

**THE AGREEMENT BETWEEN SANTA CLARA UNIFIED SCHOOL DISTRICT
AND THE CITY OF SANTA CLARA PERTAINING TO THE USE,
MAINTENANCE AND IMPROVEMENT FOR PUBLIC RECREATIONAL
PURPOSES OF VARIOUS BUILDINGS AND OPEN SPACE AREAS AT
SCHOOL SITES OWNED BY SANTA CLARA UNIFIED SCHOOL DISTRICT –
YOUTH ACTIVITY CENTER, TEEN CENTER AND SKATE PARK**

RECITALS

WHEREAS, Section 10900 *et seq.* of the Education Code of the State of California authorize and empower City of Santa Clara (the “City”) and Santa Clara Unified School District (the “District”) to cooperate with each other in organizing, promoting and conducting programs of community recreation.

WHEREAS, on May 13, 1987, the City and the District entered into a Lease Agreement for the City to use a portion of the Cabrillo Middle School site for \$1 per year, for a period of 35 years (2022) and extended for five year terms by mutual consent for the same terms and conditions, but not exceeding 99 years (the “Lease Agreement”), and to construct, operate and maintain a community youth activity center of approximately 20,000 square feet in size, (the “Youth Activity Center” or “YAC”), with the improvements becoming the property of the District at the end of the original term or any extensions.

WHEREAS, the City and the District are working on a new agreement known as the Agreement Pertaining to the Use, Maintenance and Improvement for Public Recreational Purposes of Various Buildings and Open Space Areas Owned by Santa Clara Unified School District or City of Santa Clara (the “Master Agreement”).

WHEREAS, pending execution of the Master Agreement, the City and the District desire to enter into this Agreement in connection with the Lease Agreement, which Agreement will ultimately become an addendum to the Master Agreement.

WHEREAS, the Lease Agreement provided that when the YAC, Cabrillo Middle School's only gym, was constructed by the City on the Cabrillo campus, the YAC would revert to the District if the Lease Agreement was not extended.

WHEREAS, under the Lease Agreement, the City requires the District to reserve time in the YAC and has City staff has offices in the YAC as provided in Attachment A (“Current YAC Use”).

WHEREAS, the District wants the YAC to be available to the District and the District will take over the custodial and maintenance obligations for the building.

WHEREAS, the City and the District desire to establish a basis for cooperative use of the facility known collectively as the YAC, Teen Center And Skate Park (the “Premises”) adjacent to Cabrillo Middle School in the City of Santa Clara, a map of which is provided in Attachment B.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Definitions of Terms.

The following terms have in this Agreement the significance attached to them in this paragraph, unless otherwise apparent from the context:

“Board of Education” means the Governing Board of the Santa Clara Unified School District.

“Building” means the building that houses the YAC and the Teen Center

“Cabrillo” means Cabrillo Middle School.

“City Council” means the City Council of the City of Santa Clara.

“City Premises” means the Teen Center and Skate Park and adjacent grounds.

“City Manager” means the City Manager for the City of Santa Clara or designee.

“Custodial” means the cleaning and everyday care of the Premises.

“District Premises” means the YAC.

“Division of State Architect” (“DSA”) means the State entity that provides design and construction oversight for K-12 schools.

“Facilitron” means the current District online Facility scheduling application, as may be replaced from time to time.

“Maintenance” means the repair and care of the Premises, including but not limited to, preventative maintenance.

“Master Agreement” means the Agreement Pertaining to the Use, Maintenance and Improvement for Public Recreational Purposes of Various Buildings and Open Space Areas Owned By Santa Clara Unified School District or by City of Santa Clara which will be entered into between the City and the District.

“Non-School Time” means days when school is not in regular session and after the after-school activities in the Gymnasium are over as set forth in the Facilitron reservation schedule or the bell indicating the last period is over on days when school is in regular session. Non-School Time includes the summer months even if classes are held at Cabrillo Middle School.

“School Time” means days when school is in regular session, students are on campus or when Cabrillo has after school events scheduled in the YAC.

“Summer” means the period commencing the Monday after the last day of school and ending 2 full weeks before the start of the next school year.

“Premises” means the property comprising the District Premises/YAC and the City Premises/Teen Center, Skate Park, and adjacent grounds as delineated in Attachment B attached hereto and incorporated by this reference.

“Skate Park” means the Skate Park and adjacent grounds as delineated in Attachment B attached hereto and incorporated by this reference.

“Summer” means the period commencing the Monday after last day of school and ending 2 full weeks before start of the next school year.

“Superintendent” means the Superintendent for the Santa Clara Unified School District.

“Teen Center” means the Teen Center and adjacent grounds as delineated in Attachment B attached hereto and incorporated by this reference.

“YAC” or “Youth Activity Center” means the building previously operated by the City and used by the District as the Cabrillo Middle School gym delineated in Attachment B attached hereto and incorporated by this reference.

The words “shall” and “will” are mandatory and the word “may” is permissive.

2. General Principles

- (a) Ownership/Operation of the YAC will transfer to the District upon the expiration of the Lease Agreement on May 13, 2022. City will continue to operate and maintain the Teen Center and the Skate Park.
- (b) The City and the District will enter into this Agreement pending the execution of the Master Agreement for use of the YAC after May 13, 2022. Once the Master Agreement is executed, this Agreement will be subject to the Master Agreement. Use of the YAC will be scheduled through the District online Facility scheduling application (“Facilitron”).
- (c) The City will have exclusive use of the Teen Center for a period of five years from May 14, 2022 to May 13, 2027 and may have an extension and exclusive use of up to five years for a total extended use of up to ten years if both parties agree. Should the agreement not be extended, the City Premises will revert to the District upon the expiration of the first term on May 13, 2027.

3. Premises Use

(a) YAC

- (1) City staff who are currently located in the YAC portion of the facility will move their offices into the Teen Center portion of the building by May 13, 2022.
- (2) District and City agree to the greatest extent possible, District to schedule use in Facilitron a minimum of 6 months in advance, followed by City scheduled use.
- (3) During school hours, the District and Cabrillo Middle School (“Cabrillo”) will have access to all facilities within the YAC. This includes the gymnasium, the classrooms, restrooms, and offices/meeting rooms.
- (4) Cabrillo will have access to the gymnasium and restrooms for practices for up to three hours following each school day. Cabrillo will have access to the gymnasium and restrooms for games on “game day” until 7:00 P.M, which includes time for the custodial maintenance of the space.
- (5) City will have access to the gymnasium (scheduled through Facilitron):
 1. After the school day; and/or
 2. Approximately 30 minutes after the completion of games but no later than 7:00 p.m.; and/or
 3. On weekends; and/or
 4. During the summer; and/or when school is not in session.
- (6) Cabrillo will be able to use the offices/meeting rooms in the YAC during the school day. School staff will be instructed to keep non-essential property out of the room so it is ready for the City’s use during non-school hours.
- (7) City will have access to the YAC offices/meetings rooms during non-school hours through reservation on Facilitron.
- (8) The San Tomas Room, may be used by Cabrillo as a music room. If this occurs, it will be unavailable by the City for its programming.
- (9) Outdoor Spaces:
 1. The Covered patio area behind YAC will be available for City use during non-school hours, even when Cabrillo is using the YAC.

2. City's storage containers on the south side of the YAC - can stay in place and have city access including during school hours.
3. Patio behind the Teen Center is considered part of the Teen Center and not part of the facilities the school has access to during the school day.
4. Cabrillo Fields are not part of this Agreement, and the District has full control over them.

(b) Teen Center

- (1) Teen Center will house City staff during the course of business/operating hours. Staff who are currently located in the YAC portion of the facility will move offices into the Teen Center portion of the building by May 13, 2022.
- (2) Teen Center may be used by City staff for programming and City operations during business hours, school hours, after hours, and weekends school hours.
- (3) The City will provide the custodial, maintenance and landscaping services in and around the Teen Center.

(c) General

- (1) Certain events that occur throughout the year which will require special planning (for example, the City's Halloween event and Cabrillo dances). Both parties agree to work together to schedule these events.
- (2) In order to provide clear communication and expectations regarding the availability of space, YAC facility use will be reserved using the District's Facilitron platform. Practices and games will be scheduled as early and as efficiently as possible in order to maximize and optimize facility use, specifically of the gym.

4. Premises Maintenance

(a) YAC

- (1) District will be responsible for all custodial, routine maintenance and repair for YAC. City will reimburse District for actual custodial costs only for the time when the YAC is used by

City or City's renters ("Cost Share") according to the established fee schedule.

- (2) District will be responsible for locks, key control, and alarms. City will not receive keys. Cabrillo staff/custodians will open/close YAC for City and/or City users when events are booked on Facilitron.
- (3) District will install a separate building (burglar) alarm system for the YAC.
- (4) City and District will establish a call out protocol for response to any activations of the shared fire alarm. District responsible for testing and maintenance of Fire alarm.
- (5) YAC will be closed for approximately two full weeks prior to the start of the District school year for routine maintenance to the building.

(b) Teen Center/Skate Park

- (1) City will be responsible for all custodial services and routine maintenance and repairs.
- (2) Non-routine repairs and emergency maintenance calls will be referred to the District. Dependent upon the severity and cost, responsibility and funding will be discussed and allocated prior to proceeding if possible.
- (3) Thresholds for repairs will be based on DSA requirements. Projects incorporating the alterations of Structure, ADA/Accessibility, Fire, Life, Safety systems or the project is in excess of the public contract bid limit of \$15,000 must be discussed with District prior to proceeding; threshold may be updated during the quarterly meetings.
- (4) District is responsible for coordinating all major projects that will go to DSA.
- (5) A reserve fund for capital renewals and replacements per the facility condition assessment report(s) will be discussed at a later date as described in section 5(b).

(c) Grounds

- (1) District is responsible for all turf and landscaping around the YAC and in the back covered patio area behind the YAC as depicted on Attachment B.
- (2) City is responsible for the landscaping in front of and around the Teen Center and Skate Park including the landscaping along the Teen Center and Cabrillo Ave and around and in the Skate Park as depicted on Attachment B.
- (3) City will have access to maintain the landscaping and make repairs through the fire service gate entrance next to the YAC during non-school hours. City will have access during school hours through vehicle gates on Raggio Ave.
- (4) City Maintenance and Grounds personnel have permission to access the Teen Center and Skate Park from the Cabrillo campus in order to maintain the Teen Center and Skate Park during school and non-school hours.

(d) Custodial

- (1) At the completion of activities by City or by District, the YAC will be cleaned by the District with District approved cleaning supplies.
- (2) District will set up YAC for City events with reservations in Facilitron prior to event starting.

5. Costs of Maintenance

(a) General:

- (1) Parties agree to revisit Cost Share of custodial, maintenance, and upgrades on a semi-regular basis. A December / January meeting for true-up will occur at the end of the year. Quarterly meetings described in section 7(a) will help to track the costs.
- (2) Persons using the Premises shall be responsible for the Premises and shall reimburse the party responsible for maintenance for the cost of repairing any damage to the Premises. If City has authorized the use of the Premises and the user damages the Premises and does not repair the same, then City shall be obligated to make repairs and may recover the costs so incurred from the user. Similarly, if District has authorized the use of the Premises and its user damages the Premises and does not repair the same, then District shall be obligated to make repairs and may recover costs so incurred from the user. Users shall execute agreements for

use that shall provide that if monies owing are not paid when due, then said sums shall bear interest at maximum rate allowed by law until paid, and City and/or District shall be reimbursed for its costs of collecting said sums, including its attorney's fees and court costs. If the Premises is damaged by individuals or groups using it without authorization by City or District, the City and District shall meet and mutually agree as to the financial responsibility for repair of the Premises. Users that damage the Premises and do not make repairs or pay for repairs made by the City or the District will be denied further use of the Premises.

(b) Long Term Maintenance and Capital Improvements Account:

- (1) District is completing a Facility Conditions Assessment and once maintenance and capital improvement projects are determined, the Parties shall create long term maintenance and capital improvement accounts and project lists for such project. Decisions to replace or repair will be driven by life cycle data.
- (2) Quarterly meetings described in section 7(a) will determine how account monies will be spent. Issues to be addressed will be Federal, State, Life, Safety; Priority Projects; and Preventative Maintenance

(c) Utilities:

- (1) The YAC and Teen Center, Skate Park and adjacent grounds are on separate electrical and water meters. District shall pay for the YAC and the City will pay for the Teen Center, Skate Park and adjacent grounds.
- (2) Gas and other utilities not split by building will be initially paid for by District.
- (3) Notwithstanding 1 and 2 above, a pro rata share of the utility costs shall be mutually determined and agreed upon semi-annually. The initial pro rata share will be a 40 % City/60% District flat rate and will then be adjusted based on actual facility use by City or District semiannually. City share includes times when the City rents out the facilities or uses the facilities for its own use. Annual true up will be done in arrears whereby the City will be charged, or credited, based on actual use and costs.
- (4) District will bill City semiannually commencing November 1, 2022, due and payable in 90 days.

- (d) The Premises, as developed by the parties for the purposes under this Agreement, shall be adequately maintained to ensure proper and safe use, appearance, and preserve the lifecycle of each facility.

6. Term

Pending execution of the Master Agreement, the City and the District desire to enter into this Agreement in connection with the Lease, which Agreement will ultimately be subject to the Master Agreement. The Term of this Agreement will be five (5) years with a potential extension of up to five (5) years, if all parties agree. If parties do not agree, District shall have full use and occupancy of Teen Center and the Skate Park. The District shall provide the City at least 180 days written notice of its intention to not extend the Term of this Agreement.

7. General Provisions.

- (a) Representatives of District and City shall regularly, on at least a quarterly basis commencing September 1, 2022, confer with regard to the development, use and maintenance of the Premises. The representatives will be an Assistant City Manager, City Director of Parks and Recreation, District Chief Business Official, District Director of Facility Development and Planning or Maintenance, or designees thereof.
- (b) There shall be no additional development of the Premises or changing of the facilities on the Premises without the prior discussion between the District and the City of the proposed changes. Any modifications to the Premises that may affect the DSA approval status of the buildings and surroundings must be approved by the District prior to any plans or work beginning.

8. Dispute Resolution.

Disputes involving day to day issues should be discussed with site level staff. Additional dispute resolution shall be discussed at the quarterly meeting in section 7(a). If a resolution is not determined the issue will be brought to the City School Liaison Meeting.

9. Duty Of Parties To Defend, Indemnify, And Hold Harmless.

- (a) City shall protect, defend, indemnify and hold harmless District, its officers, agents and employees from and against any and all demands, claims, liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of or in any way connected with the City's negligent performance or nonperformance under this Agreement, including City's

operations on, possession, use, management, alteration or control of the District's property, except for any claims, causes of action or liability, or portions thereof, arising from the concurrent or sole negligence or intentional malfeasance of District, its officers, agents or employees.

(b) District shall protect, defend, indemnify and hold harmless City, its officers, agents and employees from and against any and all demands, claims, liability or expense on account of suits, verdicts, judgments, costs or claims of any nature or kind arising out of or in any way connected with the District's negligent performance or nonperformance under this Agreement, including District's operations on, possession, use, management, alteration or control of the District's property except for any claims, causes of action or liability, or portions thereof, arising from the sole negligence or intentional malfeasance of City, its officers, agents or employees.

(c) City shall defend, indemnify and hold harmless District, its officers, agents and employees from any claims or causes of action for death or injury to persons, or damage to or loss of property attributable to the physical condition of any school or open space/recreational area site for which City has undertaken responsibility for maintenance, improvement or rehabilitation under this Agreement arising out of the maintenance of such site by City, except for those claims or causes of action to which District is responsible pursuant to subsections (a) and (b).

(d) District shall defend, indemnify and hold harmless City, its officers, agents and employees from any claims or causes of action for death or injury to persons, or damage to or loss of property attributable to the physical condition of any school or open space/recreational area site for which District has undertaken responsibility for maintenance, improvement or rehabilitation under this Agreement arising out of the maintenance of such site by District, except for those claims or causes of action to which City is responsible pursuant to subsections (a) and (b).

10. Insurance.

a) City, at its sole cost and expense, will obtain and maintain, in full force and effect, during the term of this Agreement the following insurance:

(1) Commercial General Liability insurance with limits of two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) aggregate, insuring both parties, their officers, employees, agents, and each of them with respect to City's participation and the services performed by City under this Agreement.

- (2) Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000).
- (3) Workers' Compensation with statutory limits and Employers' Liability with limits of one million dollars (\$1,000,000) per accident for bodily injury or disease.
- (4) Molestation/Abuse Insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

Concurrently with execution of this Agreement, City will file with District's Risk Manager a certificate of insurance showing evidence that the coverage above is in place, or a letter regarding self-insurance. The Commercial General Liability policy shall include an additional insured endorsement that names the Santa Clara Unified School District, its officers, agents, employees and volunteers as additional insureds.

(b) District, at its sole cost and expense, will obtain and maintain, in full force and effect, during the term of this Agreement the following insurance:

- (1) Commercial General Liability insurance with limits of two million dollars (\$2,000,000) per occurrence and four million dollars (\$4,000,000) aggregate, insuring both parties, their officers, employees, agents, and each of them with respect to District's participation and the services performed by District under this Agreement.
- (2) Automobile Liability insurance with a combined single limit of one million dollars (\$1,000,000).
- (3) Workers' Compensation with statutory limits and Employers' Liability with limits of one million dollars (\$1,000,000) per accident for bodily injury or disease.
- (4) Molestation/Abuse Insurance with limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

Concurrently with execution of this Agreement, District will file with City a certificate of insurance showing evidence that the coverage above is in place, or a letter regarding self-insurance. The Commercial General Liability policy shall include an additional insured endorsement that names the City of Santa Clara, its officers, agents, employees and volunteers as additional insureds.

11. Time Of The Essence.

Time is of the essence with respect to this Agreement.

12. Force Majeure.

If, due to act of God; fire; flood; storm; inclement weather; earthquake; drought; acute restrictions or riot; war or insurrection; plant or animal infestation or disease; sudden or severe energy shortage; strike; work stoppage; work slowdown or other concerted job action; or other condition of emergency or disaster beyond the control of City which makes performance of its construction, rehabilitation and/or maintenance obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

13. Discrimination Prohibited.

Neither District nor City shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, sex, physical handicap, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

14. Notices.

All notices hereunder shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To City City Manager
City of Santa Clara
1500 Warburton Ave Santa Clara, CA 95051

To District Chief Business Official
Santa Clara Unified School District
1889 Lawrence Road
Santa Clara, CA 95051

15. Effect Of Waiver Of Breach Or Violation.

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provision of law shall not be deemed to be a waiver of any other term, covenant, or condition or law. The subsequent acceptance by either party of any money which may become due hereunder shall

not be deemed a waiver of any preceding breach or violation by the other party of any term or condition of this Agreement, or of any applicable law.

16. Disputes; Legal Actions; Attorney Fees; Specific Performance.

(a) If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a party to perform, the Party raising the question or making the allegation shall give written notice thereof to the other Party. The parties shall promptly meet in an effort to resolve the issues raised. The City hereby appoints its City Manager or designee as its representative and the District hereby appoints the Superintendent or designee as its representative. If the parties fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the Parties to the maximum extent possible that litigation be avoided as a method of dispute resolution.

(b) If the parties are unable to resolve a dispute as provided in subsection (a), the dispute(s) regarding this Agreement shall be resolved according to the laws of the State of California. Any legal proceedings shall be instituted in the courts of the State of California and County of Santa Clara, irrespective of any claim of diversity of citizenship or other possible jurisdictional conditions.

(c) The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs and attorney's fees expended in connection with such an action from the other party.

(d) In any action to enforce the provisions of this Agreement, specific performance shall be a remedy available in addition to any other remedies provided by law.

17. Integrated Agreement.

This document represents the entire and integrated agreement between District and City and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement shall not be construed as nor deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action herein for any cause whatever.

18. Countersign.

This Agreement may be countersigned by the two parties on two separate sheets, which will be deemed as one fully executed Agreement. The Agreement may also be signed digitally.

DRAFT

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

CITY OF SANTA CLARA (“CITY”)

SANTA CLARA UNIFIED SCHOOL DISTRICT
 (“DISTRICT”)

City Manager

Chief Business Official

Dated: _____

Dated: _____

APPROVED TO AS FORM FOR CITY

APPROVED TO AS FORM FOR DISTRICT

City Attorney

District Attorney

Spectator Guidelines

ATTACHMENT B

PREMISES MAP