shall be null and void.
- F. All other terms and conditions of the Lease, dated November 1, 1985, shall remain in effect.

SECTION 4. 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 5. 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 6. TERMINATION

- A.** In the event of a material breach, a Party shall deliver to the non-performing Party a written request to perform or remedy the alleged breach stating clearly the nature of breach and any applicable cure period (“Notice of Breach”). The cure period shall be ninety (90) days and shall commence upon delivery of the Notice of Breach to the non-performing Party. Where an alleged breach cannot be reasonably cured within the cure period, then there shall be default only if the non-performing Party fails to diligently and continuously prosecute the curing of such breach. There shall be no material breach with respect to a matter that is subject of ongoing dispute resolution as provided for in this Agreement.
- B.** In the event of a material breach that is not cured within the cure period, the Parties shall have the right to terminate the Agreement. The Parties shall cooperate in good faith in taking all reasonable steps to avoid termination for material breach. Upon the occurrence and continuance of a material breach, the non-breaching Party may terminate this Agreement by giving written notice of termination and the date for termination, which shall be no less than one year (365 days) after written notice of termination.
- C.** In no event shall either Party be entitled to recover consequential or punitive damages for any breach of this Agreement.
- D.** Notwithstanding any other provision of this Lease to the contrary, any failure by City or District to perform any duty or obligation set forth in this Lease shall not be deemed a breach of or default in the performance of this Agreement if such failure to perform is caused by fire, earthquake, flood, hurricane, the elements, acts of God or the public enemy; actions, restrictions, limitations or interference of other governmental authorities or their agents; enforcement of applicable provisions of federal, state, or local law; war; invasion, insurrection; rebellion; riots; strikes or lockouts; or inability to perform which is beyond the reasonable control of City or District.
- E.** As set forth in Section 3, D above, notwithstanding anything to the contrary contained in this Agreement or the Lease, the termination of City’s lease of Parcel B1 shall be irrevocable and shall survive termination, including termination for material breach, except in the event the District determines that it will not proceed with the Project, in which case this Agreement, including Amendment No. 1 to the Lease, shall be void.

SECTION 7. MUTUAL INDEMNIFICATION; HOLD HARMLESS

- A.** City shall indemnify and hold harmless the District, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (a) injuries to or death of any person, including each party, its officers, employees and agents or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any other loss or cost, including but not limited to reasonable attorney's fees and other costs of defense, resulting from any negligent act or omission or willful misconduct of City, its officers, employees or agents, which arises under this Permit or any extension thereof. The duty of City to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.
- B.** District shall indemnify and hold harmless City, its officers, agents, employees and servants from all claims, suits or actions of every name, kind and description, brought for, or on account of (A) injuries to or death of any person, including each party, its officers, employees and agents or (B) damage to any property of any kind whatsoever and to whomsoever belonging, or (C) any other loss or cost, including but not limited to reasonable attorney's fees and other costs of defense, resulting from any negligent act or omission or willful misconduct of District, its officers, employees or agents, which arises under this Permit or any extension thereof. The duty of District to indemnify and hold harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

SECTION 8. 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.

IN WITNESS WHEREOF, City and District have executed this Agreement through their officers or representative thereunto duly authorized as of the day and year written below the signature line.

THE CITY OF SAN MATEO

DISTRICT:

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

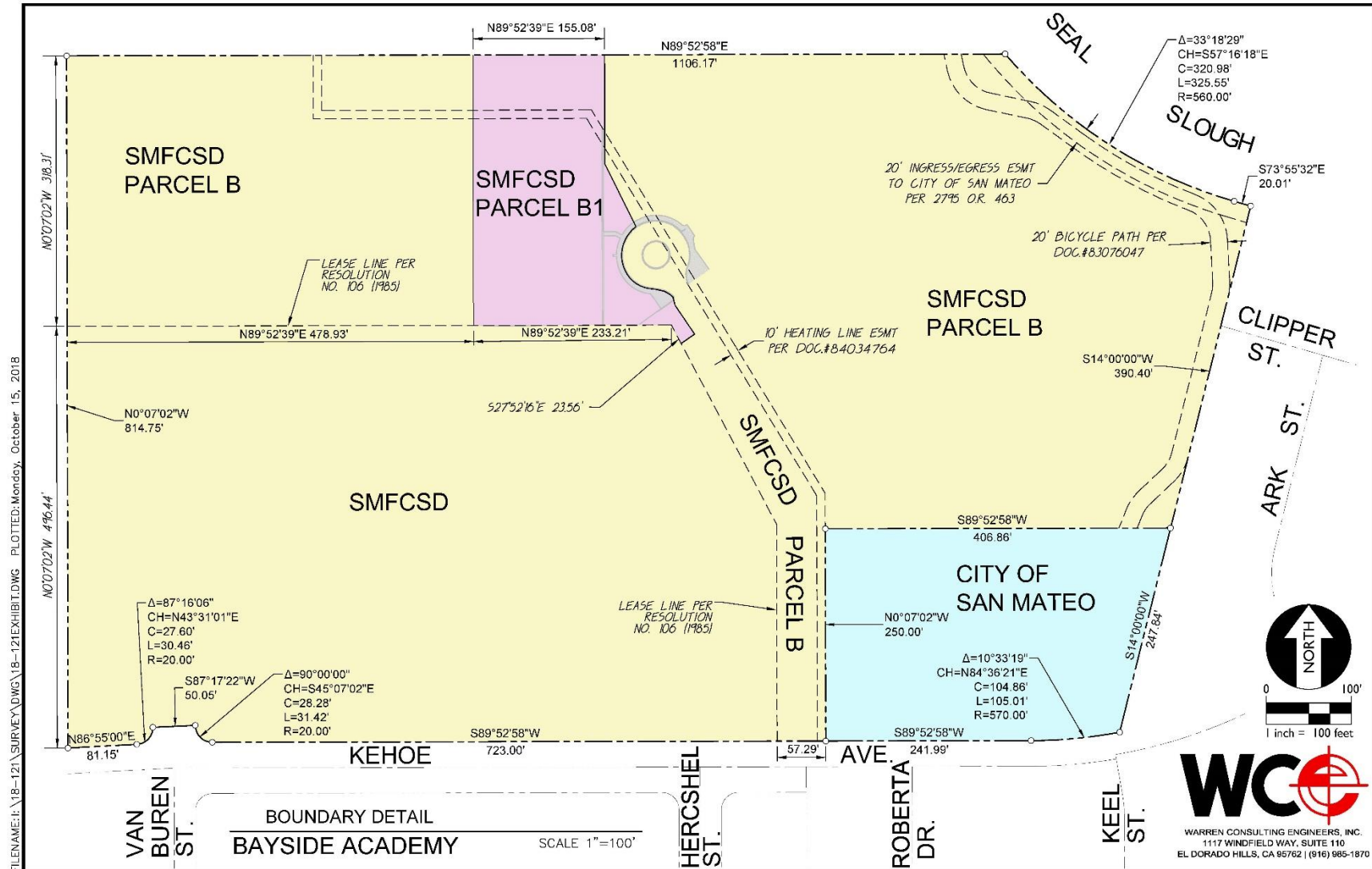
APPROVED AS TO FORM:

APPROVED AS TO FORM:

Gabrielle 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

SAN MATEO-FOSTER CITY SCHOOL DISTRICT
FACILITIES USE DAILY FEE SCHEDULE FOR SAN MATEO PARKS AND RECREATION DEPARTMENT
2018-2019

Payment of all Short-Term user fees must be made in advance of the scheduled use.*			
Payment of all Long-Term user fees must be made every 30 days prior to the scheduled use.*			
	Time	Direct Cost Fee	Fair Rental Fee
Classroom	1/2 Day	\$50.75	\$76.25
	Full Day	\$101.49	\$152.52
LGI Room	1/2 Day	\$83.89	\$125.82
	Full Day	\$167.78	\$251.66
MPR	1/2 Day	\$127.10	\$190.65
	Full Day	\$254.20	\$381.29
Regular Fields / Blacktop Area	Full Day	\$19.06	\$32.27
Parking Lot	Full Day	\$20.00	--

Other fields are scheduled by site manager/principal.

Children's Annex must be pre-approved by Annex teacher and Annex Coordinator-all revenues go to Annex.

OTHER FEES

Processing Fee	Per Permit	\$35.00	
Custodial Fees			
Regular Time ^	Hourly	\$50.00	
Overtime ^	Hourly	\$75.00	
Holidays ^	Hourly	\$100.00	
Re-key rooms. Fee includes cost to rekey one room/lock.	Per Room	**	

Important Information

Facility Use Fees adjusted annually based on Consumer Price Index (CPI)

For groups of 100 people or larger, the District may charge additional custodial fees for excess use of custodial supplies, extra waste disposal, and other costs incurred by the District as a result of the group's use.

* Short-Term: 1-30 days of requested use.

* Long-Term: 31 days - 12 months of requested use.

** Per AR 3200 and key regulation.