REPORT TO MAYOR AND COUNCIL **NO: 12-280**

Council Meeting: December 4, 2012

SUBJECT: Discussion and Possible Action on Request for Proposals for a License to Operate Public Swim Programs at Fremont High School Pool

BACKGROUND

In July 2000, the City entered into a 25-year agreement with the Fremont Union High School District for the construction and operation of a 50-meter swim pool at Fremont High School. The City and District share ongoing operational, staffing and utility costs under the terms of this agreement. The pool opened to the public in June 2001 and has been operated under a license agreement between the City and California Sports Center since 2002.

California Sports Center (CSC) has provided a broad array of aquatics programs since that time including lap swim, masters programs, swim lessons for all ages, recreation/family swim, diving, water exercise, and safety and training classes. The existing contract totals $46,295.59 in revenue annually. Additionally, CSC reimburses the City for the cost of water, sewer, garbage and electrical services for the public pool building.

The purpose of this report is to request Council approval of the Request for Proposals (RFP) so that the City may solicit proposals for the operation of public swim programs at Fremont High School Pool. (Please refer to Attachment A.) The license agreement with the current operator, California Sports Center (CSC), ends on August 31, 2013. The City intends to undertake a competitive proposal process to maximize the public benefit of City sponsored programs at Fremont Pool, while at the same time maintaining or reducing the City's on-going operating costs for the facility. Typically, staff does not bring draft Request for Proposals to Council prior to issuance; however, in this instance, the level of community interest warrants such advance review.

EXISTING POLICY

Sunnyvale Consolidated Plan

CC-10.6: Leverage available resources by pursuing co-funded and/or cooperative agreements for provision and maintenance of programs, facilities and services, in order to maximize benefits to the community. Partners may include, but are not limited to, school districts, non-profit groups, governmental agencies and businesses.

CC-10.4: Use entrepreneurial strategies to identify and reach new markets for programs, services and revenue generation, and to strengthen relationships within existing markets.

CC-12.3: Provide recreation and enrichment programs, services, facilities and amenities to underserved areas and/or populations of the City. Underserved areas and/or populations could be due to geography, gender, economics or ethnicity.

Sunnyvale City Council Policy

7.3.6.1: Service Delivery Options. Commitment to Council and the Public. The premise of this policy is that competitive service delivery produces value for City residents and that either in-house or alternative service delivery methods may produce superior service value (e.g., better service at lower cost; better service at equal cost; or equal service at lower cost). Contracting, bringing a service in-house, or partnering for service provision are all tools the City may employ to provide high quality, effective and efficient municipal services.

DISCUSSION

The current service provider has operated the pool since 2002. Since that time other providers have expressed an interest in operating the Fremont Pool, therefore staff believes it is appropriate to issue an RFP for services. Overall objectives of the RFP are to provide quality swim programs that also offer the best value to the City. In addition, based upon community feedback and Council priorities when the pool was first established, the following programs will be offered by the provider, based upon priority order:

- Adult lap swimming;
- Other adult swim programs (potentially a Masters or other competitive program, classes, water exercise, etc.);
- Recreation or Family Swim;
- Other youth or community activities (lessons, competitive swimming, etc.).

During the RFP process, staff will also develop a plan that would provide an overview of services, cost estimates and revenue estimates were the City to take over operation of public swim programs at Fremont Pool. When the responses to the City's RFP process are brought back to Council staff will provide an analysis that will compare the City proposal against those of organizations responding to the RFP.

As outlined in the RFP, all proposers must provide and will be evaluated on criteria to include:

- Background information
- Proposed swim program services
- Swim building maintenance
- Overall use of the facility, equipment and furnishings
- Yearly operations summary
- Startup strategy, if appropriate
- Financial return to the City

City Council retains the final authority to approve any long-term license agreement. Until the license agreement is executed, the City retains its rights to reject any and all proposals, to waive irregularities in the process, and to withdraw any and all of the described real property from the market.

FISCAL IMPACT

The City's cost sharing agreement with the Fremont Union High School District remains the same. Depending on the proposal selected, the City subsidy of Fremont Pool could vary; however, the exact terms are unknown at this time.

PUBLIC CONTACT

Public Contact was made through posting of the Parks and Recreation Commission agenda on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk, Sunnyvale Public Library, Senior Center and Community Center.

Staff met with the Friends of Fremont Pool and members of the community to solicit input on current pool programming and operations.

Notice of Commission and Council meetings regarding this report was also distributed to the "Friends of Parks and Recreation" mailing list (a list of organizations and individuals who have expressed an interest in parks and recreation issues).

A survey was posted on the City website to gather input on pool operations.

The Parks and Recreation Commission conducted a public hearing on this item at their meeting on November 14, 2012.

ALTERNATIVES

1. Approve the Request for Proposals document and authorize staff to move forward on this project.
2. Do not approve the Request for Proposals document and amend per Council direction.

RECOMMENDATION

Staff recommends the approval of Alternative No. 1: Approve the Request for Proposals for the license to operate Fremont High School Pool. Approving the Request for Proposals will allow staff to find a licensee for the operation of Fremont High School Swim Pool who will serve the community and maintain the facility as negotiated by the City.

The Parks and Recreation Commission reviewed a draft of this report at its meeting on November 14, 2012, and voted 5-0 to recommend to Council that the language in the Request for Proposals be modified and to consider the following changes. (Attachment B, Draft Minutes of the November 14, 2012, Parks and Recreation Commission Meeting)

Commission modifications proposed to RFP:

1. Remove mandate for non-summer open swim hours and leave to the discretion of the pool operator to best meet the needs of the community as they are at that time. (Page 16)
2. *Summer Schedule Requirements.* Six weeks is acceptable only if open swim is cancelled to offer swim meets for Sunnyvale Youth Swim Clubs that serve at least 60% residents. (Add the word "only.") (Page 15)
3. Add to definition of Swim Team – Program provider shall provide for a minimum of 8,000 lane hours for local youth swim teams of which all 'teams' shall have at least 60% resident members in their entire organization and either hold a Sunnyvale business license or a majority of board members are Sunnyvale residents. (Add the underlined words.) (Page 16)

Staff response to Commission recommendations:

1. Staff makes no recommendation.
2. Staff supports the recommendation.
3. Staff recommends keeping the language as is because it has been defined in Section 1.M. and 1.N. of the draft agreement. In the current draft agreement included in the RFP for the Operation of Swim Programs at Fremont High School Pool, Sections 1.M. and 1.N. define the requirements for a Sunnyvale-based group and business. The current definition requires a "Sunnyvale-based group" to consist of a minimum of 60% Sunnyvale residents and a board comprised of a minimum of 50% residents. "Sunnyvale-based business" is defined as a business with a presence in Sunnyvale and with a business license from the City of Sunnyvale.

Reviewed by:

Lisa G. Rosenblum Director, Department of Library and Community Services
Prepared by: Nancy Grove, Community Services Manager and
Nancy Bolgard Steward, Superintendent of Community Services

Approved by:

Gary M. Luebbers
City Manager

Attachments

A. Request for Proposals – Operation of Public Swim Programs at Fremont High School Pool.
B. Draft Minutes of the November 14, 2012, Parks and Recreation Commission Meeting

ATTACHMENT A

Request for Proposals
Operation of Public Swim Programs at Fremont High School Pool

ATTACHMENT A

CITY OF SUNNYVALE, CALIFORNIA

REQUEST FOR PROPOSALS
FOR THE
OPERATION OF PUBLIC SWIM PROGRAMS AT
FREMONT HIGH SCHOOL POOL
1279 SUNNYVALE-SARATOGA RD.
SUNNYVALE, CA

December 6, 2012

PROPOSALS DUE:

Friday, January 25, 2013 at 3:00 p.m.

To:
Nancy Grove
Community Services Manager
Department of Library and Community Services
PO Box 3707
Sunnyvale, CA 94088-3707
(May be hand delivered to City of Sunnyvale Community Center located at 550 East Remington Dr. Sunnyvale, CA 94088)

(408) 730-7363
ngrove@ci.sunnyvale.ca.us

PRE-PROPOSAL WALKTHROUGH:

Date and Time:	**Tuesday, January 15, 2013, 9:00 a.m.**
Location:	**Fremont High School Pool** **1279 Sunnyvale-Saratoga Road** **Sunnyvale, CA 94087**

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I. INTRODUCTION AND PURPOSE

The City of Sunnyvale is seeking proposals from qualified individuals or organizations interested in entering into an agreement to provide public swim programs at the Fremont High School 50-meter pool facility at 1279 Sunnyvale-Saratoga Road, Sunnyvale, California, commencing on September 1, 2013. By agreement, the pool use has been divided into City, School or shared use times. During the shared use times, the City of Sunnyvale has a designated number of lanes for use while the school uses the remainder of the pool. At all times, the City has a dedicated locker/shower/office building for exclusive use. The Fremont Union High School District is responsible for its school-related swim programs and for the maintenance of the pool (filtration, heating, vacuuming, equipment repair and replacement, etc.).

II. GOALS AND OBJECTIVES

The City of Sunnyvale is well known for excellence in customer service and fiscal responsibility. The City seeks a swimming program operator who shares these core values and who will incorporate them into the public swim programs at the Fremont High School Pool. The City's specific objectives in selecting a swimming program operator are noted below:

A. To enter into a business relationship with an effective entity to operate the Fremont High School public swim programs. (The City prefers to enter into a license agreement with a single provider.)

B. To provide a safe, cheerful, wholesome, comfortable and service-friendly atmosphere in which patrons can enjoy a wide variety of swimming activities.

C. To ensure provision of quality swim programs and services in the following order of priority:

1. Adult lap swimming (see Attachment A - Schedule Requirements);
2. Other adult swim programs (potentially a Masters or other competitive program, classes, water exercise, etc.);
3. Recreation or Family Swim (see Attachment A – Schedule Requirements);
4. Other youth or community activities (lessons, competitive swimming, etc.

D. To establish an equitable, fair and just level of financial return to the City.

E. To establish appropriate staffing levels, qualifications and responsibilities to ensure the provision of safe, quality programs.

III. BACKGROUND

A. **City of Sunnyvale Recreation Services and History –** For a number of years, the Sunnyvale Department of Library and Community Services has provided a diverse and extensive variety of swim programs to the public. The City operates swim programs at Washington Park, Columbia Middle School and Sunnyvale Middle School pools.

In July 2000, the City entered into a 25-year agreement with the School District for the construction and operation of a 50-meter pool at Fremont High School. The pool opened to the public in June, 2001, and has been operated under a license agreement with California Sports Center since that time.

B. **Swim Pool Facility** – The Fremont High School swim facility is located at Fremont High School. The 50-meter pool is located between the main gymnasium and the school locker rooms (see Attachment C, Exhibit A). The pool has eight (8) lanes of 50 meters and twenty-three (23) cross pool lanes of 25 yards. Two (2) of the 25-yard lanes extend into a small shallow "L" section at one end (see Attachment C, Exhibit A) and are not usable for lap or competition swimming. The pool also has two (2) 1-meter diving boards and one (1) 3-meter diving board. School district personnel maintain the pool facility.

C. **Pool Building** - There is a separate 2,800 square foot building (approximate size) exclusively for the use of the City and/or the City's licensed swimming program operator. Inside the building, located at the north end of the pool, are locker rooms, user group offices, a lifeguard control room, a training/teaching room and storage rooms (see Attachment C, Exhibit A). This building is referred to as "the Bathhouse" in Attachment C - City-District Agreement.

D. **Hours of Use** – The pool facility is available for use daily from 5 a.m. through 10 p.m. The City will have at least partial use of the pool during all these hours. The City-District agreement outlines the exact number of pool lanes for City and School District use throughout the year and establishes an annual review of the use schedule between the City and the School District (see Exhibit C of Attachment C - City-District Agreement).

E. **Swim Pool Equipment** - Lane lines, pool blankets, reels, starting blocks, diving boards, and H/C lift are available and will be replaced, when necessary, jointly by the school district and City (per Attachment C - City-District Agreement). With the permission of the City, other equipment may be used and/or stored at the facility by the licensee.

F. **Issues To Be Considered by Proposer During Proposal Preparation**

1. **Parking** –City's agreement with the School District requires that thirty-five (35) reserved parking spaces be designated for pool use only and for the School District to provide exclusive use of these reserved spaced from 5 a.m. to 5 p.m. during school days only. During non-school days and off hours, parking will be on a "first come, first served" basis; and there are many activities on the campus, including after school student programs and functions, adult education classes, high school and City sports programs, etc.

2. **Joint Use** – The pool is a joint use facility with some exclusive use and some joint use time periods. The City–District agreement allows fifteen (15) occurrences (with various time requirements for notification) during which the school district will have priority and/or exclusive use (see Attachment C - City-District Agreement, pages 8 and 9). This priority and/or exclusive use will be reiterated in any license agreement between the City and the successful proposer. Clear and concise communication and coordination between the Licensee, School District and City will be essential.

3. **Limited Use** – The City and School District have agreed that the use of SCUBA equipment will not be permitted in the pool. The use of any watercraft (row boats, canoes, kayaks, etc.) is also restricted and may only be used in the pool by special written permission from the City. This restriction will also be included in any license

agreement between the City and the successful proposer. The City also retains the rights to utilize any of the City's swim pool use time not specifically identified for use by the licensee.

4. All facilities including pool and pool building should be considered to be provided to a future operator in an "as-is" condition.

IV. INSTRUCTIONS, SELECTION PROCESS AND KEY DATES

A. **Submission of Proposals** - Proposers shall submit proposal on a CD, other electronic media or an original documents plus five (5) copies. Proposals shall be submitted in a sealed envelope, clearly marked "Request for Proposals for Operation of Public Swim programs at Fremont High School Pool" no later than Friday, January 25, 2013, at 3 p.m. to Nancy Grove, Community Services Manager, Department of Library and Community Services, P.O. Box 3707, Sunnyvale, CA 94088-3707 (mailed) or to 550 East Remington Dr., Sunnyvale, CA (hand-delivered).

B. **Pre-Proposal Walkthrough** – A pre-proposal walkthrough of the Fremont High School pool facility located at 1279 Sunnyvale-Saratoga Road, Sunnyvale, California, will be held on Tuesday, January 15, 2013, at 9 a.m. ***Attendance is mandatory.*** The purpose of the walkthrough is to discuss City objectives, to allow proposers to examine the facility, to answer proposer questions, and/or to clarify the City's requirements, if necessary. Written addenda may be issued to all prospective proposers if deemed appropriate and necessary by the City. Those who wish to participate in the walkthrough should meet at the pool site entry promptly at 9 a.m. If you do not attend the pre-proposal walkthrough, your proposal cannot be accepted or considered.

The City shall presume that any proposer who submits a proposal is thoroughly familiar with all specifications and requirements of the Request for Proposals (RFP). The failure or omission to examine any form, instrument or document or to examine the existing facility and/or equipment and furnishings shall in no way relieve the proposer from any obligation in respect to the proposal.

C. **Proposal Preparation** – The proposal should clearly describe proposer's expertise and experience in the provision of public swim programs and services. The proposal must closely adhere to the requirements of this RFP and must be presented in the established format. Failure to comply with RFP requirements may result in rejection of a proposal.

D. **Questions about Proposal Procedures or Specifications** – Questions regarding the specifications or proposal procedures, etc., should be addressed to Nancy Grove, Community Services Manager, at (408) 730-7363. All information provided in the Request for Proposals and its supporting documents is based on information from a variety of sources. No representation or warranty is made with respect thereto. Additional feasibility and marketing studies, etc., are the responsibility of the proposer.

E. **Late Proposals** – Any proposal received after the proposal deadline cannot be considered.

F. **Rights Reserved by the City** – The City reserves the right to:

1. Postpone the date and time announced for receipt of proposals by issuance of an Addendum at any time prior to the deadline for receipt of proposals;
3. Make such investigations as deemed necessary to determine the ability of proposer to perform the specified services;
4. Reject any proposal if the evidence submitted by or investigation of the proposer or City's past experience with proposer under another contract fails to satisfy the City that the proposer is properly qualified to successfully perform the obligations of the license;
5. Reject any or all proposals;
6. Determine the proposal(s) most advantageous to the City;
7. Consider proposals for a period of one-hundred eighty (180) days following the deadline for receipt of proposals before deciding which proposal, if any, to accept.
8. Reject proposals and operate the Fremont High School Swim Pool with City staff, if following the consideration of all proposals that is determined to be the most advantageous to the City.

G. **Modification or Withdrawal of Proposals** - After Date and Time for Receipt of Proposals - A proposer alleging a mistake in a proposal may be permitted to withdraw its proposal if the proposer alleges that the mistake made proposal pricing materially different than intended, provided that the proposer gives written notice of the mistake and the manner in which it occurred to Nancy Grove, Community Services Manager, within five (5) calendar days following the deadline for receipt of proposals and Nancy Grove, Community Services Manager deems it to be in the best interest of the City.

H. **Cost of Proposal Preparation** – The City of Sunnyvale will not pay costs incurred by the proposer in proposal preparation. All such costs shall be borne by the proposer. All submitted materials shall become the property of the City of Sunnyvale.

I. **Proposal Evaluation and Award** – This is a Request for Proposals for qualified proposers with expertise and experience in the provision of public swim programs. A review board composed of City staff will evaluate written proposals. Scoring by the review board will identify the proposer most likely to meet the City's needs.

J. **Evaluation Criteria**

- Proposer background information and length working in aquatic industry
- Proposed swim programs or service and proposed staffing
- Proposal for use and/or remodel of pool building and facility
- Proposal for replacement of equipment and furnishings
- Safety Plan
- Start up strategy (if appropriate)
- Financial return to the City (amount throughout the license agreement term)
- Yearly Operations Summary (clarity and completeness of business plan and whether plan is realistic) See attachment B.
- Documentation of Financial Responsibility (completeness of financial statements as requested and whether proposer is capable of supporting future obligations)

- Proposed License Term
- Overall quality of the proposal
- Quality of reference checks

Proposers may be required to make an oral presentation before the City review board at a City site.

The evaluation process will conclude with City's identification of the proposer whose proposal is most likely to meet the City's needs. Proposals that go beyond basic specifications for minimum number of program hours will receive higher consideration than those meeting basic specifications listed in Attachment A. License negotiations will closely follow.

Should license negotiations fail to conclude with an agreement acceptable to both parties, the City will release, at its own discretion, the first considered proposer and begin negotiations with subsequent candidate(s). City Council retains the final authority to approve any license agreement. Until the license agreement is executed, the City retains its rights to reject any and all proposals.

All proposals shall be made public once a successful proposal is selected and proposers are notified (with the exception of financial disclosers required in Section VI – Documentation of Financial Responsibility).

KEY DATES

Issuance of RFP	December 6, 2012
Mandatory Pre-proposal Walkthrough	January 15, 2013
Proposals due to the City	January 25, 2013
City Reviews Proposals	January 28-February 8, 2013
City interviews short list of Proposers	February 2013
Parks and Recreation Commission reviews proposal(s)	April 2013
City Council reviews proposal(s)	April 2013
License Agreement negotiations begin	May 2013
City Council considers final Agreement	June 2013
Successful Proposer begins operation of Pool	September 2013

K. **Non-Collusion Certification** – By submitting a proposal, the proposer is certifying that he/she has not directly or indirectly been collusive with any other proposer in the preparation and submission of the proposal. If at any time it shall be found that the person, firm or corporation engaged in collusive activity, the person, firm or corporation shall be liable to the City for all loss or damage which the City may suffer as the result of the collusive activity, including but not limited to, the cost of advertising and awarding a replacement license for the service. This does not restrict the ability to collaborate with other individuals or groups to submit a joint proposal.

L. **License Documents** - The license documents will consist of this Request for Proposals; its attachment(s), if any; the successful proposer's signed proposal; and a license agreement executed by the parties.

V. LICENSE ELEMENTS

The elements and terms of the license agreement will be negotiated between the City and the successful proposer. The City has entered into several license agreements in past years. Each agreement is unique and contains terms and conditions, consideration, and obligations which are specific to the licensed activity and designed to provide a fair distribution of revenue and responsibilities between the parties. Each license agreement is negotiated in confidence but becomes a public document once executed.

While each license is unique, all contain certain elements which are standard requirements of the City. These requirements are described in this section and should be considered by proposers when completing their estimates of business operating expenses for submission with the proposal.

A. Indemnification and Insurance - The following paragraphs are typical of those included in all City of Sunnyvale license agreements:

1. Indemnification

Licensee shall indemnify, defend, and hold harmless the City and Fremont Union High School District, their officers, employees, and agents from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to any person or property, loss, damage and liability occasioned by, growing out of or arising out of, or resulting from any act or omission on the part of licensee, its agents, or employees, or arising from the use of any improvements thereon or therein by any person or persons, or arising out of the operation or maintenance or dangerous or defective condition of the portions of the Fremont High School swim pool facility occupied or used by licensee, or any structure, facility or thing erected or placed thereon or therein

2. Insurance

At a minimum, Licensee shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the Nancy Grove, Community Services Manager, Department of Library and Community Services, P.O. Box 3707, Sunnyvale, CA 94088-3707 (mailed), to 550 East Remington Dr., Sunnyvale, CA (hand-delivered), (408) 730-7757 (fax) or ngrove@ci.sunnyvale.ca.us (email).

Licensee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Licensee, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance Licensee shall maintain limits no less than:

1. **Commercial General Liability**: $5,000,000 per occurrence and $10,000,000 annual aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 is required.

2. **Automobile Liability**: $1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.

3. **Workers' Compensation:** Statutory Limits and **Employer's Liability**: $1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The licensee shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain or be endorsed to contain the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.

2. For any claims related to this project, the Licensee's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.

4. The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

Licensee shall be solely responsible for insuring (if desired and at its own cost and expense) any furnishings, fixtures, equipment, merchandise and supplies provided under the terms of the license agreement against loss or damage from fire, theft, or any other cause.

B. Utilities and Maintenance

1. The charges for water, gas, electricity, chemicals, garbage, sewer and repairs for operation of the pool and cleaning of the pool/deck will be paid by the District who will, in turn, charge the City for one-half of all such costs.

2. All charges for gas, electricity, garbage and maintenance of the interior of the City's pool building will be paid by the licensee.

3. Licensee shall be responsible for installing and removing pool blankets as prescribed in the joint use agreement and for paying any penalties for failure to discharge those duties (see Attachment C - City-District Agreement, page 7).

4. Licensee shall be responsible for:

   a. Telephone and data costs.

   b. Cost for replacement of lost keys or re-keying of locks at City's discretion.

   c. Furnishing and paying for janitorial services required during the day.

   d. Supplemental janitorial services for the pool building will be furnished and paid by licensee and shall include but not limited to the cleaning of windows (inside and outside), walls, doors and lockers (inside and outside).

   e. Keeping the portions of the pool building occupied by licensee in a clean and sanitary condition and reasonably free from rubbish at all times to the satisfaction of the City. (The City expressly reserves the right to inspect the facility at all times by and through its authorized representatives.)

   f. Training its staff on proper maintenance procedures for all City-District equipment used by licensee.

C. Financial and Service Level Reporting

1. Licensee shall report to the City, the number of individuals participating in the various aquatic programs and the times those programs are conducted. Reports for programs

occurring July 1 through December 31 will be due on or before January 15 and reports for programs occurring January 1 through June 30 will be due on or before July 15.

D. Compliance with Laws; Inspections

1. Licensee shall be in full compliance with the Sunnyvale Municipal Code and other ordinances of the City; all rules, regulations, and policies of the City; and all applicable laws of Santa Clara County, the State of California and the United States of America.

2. Within fifteen (15) days of occurrence, licensee shall provide to the City copies of any and all reports of inspections conducted by fire and/or health regulatory agencies, including any recommended and/or required actions contained in the reports.

E. Bonds and Insurance

The successful bidder shall furnish a performance bond in the amount of $172,000 and issued by an admitted surety insurer authorized to operate in the State of California. The only bond acceptable to the City shall be that included with the request for proposal documents (Attachment E). The successful bidder shall also maintain throughout performance of the work the insurance coverage specified in the contract (Attachment D).

F. Termination

1. City reserves the right to terminate any license granted as the result of this Request of Proposals under the following conditions:

    a. Licensee is in default of any payment due the City or in the performance of any duty or obligation contained in the license agreement and fails to correct such a default within fifteen (15) days of receipt of written notice from the City.

    b. Licensee fails to keep in full force and effect the policies of insurance or performance deposit required by the license agreement and fails to correct such a default within fifteen (15) days of receipt of written notice from the City.

2. Should either of the conditions stated above exist, the license agreement and all rights and privileges granted by the agreement shall immediately (without any demand or notice from the City, written or oral) cease and become void; and representatives of the City may immediately enter and take immediate and sole possession of the portions of the swim building occupied by licensee. Such an action shall not prejudice City's right to recover from licensee any payment due the City.

G. Payments; Considerations

1. The payment arrangement which will be considered by the City includes, but is not limited to, a fee paid to the City on a quarterly basis for rights to occupy and operate within the facility areas as licensed by the City or revenue sharing plan.

VI. DOCUMENTATION OF FINANCIAL RESPONSIBILITY

The City reserves the right to, and may ask for the following documentation from prospective proposers anytime in the review process.

1. Certified financial audits or copies of filed federal tax returns for the past three (3) years in separate envelopes delineating the corresponding year.
2. Letters of reference from a major bank or lending institution.
3. Representation that the proposer is not in default under any lease or purchase contract.
4. A statement describing any litigation in which the entity and principals have been involved during the past five years.
5. A statement regarding any past or current bankruptcies involving the entity, the principals, or any affiliates during the past seven years.

Financial information shall be kept confidential to the extent permitted by law. The City reserves the right to perform a background or credit check on any proposer or its principals. Additional information may also be requested.

VII. PROPOSAL FORMAT AND CONTENT

Proposals shall include the specific information identified below. To expedite review by the City, information must be presented in the following sequence and format by number.

A. Proposer Qualifications and Experience

1. Legal structure of entity submitting proposal; i.e., sole proprietor, partnership, corporation, etc. If a partnership or corporation, indicate the ownership, rights and roles of each member of the partnership or corporation. Preference will be given to a single proposal providing multiple programs or services. Single proposers, consisting of consortiums, joint ventures, or other partnership ventures, must clearly establish that all license negotiation responsibilities will rest solely with one individual, firm or legal entity.
2. All principals of entity submitting proposal and a contact person with contact address and phone number.
3. Provide at least three (3) business and personal references of all principals as well as for the proposing entity, if applicable.
4. Related experience of principals, including number of years, type of business, positions held, special training, certifications, level of authority, etc.
5. Verifiable track record of success in similar or related business operations. Provide the name and location of all existing operations and any operations managed in the past five years.
6. Evidence of financial ability to fulfill probable license commitments, including ability to provide equipment and furnishings.
7. Any additional information that will assist the City in evaluating the proposal.

B. Proposed Swim Program Services

Proposal shall include a detailed description of the proposed services, including, but not limited

to:

1. Whether the proposer proposes to meet the required swim schedule (see Attachment A - Schedule Requirements);
2. Intended use of various areas of the facility;
3. Type(s) of services or programs offered;
4. Qualifications of proposer's staff and the number of employees proposer will provide for each program or service;
5. Safety plan covering the various types of swim programs and activities included in this proposal;
6. Number of hours, lanes occupied and participants planned for each program or service;
7. Proposed fee schedule for programs or services and pricing for any sales items;
8. Type and extent of advertising and/or promotions (including City publications);
9. Involvement of principal(s)/owner(s) in operations;
10. Proposed license term, such as five years with an opportunity to extend in five year increments if both parties agree. (The City will consider any length of license term up to June 30, 2025.) All proposed terms shall begin on September 1, 2013.
11. Proposer's approach to scheduling. (The City encourages creativity.)
12. Other information, as necessary, to fully describe proposed services.

C. Swim Building Maintenance

The proposal shall specify who will perform routine maintenance of the interior portions of the City's swim building (see Attachment C, Exhibit A), including, but not limited to:

1. Cleaning, trash removal, stocking paper supplies, keeping all locks and fasteners in a state of repair, etc;
2. Repair and replacement of all windows within the portion of the building occupied by licensee that were not broken as the result of any act or neglect of licensee; and
3. Janitorial services and routine maintenance of the swim building and surrounding deck space (except those janitorial services identified as the responsibility of the licensee in Section V - License Elements, paragraph B (4) (and (d)).

D. Financial

1. Methodology for determining fees; proposed fee schedule for classes, drop in programs and instruction programs, and general pricing strategy.
2. Anticipated income and how registration and income will be verified and reported to the City for the operator and all teaching professionals and subcontractors.
3. Proposed license term, such as five years with an opportunity to extend in five year increments if both parties agree.
4. Proposal for proposed rent structure/revenue sharing plan.

E. Equipment and Furnishings

The proposal shall include a list of the existing equipment and furnishings that will be required for the proposed programs or services. The proposal shall also include a replacement

schedule for the existing equipment and furnishings due to normal wear and tear or for any other reason, including the source of equipment replacement capital. Proposal should include what, if any, additional equipment will be required and who will be responsible for purchasing, maintaining and replacing that equipment.

F. Yearly Operations Summary (Business Plan)

The proposal shall include a Yearly Operations Summary (completed Attachment B) for each year of the proposed term of the license. For example: If a five-year license is proposed, five Yearly Operations Summary Forms must be completed and submitted with the proposal. The proposed operations plan shall address and will be evaluated based upon:

- The Proposed Return to the City
- Budget Plan
- Financial Stability

G. Start Up Strategy

The proposal shall include a description of the proposed start up strategy and all related costs, including, but not limited to:

1. Required furnishings and floor coverings;
2. Required expendable equipment, including kick boards, pace clocks, pull buoys, etc.;
3. Supplies and materials required in the operation of services and programs;
4. Staffing level, including a resume of the person who will manage the operation, all required positions and number of staff in each position, qualifications, functions, and pay rates;
5. Proposed staff training.
6. Proposed marketing plan (including proposed City publications);
7. Proposed written revenue handling procedures and policies;
8. Proposed written safety procedures and policies; and
9. Other information, as necessary, to fully describe start up strategy.

H. Signature

The proposal must be signed by the proposer or an officer, partner or other representative duly authorized to sign such proposals on behalf of the proposer. If not signed by the proposer, a notarized resolution of the governing board of the entity establishing such authority to the signer must be attached.

INFORMATION DISCLAIMER:

The information contained herein is in summary form. It is believed to be accurate. However, no warranties are expressed or implied.

Attachment A

Schedule Requirements

Lap Swim - The City of Sunnyvale is interested in ensuring the provision of unstructured adult lap swimming opportunities. To accomplish this goal, the contract operator of public swim times at the Fremont High School 50-meter swimming pool shall include, as a minimum requirement, the following amount of lap swimming lanes and times. These times and lane numbers must be maintained for unstructured adult lap swimmers and may not be used for other programs or activities such as Masters Swimming, swim instruction, coaching, etc. Additional lanes may be designated for lap swimming at the program provider's discretion, based upon observed need.

Minimum Adult Lap Swim Times	Minimum Number of 25-Yard Lanes
Monday – Friday	
6:00 a.m. – 8:00 a.m.	4 lanes
11:30 a.m. – 1:30 p.m.	4 lanes
6:00 p.m. – 8:00 p.m.	6 lanes
Saturday and Sunday	
8:00 a.m. – 11:00 a.m.	6 lanes

Masters Swim - Program Provider shall provide a minimum of 2,500 lane hours of instructional lessons per year.

Instructional Lessons - Program Provider shall provide a minimum of 7,000 lane hours of instructional lessons per year.

Open Swim - The City of Sunnyvale is interested in ensuring the provision of unstructured recreation or family swim opportunities. To accomplish this goal, the contract operator of public swim times at the Fremont High School 50-meter swimming pool shall include, as a minimum requirement, the following amount of recreation swim lanes and times. These times and lane numbers must be maintained for unstructured recreation swim and may not be used for other programs or activities.

Summer Schedule Requirements - The total "open swim" lane hours per summer shall be at minimum between 2004 and 2672 for seven days a week for a minimum of six to eight weeks. Six weeks is acceptable if open swim is cancelled to offer swim meets for Sunnyvale Youth Swim Clubs that serve at least 60% residents.

Minimum Days	Minimum Hours	Minimum Lanes (25-yard)	Minimum Total Lane Hrs. Required
Monday – Friday	2 hrs/day/mid-afternoon	23 lanes	1380-1840
Saturday/Sunday	4 hrs/day/1:00-5:00pm	13 lanes	624-832

Non-summer months (September through May) Requirements - Program provider shall provide at least 544 lane hours of “open swim” over a minimum of 34 weeks each year on Saturdays and Sundays.

Minimum Days	Minimum Hours	Minimum Lanes (25-yard)	Minimum Total Lane Hrs. Required
Saturday - Sunday	2 hrs/day/1:30-3:30pm	4 lanes	544

The public swim program schedule will be reviewed on a regular basis and may, upon mutual agreement between City and contract operator, be revised.

Swim Team - Program provider shall provide for a minimum of 8,000 lane hours for local youth swim teams of which all ‘teams’ shall have at least 60% resident members in their entire organization.

Attachment B

Yearly Operations Business Plan Summary
For Operation of Public Swim programs at Fremont High School Pool

Business Plan for Year ___ of a _____-year agreement.

Gross Revenues:	
Activity Fees	**$**
Rentals	**$**
Miscellaneous Sales/Services	**$**
Year _____ Total Gross Revenues	**$**
Gross Operating Expenses:	
Labor/Management	**$**
Office Supplies	**$**
Expendable Equipment	**$**
General Supplies	**$**
Maintenance/Repairs	**$**
Insurances and Misc. Expenses (taxes, interest, etc.)	**$**
Marketing/Publicity	**$**
Return to City (rent, %, etc.)	**$**
Year _____ Total Gross Operating Expenses	**$**
Year _____ Net Operator Profit or (Loss)	**$**
Debt Retirement:	
Year _____ Total Debt Retirement	**$**

ORIGINAL

Attachment C

AGREEMENT BETWEEN CITY OF SUNNYVALE AND FREMONT UNION HIGH SCHOOL DISTRICT FOR THE DEVELOPMENT AND OPERATION OF A 50 METER SWIMMING POOL AND RELATED FACILITIES AT FREMONT HIGH SCHOOL

THIS AGREEMENT, made and entered into this 18th day of July, 2000, by and between CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "CITY", and FREMONT UNION HIGH SCHOOL DISTRICT OF SANTA CLARA COUNTY, herein called "DISTRICT";

W I T N E S E T H:

WHEREAS, Section 10900 et. seq. of the Education Code authorizes cities and school districts to organize, promote and conduct programs of community recreation; to establish systems of playgrounds and recreation; and to acquire, construct, improve, maintain and operate recreation centers, including but not limited to such facilities as playgrounds, outdoor playing fields or courts, swimming pools and gymnasiums; and

WHEREAS, Section 10905 of the Education Code authorizes public agencies to enter into agreements with each other for the maintenance of recreation centers; and

WHEREAS, Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of any of the buildings or grounds of the school district to any other public authority for the organizing, promoting and conducting of community recreation whenever such use will not interfere with the use of such facilities for any other purpose of the public school system; and

WHEREAS, the parties desire to provide to provide for the construction, funding, operation and maintenance of a 50-meter outdoor swimming pool in place of the existing 25-yard swimming pool, and of locker and shower facilities to serve the general public of CITY and the students of DISTRICT within Fremont Union High School ("the Campus").

NOW, THEREFORE, the parties agree as follows:

SECTION 1. DISTRICT TO PREPARE CONSTRUCTION PLANS AND SPECIFICATIONS; RESPONSIBILITY FOR PROJECT.

(a) Not later than December 31, 2000, DISTRICT shall cause to be prepared at its expense construction plans and specifications for a project (the "Project") consisting of the following: construction of a 50-meter (m) by 25 yard (y) outdoor swimming pool ("the Pool") on the Campus; removal of the existing outdoor swimming pools from the Campus; and construction of one (1) separate building on the Campus adjacent to the new outdoor swimming Pool to provide locker and shower facilities for the general public ("the Bathhouse").

(b) DISTRICT shall submit the plans and specifications to CITY for review and approval before their final acceptance. The plans and specifications shall be consistent with the Conceptual Plan for the Project, attached hereto and incorporated herein by this reference as Exhibit "A".

(c) DISTRICT shall have the following responsibilities regarding the Project:

1. Obtaining of approval of the plans and specifications by the Office of Regulatory Services, Division of the State Architect;

2. Preparation of working drawing and plans and specifications for the construction of the Project;
3. Compliance with the California Environmental Quality Act and regulations promulgated thereunder;
4. Legal advertisements to the public and to qualified bidders;
5. Conducting and administering the bidding process for construction;
6. Awarding the construction contract;
7. Supervision and administration of construction;
8. Payment of amounts due to the architect, the contractor and other persons providing services;
9. Administration and resolution of any claims or disputes in connection with the design and construction of the Project;
10. Acquisition of equipment and furnishings to be used in or at the facilities housing the Project.

(d) Construction of the Project shall be completed not later than June 30, 2002.

(e) Before approving any change order in excess of $5,000.00 and before making any substantive changes in the plans and specifications during construction, DISTRICT will notify CITY at least five (5) days in advance to allow CITY review, unless such change is required to correct an emergency situation.

(f) DISTRICT shall keep CITY advised of the progress of the Project on a regular basis.

(g) For purposes of this Agreement, amounts expended for the purposes enumerated above within this section and following within this subparagraph (g) are designated as "Project improvement costs":

1. The cost of construction of the Project.
2. The cost of installation of separate metering to the Pool and to the Bathhouse pursuant to Sections 3(d) and 3(e) of this Agreement.
3. The cost of installation of Pool blankets and lane lines, and placement of such blankets atop the Pool to prevent heat loss pursuant to Section 3(g) of this Agreement.

SECTION 2. PROJECT IMPROVEMENT COSTS; RESPONSIBILITY; OWNERSHIP

(a) DISTRICT shall pay fifty-one percent (51%), and CITY shall pay forty-nine percent (49%) of the total Project improvement costs. The agreed upon percentage is based upon a comparison of the estimated cost for a new 30m by 25y pool without a bathhouse and a new 50m by 25y pool with a bathhouse as set forth in Exhibit "B", attached hereto and incorporated herein by this reference.

(b) The three hundred and fifty thousand dollars allocated on a one-time basis to the Fremont Union High School District for a swimming pool at Fremont High School by the Governor on July 5, 2000 via Senate Bill No. 1667 (Chap. 71, 2000 Stats.) shall be credited toward the City's share of costs under this section, as shall any interest which accrues to that three hundred and fifty

thousand dollars.

(c) DISTRICT shall be responsible for direct payment of all Project improvement costs to the architect, contractor and other persons providing services with respect to the Project improvement.

(d) At the end of each calendar quarter DISTRICT shall submit invoices to CITY for the latter's prorata share of Project improvement costs incurred up to that time for which CITY has not previously reimbursed DISTRICT. CITY shall reimburse DISTRICT not later than thirty (30) days from date of invoice.

(e) Ownership of all improvements to the Campus resulting from the Project shall vest in DISTRICT.

SECTION 3. OPERATION, MAINTENANCE, REPAIRS AND UTILITIES: SWIMMING POOL AND BUILDINGS.

(a) Prior to completion of the Project, DISTRICT shall be responsible for all maintenance and utilities on and serving the Campus, and payment therefor. The following provisions of this Section shall apply after completion of the Project.

(b) CITY shall be solely responsible for the cost of all operations, maintenance and repair of the Bathhouse, including custodial service, cleaning and repairs to, or replacement of, all components. Unless mutually agreed upon by CITY and DISTRICT, all work related to this subsection shall be completed by CITY with the consent of DISTRICT.

(c) DISTRICT shall be solely responsible for the cost of all operations, maintenance and repair of the building housing the locker and shower room facilities open to the students of DISTRICT, including custodial service, cleaning

and repairs to, or replacement of, all components. DISTRICT shall also be responsible for water, gas, electrical, telephone, garbage and sewer service thereto.

(d) DISTRICT shall arrange for separate metering and billing of water, gas, telephone and electrical service for the Bathhouse. CITY shall be responsible for, and make direct payment to the provider(s) of such separately metered or billed services. CITY shall also be responsible for, and make direct payment to, the provider(s) of garbage and sewer service thereto.

(e) DISTRICT shall arrange for separate metering and billing of water, gas, telephone and electrical service for the Pool. DISTRICT shall be responsible for all maintenance of the Pool facility, Pool tanks, Pool deck, Pool blankets/lane lines, Pool water, mechanical room and systems and adjacent outdoor areas, including custodial service, cleaning and repairs. Such maintenance shall be in accordance with applicable state, county and DISTRICT laws, regulations and standards for operation and maintenance of public swimming Pools. DISTRICT shall also be responsible for water, gas, electrical, telephone, garbage and sewer service thereto. DISTRICT shall maintain detailed records of the costs incurred for maintenance and utilities pursuant to this subsection. CITY shall reimburse DISTRICT for half (50%) of such costs for each half (1/2) a calendar year. At the end of each half (1/2) of a calendar year DISTRICT shall submit invoices to CITY for the latter's share of these costs, and CITY shall reimburse DISTRICT for its share of such costs not later than thirty (30) days from date of invoice.

(f) Unless mutually agreed upon by the parties, DISTRICT shall

maintain the temperature in the water of the Pool between 78 and 82 degrees. Only DISTRICT staff shall be permitted to adjust the water temperature.

(g) DISTRICT shall be responsible for purchasing Pool blankets and lane lines and for placement of such blankets atop the Pool to prevent heat loss. It is understood that CITY will remove such blankets during its use of the Pool and will replace them after such use is completed. If CITY fails to replace the Pool blankets after CITY use, CITY shall pay DISTRICT a fifty dollar ($50.00) penalty for each such incident, provided that DISTRICT furnish CITY with the specific time, name of scheduled user group (if known), and names of any witnesses within one (1) week of any such incident.

SECTION 4. EMERGENCIES.

In the event of an emergency or an imminent safety hazard, including, without limitation, earthquakes, fires, flooding, or other similar events, DISTRICT may perform non-scheduled repair or maintenance work at the Project without prior notification of CITY. DISTRICT shall notify CITY of such emergency work within a reasonable time.

SECTION 5. MODIFICATIONS TO PROJECT; INTERFERENCE WITH INTENDED USE.

There shall be no additional development or physical changes to the Project without the joint written consent of DISTRICT and CITY. Such consent shall not be unreasonably withheld. After completion of the Project, nothing

shall be done by either DISTRICT or CITY or be authorized by them to be done by a third party that would interfere with the intended use of the Project.

SECTION 6. POOL USE AND STAFFING.

(a) The Pool may be open from 5:00 a.m. to 10:00 p.m. every day, except during times of closure due to maintenance and repairs, or as modified by agreement of the parties.

(b) Use of the Pool shall be governed by the schedule set forth in Exhibit "C", attached hereto and incorporated herein by this reference. At least annually, the Director of Parks and Recreation of CITY and the Superintendent of DISTRICT, or their designees, shall meet to discuss the Schedule and any desired adjustments. The Schedule shall be subject to adjustment upon the written approval of the Superintendent and the Director.

(c) 1. With at least ninety (90) days written notice to CITY, DISTRICT shall also have priority use of the Pool for weekday interscholastic competitions that might extend past 6:00 p.m. There shall be no more than five (5) days of use for such competitions per calendar year.

2. With at least seven (7) days written notice to CITY, DISTRICT shall have priority use of the Pool for weekday interscholastic competitions that might extend beyond 6:00 p.m. There shall be no more than five (5) days of use for such competitions per calendar year.

3. In case of interscholastic events that are rescheduled on weekdays for unavoidable reasons, or in the case of special games or competitions, such as playoff contests or league championships, DISTRICT will advise CITY as soon as it has notice of the events and DISTRICT use shall have priority. There will be no more than five (5) days of such use for unforeseen conditions per calendar year.

4. Other than the exceptions set forth above, DISTRICT practices and other activities shall not have priority after 6:00 p.m. on school days without the prior written approval of CITY.

(d) CITY shall be responsible for supervision of all CITY operated programs at the Pool. It is understood that CITY building maintenance workers, supervisors, instructors, coaches, lifeguards and contractors are employees or contractors of CITY, and that DISTRICT does not provide liability or worker's compensation insurance or benefits for any such employees and contractors.

(e) DISTRICT shall be responsible for supervision of all DISTRICT operated programs at the Pool. It is understood that DISTRICT building maintenance workers, supervisors, instructors, coaches, lifeguards and contractors are employees or contractors of DISTRICT, and that CITY does not provide liability or worker's compensation insurance or benefits for any such employees and contractors.

SECTION 7. PARKING ON CAMPUS.

(a) DISTRICT shall reserve thirty-five (35) parking spaces at the Campus for exclusive use of community users between 5:00 a.m. and 5:00 p.m. on school days only.

(b) When school is not in session, the general public can use other spaces at the Campus for parking on a first-come-first-serve basis.

SECTION 8. REPRESENTATIVES OF THE PARTIES

(a) The Director of Parks and Receation or designee shall represent CITY in all matters pertaining to the administration of this Agreement. All requirements of CITY pertaining to the Project and facilities created thereby shall be coordinated through the CITY representative.

(b) The Superintendent or designee shall represent DISTRICT in all matters pertaining to the administration of this Agreement. All requirements of DISTRICT pertaining to the Project and facilities created thereby shall be coordinated through the DISTRICT representative.

SECTION 9. DUTY OF PARTIES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS.

(a) To the fullest extent permitted by California law, CITY shall indemnify, defend and hold harmless DISTRICT, its trustees, officers, employees, elected officials, agents, representatives, consultants and volunteers from any and all claims, suits, losses, damages, liability, costs, expenses and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the

performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the City in conjunction with the performance of this Agreement, or the use or occupancy of the Pool, the Bathhouse or the surrounding area, including the following:

1. Use of the Pool and/or the Bathhouse by the general public while under the control or with the consent of the CITY; and
2. Compliance with all applicable local, state and federal laws and regulations.

CITY shall not be responsible for any loss due to the sole negligence or willful misconduct of the DISTRICT, its agents, employees or contractors.

(b) To the fullest extent permitted by California law, DISTRICT shall indemnify, defend and hold harmless CITY, its trustees, officers, employees, elected officials, agents representatives, consultants, and volunteers from any and all claims, suits, losses, damages, liability, costs, expenses and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, connected with, or resulting from the performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the DISTRICT in conjunction with the performance of this Agreement, or the use or occupancy of the Pool, the Bathhouse or the surrounding area, including the following:

1. Use of the Pool and/or the Bathhouse by the general public while under the control or with the consent of the DISTRICT; and

2. Compliance with all applicable local, state and federal laws and regulations.

DISTRICT shall not be responsible for any loss due to the sole negligence or willful misconduct of the CITY, its agents, employees or contractors.

SECTION 10. INSURANCE.

(a) DISTRICT represents to CITY that DISTRICT is legally self-insured for its public liability and property damage risk for ten million dollars ($10,000,000), and maintains qualified claims investigators for the purpose of administering its self-insured claims. DISTRICT's self-insurance shall protect against loss from liability imposed by law for damages to property or on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons, resulting directly or indirectly from any act or activities of DISTRICT on the Campus or any person acting for DISTRICT or under DISTRICT's control or direction on the Campus. Such public liability and property damage self-insurance shall be maintained in full force and effect during the entire term of this Agreement, in the amount of no less than ten million dollars ($10,000,000), combined single limit liability. DISTRICT shall submit proof of coverage to the CITY on or before the commencement of this Agreement, indicating full coverage of the contractual liability imposed by this Agreement and stipulating that the insurance selected by DISTRICT shall not be subject to cancellation, any change in coverage, reduction in limits or nonrenewal, except after written notice to CITY by certified mail, return receipt requested, not less than thirty(30) days prior to the effective date thereof.

(b)) CITY represents to DISTRICT that CITY is legally self-insured for its public liability and property damage risk for five hundred thousand dollars ($500,000) and carries excess insurance for up to ten million dollars ($10,000,000), and maintains qualified claims investigators for the purpose of administering its self-insured claims. CITY's insurance shall protect against loss from liability imposed by law for damages to property or on account of bodily injury, including death therefrom, suffered or alleged to be suffered by any person or persons, resulting directly or indirectly from any act or activities of CITY on the Campus or any person acting for CITY or under CITY's control or direction on the Campus. Such public liability and property damage self-insurance shall be maintained in full force and effect during the entire term of this Agreement, in the amount of no less than five hundred thousand dollars ($500,000) and excess insurance for up to ten million dollars ($10,000,000), combined single limit liability. CITY shall submit proof of coverage to the DISTRICT on or before the commencement of this Agreement, indicating full coverage of the contractual liability imposed by this Agreement and stipulating that the insurance selected by CITY shall not be subject to cancellation, any change in coverage, reduction in limits or nonrenewal, except after written notice to DISTRICT by certified mail, return receipt requested, not less than thirty(30) days prior to the effective date thereof.

(c) Neither DISTRICT nor CITY shall use or permit the use of the Pool and/or the Bathhouse for any purpose other than those allowed by this Agreement. DISTRICT at its sole cost and expense shall secure compliance with

all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering the Pool, its buildings and appurtenances during DISTRICT's use. CITY at its sole cost and expense shall secure compliance with all insurance requirements necessary for the maintenance of reasonable fire and public liability insurance covering the Pool, the Bathhouse, their buildings and appurtenances during CITY's use.

(d) CITY and DISTRICT each certifies that it shall comply with and shall cause all parties using the Pool and/or the Bathhouse to comply with the workers compensation insurance requirements required by law, including California Labor Code section 3700.

SECTION 11. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

SECTION 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 either party which makes performance of any of its obligations under this Agreement impossible or extremely impracticable, such obligations shall be suspended during such time any such condition or conditions exist.

SECTION 13. DISCRIMINATION PROHIBITED. Neither CITY nor DISTRICT shall discriminate in the employment of persons engaged in the performance of this Agreement on account of race, color, national origin, ancestry, sex, disability,

sexual orientation, or medical condition, in violation of state or federal laws, or any other basis otherwise prohibited by state or federal law.

SECTION 14. NOTICES. All notices shall be given in writing and mailed, postage prepaid, by certified mail, addressed as follows:

To CITY	Director of Parks and Recreation City of Sunnyvale P.O. Box 3707 Sunnyvale, California 94088-3707
To DISTRICT	Chief Business Official Fremont Union High School District 589 W. Fremont Ave. Sunnyvale, California 94087

SECTION 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 that 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.

SECTION 16. LEGAL ACTIONS; ATTORNEY FEES.

(a) Any disputes 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.

(b) 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.

SECTION 17. INTEGRATED AGREEMENT. This document represents the entire and integrated Agreement between CITY and DISTRICT 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.

SECTION 18. AMENDMENT OF AGREEMENT. This Agreement may be amended only by written instrument, signed by both CITY and DISTRICT.

SECTION 19. ALL PROVISIONS OF AGREEMENT ARE CONDITIONS. All provisions of this Agreement are expressly made conditions.

SECTION 20. TERM OF AGREEMENT; TERMINATION; SURVIVAL OF OBLIGATIONS.

(a) This Agreement shall terminate on June 30, 2025 unless sooner terminated pursuant to this section.

(b) DISTRICT may terminate this Agreement upon written notice to CITY for any of the following reasons:

1. The failure of CITY to make any contribution toward Project improvement costs required pursuant to Section 2.
2. The failure of CITY to comply with its obligations pursuant to Section 3.

(c) CITY may terminate this Agreement upon written notice to DISTRICT for any of the following reasons:

1. The failure of DISTRICT to timely prepare plans and specifications for the Project pursuant to Section 1(a) of this Agreement.
2. The failure of DISTRICT to submit plans and specifications to CITY for review prior to their final acceptance pursuant to Section 1(b) of this Agreement.
3. The failure of DISTRICT to complete construction of the Project by June 30, 2002, except to the extent that completion is delayed for any factor enumerated in Section 11.
4. The failure of DISTRICT to comply with its obligations pursuant to Section 3.

(d) This Agreement may be terminated at any time prior to June 30, 2025, upon the mutual assent of the City Council of CITY and the Board of Trustees of DISTRICT.

(e) Termination of this Agreement after commencement of the operation of the Pool, locker and shower facilities shall have the following consequences:

1. CITY shall have no further responsibility for maintenance, cleaning or repairs of the Pool or related facilities, or for payment of utility costs, pursuant to Section 3 of this Agreement.
2. CITY shall be entitled to remove from the Campus any equipment, supplies or furnishings that are the property of

CITY, excepting only fixtures, which shall remain at the Campus.

(f) The obligation of each party pursuant to Section 9 to defend, indemnify and hold harmless the other party and its officers, agents and employees from any and all claims or causes of action that arose prior to such termination shall survive the termination of this Agreement.

SECTION 21. EFFECT OF NON-APPROPRIATION.

(a) CITY's funding of its obligations under this Agreement shall be on a fiscal year basis (July 1 to June 30) subject to annual appropriations. DISTRICT acknowledges that CITY has informed DISTRICT that CITY, a municipal corporation, is precluded by the California State Constitution and other laws from entering into obligations which financially bind future governing bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the CITY to appropriate funds for purposes of this Agreement. In the event that CITY fails to appropriate funding for the purposes set forth in this Agreement, the covenants for performance by DISTRICT shall be suspended for only the period of CITY's non-payment due to the failure to appropriate funding.

(b) DISTRICT's funding of its obligations under this Agreement shall be on a fiscal year basis (July 1 to June 30) subject to annual appropriations. CITY acknowledges that DISTRICT has informed CITY that DISTRICT, a California public school district, is precluded by the California State Constitution and other laws from entering into obligations which financially bind future governing

bodies, and that, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the DISTRICT to appropriate funds for purposes of this Agreement. In the event that DISTRICT fails to appropriate funding for the purposes set forth in this Agreement, the covenants for performance by CITY shall be suspended for only the period of DISTRICT's non-payment due to the failure to appropriate funding.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Agreement on the day and year first above written.

ATTEST:
City Clerk

By _____
Deputy City Clerk

CITY OF SUNNYVALE ("CITY")

_____
City Manager

FREMONT UNION HIGH SCHOOL DISTRICT ("DISTRICT")

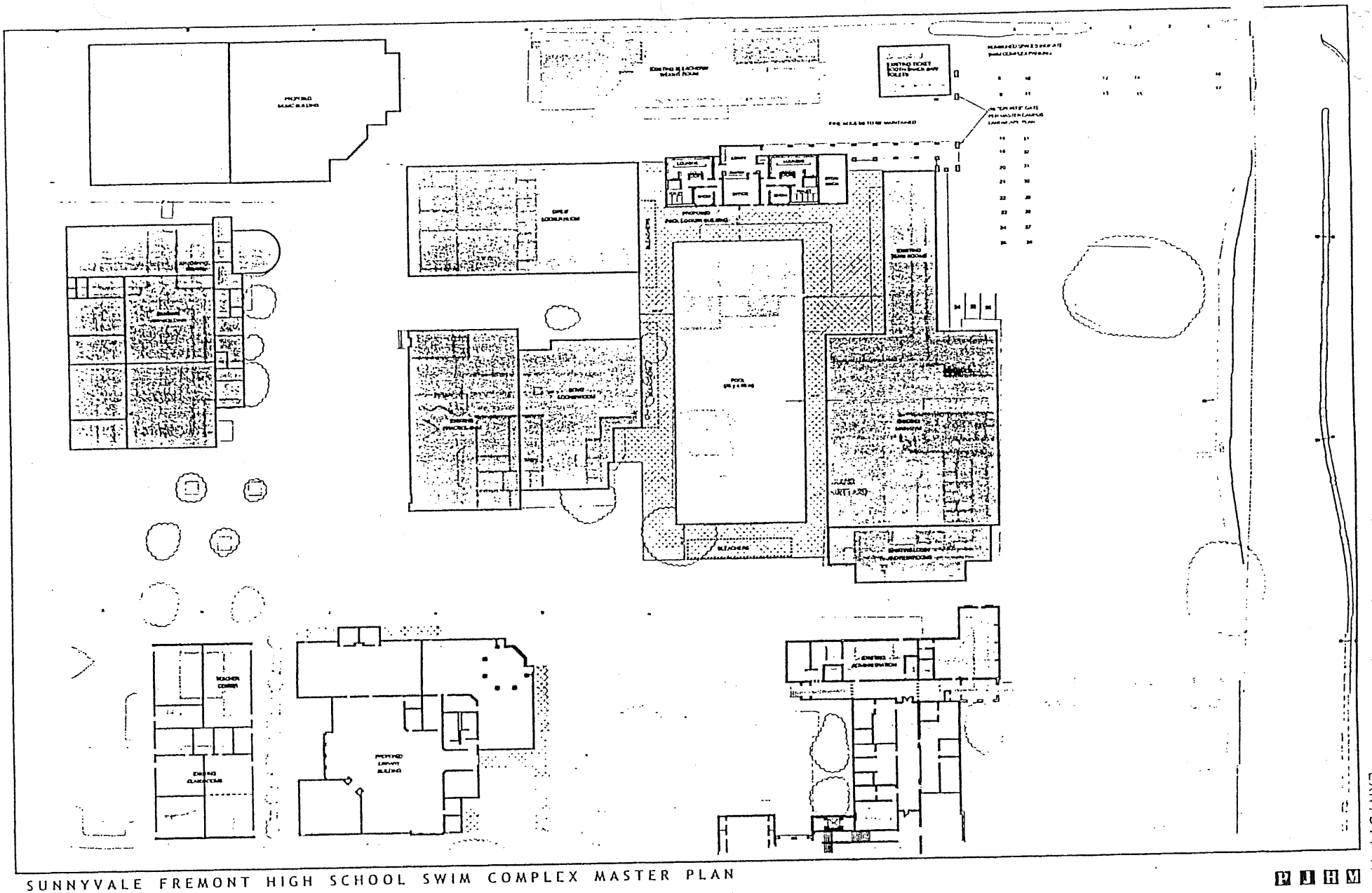
_____
Joe Hamilton, Secretary to the Board

APPROVED AS TO FORM:

_____
City Attorney

APPROVED AS TO FORM:

_____
Legal Counsel for DISTRICT



SUNNYVALE FREMONT HIGH SCHOOL SWIM COMPLEX MASTER PLAN

11 FEBRUARY, 2000

PJHM

Exhibit B

Proposed Fremont High School Swimming Pool Project

Estimated Construction Cost:

Pool Size	*Hard Cost	**Soft Cost	Total
30m x 25 y (No Bathhouse)	$1,223,143	$244,629	$1,467,772
50m x 25 y (With Bathhouse estimated to cost $469K plus soft costs)	$2,399,162	$479,832	$2,878,994

*Hard Costs: Construction Cost
**Soft Costs: Architectural, DSA, and Inspection Fees etc.

Estimated Annual Operating Cost:

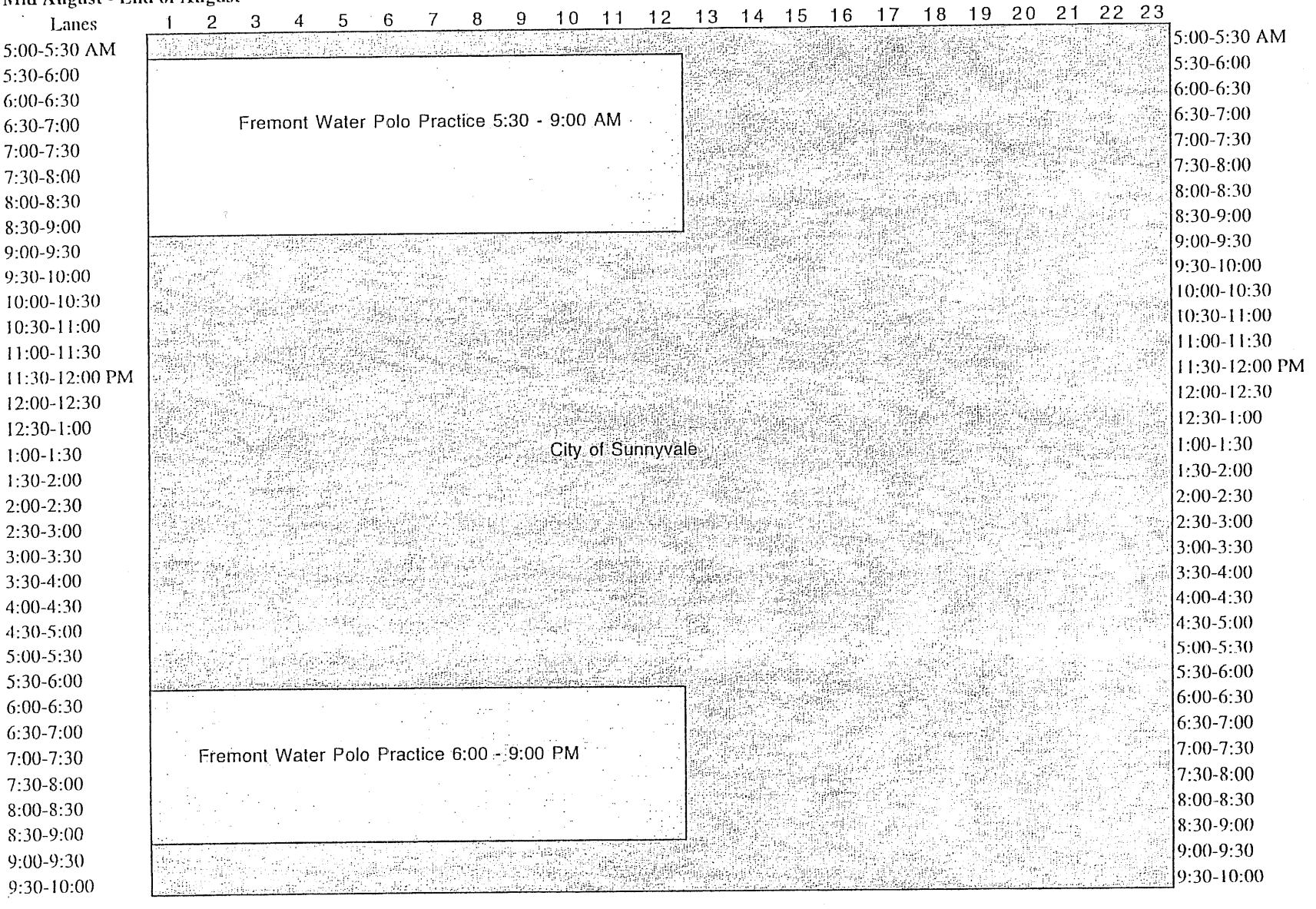
Pool Size	Water, Elect, Gas, Chemicals and Repairs	Labor for Cleaning and Maintenance	Total
30m x 25 y (No Bathhouse)	$104,000	$33,000	$137,000
50m x 25 y (With Bathhouse estimated to cost $469K plus soft costs)	$157,000	$50,000	$207,000

Exhibit C

Revised 2/17/00

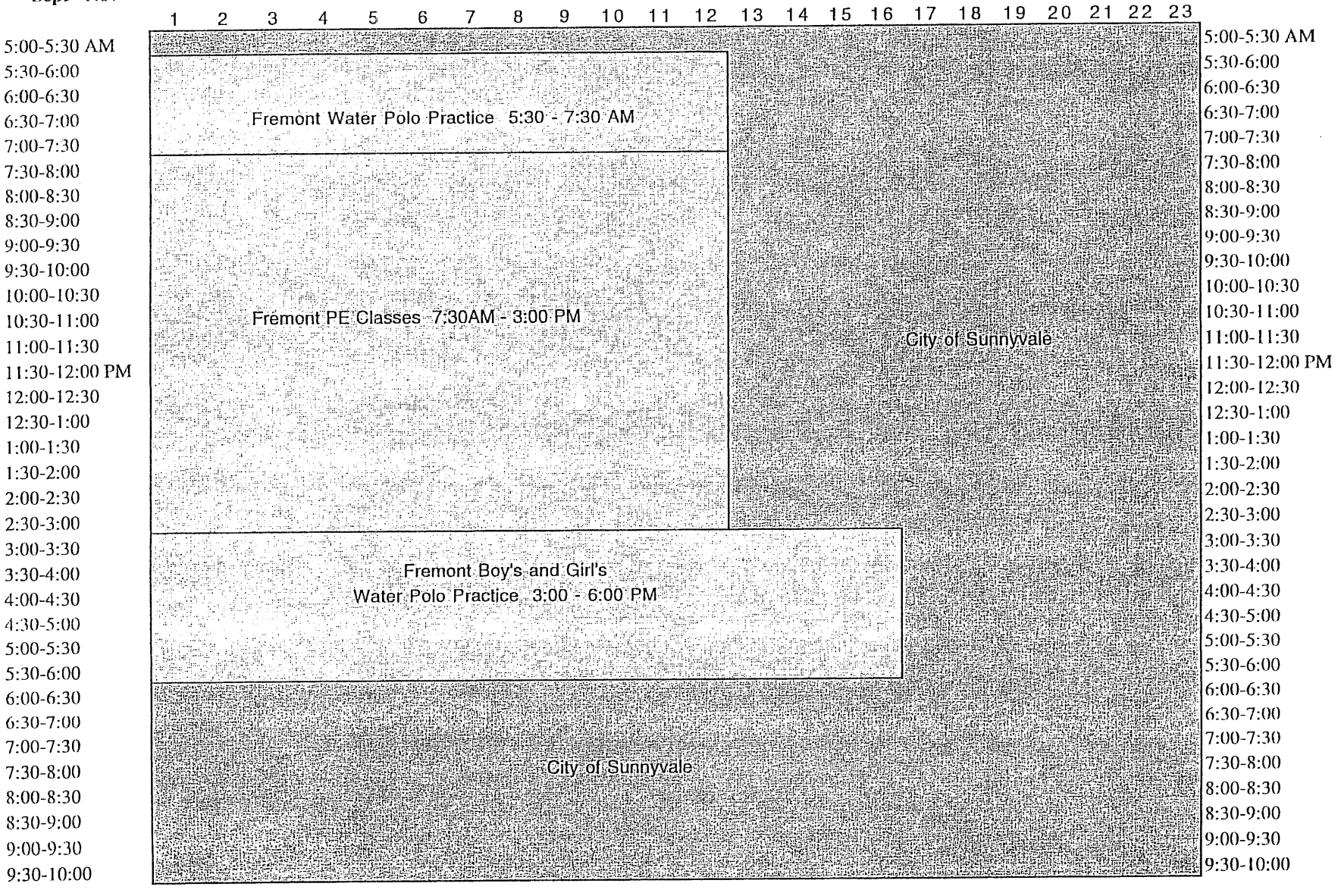
Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

Mid August - End of August



Revised 2/17/00
Sept - Nov

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)



Revised 2/17/00

Dec - Jan

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

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City of Sunnyvale

Revised 4/12/00

Feb - Mid June

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

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Revised 2/17/00

Mid June - Mid August

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

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City of Sunnyvale

Revised 2/17/00

Jan - Dec (entire year)

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

(Sundays Only)

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City of Sunnyvale

Revised 2/17/00

Dec - Mid August

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

(Saturdays Only)

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City of Sunnyvale

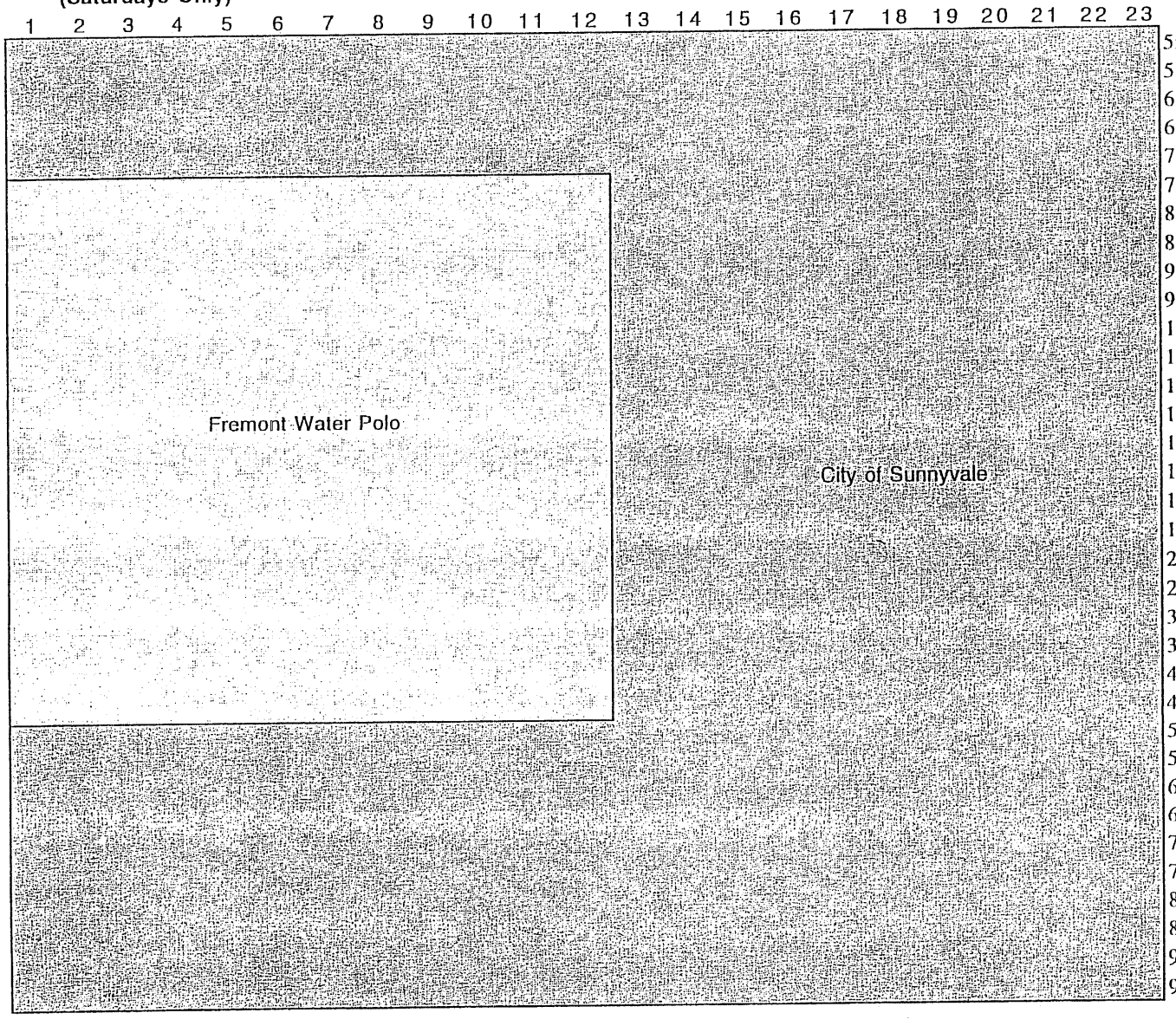
Note: On not more than three (3) Saturdays during Feb. - mid June, Fremont shall have priority use from 7:00 am - 5:30 pm

Revised 2/17/00

Mid Aug. - Nov.

Fremont High School Proposed 50m x 25 y Pool (Exhibit B)

(Saturdays Only)



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FIRST AMENDMENT TO AGREEMENT DATED JULY 18, 2000, BETWEEN CITY OF SUNNYVALE AND THE FREMONT UNION HIGH SCHOOL DISTRICT FOR THE DEVELOPMENT AND OPERATION OF A 50 METER SWIMMING POOL AND RELATED FACILITIES AT FREMONT HIGH SCHOOL

THIS AMENDMENT is made and entered into this 15th day of September, 2003, by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "CITY," and FREMONT UNION HIGH SCHOOL DISTRICT OF SANTA CLARA COUNTY, herein called "DISTRICT." This Amendment is the first Amendment to the Agreement dated July 18, 2000, between the CITY and the DISTRICT, entitled "Agreement Between City of Sunnyvale and the Fremont Union High School District for the Development and Operation of a 50 Meter Swimming Pool and Related Facilities at Fremont High School" (hereinafter, "AGREEMENT").

RECITALS

WHEREAS, Section 18 of the AGREEMENT provides that the AGREEMENT may be amended only by written instrument, signed by both CITY and DISTRICT.

WHEREAS, Section 6 of the AGREEMENT states that the Schedule shall be subject to adjustment upon the written approval of the Superintendent of DISTRICT and the Director of Parks and Recreation of CITY, or their designees.

NOW, THEREFORE, the parties agree as follows:

1. For purposes of schedule changes under Section 6, Paragraphs (b) and (c), written notification from the DISTRICT shall be official if signed by one of the following persons: Superintendent, Chief Business Officer – Associate Superintendent, Director of Business and Property Services, Fremont High School Principal, or Fremont High School Assistant Principal in charge of Activities.

2. For purposes of schedule changes under Section 6, Paragraphs (b) and (c), written notification from the CITY shall be official if signed by one of the following persons: Director of Parks and Recreation or the Leisure Services Manager.

3. DISTRICT, when notifying CITY of schedule changes under Section 6, Paragraphs (b) and (c), shall complete the form entitled "Schedule Changes" attached hereto as Exhibit A, and shall deliver the same to the CITY. CITY shall review the Schedule changes and respond to DISTRICT within a reasonable amount of time.

4. Written notification of schedule changes pursuant to Section 6(c)(3) of the AGREEMENT must be either hand-delivered or sent by E-mail. Other written notifications made under Section 6, Paragraphs (b) and (c), may be hand-delivered, E-mailed, or sent by U.S. Mail.

5. Written notification via E-mail shall not be deemed effective unless actually received and read by the person to whom the E-mail is addressed.

6. Except for the foregoing, all other provisions of the AGREEMENT remain in full force and effect.

FREMONT UNION HIGH SCHOOL DISTRICT

By _____ Date 9-17-03
Superintendent of Schools

CITY OF SUNNYVALE

By _____ Date 9/22/03
Director of Parks & Recreation

By _____ Date 9/22/03
City Attorney

Agreement Between the Fremont Union High School District and the City of Sunnyvale for the Operation of the 50Meter Swimming Pool and Related Facilities at Fremont High School

Amendment #1 Exhibit A – Schedule Changes
Calendar Year _____

Section 6. (c) 1. – 90 Day written notice to City to extend past 6:00 p.m. on weekdays (maximum of 5 weekdays):

Date of Request	Date and Time of Activity	District Personnel Requesting Change	City Personnel Approving Change	Date of Approval

Section 6. (c) 2. –7 Day written notice to City to extend past 6:00 p.m. on weekdays (maximum of 5 weekdays):

Date of Request	Date and Time of Activity	District Personnel Requesting Change	City Personnel Approving Change	Date of Approval

Section 6. (c) 3. – As soon as possible written notice to City to extend past 6:00 p.m. on weekdays (maximum of 5 weekdays):

Date of Request	Date and Time of Activity	District Personnel Requesting Change	City Personnel Approving Change	Date of Approval

Note: Per the Agreement, at least annually, the District and City shall meet to discuss the Schedule and any desired adjustments

Agreement Between the Fremont Union High School District and the City of Sunnyvale for the Operation of the 50Meter Swimming Pool and Related Facilities at Fremont High School

Amendment #1 Exhibit A – Schedule Changes
Calendar Year _____

Section 6. (c) 1. – 90 Day written notice to City to extend past 6:00 p.m. on weekdays (maximum of 5 weekdays):

Date of Request	Date and Time of Activity	District Personnel Requesting Change	City Personnel Approving Change	Date of Approval

Section 6. (c) 2. –7 Day written notice to City to extend past 6:00 p.m. on weekdays (maximum of 5 weekdays):

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Section 6. (c) 3. – As soon as possible written notice to City to extend past 6:00 p.m. on weekdays (maximum of 5 weekdays):

Date of Request	Date and Time of Activity	District Personnel Requesting Change	City Personnel Approving Change	Date of Approval

Note: Per the Agreement, at least annually, the District and City shall meet to discuss the Schedule and any desired adjustments

SECOND AMENDMENT TO AGREEMENT BETWEEN CITY OF SUNNYVALE AND FREMONT UNION HIGH SCHOOL DISTRICT FOR THE DEVELOPMENT AND OPERATION OF A 50 METER SWIMMING POOL AND RELATED FACILITIES AT FREMONT HIGH SCHOOL

THIS SECOND AMENDMENT, dated February 24, 2004, is by and between CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "CITY" and FREMONT UNION HIGH SCHOOL DISTRICT OF SANTA CLARA COUNTY, herein called "District" and amends the Agreement between the parties dated July 18, 2000.

WHEREAS, pursuant to the July 18, 2000 Agreement between CITY and DISTRICT a 50 meter pool opened for operation on June 26, 2002; and

WHEREAS, it has been determined some refinement is needed to the provisions in that Agreement pertaining to parking and enforcement thereof, and Section 18 of the Agreement provides for amendment by written instrument;

NOW, THEREFORE, the parties agree as follows:

Section 7 of the Agreement is amended to read:

SECTION 7. PARKING ON CAMPUS

(a) DISTRICT shall reserve thirty-five (35) parking spaces at the Campus for exclusive use of community users between 5:00 a.m. and 5:00 p.m. on school days only. The parking spaces shall be signed "Reserved for Pool Use" or similar language. CITY shall enact an appropriate ordinance making it unlawful for any person to park in violation of said restriction. DISTRICT hereby authorizes CITY to enforce such ordinance on DISTRICT property. DISTRICT recognizes that Public Safety Officers may enter into the parking lot for the purposes of such enforcement.

(b) When school is not in session, the general public may use other spaces at the Campus for parking on a first-come-first-serve basis.

As modified above, all terms and conditions of the July 18, 2000 Agreement remain in full force and effect.

IN WITNESS WHEREOF, CITY and DISTRICT have executed this Amendment.

ATTEST:

City Clerk

CITY OF SUNNYVALE ("CITY")

City Manager

FREMONT UNION HIGH SCHOOL DISTRICT ("DISTRICT")

Dr. Stephen R. Rowley
Superintendent

APPROVED AS TO FORM:

Asst. City Attorney

Attachment D

DRAFT

AGREEMENT BETWEEN THE CITY OF SUNNYVALE AND _____ FOR THE MANAGEMENT, OPERATION AND SUPERVISION OF PUBLIC SWIMMING PROGRAMS AT FREMONT HIGH SCHOOL POOL

This Agreement dated _____, 2013, is by and between the City of Sunnyvale, a municipal corporation of the State of California (hereinafter "City"), and _____ ("CONTRACTOR"), to manage, operate and supervise the public swimming programs at Fremont High School Pool, for a term beginning on 12:01 a.m. on September 1, 2013, and ending at 12:01 a.m. on _____, unless sooner terminated pursuant to the provisions contained in this Agreement.

Nothing in this Agreement shall become primary to or supercede any part of the City of Sunnyvale-Fremont Union High School District Agreement dated July 18, 2000 (as it currently exists or as hereafter amended), regarding the joint operation of the 50-meter swim pool and adjacent pool building at Fremont High School.

SECTION 1. DEFINITIONS. As used in this Agreement, the words and phrases noted, unless provided otherwise, shall have the following meanings:

A. "City Council" means the City Council of the City of Sunnyvale.

B. "City-District Agreement" means an Agreement, dated July 18, 2000, Between the City of Sunnyvale and the Fremont Union High School District for the Development and Operation of a 50-Meter Swimming Pool and Related Facilities at Fremont High School.

C. "Department" means the Department of Library and Community Services of the City of Sunnyvale.

D. "Director" means the Director of the Department of Library and Community Services of the City of Sunnyvale.

E. "District" or "School District" means the Fremont Union High School District

F. "CONTRACTOR's Employee" means any person employed by and paid solely by Contractor, for any of the following purposes: (1) to supervise or give lessons and instructions in swimming; or (2) to assist in the day-to-day operation of the swimming programs, pool or related activities, including collection of monies.

G. "Pool" means the Fremont High School Swim Pool, a 50-meter by 25-yard pool, located at 1279 Sunnyvale-Saratoga Road, California.

H. "Pool Building" means a single-story structure, located at the north end of Fremont High School Pool (approximately 2,800 sq. ft. in size containing locker rooms, lavatories, offices, lifeguard control room, teaching/training room, and storage rooms) located at 1279 Sunnyvale-Saratoga Road, California.

I. "Swimmers" means members of the public using the pool facilities.

J. "Shall" is mandatory.

K. "Hours" means any block of time in the water.

L. "Lane Hour" means any one (1) hour block of time in each 25-yard swimming lane assigned.

M. "Sunnyvale-based group" means any non-profit group whose primary purpose is to serve Sunnyvale residents, whose membership consists of a minimum of 60% Sunnyvale residents, and whose board of directors is comprised of a minimum of 50% Sunnyvale residents.

N. "Sunnyvale-based business" means any business with a physical presence in Sunnyvale and with a business license from the City of Sunnyvale.

O. "Swim team" means any organization registered with a recognized US National Governing Body (NGB) for their defined aquatics program. All users/participants shall be individual members of the NGB. If no such governing body exists for the activity, none shall be required.

SECTION 2. EXCLUSIVE USE. City grants to Contractor the exclusive use of the Pool Building and the City's portion of the Pool to be occupied only for publicly offered aquatic related programs and as a related on-site office, and for no other purpose. Contractor shall occupy and operate the Pool Building and City's portion of Pool use under this Agreement, consistent with the City–District Agreement. Contractor is granted the exclusive right to provide all public swimming programs at the Fremont High School Pool other than those provided by City or its employees in connection with programs authorized and mutually agreed to by the Director and Contractor. The hours of operation will be daily between 5:00 a.m. and 10:00 p.m. with specific pool use, including shared or joint use as outlined in the City-District Agreement, unless agreed upon by the School District, City and Contractor, and except during times of closure due to maintenance and repairs, bad weather conditions or as modified by written agreement of the parties.

SECTION 3. PRIVILEGES AND DUTIES OF CONTRACTOR. Contractor shall perform each duty and obligation imposed herein in full compliance with the Sunnyvale Municipal Code and other ordinances of City, and all applicable laws of the County of Santa Clara, State of California and the United States of America and the terms of the City-District Agreement. Specifically, Contractor shall:

A. Obtain and pay for any business license or permit required by the Sunnyvale Municipal Code (as it currently exists or as hereafter amended) or any other City ordinance, or law of the County of Santa Clara or State of California or the United States of America.

B. Pay any and all taxes including, but not limited to, personal property taxes, and sales and use taxes assessed against Contractor, or any possessory interest in the Pool and Pool Building, including inventories used in performing the duties and obligations under this Agreement.

SECTION 4. SCOPE OF PROGRAMMING. Contractor shall:

A. Provide, to the degree that it can be accomplished within the context of market-based programming, a broad array of swim opportunities (such as lap swim, masters programs, swim opportunities for children in grades K-12, swim lessons for all ages, and recreational/family swim opportunities, diving, water exercise classes, safety and training classes and other aquatic related activities) as opposed to a narrow

scope of programs and all other services customarily provided by a swim professional, either by _____ personally or by qualified contractor's employees;

B. Provide, at an acceptable level to the public, swimming lessons and instructions and all related services as required by the Director;

C. If possible under market conditions, schedule swim meets at the Pool and Pool Building for special interest groups so as to assure the best overall, well-rounded swim program for the community;

D. Operate, manage and supervise the Pool and Pool Building.

SECTION 5. SWIM PROGRAMS. With regard to operating, managing and supervising the swim programs, Contractor shall:

A. Organize, establish and conduct fee-based swimming programs which include the specifically required adult lap swimming schedule set forth in Attachment A. Contractor covenants that the swim programs shall be supervised and/or conducted by professional personnel, all of whom will have current and legally approved training, including, but not limited to, certification in cardiopulmonary resuscitation, use of AED equipment and certification in lifeguarding (and/or water safety instruction) for the purposes of supervising public swimming activities.

B. Perform services as may be deemed necessary by Contractor including, but not be limited to, the following:

(1) Selecting, training, supervising and assuming responsibility for conduct, appearance and performance of contractor's employees;

(2) Providing such equipment and teaching aids as may be necessary;

C. Employing, in connection with the foregoing operations at Contractor's sole cost and responsibility, such contractor's employees as deemed necessary; provided, however, that:

(1) Within ten (10) days following receipt of written notice from City that a particular of contractor is not satisfactory to City for good cause, Contractor shall dismiss that employee forthwith; and

(2) When performing duties for the Contractor, no employee of

Contractor shall be deemed to be an employee, agent or representative of City at any time or for any purpose whatsoever; and

(3) Contractor shall require all its employees to be neatly dressed and courteous at all times, and to refrain from boisterous or objectionable conduct or littering around and about the Pool, Pool Building and Fremont High School premises.

(4) Contractor shall require and be responsible for any and all background checks and fingerprinting necessary to comply with applicable state laws.

D. For the purpose of tracking service levels, provide the City accurate number of monthly participants in various swim programs offered by Contractor and its employees at the Pool and Pool Building by the 15th day of the following month.

SECTION 6. FACILITY SUPERVISION. With regard to facility supervision, the Contractor shall be responsible for operating, managing and supervising the Pool and Pool Building, including but not limited to:

A. Enforcing all rules and regulations.

B. Regulating the swimming and conduct of the swimmers.

C. Notifying the Director or their designee of any incident, accident or injury involving removal from the facility of a participant or contractor employee by ambulance, police or fire personnel.

D. Supervising the Pool and Pool Building, preserving order, maintaining cleanliness and providing for security of the Pool and Pool Building, including keeping trespassers off of the Pool and Pool Building and preventing injury to the Pool and Pool Building by swimmers and others. During shared-use times with the District, Contractor is not responsible for those people accessing the facility through District's programs or entryway(s) or for those portions of the pool School District uses.

E. Keeping the Pool and Pool Building open for the specified, minimum number of adult lap swim hours set by agreement between Contractor and the Director, as set forth in Attachment A.

F. Keeping locker rooms and lavatories open at all times that the Pool is

open by Contractor for public swimming or related business and keeping locker rooms closed and locked at all other times.

G. During operating hours, inspecting and maintaining locker rooms, showers and lavatories to assure clean and operational conditions that meet health codes and is acceptable for providing public activities.

H. Maintaining Pool Building in a safe, clean, sanitary and acceptable condition for dealing with the public, reasonably free from trash and rubbish.

I. Repairing and replacing any equipment as required in order to maintain Pool Building in good condition, with exception of items noted in Section 12. With the permission of the City, other aquatic-related equipment may be used and/or stored at the facility by the Contractor.

J. Responding to concerns raised by the public in a timely, professional and helpful manner which will involve having a staff person at the Pool, or readily available to answer questions and provide information at all times the Pool is open for public use.

K. Remove and replace swim pool blankets in accordance with the City-District Agreement and payment of any penalties due to failure to replace the swim pool blankets.

SECTION 7. SCHEDULE AND FEES. With regard to schedules and fees, Contractor shall be responsible for:

A. Providing a six-month schedule of Pool use (December through May and June through November) by November 1 and May 1 for each following six-month period, for each year this Agreement is in place. The schedule is subject to approval by the Director or their designee.

B. Maintain the minimum number of hours of adult lap swimming for which the Pool and Pool Building is to be kept open each day and each week as per Attachment A (Schedule Requirements) unless otherwise mutually agreed to, in writing, between both parties.

C. Establishing all fees on an annual basis (January of each year), including a potential range or percentage increase, through a market-based approach and consistent with the City's enterprise philosophy, including resident/non-resident fee differentials and other subsidies where appropriate. The

fees are subject to approval by the City.

D. Posting and notifying the public of fees and changes to fees.

E. Collecting and depositing all fees, charges and receipts for individual participation, for individual and group swim instruction, and for all swim reservations of the Pool and Pool Building.

F. Honoring the rights of participants to waiver of fees, upon presentation by participants of an authorized City of Sunnyvale fee waiver form. Contractor shall keep accurate records of all fee waivers and shall provide City with such records not later than ten (10) days after the end of each calendar quarter for reimbursement and not later than June 25th for the last quarter (fee waivers are not valid beyond June 15 of each fiscal year).

SECTION 8. ADDITIONAL DUTIES OF CONTRACTOR. Contractor shall, in addition to the foregoing duties:

A. At Contractor's discretion, maintain, sell and rent a stock of merchandise, supplies and equipment sufficient to meet customer demand and suitable for use at the Pool and Pool Building including, for example, clothing, eye goggles, towels, books and other swim equipment and supplies, provided that the makes or lines of swim merchandise, supplies and equipment so handled shall be representative, in quality, price and type, of those makes and lines of swim merchandise generally available to the public in this area.

B. At Contractor's discretion, maintain and operate vending machines for the sales of food and beverages provided that within ten (10) days following receipt of written notice from City that a particular product or machine is not satisfactory to City for whatever reason, Contractor shall remove or have vendor remove that product or machine forthwith.

C. Pay all charges for water, gas and electric service to the Pool Building, which, per the City-District Agreement, will be metered or measured separately.

D. Furnish and pay all charges for telephone, cable, internet or any other audio or visual services which relate to the Contractor's use of the Pool and Pool Building operations.

E. Furnish and pay all costs in connection with maintaining the interior of the Pool Building together with routine maintenance thereof, the janitorial services

to include, but not limited to, cleaning of windows (inside and outside), removal of trash, and the routine maintenance of interior furnishings, equipment and fixtures. The Contractor shall keep the appearance of the Pool and Pool Building locker areas in a safe, clean and sanitary condition and reasonably free from rubbish during operating hours, to the satisfaction of City, which expressly retains and reserves the right to inspect the Pool and Pool Building at any reasonable time for this purpose. Contractor shall provide and maintain high-quality equipment and other interior furnishings or devices required to operate the Pool and Pool Building.

F. Furnish and pay all charges for office supplies.

G. Contractor, at Contractor's own expense, may with the written approval of City change the locks on the rooms covered by this Agreement. If Contractor chooses to change the locks, two (2) master keys must be submitted to City immediately upon making such change. If the City is or becomes responsible for ongoing maintenance of the building interior, Contractor will make available to the City the necessary number of keys for maintenance personnel. The City, at its option, may make copies of the master keys available to the School District for maintenance and emergency purposes.

H. Communicate through the City any problems or concerns regarding issues covered by City-District Agreement.

I. Conduct a customer satisfaction survey of participants no less than annually and receive a minimum average of “very good” on services and maintenance that are under the control of the Contractor. On a scale of 1-5, “very good” is 4.

SECTION 9. PROHIBITED ACTIVITIES. Contractor shall not do any of the following without having first obtained the written consent of City:

A. Install or permit installation or use of any pinball machine, video game or similar equipment.

B. Except on approved bulletin boards, attach, hang or otherwise affix any sign or advertising matter on the exterior or interior of the Pool or Pool Building.

C. Allow any newspaper rack, vending machine or other sales device to be placed and maintained outside the Pool or Pool Building whether attached or free-standing, or anywhere in the Pool and Pool Building, except as authorized herein.

D. Permit third parties to distribute or sell goods, wares or merchandise either within the interior or exterior of the Pool or Pool Building, or anywhere on the Fremont High School property.

E. Assign or transfer this Agreement or any of the rights or privileges herein granted, or any part thereof. This Agreement cannot be assigned involuntarily or by operation or process of law.

F. Make any alterations, changes or additions to the Pool or Pool Building, or to any fixtures or equipment owned by City or School District without first having obtained written consent of City or School District, as appropriate, and provided that any alterations, changes or additions consented to shall be made at the sole cost of Contractor and shall become the property of City and/or School District upon termination of this Agreement.

G. Let, sublet or assign the Pool or Pool Building, or any portion thereof.

H. Commit, permit or allow any nuisance or waste in, or injury to the Pool or Pool Building or any portion of either, or to permit the use of the Pool or Pool Building for any illegal or immoral purpose.

I. Have any financial or other interest in the control, operation or promotion of any other swim program or establishment located within three (3) miles from the Fremont High School Pool, it being the intent of the City of Sunnyvale that the management and operation of the Pool and Pool Building shall be the sole swimming program offered by the Contractor within the immediate area, unless otherwise agreed upon by the parties.

J. Owners or Directors of Contractor or site manager/supervisor, without permission from the City, become an officer or member of any swim club or organization of swimmers formed or to be formed at the Pool or Pool Building or in any organization in which participation would conflict or create the perception of conflicting, with the City's desire to provide reasonable public access to a broad array of aquatic programs held at the Pool and Pool Building, particularly in situations involving the granting of swimming privileges.

K. Bind or attempt to bind City to any contracts or other obligations of any nature.

L. Use or instruct in the use of any SCUBA equipment in the Pool.

M. Offer or provide any discount, special privileges or service to a City employee that is not also available to the general public.

SECTION 10. DEPOSIT, PAYMENTS TO CITY, RECORDS AND ACCOUNTS.

A. Contractor, in consideration of the privileges and rights allowed by this Agreement, shall pay to the City a fee of $_____ per _____.

B. Payments are to be in quarterly installments, each to be one-quarter of the annual amount to be paid to the City and are due (i.e., must be received) no later than the last working day of March, June, September and December of each year.

C. Contractor shall maintain on a current basis complete records from which the attendance and scheduled use (from all sources) can be readily ascertained. Contractor shall furnish any and all information and reports on the aforementioned information which may be required by City, shall permit access to books, records and accounts by City or its representatives upon demand for the purposes of investigation to ascertain compliance with all applicable rules, regulations, and orders and for the purpose of evaluating and monitoring Contractor's performance and compliance with the provisions of this Agreement.

SECTION 11. COMPENSATION OF CONTRACTOR. Contractor, as compensation for the services performed under the terms of this Agreement, shall be entitled by City to keep and retain all fees (including non-resident differential) and revenues collected from all operations of the Pool and Pool Building less the amounts paid to City pursuant to SECTION 10.

SECTION 12. DUTIES OF CITY. City shall, in conjunction with Contractor's service, do or have done by the City and/or the School District pursuant to the City-District Agreement, the following:

A. Publicize the Contractor’s swim program in the Department's "Activities Guide".

B. Reimburse the Contractor for waivers of fees honored pursuant to SECTION 7.F.

C. Work with the Contractor in the promotion of swim meets and swim programs as related to Department-sponsored or special agreement swim

programs.

D. Pay all charges for utilities furnished other than those to be paid for by Contractor.

E. Maintain the Pool and appurtenant structures, including but not limited to diving boards, stands, ladders, bleachers, posts and poles, lighting and other plumbing or electrical systems, fences, grounds and adjacent improved off-street parking areas.

F. Be responsible for maintaining the structural elements and systems of the Pool and Pool Building, including the roof, in the condition existing at the time the Contractor takes possession of the premises, excepting normal wear and tear, consistent with the terms of the City-District Agreement. "Structural elements and systems" includes skylights, foundation, footings, floor slab, flooring, structural walls, parking areas, and plumbing, electrical and heating systems. If the state of disrepair (except normal wear and tear) is due to the action of the Contractor, its agents or clients, necessary repairs or replacements shall be charged to Contractor as additional rent.

G. Repair and replace all broken windows within the Pool Building other than any broken as a result of any act of negligence by Contractor, it's agents or clients.

H. Purchase and replace water polo nets, lane lines, backstroke flags, pool blankets, reels, starting blocks, diving boards, and handicapped lift when necessary, consistent with the City-District Agreement) other than any damage as a result of any act of negligence by Contractor, its agents or clients in which case necessary repairs or replacements shall be charged to Contractor as additional rent.

I. Reserve, clearly mark and monitor thirty-five (35) parking spaces for Pool during the normal school year (typically late August through mid-June). As detailed in the City/District Agreement.

SECTION 13. <u>INDEMNIFICATION.</u> Contractor shall indemnify and hold harmless the City of Sunnyvale and the School District, their officers, employees and agents, from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to person or property, loss, damage and liability (including all costs and attorneys' fees incurred in defending any claim,

demand or cause of action), occasioned by, growing out of, or arising or resulting from any act or omission on the part of Contractor, or its agents or employees, arising or resulting from the performance of any services required herein to be performed by Contractor or arising from the use of the Pool or Pool Building by Contractor, or its agents, clients or employees, or arising from the use of any buildings or improvements thereon or therein by any person or persons, or arising out of the operation or maintenance of dangerous or defective condition of the Pool or Pool Building, or any other structure, facility or thing erected or placed in the Pool or Pool Building and under the control or supervision of the Contractor.

SECTION 14. INSURANCE. Contractor shall and will, during the period commencing on the date on which this Agreement is issued and continuing without interruption until this Agreement is canceled, revoked or otherwise terminated, and at its own cost and expense, provide and maintain in such form and with a company or companies satisfactory to City and District, a policy or policies of each of the following types of insurance to wit:

Minimum Scope and Limits of Insurance Licensee shall maintain limits no less than:

1. **Commercial General Liability**: $5,000,000 per occurrence and $10,000,000 annual aggregate for bodily injury, personal injury and property damage. ISO Occurrence Form CG 0001 is required.

2. **Automobile Liability**: $1,000,000 per accident for bodily injury and property damage. ISO Form CA 0001 is required.

3. **Workers' Compensation:** Statutory Limits and **Employer's Liability**: $1,000,000 per accident for bodily injury or disease.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the

City of Sunnyvale. The licensee shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

Other Insurance Provisions

The **general liability** policy shall contain or be endorsed to contain the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Licensee; products and completed operations of the Licensee; premises owned, occupied or used by the Licensee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Licensee's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Licensee's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Licensee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

SECTION 15. BOND REQUIREMENTS. The Contractor shall furnish a performance bond in the amount of $172,000 and issued by an admitted surety

insurer authorized to operate in the State of California. The bond requirements are outlined in Attachment E. The Contractor shall also maintain throughout performance of the work the insurance coverage.

SECTION 16. TERMINATION.

A. City reserves the right to terminate this Agreement:

(1) If at any time Contractor is in default in the payment of any fees or any other monies required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein (time expressly declared to be of the essence), upon five (15) days written notice to Contractor and Contractor fails to correct such default within the five (15) day period; provided, however, that:

(a) Contractor shall not be entitled to and expressly waives any other form of demand or notice (written or oral);

(b) City shall have the full right, at its election, to enter Pool and Pool Building and take immediate and sole possession thereof;

(c) City shall have the right to bring suit for and collect all monies required to be paid to City and which shall have accrued up to the time of entry described above;

(d) Upon such termination, this Agreement and all rights and privileges herein agreed to shall become void to all intents and purposes whatsoever; or

(2) If Contractor fails to keep in full force and effect at any time the policies of insurance or faithful performance deposit required above upon five (15) days written notice to Contractor and Contractor fails to correct such default within the five (15) day period.

B. Either party may terminate this Agreement for any reason upon 120 calendar days written notice to the other.

SECTION 17. DEFAULT AND BREACH BY CONTRACTOR: If the City so chooses, this Agreement and all rights and privileges herein shall immediately (and without any demand or notice written or oral) cease, determine, come to an end, and become void, and the City immediately may enter Pool and Pool Building and take immediate and sole possession thereof, without prejudice to the right of City

to recover from Agreement all unpaid monies required to be paid to City and which shall have accrued up to the time of the entry described above, if:

A. Contractor at any time during the term of this Agreement becomes insolvent, or if proceedings in bankruptcy shall be instituted by or against Contractor, or if Contractor shall be adjudged bankrupt or insolvent by any pool owner, or if a receiver or trustee in bankruptcy or a receiver of any property of Contractor shall be appointed in any suit or proceeding brought by or against Contractor, or if Contractor shall make an assignment for the benefit of creditors, or if any action is taken against or suffered by Contractor under any insolvency or bankruptcy act.

B. If during the term of this Agreement either_____ dies, or by reason of incapacity, or otherwise, is unable to personally perform the duties, obligations, covenants or agreements contained herein for a period of ninety (90) consecutive days.

SECTION 18. SURRENDER OF PREMISES AND REMOVAL OF PROPERTY.

A. Upon expiration of the term of this Agreement, or upon the sooner termination of such term from whatever cause, Contractor:

(1) May remove any and all furnishings, fixtures, equipment, merchandise and supplies installed or purchased by Contractor; provided, however, that:

(a) Any item of personal property described above not so removed shall be deemed abandoned by Contractor to City and absolute title thereto shall vest in City immediately;

(b) Contractor is not then in default in the payment of any fees, portion of gross revenue or any other required to be paid to City, or in the performance of any duty, obligation, covenant or agreement contained herein;

(c) Contractor shall leave the Pool and Pool Building appurtenances in good order, condition and state of repair, reasonable wear and tear and damage by the elements excepted, together with any alterations, changes, additions or improvements thereto; and

(d) Contractor shall be responsible for any damage to the Pool or Pool Building and occasioned by the removal of any furnishings, fixtures or

equipment; and for such damage, if any, City shall have lien on the items of personal property until such damages be paid.

(2) Shall peaceably and quietly leave, surrender and yield up to City and District the Pool and Pool Building.

B. In the event of termination of this Agreement, because of the default of Contractor upon any of the grounds set forth above or in the event of the automatic termination of this Agreement, City reserves the right to remove any personal property belonging to Contractor from the Pool and Pool Building and to store such personal property at the sole cost and expense of Contractor, and City shall have a lien on such personal property for and until all and any storage charges are paid.

SECTION 19. DISCRIMINATION PROHIBITED. Neither Contractor nor any officer, agent, or employee thereof shall discriminate in the employment of persons to perform any service or activity at the swim facility, or discriminate against any person in the use or access to the Pool or Pool Building on account of race, color, national origin, ancestry, religion, sex, sexual orientation, physical handicap, or medical condition in violation of any law, or on account of any other basis for discrimination prohibited by law.

SECTION 20. NOTICES. Any action, notice or request required to be taken, given or made by City hereunder may be taken, given or made by the City Manager of City or such other person or persons as they may authorize for the purpose.

A. All notices, requests or other papers required to be given or delivered to Contractor shall be deemed to be duly and properly given or made if mailed to Contractor, postage prepaid, addressed to:

_____
_____
_____
_____

or personally delivered to Contractor at such address, or at such other address as Contractor may designate in writing to City.

B. All notices, requests or other papers required to be given or delivered to City shall be deemed to be duly and properly given or made if mailed to City

postage prepaid, addressed to:

Director of Library and Community Services
City of Sunnyvale Public Library
P.O. Box 3707
Sunnyvale, CA 94088-3707

or personally delivered to Director of Library and Community Services at City of Sunnyvale Public Library, 665 West Olive Ave., Sunnyvale, CA, 94086, or at such other address as City may designate in writing to Contractor.

SECTION 21. ATTORNEY FEES. 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 attorneys' fees expended in connection with such an action from the other party.

SECTION 22. NATURE OF AGREEMENT. MODIFICATIONS.

A. This Agreement does not constitute a contract of employment and the relation of master and servant, employer and employee, does not and shall not exist between City and _____, Contractor or any of its employees. Contractor is and at all times shall be deemed to be an independent contractor.

B. This Agreement does not constitute a deed or grant of any easement by the City of Sunnyvale and does not constitute a lease.

C. No assurances or inducements of any kind not specifically set forth in the Agreement have been made to Contractor by anyone authorized by City to cause Contractor to execute this Agreement.

D. Failure of City or Contractor to insist upon a strict performance of any of the duties, obligations, conditions, covenants or agreements contained in this Agreement shall not be deemed a waiver of any subsequent breach or default in the duties, obligations, conditions, covenants or agreements herein contained.

E. Rights of City or Contractor hereunder shall be cumulative and not alternative and shall be in addition to any and all rights which either party shall have as a matter of law.

F. No agent, officer or employee of City has any authority to vary or extend the term of this Agreement or any duty, obligation, covenant or agreement contained herein, or to make any statements or representations concerning this

Agreement, or the rights and privileges set forth herein, except such as are set forth in any written addendum to this Agreement which has been approved by the City Council.

G. This document represents the entire agreement between City and _____. This agreement may be amended only by written instrument, signed by both City and Contractor. Except as may be expressly provided in this Agreement to the contrary, all provisions of this Agreement are expressly made conditions.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT.

ATTEST:

By _____
City Clerk

APPROVED AS TO FORM:

By _____
City Attorney

CITY OF SUNNYVALE ("CITY")

By _____
City Manager

_____
("CONTRACTOR")

By _____

_____
Name and Title

By _____

_____
Name and Title

Attachment E

PERFORMANCE BOND

Request for Proposal No.
OPERATION OF PUBLIC SWIMMING PROGRAMS AT
FREMONT HIGH SCHOOL POOL
1279 SUNNYVALE-SARATOGA RD.
SUNNYVALE, CA

KNOW ALL MEN BY THESE PRESENTS:

THAT WHEREAS, the City of Sunnyvale ("City") has awarded to _____ as principal ("Contractor"), a contract for the services described as follows:

> Provide public swimming programs at the Fremont High School 50-meter pool facility at 1279 Sunnyvale-Saratoga Road, Sunnyvale, California, commencing on September 1, 2013. By agreement, the pool use has been divided into City, School or shared use times. During the shared use times, the City of Sunnyvale has a designated number of lanes for use while the school uses the remainder of the pool. At all times, the City has a dedicated locker/shower/office building for exclusive use. The Fremont Union High School District is responsible for its school-related swimming programs and for the maintenance of the pool (filtration, heating, vacuuming, equipment repair and replacement, etc.).

The contract and all of its terms and conditions are incorporated into this Bond by reference.

AND WHEREAS, the Contractor is required to furnish a bond in connection with the contract guaranteeing its faithful performance.

AND THEREFORE, we the undersigned Contractor as principal and _____ a _____, admitted and duly authorized to transact business under the laws of the State of California as surety, are held and firmly bound unto the City as obligee in the sum of One Hundred and Seventy-Two Thousand and

No/100 Dollars ($172,000.00); (which amount represents approximately three months of operating costs if the City were required to provide the described services) to be paid to the City or its successors and assigns; and for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors or assigns, jointly and severally, firmly by these presents.

THE CONDITION of the obligation is such:

That if the Contractor, (or the Contractor's heirs, executors, administrators, successors or assigns) shall in all respects abide by, and well and truly keep and perform all of the covenants, conditions and agreements in the contract (and any alteration made as provided in the contract) at the time and in the manner specified and in all respects according to their true intent and meaning; and if the contractor shall indemnify and save harmless the City, its officers, employees and agents, as stipulated in the contract, then this obligation shall become and be null and void; otherwise this obligation shall be and remain in full force and effect.

No prepayment or delay in payments, and no change, extension, addition or alteration of any provision of the contract or in the specifications agreed to between the Contractor and the City, or any forbearance on the part of the City shall operate to relieve the surety. The surety hereby waives the provisions of Section 2819 of the California Civil Code. The surety waives all rights of subrogation against the City or any person employed by the City. If the contract price increases by the issuance of change orders, the amount specified in this bond shall increase by the same amount.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____, 20___.

SURETY {Name}:

_____

{Address of Principal Place of Business}

_____

_____

_____

Telephone No.:_____

Facsimile No. _____

By:_____
Attorney in Fact

CONTRACTOR:

_____

By:_____

_____
(Name: print or type)

Title:_____

By:_____

_____
(Name: print or type)

Title:_____

(Notice: The signatures of the Surety and Contractor on this bond must be acknowledged before a notary.)

ATTACHMENT B

Draft Minutes of the November 14, 2012,
Parks and Recreation Commission Meeting

DRAFT MINUTES

SUNNYVALE PARKS AND RECREATION COMMISSION
NOVEMBER 14, 2012

The Sunnyvale Parks and Recreation Commission met in regular session in the Community Center Conference Room, 550 E. Remington Drive, Sunnyvale CA 94087 at 7 p.m. with Chair Kinder presiding.

CALL TO ORDER
Chair Kinder called the meeting to order at 7 p.m.

SALUTE TO THE FLAG

ROLL CALL

Commissioners Present:
Chair Robert Kinder
Vice Chair Robert Pochowski
Commissioner Henry Alexander III (arrived 7:01 p.m.)
Commissioner Robert Harms
Commissioner Craig Pasqua

Commissioners Absent:
None

Council Liaison:
Councilmember Pat Meyering (arrived 7:03 p.m.)

Staff Present:
Director of Library and Community Services Lisa Rosenblum
Superintendent of Community Services Nancy Bolgard Steward
Superintendent of Parks Scott Morton
Community Services Manager Nancy Grove
Administrative Aide Karen Smith

Consider Commissioner Harms' absence from the October 10, 2012, meeting.

MOTION: Chair Kinder moved and Vice Chair Pochowski seconded to excuse Commissioner Harms' absence from the October 12, 2012, meeting.

VOTE: 5-0 motion passed unanimously.

PUBLIC ANNOUNCEMENTS – None

CONSENT CALENDAR

1.A. Approval of Draft Minutes of October 10, 2012

MOTION: Chair Kinder moved and Vice Chair Pochowski seconded to approve Consent Calendar Item 1.A. as presented.

VOTE: 5-0 motion passed unanimously.

PUBLIC COMMENTS – None

PUBLIC HEARINGS/GENERAL BUSINESS

2. Draft Report to Commission: Naming of Park at 545 Santa Real Avenue

Superintendent Morton presented the staff report. He said that the Commission should consider and make a recommendation to Council based on Council Policy 7.3.23 Naming/Renaming Parks and Recreation Facilities.

Commissioners asked questions about the park naming suggestions received from neighbor input and the Sunnyvale Historical Society and Museum Association, the City-wide naming contest for Plaza del Sol, and whether there was a neighborhood association located in the area of the park.

The public hearing was opened. There were no speakers and the public hearing was closed.

MOTION: Commissioner Pasqua moved and Vice Chair Pochowski seconded to recommend to Council that the selection of a park name be open to community residents.

Director Rosenblum suggested, if the Commission chooses to do this, that they recommend Council create a list of park names for the community residents to vote on so names are appropriate, not leave it open-ended.

Commissioner Pasqua amended his motion.

MOTION: Commissioner Pasqua moved and Vice Chair Pochowski seconded to recommend to Council that the selection of a park name be open to community residents, that the selection process used for the naming of Plaza del Sol be followed, and that the Commissioners can participate in the proposed future process by suggesting park names.

In addition, the park name suggestions given by resident of the Fusion Sunnyvale development and listed in the report should be included as selections in the naming process: Oasis Park, Fusion Park, Hidden Green, Happy Park, Graceland Park, Santa Real Park, Pulse Park, Hideaway Grove, Haiku Gardens, Serenity Gardens, Green Fusion Park, The Green, Unity Park, Sunnyside Park, Sunnyvale Glen Park, Rosalie Park, It's a Good Life Park, Landon Curt Noll Park, Sunrise Park, Sunset Park, Horizon Park, Sunshine Park, Good Life Park and Kings Park.

VOTE: 5-0 motion passed unanimously.

Chair Kinder offered two additional park name suggestions.

- Semiconductor Park
- Veterans Park

Chair Kinder asked Commissioners to email Superintendent Morton if they have any other park name suggestions. Chair Kinder also suggested that Commissioners visit locations in Sunnyvale, such as the new park, so that they will be familiar with the areas.

Superintendent Morton handed out pictures of the new park. In response to Commissioners' questions, he said that the new park lacks a tot lot and does not meet all park criteria because the developer donated it, and they were not required to meet park criteria. There is no current project for park site improvements. There are no restrictions on the park; it is the same as any other City mini-park.

3. Draft Report to Commission: Discussion and Possible Action on Request for Proposals for a License to Operate Public Swim Programs at Fremont High School Pool

CS Manager Grove presented the staff report. She said that the Commission and Council do not typically review a Request for Proposals (RFP), but an exception was made because of the community interest.

Commissioners' questions were answered regarding the RFP including the amount of annual revenue, percentage of revenue increase each year, the City reserving the right to provide the swim program at the pool, input from users and other groups, whether the pool is highly utilized or whether it needs to be promoted and draw in new users, and significant changes such as more non-summer open swim throughout the year which might change the type of swim programs offered.

Commissioners asked questions about fee waivers. Superintendent Steward said there was a maximum limit budget on fee waivers, and she would get back to the Commissioners with that information.

CS Manager Grove said she would get back to the Commissioners with the number of swim teams.

The public hearing was opened.

Chair Kinder referred to an email from a member of the public commenting on City versus independent operation of the pool.

Holly Lofgren, Chair, Friends of Fremont Pool, said it is evident that Sunnyvale residents are overall very pleased with the pool operation, the operator and the programming. The parking lot situation is resolved, and she is waiting for the timeline to have the locker room drains fixed. Ms. Lofgren stated she provided input to the RFP during the community input process and most of her suggestions were incorporated. She requested several additional changes to the RFP to "tighten up the language." She provided her written comments to Vice Chair Pochowski.

Lisa Fischer-Colbrie, former president of Sunnyvale Swim Club, stated that the RPF should not mandate non-summer open swim. It is better to place as a suggestion because a mandate can have a negative impact on how the pool is run and the programs offered. It is not clear to her that increased non-summer open swim is needed; it would have a negative fiscal impact if it is not needed. She stated that the City had no will or manpower to operate the pool in 2000.

Dave Peterson, California Sports Center, said he supports approving the RPF with changes. He said the non-summer months' requirement is a major change in expectation of performance, and he requested that the non-summer months' requirement on page 16 be eliminated. If the requirement is not eliminated, then he requested that the City seriously look at the request and reality of offering open swim in the winter in an Olympic-size outdoor pool. The expectation on the return of 544 hours

and 4 lanes restricts the existing uses that would be displaced, loss of income and/or programming, and adds a substantial expense for the minimum number of lifeguards required. His research showed that very few pools offer this option during non-summer months. He clarified the contract fee paid to the City annually is only the facility use fee; the contractor also pays for all the utilities for the pool building, program operational costs, staffing and office costs, and certain equipment.

Steve O'Neill, active user of the pool for ten years, said it makes no sense to offer open swim during the winter months; it is too cold and unlikely that anyone will take advantage of it. He said it is a complicated situation with a joint use agreement and hopes that the City will keep an open mind when the current operator comes forward with a proposal.

The public hearing was closed.

After considerable discussion regarding the public comments, the following motion was made.

MOTION: Vice Chair Pochowski moved and Chair Kinder seconded to recommend to Council that the language in the Request for Proposals be modified and to consider the following changes:

1. **Remove mandate for non-summer open swim hours and leave to the discretion of the pool operator to best meet the needs of the community as they are at that time. (Page 16)**
2. ***Summer Schedule Requirements.* Six weeks is acceptable <u>only</u> if open swim is cancelled to offer swim meets for Sunnyvale Youth Swim Clubs that serve at least 60% residents. (Add the word "only.") (Page 15)**
3. **Add to definition of Swim Team – Program provider shall provide for a minimum of 8,000 lane hours for local youth swim teams of which all 'teams' shall have at least 60% resident members in their entire organization <u>and either hold a Sunnyvale business license or a majority of board members are Sunnyvale residents.</u> (Add the underlined words.) (Page 16)**

VOTE: 5-0 motion passed unanimously.

Chair Kinder thanked staff for their excellent work in preparing the RFP and the public for the good points that were brought up.

4. Rank Study Issues

Superintendent Steward provided an overview of the study issue ranking process.

Superintendent Morton provided an overview of the study issue to be ranked.

- DPW 13-13 Feasibility of Establishing a Community Animal Farm for Children at the Sunnyvale Landfill.

The public hearing was opened. There were no speakers and the public hearing was closed.

MOTION: Vice Chair Pochowski moved and Commissioner Harms seconded to recommend that Council drop Study Issue DPW 13-13 Feasibility of Establishing a Community Animal Farm for Children at the Sunnyvale Landfill.

VOTE: 4-1 motion passed. Commissioner Alexander dissented.

Commissioners recommended that DPW 13-13 be dropped until a new master plan for the Sunnyvale Landfill is completed. Commissioner Alexander dissented because he felt the study issue should be deferred.

5. Code of Ethics and Conduct for Elected and Appointed Officials

Commissioners reviewed the Code of Ethics and Conduct for Elected and Appointed Officials. There was no action taken.

NON-AGENDA ITEMS AND COMMENTS

COMMISSION MEMBERS Oral Comments

None

STAFF Oral Comments

Superintendent Morton provided updates on the following topics:

- Consideration for addition of a tot lot at Panama Park will be part of the next capital projects budget review. Council will determine funding.
- Adopt-A-Park is a new element that was added to the Parks Volunteer Program. Parks staff will be presenting Adopt-A-Park to the Neighborhood Associations.
- Negotiations with Synergy Golf Management are ongoing to provide food service at the Sunnyvale and Sunken Gardens Golf Course restaurants.
- Council action on RTC 12-255 City Council Policy on Allocation of Park Dedication Fund. He encouraged the Commissioners to read the Council minutes as to why Council deferred this item.

Superintendent Steward provided updates on the following topics:

- Council action on RTC 12-252 Discussion and Possible Action on a Proposal to Amend the Agreement with California Sports Center for Operation of Fremont Pool through August 31, 2013.

INFORMATION ONLY ITEMS - None

ADJOURNMENT

Chair Kinder adjourned the meeting at 8:46 p.m.

Respectfully submitted,

Karen Smith
Recording Secretary
Community Services Division
Library and Community Services Department

Reviewed by:

Lisa G. Rosenblum
Director of Library and Community Services Department