REPORT TO MAYOR AND COUNCIL

NO: 13-309

Council Meeting: December 17, 2013

SUBJECT: Discussion and Possible Action to Approve Budget Modification No. 22 in the amount of $500,000 to Capital Project 830560 Fremont Pool House Infrastructure Improvements, Approve "Third Amendment to Use 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," and Adopt a Finding of Categorical Exemption Under CEQA

BACKGROUND

Fremont Union High School District (FUHSD) and the City entered into an agreement for maintenance of the Fremont High School pool house ("Pool House") in 2000, which was amended in 2002 (first amendment) and 2004 (second amendment) (Attachment A). When the pool was originally constructed, two separate locker/shower room facilities were constructed – one for high school students and one dedicated for community use. This project only relates to the locker room/shower facilities (Pool House) dedicated to community use.

In 2012, a damage assessment report identified significant deficiencies that have caused damage from excess moisture and require major repairs to the pool house. The Fiscal Year 2013/14 budget included funding for Capital Improvement Project 830560 *Fremont Pool House Infrastructure Improvements* (Attachment B) to fund the City's share for major infrastructure improvements to the Pool House that are more extensive than normal routine maintenance. Budgeted project costs were preliminary with the intention that they would be updated based on a facility assessment report and any other necessary investigation into the condition of the building. The repairs will address deficient shower drains, inadequate air flow inside the two locker rooms, and damages to building infrastructure as a result of the deficiencies.

EXISTING POLICY

The agreement to provide facilities, and share resources and costs is in accordance with Sunnyvale General Plan Chapter 4 Community Character:

Policy 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.

CEQA REVIEW

The work to be performed is considered maintenance and repair of existing facilities. Therefore, the project, and budget modification are categorically exempt under CEQA pursuant to Guideline section 15301.

DISCUSSION

The Pool House repairs are necessary to resolve ongoing concerns for user safety and to protect the infrastructure of the building. The scope of repairs needed is based on extensive testing to determine building components that have been damaged by excessive moisture. FUHSD has retained an architect to coordinate testing and prepare cost estimates based on preliminary designs. The scope includes upgrading all construction materials to moisture resistant grade. Items to be replaced include shower valves, floor drains, air handling units, interior wall board and rusted steel lockers. Due to the extent of repairs, the building will also be updated to meet current accessibility and life safety codes.

A third amendment to the development and operation agreement of the Pool House has been prepared to formalize the understanding of the scope of work and cost sharing of the maintenance and repair project. The current agreement with FUHSD makes the City solely responsible for the maintenance, repair and replacement of the Pool House building which is dedicated to community use. In recognition that moisture damage in the building is partially attributable to drainage problems resulting from defects in the original construction of the facility that was managed by the District, FUHSD will equally share all project costs with the City. Approval of the proposed Third Amendment to the agreement by the City and the District would provide funding for the City's share of the necessary repair work. (Attachment C). Once the project is complete, the City will be responsible for 100% of maintenance, repair, and replacement costs of the building.

Project costs included in the current capital project were preliminary with the intention that they would be updated based on a facility assessment report which has been completed. Total project costs for repairs identified in the assessment report are estimated at $1,586,889, including design costs and contingencies. The City share would be a maximum of $793,445 and are capped by the third amendment. If construction bids come in higher than expected, the proposed agreement calls for the City and FUHSD to meet and confer about potential solutions before proceeding with a contract award. The amount approved and budgeted for Capital Project 830560 is $300,000. In addition to approval of the Third Amendment to the agreement, staff is recommending an increase of $500,000 to bring the total project budget to $800,000.

Design and construction of the project would be led by the District with the involvement of City project management staff. The project is scheduled to be

completed in the summer of 2014. The agreement provides for community use of the student locker rooms when school is not in session so that use of the pool can continue during construction. If the project is not completed by fall when school is back in session, there is sufficient funding so that a temporary changing area can be set up for continued community use of the pool.

FISCAL IMPACT

Park Dedication Funds have been budgeted for the renovation of the Fremont Pool House. The Park Dedication Fund ended FY 2012/13 approximately as planned with adequate funding in reserve to fund this project. However, this appropriation does potentially affect the ability of the Park Dedication Fund to absorb unexpected increases in costs or reductions in revenue. Budget Modification No. 22 has been prepared to appropriate Park Dedication funds in the amount of $500,000 for increasing the City share of the costs for maintenance and repair of the Fremont Pool House.

Budget Modification No. 22
FY 2013/14

	Current	**Increase/ (Decrease)**	**Revised**
Infrastructure Renovation and Replacement Fund			
Expenditures			
Project 830560 – Fremont Pool House	$300,000	$500.000	$800,000
Park Dedication Fund			
Reserves			
Capital Projects Reserve	$4,275,745	($500,000)	$3,775,745

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

Staff met with the pool operator, California Sports Center, on October 29, 2013 to provide a project overview and timeline. In addition, a notice was posted on the City's website, on the Friends of Fremont Pool blog, at the Fremont H.S. Pool facility and emailed to a pool user database for notification of a Pool House project informational meeting held on November 18, 2013 at the Sunnyvale Community Center. At the meeting, the City provided a project overview and gathered feedback on the pool house project.

ALTERNATIVES

1. Approve Budget Modification No. 22 in the amount of $500,000 to Capital Project 830560 Fremont Pool House Infrastructure Improvements; and, approve the Third Amendment to Use 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; and, adopt a finding that approval of the Third Amendment to the Use Agreement is exempt under CEQA pursuant to Guideline Section 15301.
2. Do not approve the proposed amendment to the agreement with Fremont Union High School District and provide further direction to staff.

RECOMMENDATION

Staff recommends Alternative No. 1: Approve Budget Modification No. 22 in the amount of $500,000 to Capital Project 830560 Fremont Pool House Infrastructure Improvements; and, approve the Third Amendment to Use 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; and, adopt a finding that approval of the Third Amendment to the Use Agreement is exempt under CEQA pursuant to Guideline section 15301.

Reviewed by:

Kent Steffens, Director, Department of Public Works
Prepared by: James Craig, PE, Superintendent of Public Works Operations

Reviewed by:

Lisa Rosenblum, Director of Library and Community Services

Reviewed by:

Grace Leung, Director of Finance

Approved by:

Gary M. Luebbers
City Manager

ATTACHMENTS

A. 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, including Amendments One and Two

B. Capital Project Summary Page for Capital Project 830560 Fremont Pool House Infrastructure Improvements

C. Proposed Third Amendment to Use 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, including all Exhibits

ATTACHMENT A

ORIGINAL

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")

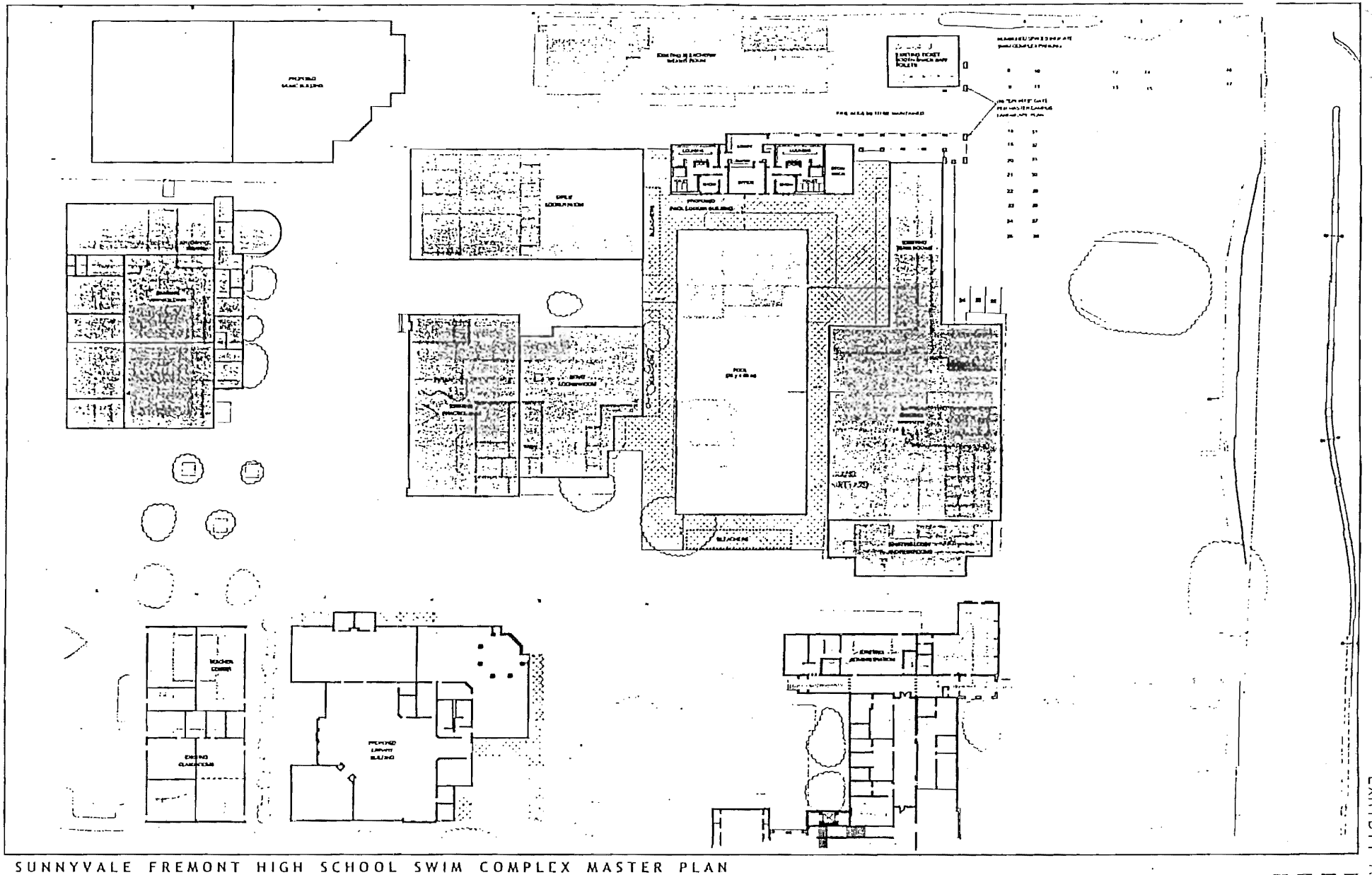
_____
Joe Hamilton, Secretary to the Board

APPROVED AS TO FORM:

_____
City Attorney

APPROVED AS TO FORM:

_____
Legal Counsel for DISTRICT



CONCEPTUAL PLAN FOR THE PROJECT

EXHIBIT A

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

Revised 2/17/00

Mid August - End of August

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

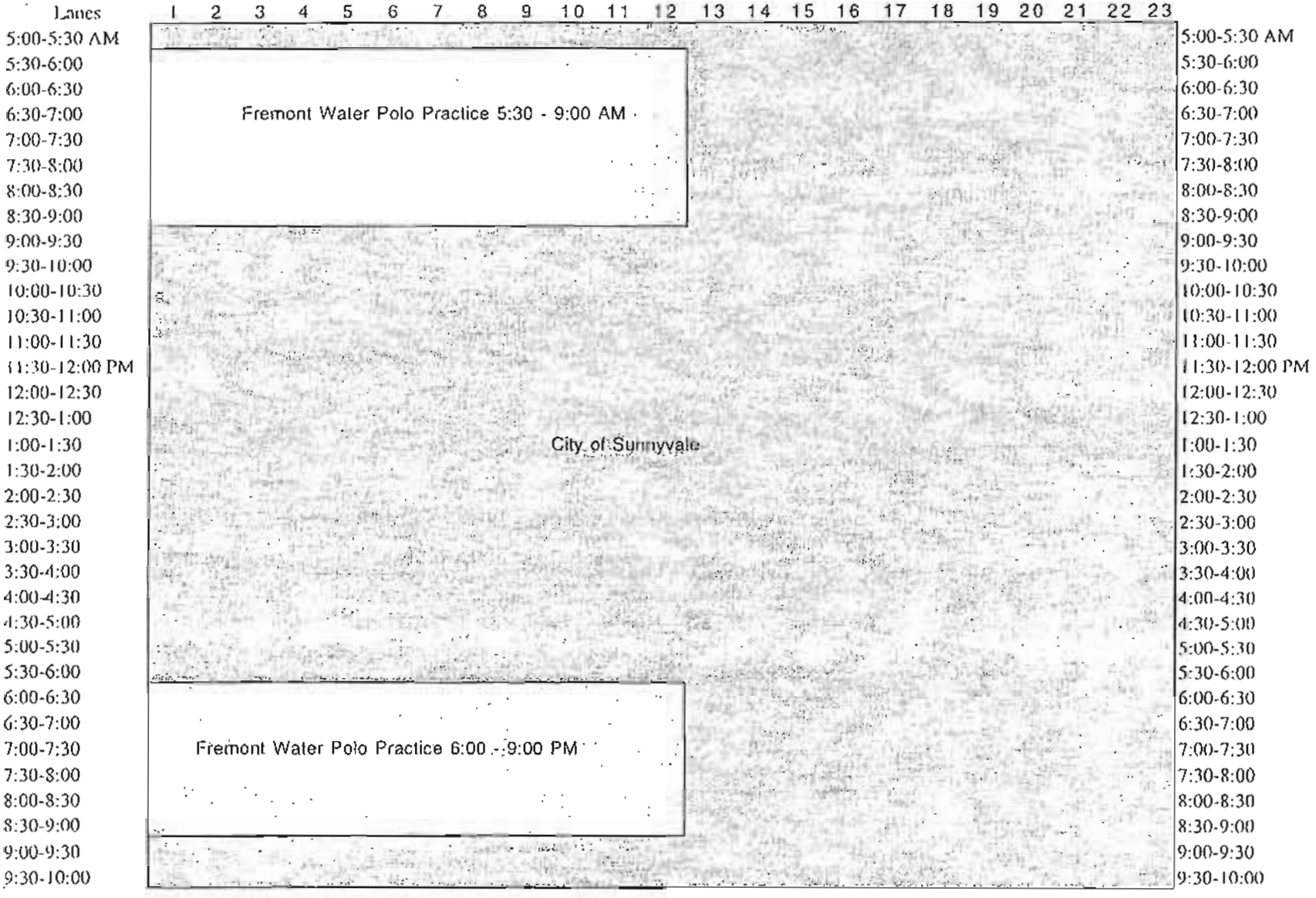
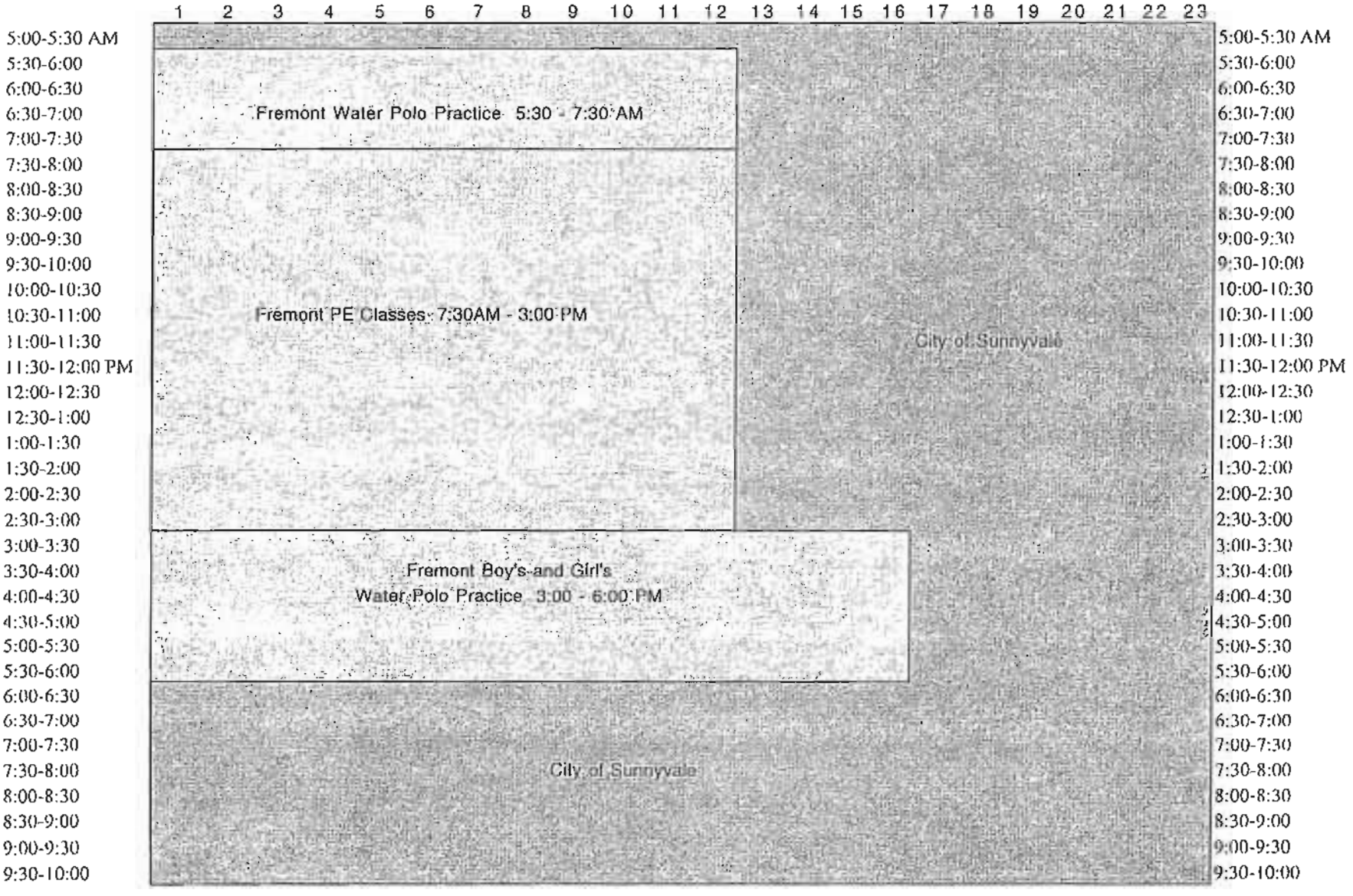


Exhibit C

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)

Lanes	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	
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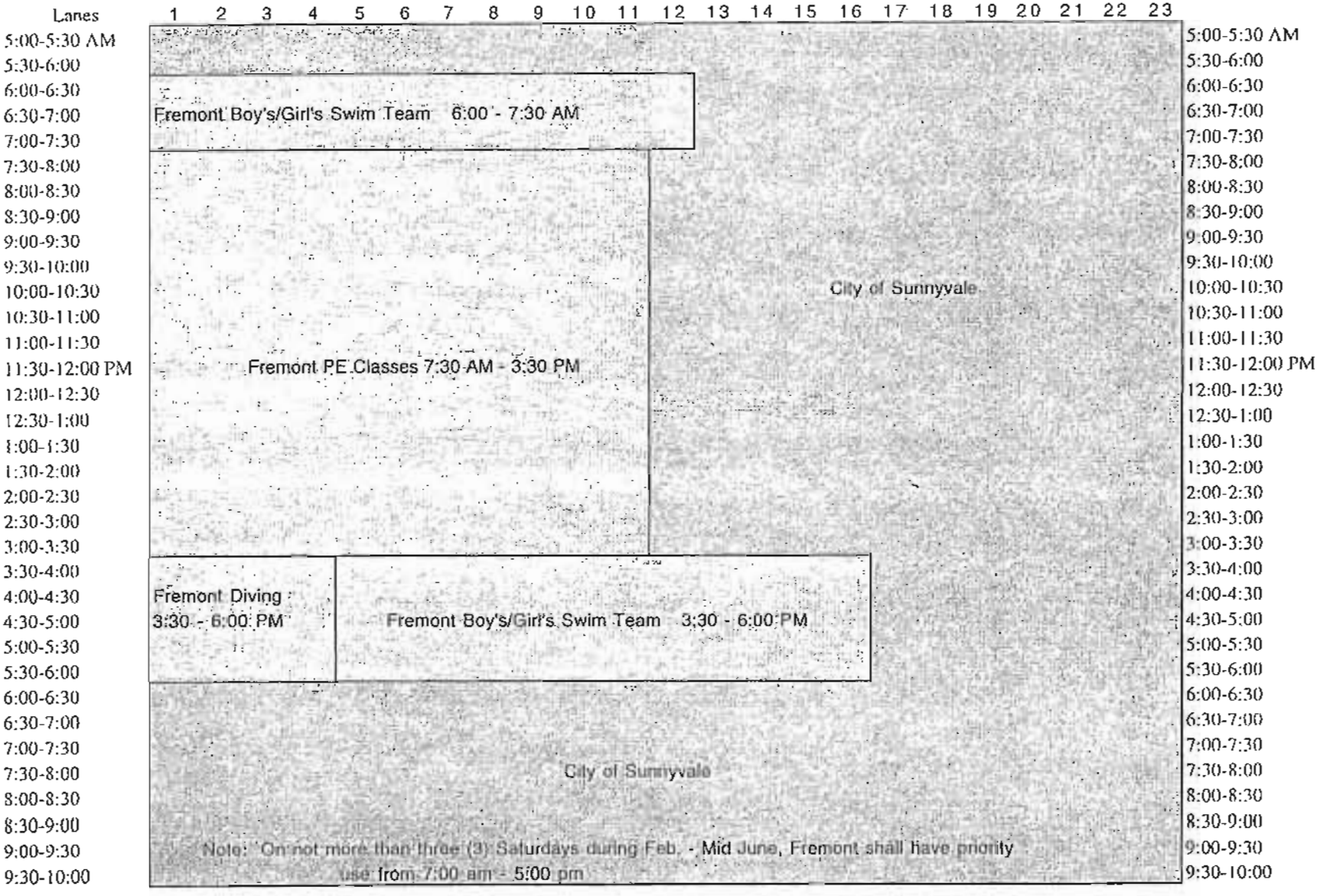
Revised 4/12/00
Feb - Mid June

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



Revised 2/17/00

Mid June - Mid August

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

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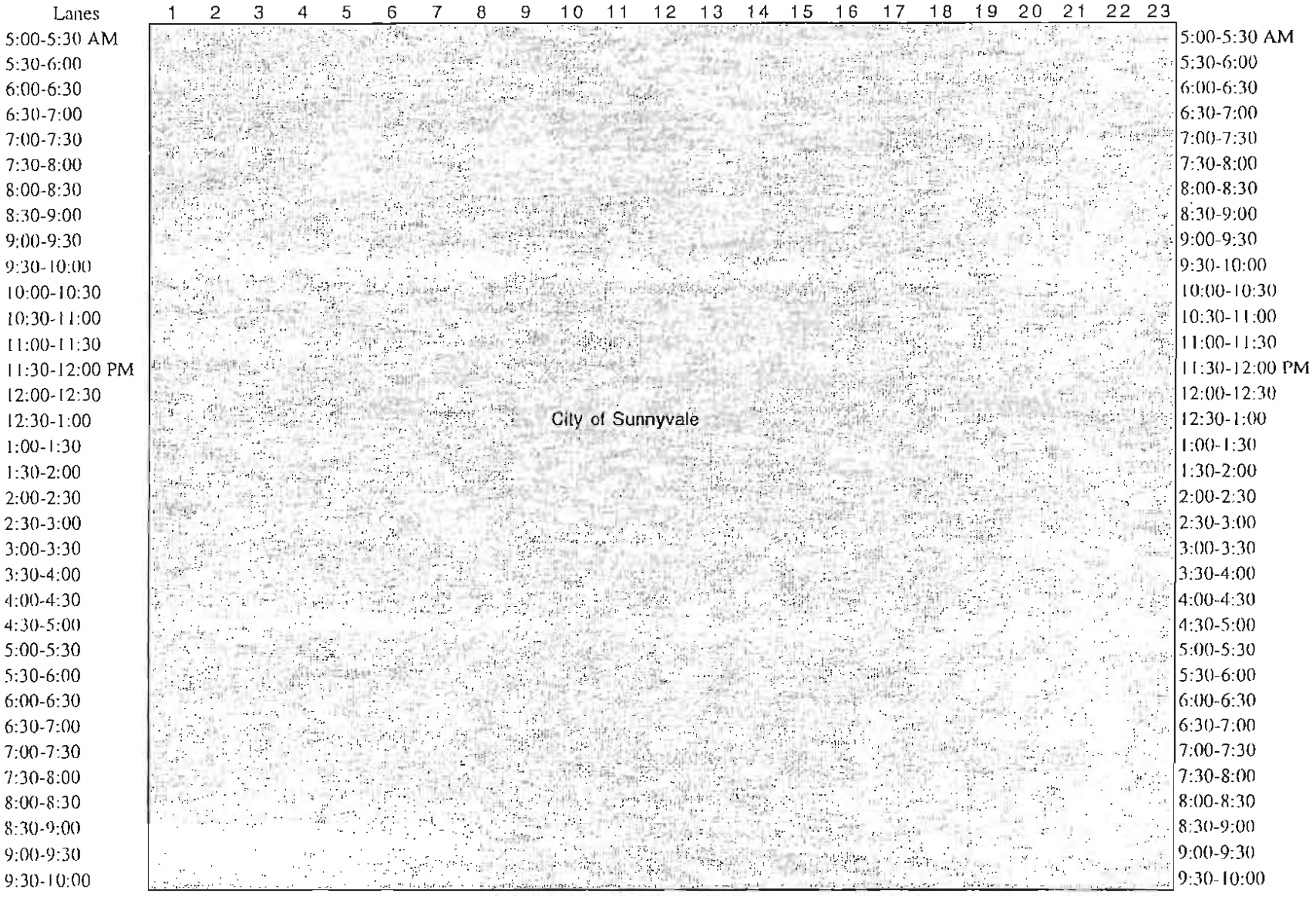
Revised 2/17/00

Jan - Dec (entire year)

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

(Sundays Only)



Revised 2/17/00

Dec - Mid August

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

(Saturdays Only)

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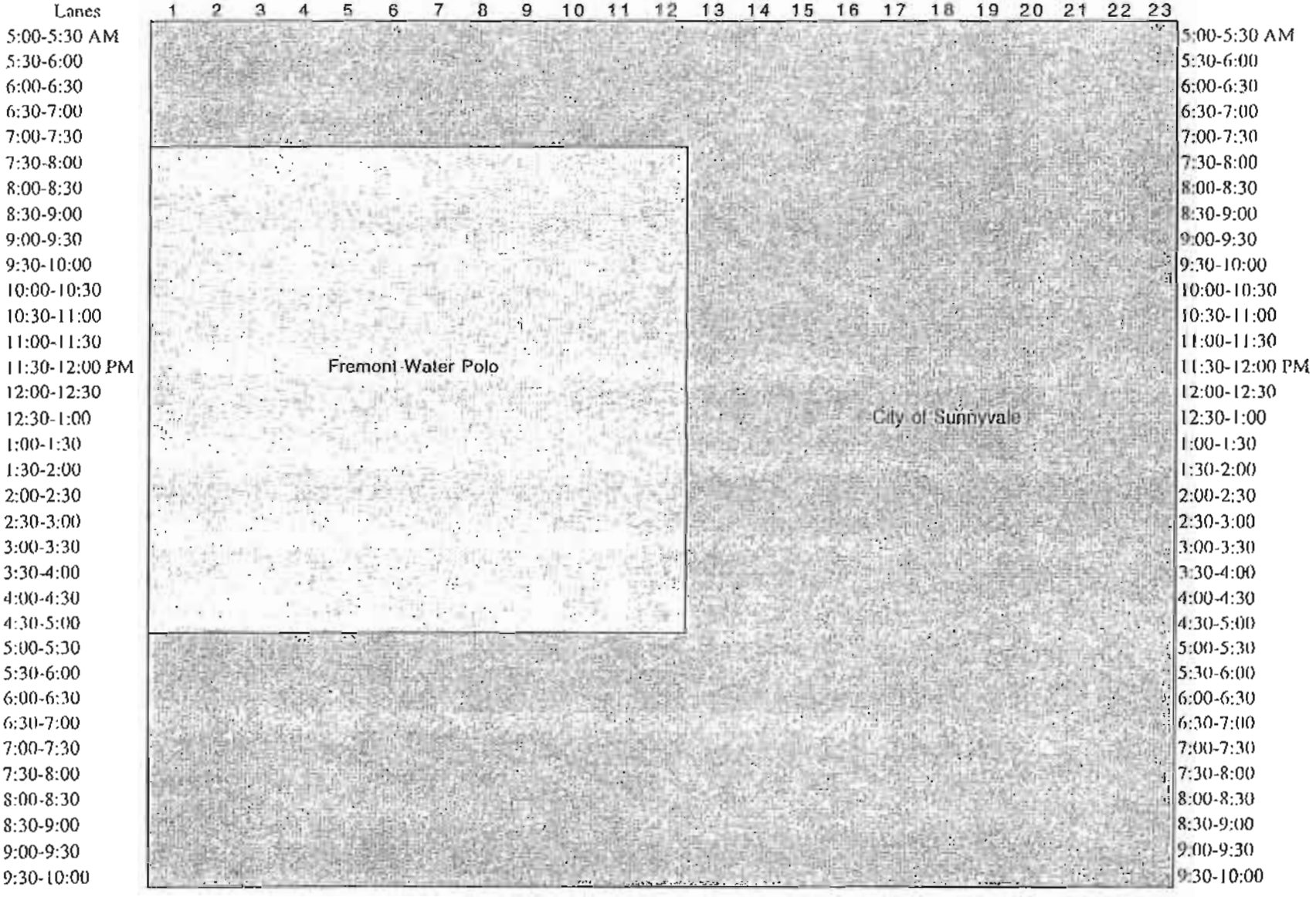
City of Sunnyvale

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. (Saturdays Only)

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



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):

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

DUPLICATE ORIGINAL

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 B

Project Information Sheet

Project: 830560 Fremont Pool House Infrastructure Improvements

Origination Year:	2012-13	Type:	Administrative Facilities	Fund:	610 Infrastructure Renov & Replace
Planned Completion Year:	Ongoing	Category:	Infrastructure	Sub-Fund:	100 General Fund Assets
Department:	Public Works	Project Manager:	Bob Van Heusen	Project Coordinator:	Scott Morton

Project Description / Scope / Purpose

Fremont Union High School District (FUHSD) and the City entered into an agreement for maintenance of the pool house in 2002. Staff has identified significant structural deficiencies that have caused serious damage and will require major repairs. This project provides for major infrastructure improvements to the Fremont High School pool house building that are more extensive than normal routine maintenance. The repairs will address deficient shower drains, inadequate air flow inside the two locker rooms, and damages to building infrastructure as a result of the deficiencies.

Project Evaluation and Analysis

The pool house repairs are necessary to resolve ongoing concerns for user safety and to protect the infrastructure of the building. The pool house is heavily used by patrons of a program operator working under contract with the City to provide aquatic programs. Repairs to the pool house building are necessary in FY 2013/14 and will need to commence in summer 2013. Infrastructure upgrades will be necessary every 15 years. Funding listed in FY 2028/29 is for shower fixture replacements, grout resealing, and other infrastructure upgrades.

Project costs are preliminary and will be updated based on a facility assessment report now being prepared by FUHSD.

Fiscal Impact

The City's portion of the project cost is funded by the Park Dedication Fund. The city and FUHSD are currently negotiating the cost share on this project.

Project Financial Summary

Financial Data	Prior Actual	Current 2012-13	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	Y11-Y20 Total	Project Life Total
Project Costs	0	0	300,000	0	0	0	0	0	0	0	0	0	85,620	385,620
Revenues														
Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Transfers-In														
Park Dedication - Subdivisions			300,000	0	0	0	0	0	0	0	0	0	85,620	
Total	0	0	300,000	0	0	0	0	0	0	0	0	0	85,620	385,620
Operating Costs	0	0	0	0	0	0	0	0	0	0	0	0	0	0

ATTACHMENT C

THIRD AMENDMENT TO USE 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 THIRD AMENDMENT ("Amendment"), dated _____, __, 2013, is made by and between the CITY OF SUNNYVALE, a municipal corporation of the State of California, herein called "City" and the FREMONT UNION HIGH SCHOOL DISTRICT, a public school district duly organized and validly existing under the laws of the State of California, herein called "District," and amends the Development and Operation Agreement between the parties dated July 18, 2000 ("Agreement"), as last amended on February 24, 2004.

RECITALS

WHEREAS, pursuant to the Agreement, the 50-meter pool and ancillary facilities were opened for operation on June 26, 2002; and

WHEREAS, due to deteriorating conditions, the District and City have discovered significant repairs that must be performed on the pool bathhouse, also known as the pool house facility ("Pool House"); and

WHEREAS, the District and City desire to share the costs associated with repairing and/or replacing portions of the Pool House; and

WHEREAS, Section 18 of the Agreement provides for amendment by written agreement of the Parties.

NOW, THEREFORE, in light of the foregoing facts, it is mutually agreed as follows:

Section 1: The Agreement is amended to add a new Section 22, as follows:

SECTION 22. REPAIRS AND/OR REPLACEMENT OF POOLHOUSE

(a) The Pool House Repair Project. DISTRICT and CITY agree to make any and all repairs necessary to address mold, damage and other deterioration of portions of the Pool House ("Pool House Repair Project"). At a minimum, the Pool House Repair Project shall include all items listed on the Pool House Repair Project List set forth in **Exhibit "AA,"** attached hereto and incorporated herein by reference.

(b) Preparation of Plans and Specifications. DISTRICT shall be responsible for causing to be prepared the design and the construction plans and specifications for the Pool House Repair Project. DISTRICT shall submit plans and specifications to the CITY for review at 50% design and for approval prior to bidding the project. The plans and specifications shall be consistent with the Conceptual Plans for the Pool House Repair Project attached hereto and incorporated herein as **Exhibit "BB."**

(c) Project Approval, Construction and Oversight. DISTRICT shall comply with the Sections 1(c), (e) and (f) prior to and during the construction of the Pool House Repair Project. However, award of the construction contract shall not occur without the City's approval.

(d) Temporary Closure of Pool House. The Pool House will be closed during construction of the Pool House Repair Project. CITY shall maintain the right to use and operate the Swimming Pool during construction. During construction, which is planned during summer 2014, DISTRICT shall permit use of student locker rooms for community pool use when school is not in session. If construction continues into the fall, when DISTRICT will resume use of student locker rooms, DISTRICT shall allow a temporary changing area to be placed upon DISTRICT property by CITY until completion of construction. The placement of the temporary changing area will need to be agreed to by the District and the site staff at Fremont High School.

(e) Project Cost Sharing. DISTRICT and CITY shall each pay fifty percent (50%) of the costs associated with the investigation, design, plans, specifications and construction of the Pool House Repair Project this includes the damage Assessment Report that was performed in April 30, 2012 and all associated deconstructive testing and investigation ("Pool House Repair Project Costs"). DISTRICT shall be responsible for direct payment of all costs associated with the Pool House Repair Project. Total project costs are currently estimated at $1,586,889.00, including contingencies. Based on the preliminary estimate, the total contribution by CITY shall not exceed $793,444.00.Should the proposed project construction bids show that total project costs will likely exceed the preliminary estimate of $1,586,889.00, the parties shall meet and confer within 10 business days to determine whether to accept the successful bid or rebid the project. DISTRICT shall notify CITY at least five business days in advance of executing any construction change orders in excess of $5,000 in accordance with Section 1(e) of the Agreement. DISTRICT shall notify CITY monthly about all executed contract changes, and contractor claims for additional compensation. At the beginning of each month, DISTRICT shall submit invoices to the CITY for costs expended in the prior month. CITY shall reimburse DISTRICT within thirty (30) days from the date of the invoice. At any point, should the project costs exceed the current estimate, the parties must meet and confer within 10 days to determine a solution.

(f) On-Going Maintenance of Pool House. Following completion of the Pool House Repair Project, CITY shall be responsible, at its sole expense, for providing regular preventive and routine maintenance as necessary to keep the Pool House in a good and serviceable condition including the repair and/or replacement of building systems and components including but not limited to: plumbing, electrical, heating and air conditioning, roofing, interior and exterior finishes, and structural components of the building.

(g) Pool House Ownership. Ownership to the Pool House shall remain vested in the District.

Section 2: All other provisions of the Agreement, as amended, remain in full force and effect.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, __, 2013

FREMONT UNION HIGH SCHOOL DISTRICT

By: _____

Print Name: Polly Bove

Print Title: Superintendent

Dated: _____, __, 2013

CITY OF SUNNYVALE

By: _____

Print Name: _____

Print Title: _____

APPROVED AS TO FORM:

By: _____

Print Name: _____

Print Title: Assistant City Attorney

Fremont Union High School District

589 W. Fremont Ave.
Sunnyvale, CA. 95087
408-522-2203 fax: 408-522-2234

Exhibit AA
Pool House Estimated Cost of Construction

Please see atteached PDF Dcouments

1.BMR Cosntruction Management Estimate of Project Costs

2. Noll and Tam Design Services not to exceed cost

3. Additional Estiamte Addendum

BMR Construction Management, Inc.
Project: Fremont HS Pool House

Date: November 14, 2013

Description	Quantity	Unit	Unit Cost	Subtotal	Total	Cost SF
Design Development Estimate of Probable Construction Cost						
	3,130	GSF	excl covered walkways			
FOUNDATIONS						
SUBSTRUCTURE						
Slab-on-grade						
dowels at perimeter	80	EA	$30.00	2,400		
5" slab w/ vapor barrier, crushed rock	365	SF	$11.00	4,015		
add floor drains & cleanouts						
layout for slab sawcut	8	HRS	$100.00	800		
sawcut slab	8	HRS	$175.00	1,400		
demo & remove concrete 1.6 cy x 1.7	2.7	TRKYDS	$600.00	1,620		
epoxied dowels to (E) slab edge at 14" o.c.	70	EA	$30.00	2,100		
remove 4" for CL2 AB	1.25	CY	$300.00	375		
compact infill bottom	2	HRS	$100.00	200		
place 4" CL2 AB	2.5	TNS	$100.00	250		
waterproofing prior to infill	140.0	SF	$10.00	1,400		
infill slab cutouts incl locker bases	1.6	CY	$750.00	1,200		
Wingwalls at ADA showers						
(N) Curb	4.0	LF	$45.00	180		
Frame Walls	4.0	HRS	$100.00	400		
Framing Materials	1.0	LS	$100.00	100		
					16,440	5.25
EXTERIOR CLOSURE						
Exterior Walls						
Remove (E) entry doors to Men's & Woments	6	HRS	$120.00	720		
and store for re-installation	2	HRS	$94.00	188		
Demo to widen door opening at Women's	2	HRS	$94.00	188		
Modify framing at door opening	4	HRS	$120.00	480		
Swap doors,frames, hdwr, & reinstall	8	HRS	$120.00	960		
Repair exterior insulation	1	HRS	$120.00	120		
Patch lath, trims & plaster at ext of Women's	8	HRS	$100.00	800		
Patch & finish drywall at int of Men's/Womens	4	HRS	$120.00	480		
Touch-up exterior & interior paint	4	HRS	$100.00	400		
Patch lath, trims & plaster at ext of Mech Rm	8	HRS	$100.00	800		
paint	4	HRS	$100.00	400		
Thermal insulation R-19	2,750	SF	$0.65	1,788		
Roof						
Thermal insulation R-30	3,130	SF	$1.50	4,695		
					12,019	3.84
ROOFING						
Roof Coverings						
Cricket 85' x 4' Tapered	340	SF	$7.00	2,380		
Fiberboard underlayment for roofing	1,520	SF	$0.80	1,216		
Built-up roofing	1,520	SF	$8.00	12,160		
turn roofing up inside of parapet	235	SF	$7.00	1,645		
Premium for modified bitumen roofing	1,755	SF	$3.00	5,265		

Date: November 14, 2013

Description	Quantity	Unit	Unit Cost	Subtotal	Total	Cost SF
Design Development Estimate of Probable Construction Cost						
Flashing	235	LF	$8.00	1,880		
upgrade parapet flashing incl demo, rev flash, patch & paint	1	LS	$6,000.00	6,600		
Stock from storage & re-install (2) 6'- 6 x 4'- 6 skylights at mechanical well & roof hatch	16	HRS	$120.00	1,920		
Repair RWL (allowance)	1	LS	$5,000.00	5,000		
					38,066	12.16
INTERIOR CONSTRUCTION						
Acoustical batt insulation	3,290	SF	$0.65	2,139		
Frame (N) soffits at S. side to conceal ductwork	65	SF	$15.00	975		
Gypsum board - Denshield	8,970	SF	$2.90	26,013		
Level 5 finish where no tile	6,745	SF	$1.60	10,792		
deduct for Dens Armor Plus	4,310	SF	($0.40)	(1,724)		
Dens Armor Plus at soffits to cover ductwork	65	SF	$7.00	455		
sound caulking at sill		LF	$2.45	-		
sound caulking at roof deck		LF	$3.05	-		
Firecaulk at partition head		LF	$12.00	-		
GWB ceilings - Denshield	2,790	SF	$4.25	11,858		
premium for Level 5 finish	2,790	SF	$1.60	4,464		
Fittings/Specialties						
White boards 8' x 4'	1	EA	$425.00	425		
Tackboards	975	SF		deleted		
Signage	20	EA	$100.00	2,000		
Lockers						
Single Tier	26	EA	$500.00	13,000		
Dbl Tier	68	EA	$600.00	40,800		
Reinstall Lks at staff training	1	LS	$720.00	720		
Benches	44	LF	$50.00	2,200		
ADA Bench	2	EA	$445.00	890		
Toilet partitions, solid phenolic	7	EA	$1,200.00	8,400		
Urinal screens, solid phenolic	2	EA	$600.00	1,200		
Toilet accessories	29	EA	$50.00	1,450		
Hand/Hair & Suit dryer	6	EA	$600.00	3,600		
Swimsuit dryer	1	EA	$800.00	deleted		
Coat hooks	27	EA	$50.00	1,350		
Stock from storage, reinstall stair safety post roof access ladder backing, access ladder	8	HR	$120.00	960		
Interior Finishes						
Wall Finishes						
Rubber base 4"	325	LF	$1.75	569		
Ceramic tile base at restrooms	110	LF	$10.00	1,100		
Ceramic tile at rstrms/shwr/vest epoxy grout	3,050	SF	$17.00	51,850		
Premium for Grace Permabarrier at shower walls incl ADA wingwalls	1,270	SF	$4.00	5,080		
Painting - doorframes	14	EA	$75.00	1,050		
- drywall	7,760	SF	$0.90	6,984		
Floor Finishes						
Carpet/lino	790	SF	$6.00	4,740		
Ceramic tile at shwrs/patch epoxy grout	450	SF	$24.00	10,800		
Grace Bituthene WP at shw flrs	365	SF	$5.00	1,825		

Date: November 14, 2013

Description	Quantity	Unit	Unit Cost	Subtotal	Total	Cost SF
Design Development Estimate of Probable Construction Cost						
Ceiling Finishes						
12x12 acoustical tile ceiling	960	SF	$4.50	4,320		
vapor barrier betw locker/shower rm joists and GWB ceilings	1,070	SF	$0.75	803		
Painting						
- GWB ceilings, soffits, fascias	2,790	SF	$0.90	2,511		
					223,597	71.44
MECHANICAL						
Plumbing						
Selective demo						
Sawcut concrete for SS underground	10	HRS	$175.00	1,750		
Remove concrete & dispose (4.2 cy x 1.7)	7	TRKYDS	$550.00	3,850		
Remove fixt's, showers & drains	40	EA	$110.00	4,400		
disconnect AC units at roof	3	EA	$250.00	750		
Gas to mech units						
conn to AC units incl SOV,dirt leg & union	3	EA	$175.00	525		
Water closet	7	EA	$2,050.00	14,350		
Urinal	3	EA	$1,700.00	5,100		
Lavs	4	EA	$2,000.00	8,000		
ADA shower incl grab bar & bench, SH-4	2	EA	$3,350	6,700		
Replace shwr head/cntrls	16	EA	$500.00	8,000		
Exterior showers						
replace regular units in kind	2	EA	$700.00	1,400		
replace accessible unit in kind	1	EA	$2,000.00	2,000		
Janitors sink		EA	$3,000.00	deleted		
remove/replace faucet only	1	EA	$740.00	740		
Hi-low drinking fountains	1	EA	$2,500.00	2,500		
Water heater	1	EA	$30,380.00	30,380		
1 1/2" gas piping	30	LF	$70.00	2,100		
Floor sink in Mech Rm for WHTR	1	EA	$1,200.00	1,200		
Floor drain	4	EA	$1,200.00	4,800		
Trap primer	2	EA	$500.00	1,000		
Refrigerator icemaker		EA	$250.00	-		
Dishwasher hook-up/vent		EA	$350.00	-		
Washer water & drain wall box		EA	$1,350.00	-		
Hose bibb		EA	$150.00	-		
Trench drain	70	LF	$200.00	14,000		
Floor cleanout	6	EA	$350.00	2,100		
Wall cleanout	4	EA	$250.00	1,000		
Wall access panel	6	EA	$200.00	1,200		
Circulating pump	1	EA	$500.00	500		
Underground	172	LF	$45.00	7,740		
point of connection	4	EA	$580.00	2,320		
CW distribution	20	LF	$40.00	800		
HW & HWR distribution	190	LF	$35.00	6,650		
Tempered mixing valve	3	EA	$2,000.00	6,000		
Ceiling access panel		EA	$200.00	-		
Sterilization		LS	$2,000.00	-		
					141,855	45.32
HVAC						
Mechanical units & controls		GSF				
demo (E) rooftop equipment	3	EA	$500.00	1,500		

Date: November 14, 2013

Description	Quantity	Unit	Unit Cost	Subtotal	Total	Cost SF
Design Development Estimate of Probable Construction Cost						
R&R exhaust fans	5	EA	$1,200.00	6,000		
Install new ductwork	3	EA	$4,000.00	12,000		
(N) HV units	3	EA	$15,000.00	45,000		
Add EMS to units	1	LS	$10,000.00	10,000		
					74,500	23.80
Fire Protection					not required	
ELECTRICAL						
Power & distribution						
Selective Demolition						
(E) fixtures	64	EA	$55	$3,520.00		
Remove/reinstall panel	4	EA	$2,200	$8,800.00		
Remove/reinstall backboard	1	EA	$1,000	$1,000.00		
Disconnect/re-connect transformer	1	EA	$3,500	$3,500.00		
Replace cover plate	40	EA	$20	$800.00		
Replace duplex outlet	28	EA	$175	$4,900.00		
Hand dryer connection only - use ex. Ckt.	6	EA	$175	$1,050.00		
Swim suit water extractor - conn. Only	2	EA	$175	deleted		
120V circuit for hot water heater	1	EA	$475	$475.00		
Disconnect (E) and connect (N) exhaust fan	5	EA	$735	$3,675.00		
Lighting incl controls						
note that all lighting pricing is based on using existing power circuits						
A 1x4 Fl. Wrap fixture - in rows	53	EA	$375	$19,875.00		
A1 1x4 with 2-lamp em powerpk	12	EA	$445	$5,340.00		
X Exit light	8	EA	$425	$3,400.00		
Replace cover plate	12	EA	$20	$240.00		
(N) dual-switch wall occ sensor	8	EA	$420	$3,360.00		
(N) ceiling occ sensor	10	EA	$495	$4,950.00		
(N) 2-gang switching	5	EA	$340	$1,700.00		
(N) LCP	1	EA	$8,500	$8,500.00		
Add conductor for 2 gang switching	16	HRS	$125	$2,000.00		
					77,085	24.63
Special Electrical Systems						
Selective Demolition						
Fire alarm						
Selective Demolition						
Document & tag (E) wiring prior to demo	8	HRS	$125	$1,000.00		
Remove (E) devices leaving wiring for reuse	17	EA	$65	$1,105.00		
Rework/Add conduit as needed	16	HRS	$125	$2,000.00		
Strobe		EA	$495			
Horn strobe	8	EA	$495	$3,960.00		
Horn	2	EA	$495	$990.00		
WP horn	1	EA	$595	$595.00		
Smoke detector (N) location	14	EA	$495	$6,930.00		
Heat detector (new location)	4	EA	$495	$1,980.00		
R&R Remote notification power supply	1	EA	$1,450	$1,450.00		
Fire watch while (N) devices are being during fire alarm work (est 1-wk x 10 hrs/day)	50	HRS	$50	$2,500.00		

Date: November 14, 2013

Description	Quantity	Unit	Unit Cost	Subtotal	Total	Cost SF
Design Development Estimate of Probable Construction Cost						
Tel/data						
New phone/data jack - existing location	9	EA	$165	$1,485.00		
Paging, intercom - labor only						
incl speakers removed & re-installed	10	EA	$295	$2,950.00		
Clock - existing location - labor only	6	EA	$295	$1,770.00		
					$28,715.00	9.17
EQUIPMENT & FURNISHINGS						
Furnishings						
Casework						
Solid phenolic panel base cabinet	16	LF	$370.00	5,920		
Solid phenolic countertop x 24"	40	SF	$100.00	4,000		
Storage cabinet x 7'- 0		LF	$200.00	deleted		
					9,920	3.17
SPECIAL CONSTRUCTION & DEMOLITION						
Special construction						
Building elements demolition						
Sawcut concrete	1.0	LS	$500.00	500		
dump fees (5.8 cy x 2 tns/cy)	14.0	TNS	$12.00	168		
remove concrete slab-on-grade	7.0	CY	$300.00	2,100		
Remove/salvage items for District		SM	$200.00	-		
Remove roof hatch, access ladder & stair		LG	$400.00	-		
safety post & store for re-installation	6	HRS	$94.00	564		
Remove (2) mech well skylights & store for						
re-installation	10	HRS	$94.00	940		
Remove soffit GWB & framing at S. side						
for revised soffit framing to cover ductwork	24	HRS	$94.00	2,256		
Remove roofing & fiberboard	1,520	SF	$2.00	3,040		
Remove door leafs	2	EA	$33.00	66		
Remove doorframes	2	EA	$65.00	130		
Remove carpet		SF	$0.50	see Hazmat		
Remove ceramic tile floor finish		SF	$2.00	-		
Debris boxes (30 cy)	2	EA	$800.00	1,600		
(15 cy) for conc, tile, mortar	1	EA	$400.00	400		
					11,764	3.76
SITE WORK						
Subtotal				633,961	633,961	
General requirements (4 mos)	88	WD	$1,000	88,000		
temp fence & gates	450	LF	$8.00	3,600		
final clean	3,130	SF	$0.50	1,565		
Subtotal				727,126		
Design contingency	5	%	$ 727,126	36,356		
Subtotal				763,482		
Construction Contingency	10	%	$ 763,482	76,348		
Subtotal				839,830		
GL insurance	1.5	%	$ 839,830	12,597		
Performance & payment bonds	1.5	%	$ 839,830	12,597		
Subtotal				865,025		
Labor, Market & Materials Adjustment	10.0	%	$ 865,025	86,503		
Subtotal				951,528		
Overhead & profit	8.0	%	$ 951,528	76,122		
Total Probable Construction Cost					**$ 1,027,650**	328.32

Date: November 14, 2013

Description	Quantity	Unit	Unit Cost	Subtotal	Total	Cost SF
Design Development Estimate of Probable Construction Cost						
Soft Costs						
Expenses to Date - Invoice No. 1				96,080		
Expenses to Date - Invoice No. 2				37,083		
Abatement Allowance				80,000		
Projected soft costs				200,000		
AE Fee				137,000		
Total Projected Soft Costs					**$ 550,163**	
Total Probable Project Cost					**$ 1,577,813**	
Costs proposed but not yet billed					**$ 9,076**	
Total Projected Project Cost					**$ 1,586,889**	

QUALIFICATIONS:

1. Based upon a 4-month construction schedule.
2. Abatement & Demo performed under a separate contract covered by the allowance, as directed by Kitchell CEM
3. It is assumed that the removal of existing low voltage devices and the mapping of their location and wiring is included in the demolition contract.
4. Based upon the 2013 CBC
5. If the project does does not progress so as to fall under the 2013 CBC, we anticipate an increase of about 5% to mechanical costs or about $6,000, about 20% to electrical, lighting & lighting controls, or about $8,000. and $10,000 for commissioning per 2013 CBC

noll tam
architects and planners

5 August 2013

Tom Millman
Sr. Program Manager
Kitchell CEM
589 W. Fremont Avenue
Sunnyvale, Ca 94087

Re: Fremont High School Pool House Repair Project
Fee Estimate

Hello Tom,

Per your request we are providing the following fee estimate for Design Services from Schematic Design through Construction Administration for the Fremont High School Pool House Repair Project. This estimate is based upon our understanding of the scope and requirements of the project.

The total fee for Design Services is not to exceed **$137,000**.

Regards,

Chris Noll
Noll & Tam Architects

Noll & Tam Architects
729 Heinz Avenue
Berkeley, CA 94710

Fremont High School Pool House Repairs

Sunnyvale, CA
17 September, 2013

Basic Service	Consultant	DESIGN DEVELOPMENT	CONSTRUCTION DOCUMENTS	BIDDING AND NEGOTIATION	CONSTRUCTION ADMINISTRATION	PROJECT CLOSEOUT	TOTALS
Architectural Services	Noll & Tam	$20,040	$31,725	$3,250	$23,250	$2,000	$80,265
Structural Engineering	Hohbach Lewin	$0	$6,050	$0	$2,200	$0	$8,250
Mechanical Engineering	Capital Engineering	$4,950	$9,900	$990	$3,960	$0	$19,800
Electrical Engineering	Integral Group	$2,750	$4,675	$0	$1,100	$0	$8,525
Waterproofing	WJE	$0	$5,280	$0	$0	$0	$5,280
Specifications	Pawprints	$1,650	$2,200	$0	$0	$0	$3,850
Cost Estimating	BMR	$2,750	$2,750	$0	$0	$0	$5,500
Signage	Matthew Willaims	$2,200	$2,200	$0	$1,100	$0	$5,500
Subtotal Basic Services		**$34,340**	**$64,780**	**$4,240**	**$31,610**	**$2,000**	**$136,970**
Reimbursable Expense Allowance		$0	$0	$0	$0	$0	$0

Total Proposed Fee **$136,970**

Additional Estimate Addendum

This estimate addendum is provided to address the fact that the estimate provided as a PDF in attachment AA does not include cost for abatement and Hazmat oversight by a qualified consultant. The costs provided herein are conceptual in nature until the entire scope of the project can be determined and agreed to by both parties. Based on similar size projects done in the Fremont District's Measure B Bond program including both abatement of hazardous materials and qualified over sight, an additional cost of $80,000.00 should be considered as part of the project costs.

Fremont Union High School District

589 W. Fremont Ave.
Sunnyvale, CA. 95087
408-522-2203 fax: 408-522-2234

Exhibit BB
Copy of Construction Documents (Plans)

Copy of Construction Specifications

ftp://205.173.40.40/Public/DRAWINGS_MEASURE%20B_DESIGN%20PLANS%20IN%20PROGRESS/FHS/FHS%20Pool%20House%20Repair/20131025_FHS%20Pool%20House%20Repair_DD%20Set/