JOINT USE AGREEMENT BETWEEN SAN LEANDRO UNIFIED DISTRICT AND THE CITY OF SAN LEANDRO
(Joint Use of Recreational Facilities - Pacific Sports Complex)

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into this __25th____ day of __**February**___, 2014 ("Effective Date"), by and between **SAN LEANDRO UNIFIED SCHOOL DISTRICT**, a California public school district ("District") and the **CITY OF SAN LEANDRO**, a municipal corporation of the State of California ("City"). The District and City may be referred to herein collectively as the "Parties" or individually as a "Party".

RECITALS

A. WHEREAS, District is the owner of certain recreational real property and facilities located at 2651 Teagarden Street, San Leandro, CA as identified in **Exhibit "A"** ("Pacific Sports Complex"); and

B. WHEREAS, City requires facilities to provide a program of recreational services to community youth and residents that contribute to the general attainment of recreational and educational objectives; and

C. WHEREAS, the District intends to allow the City to jointly use the Pacific Sports Complex as set forth in this Agreement to organize, promote and conduct programs of community recreation; and

D. WHEREAS, the provisions of Education Code sections 10900 through 10914.5, inclusive, (the "Community Recreation Act") authorize and empowers cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of public services which will contribute to the attainment of general recreational and educational objectives for children and adults of the state, and to enter into agreements with each other for such purposes; and

E. WHEREAS, the District and City's joint use of the Pacific Sports Complex is in the vital and best interests of the residents of the City and District students, and their collective and individual health, safety, and welfare, all of which are in accordance with the public purposes and provisions of applicable federal, State and local law.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this agreement, the Parties agree as follows:

1. **TERM OF AGREEMENT.** The "Term" of this Agreement shall be for three (3) years commencing on Effective Date, and shall remain in effect until the anniversary date in 2017, unless amended or terminated earlier pursuant to the amendments or termination provisions set forth in this Agreement.

    1.1. If the Parties intend to renew this Agreement when the Term ends, the Parties may do so only by executing a separate writing that complies with all of the following provisions:

        1.1.1. It specifically authorizes further use by the City and specifies the terms of that use, and

        1.1.2. It is approved by each Party's governing body prior to the end of the Term.

    1.2. On the last day of the Term hereof, or the termination of this Agreement, whichever occurs sooner, the City shall surrender the Pacific Sports Complex to District in good order, condition and repair, free and clear of all liens, claims and encumbrances. The condition of the Pacific Sports Complex when surrendered shall be similar to that existing as of the Effective Date of this Agreement excepting normal wear and tear. This Agreement shall operate as a conveyance and assignment to District of any improvements identified by District to remain on the Pacific Sports Complex upon completion of the Term or the termination of this Agreement, whichever occurs sooner. City shall remove from the Pacific Sports Complex all of City's personal property, trade

fixtures, and any improvements made by City which City and District agreed would be removed by City. All property not removed shall be deemed abandoned by City. If the Pacific Sports Complex is not surrendered at the end of the Term or upon earlier termination of this Agreement, City shall indemnify District against loss or liability resulting from delay by City in surrendering the Pacific Sports Complex including, without limitation, any claims made by any succeeding entity entitled to use the Pacific Sports Complex, or loss to District due to lost opportunities to timely obtain succeeding entities.

2. **CITY'S USE OF THE PACIFIC SPORTS COMPLEX**

2.1. The City shall have, per the annual jointly approved use schedule, non-exclusive use of the following buildings, grounds, equipment or recreational facilities that are located on and comprise the Pacific Sports Complex, all as further identified on the attached **Exhibit "A,"** at any time that is not part of "District's Use" as defined herein ("City('s) Use"):

2.1.1. Sports fields identified as PAC 1 and PAC 2.
2.1.2. Parking Lot A."
2.1.3. Parking Lot B.
2.1.4. Sports courts identified as "Tennis Courts."
2.1.5. Playground area identified as "Playground."
2.1.6. Area defined as "Well"

(Collectively referred to herein as "Pacific Sports Complex and/or "Recreational Facility(ies).")

2.2. City shall have limited use of the West Team Room Restrooms identified as "Building 5" located on the adjacent Burrell Field. City shall not have use of building 5 Restrooms during any District Use time period. City shall maintain Building 5 Restrooms during City's Use.

2.3. During District Use time periods, City shall have use of the bathroom identified as "Bldg.-3," as further identified in the attached **Exhibit "A."**

3. **DISTRICT'S USE OF THE PACIFIC SPORTS COMPLEX.** The District's use of the Pacific Sports Complex for any purpose shall take precedence and priority over the City's Use.

3.1. "District('s) Use" includes use of the Pacific Sports Complex, without limitation:

3.1.1. Use during any time that has been scheduled in advance, per the annual schedule by the District for classes, activities, exercises, or District functions;

3.1.2. Use during the hours of 3:00 pm until 11:00 pm, Friday and Saturday evenings during the San Leandro High School football season for home football games.

3.2. District shall submit dates and times for District's Use to City in November of each year of the Term. Once submitted to City, District's Use shall take precedence and priority over the City's Use.

3.2.1. The fields within the Pacific Sports Complex and outside the Burrell Field area shall be closed from November 1 to the last day in February for maintenance and shall re-open March 1 or as soon thereafter as possible during the term of this agreement.

4. **SCHEDULING CITY AND THIRD PARTY USE OF THE PACIFIC SPORTS COMPLEX**

4.1. City shall coordinate and schedule with the District all third party use of Pacific Sports Complex that will occur during time periods that are **not** District Use periods as identified herein. City shall be responsible to prepare and maintain the Master Use Schedule for the Pacific Sports Complex.

4.2. City acknowledges and understands that the Pacific Sports Complex is located within the same area as the Burrell Field. As such, the Pacific Sports Complex and Burrell Field may be in use at the same time by other parties, including but not limited to the District and the City. City shall cooperate with District in reaching amicable arrangements concerning the concurrent use and security of the Pacific Sports Complex and Burrell Fields.

4.3. The City acknowledges that there is limited parking at the Pacific Sports Complex and that City shall consider availability of parking when scheduling concurrent events at the Pacific Sports Complex.

4.4. City shall provide District the Master Use Schedule on an annual basis and at any time upon District's request.

4.5. City and any third party entity that schedules through the City a use of the Pacific Sports Complex or any Recreational Facility located thereon shall be considered "City Use" for purposes of this Agreement.

4.6. The City shall have first right of request for use of Burrell field when such use requests are not in conflict with District events. All requests will be submitted in accordance with the Master Schedule.

5. **USE FEES AND MAINTENANCE/CAPITAL EXPENSES**

5.1. The City may charge fees for third party use of the Pacific Sports Complex according to City's Master Fee Schedule ("Use Fees").

5.2. Each party shall pay the standard rate for use of any portion of the Burrell Field and the Pacific Sports Complex not specified as part of this agreement based on each party's fee schedule established for youth groups.

5.3. The District and the City shall individually establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of the District and the City transacted under this Agreement. The District and the City shall each individually retain such books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter. Each party shall permit the other party's representatives and agents, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the fees collected by the District and the City pursuant to this Agreement. Audit(s) may be performed at any time by either party, provided that the party requesting the audit shall give reasonable prior notice and shall conduct audit(s) during normal business hours, unless each party otherwise consents.

6. **MAINTENANCE AND UTILITY COSTS**

6.1. City shall provide, at its own cost and expense, any and all maintenance for the Pacific Sports Complex. Maintenance to be provided by City shall be conducted by City staff on City's equipment, shall be consistent with the normal maintenance levels and activities as applied to other comparable City recreational spaces and ball fields, and shall insure safe and healthful use. City shall maintain the Pacific Sports Complex in a manner that meets all federal, state and local regulations relating to the Pacific Sports Complex and to the operation of the recreational

programs thereon, and City shall comply with all federal, state and local laws, regulations and ordinances, now or hereafter enacted, concerning the Pacific Sports Complex and/or the use of the Recreational Facilities.

6.2. City shall provide, at its own cost and expense, any and all maintenance of the landscaped areas and irrigation systems located on the Pacific Sports Complex. Maintenance of the landscaped areas by City shall be conducted by City staff on City's equipment, shall be consistent with the normal maintenance levels and activities as applied to other comparable City open space and park areas and shall insure safe and healthful use.

6.3. Maintenance by City shall also include payment by City of any and all utility costs, including without limitation, electricity and water. The District shall invoice the City monthly for utility costs associated with the scheduled use of the Pacific Sports Complex.

6.4. The City is responsible for the routine maintenance and repair of the well.

6.5. The District shall have sole responsibility for the operation and maintenance of the Concession (Building 2). All scheduling requests related to the Concession building shall be directed to and administered by the District.

7. **REPAIRS.** The City shall repair, or cause to be repaired, or will reimburse the District for the cost of repairing damage to the Pacific Sports Complex as a result of City's Use.

7.1. During hours where activities by either party are not scheduled, any damage to the Pacific Sports Complex as a result of vandalism or acts of God shall be the responsibility of the District. In order to keep the facility operational in such an event, the City is entitled to full reimbursement for necessary repairs. All required repairs shall be pre-approved by the District. Any dispute regarding the responsibility for damages shall be resolved pursuant to the dispute resolution procedures indicated herein.

8. **CAPITAL IMPROVEMENTS**

8.1. District agrees to provide, as its own cost and expense, any and all necessary capital improvements for the Pacific Sports Complex. District, in its sole discretion, shall determine the necessity of, scope, scheduling, and funding for any capital improvements to the Pacific Sports Complex. Capital improvements shall be provided and made by District staff and according to District facilities standards.

8.2. District and City mutually acknowledge the intent of the parties to establish and maintain a Sinking Fund for the exclusive purpose to fund maintenance, operations, marketing, and capital replacement costs of Burrell Field and the Pacific Sports Complex (PSC). During the initial 3-year term of this Agreement, District and City shall work towards establishing such a fund, which shall reside with and be administered by the District with its own separate annual review by City and District representatives of credits and debits to and from the Sinking Fund. Terms of the Sinking Fund shall be specified in a separate Agreement between the Parties.

9. **TAXES; ASSESSMENTS**. City shall pay any assessment on the Pacific Sports Complex, including any improvements which City constructs or causes to be constructed on the Pacific Sports Complex, whether real estate, general, special, ordinary or extraordinary, or rental, levy or tax, and/or fee imposed upon or levied against the Pacific Sports Complex or City's legal or equitable interest created by this Agreement, and the taxes assessed against and levied upon City's alterations and utility installations that may be imposed by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Pacific Sports Complex address and where the proceeds so generated are applied by

the City, county or other local taxing authority having jurisdiction. The provisions of this Section shall survive the expiration or earlier termination of this Agreement.

10. **PARKING.** City shall have non-exclusive use of the parking area identified in Exhibit "A" as Parking Lot "A", and Parking Lot B. City may instruct its visitors, invitees, guests and third party users to park in Parking Lots A and B. City shall not abandon any inoperative vehicles or equipment on any portion of the Pacific Sports Complex. District shall not be liable for any personal injury suffered by City or City's visitors, invitees, guests or third party users for any damage to or destruction or loss of any personal property located or stored in Parking Lots A and B, or the Pacific Sports Complex. City accepts Parking Lots A and B "as is" and City acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking.

11. **TERMS AND CONDITIONS OF CITY'S USE OF PACIFIC SPORTS COMPLEX**

11.1. The Recreational Facilities located on the Pacific Sports Complex and identified in Exhibit "A", are provided to City on an "AS IS" basis, except as more fully identified herein or in any attachment that references this section or subsection, in which case those facilities explicitly identified shall be provided and accepted by City upon completion or satisfaction of the relevant condition. District shall not be required to make or construct any alterations, unless mutually agreed upon by the parties, including structural changes, additions or improvements to the Pacific Sports Complex for City's Use, as mutually agreed upon

11.2. City further acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Pacific Sports Complex for the conduct of City's Use. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District, and the City expressly waives all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.

11.3. City shall not use the Pacific Sports Complex for any use other than that specified in this Agreement without the prior written consent of District.

11.4. City shall not use or permit the Pacific Sports Complex to be used in whole or in part during the term of this Agreement for any purpose or use in violation of any laws or ordinances applicable thereto.

11.5. City shall not commit or suffer to be committed, any waste upon the Pacific Sports Complex, or allow any sale by auction upon the Pacific Sports Complex, or allow the Pacific Sports Complex to be used for any unlawful purpose, or place any loads upon any facilities within the Pacific Sports Complex that endanger the structure, or place any harmful liquids in the plumbing, sewer or storm water drainage system of the Pacific Sports Complex. No waste materials or refuse shall be dumped upon or permitted to remain upon any part of the Pacific Sports Complex except in trash containers designated for that purpose.

11.6. Any uses which involve the serving and/or sale of alcoholic beverages and the conducting of games of chance are prohibited on the Pacific Sports Complex. City shall at all times comply with District-wide policy prohibiting the use of tobacco products on the Pacific Sports Complex.

11.7. City shall furnish and supply the expendable materials, supplies and equipment necessary for City's Use of the Pacific Sports Complex.

11.8. City shall not use or permit the use of the Pacific Sports Complex or any part thereof for any purpose which is inimical to public morals and welfare or morally objectionable as unsuitable for

a public educational facility. City agrees to immediately respond to concerns expressed by neighbors or District relating to the City's Use of the Pacific Sports Complex.

11.9. City shall require all City Users, licensees, and invitees to use the Pacific Sports Complex in conformance with the permitted use, all applicable laws, regulations, rules and ordinances, and this Agreement.

11.10. City represents that it is qualified to administer and operate the recreational programs to be conducted at the Pacific Sports Complex. City shall be solely responsible for the administration and operation of the City Use. City shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with City's Use of the Pacific Sports Complex.

11.11. City shall provide and ensure adequate supervision of any activity conducted on the Pacific Sports Complex during City's Use.

12. **ACCIDENT/INCIDENT REPORT.** City shall require City Users to submit written accident/incident reports to the City within twenty-four (24) hours of any accident or incident that occurs on the Pacific Sports Complex during a City Use. Accident/injury reports shall be submitted to the District's Office of Risk Management.

13. **CONCUSSION OR HEAD INJURY DURING CITY USE.** City shall comply and require any person, group or entity using the Pacific Sports Complex during City's Use, to comply with Education Code section 49475 regarding the removal of any athletic participant suspected of sustaining a concussion or head injury during use of the Pacific Sports Complex.

14. **SIGNS.** City may, at City's cost, place City's sign on the Pacific Sports Complex, and otherwise advertise City's services, provided City obtains the prior written approval and consent of District. District's approval and consent shall not be unreasonably withheld. Any signs erected or placed by City in or upon the Pacific Sports Complex shall be in compliance with the local ordinances pertaining thereto. In connection with the placement of City's signs, District agrees to cooperate with City in obtaining any governmental permits necessary. Throughout the Term of this Agreement City shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. Upon the termination of this Agreement, City shall remove any signs it has erected or placed on the Pacific Sports Complex, and shall repair any damage to the Pacific Sports Complex caused by the erection, placement, or removal of City's signs.

15. **TITLE TO THE PACIFIC SPORTS COMPLEX**. The Parties acknowledge that title to the Pacific Sports Complex shall be in, with, and held by the District.

16. **TITLE TO AND REMOVAL OF CITY'S IMPROVEMENTS / FIELDS; EQUIPMENT REQUIREMENTS.**

16.1. City shall not construct or cause to be constructed on the Pacific Sports Complex any improvements or modifications ("City's Improvements") without the express prior written consent of District. City's Improvements must be deemed in advance by the City Council as necessary for the operation of the City's recreational program. District cannot and shall not compel City to construct any City Improvements that are not deemed in advance by the City Council as necessary for the operation of the City's recreational program.

16.2. City shall at its own expense obtain all necessary environmental and governmental approvals and permits, including, without limitation, the California Environmental Quality Act ("CEQA"), any necessary approvals from any local authority including any Site(s), grading, zoning, design review and other required permits or approvals, if applicable, prior to commencing construction of City Improvement and shall provide District with evidence of such approval(s).

16.3. City's contractor must be approved in advance by District. All contractors and subcontractors of City, if any, shall be duly licensed in the State of California. City shall be solely responsible for maintaining City's Improvements installed thereon during the Term of this Agreement.

16.4. Under all circumstances, City must seek and receive necessary approvals from the Division of the State Architect for any City Improvements and pay all applicable fees associated with permitting requirements.

16.5. On or before the expiration of this Agreement, or within thirty (30) days after any earlier termination of this Agreement, City shall remove City's Improvements, at its sole expense. City shall repair any damage to the Pacific Sports Complex caused by removal of City's Improvements and restore the Pacific Sports Complex to good condition, less ordinary wear and tear. In the event that City fails to timely remove City's Improvements, District, upon fifteen (15) days written notice, may either (1) accept ownership of City's Improvements with no cost to District, or (2) remove City's Improvements at City's sole cost. In the event that District chooses to accept ownership of City's Improvements, City shall execute any necessary documents to effectuate the change in ownership of City's Improvements. In the event that District removes City's Improvements, City shall pay all invoices for the removal of City's Improvements within thirty (30) days of receipt of such invoices.

17. **ANNUAL MEETING OF THE PARTIES.** During the Term of this Agreement, designated District and City staff shall meet annually at a time that is mutually agreed upon to jointly analyze each Party's respective uses of the Pacific Sports Complex. Any mutually agreed upon revisions to the terms and conditions of this Agreement shall be committed to writing and approved by each Party.

17.1. Each Party shall designate one contact person to maintain records and be the point of contact for each Party. Each Party shall notify the other in the event the Party's contact person changes. Such notification shall be in the same manner provided in this Agreement in the section entitled "Notices."

18. **COMPLIANCE WITH ALL LAWS**

18.1. City shall at City's expense comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Pacific Sports Complex, and shall faithfully observe in City's Use of the Pacific Sports Complex all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality, hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act ("CEQA") and its implementing regulations in its use of the Pacific Sports Complex), and all District policies, rules and regulations.

18.2. The judgment of a court of competent jurisdiction that City violated any law or regulation or ordinance in City's use of the Pacific Sports Complex shall be considered conclusive evidence of that fact as between District and City. If City fails to comply with any such law, regulation or ordinance, District reserves the right to take necessary remedial measures at City's expense, for which City agrees to reimburse District on demand.

18.3. City shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Pacific Sports Complex and any improvements by City or its agents, employees, contractors, third party users, or invitees, except for limited quantities of standard office, and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). City shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United

States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq. (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.

18.4. **Notice**. City will promptly notify District in writing if City has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Pacific Sports Complex in violation of Environmental Laws. City shall promptly provide copies to District of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Pacific Sports Complex or compliance with Environmental Laws. City shall promptly supply District with copies of all notices, reports, correspondence, and submissions made by City to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. City shall promptly notify District of any liens threatened or attached against the Pacific Sports Complex pursuant to any Environmental Laws.

19. **INDEMNIFICATION**

19.1. **Indemnification of District.** To the furthest extent permitted by California law, City shall protect, defend, indemnify and hold harmless District, and its officers, agents, representatives, consultants, employees, trustees and volunteers ("District's Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suits, and actions ("Claims") of any kind, nature or description, including, but not limited to, personal injury, death, property damage, and consultants' and/or attorneys' fees and costs, directly arising out of, connecting 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 this Agreement except to the extent that the Claims are caused by the negligence or willful misconduct of the District or the District's Indemnified Parties.

To the furthest extent permitted by California law, District shall protect, defend, indemnify and hold harmless City, and its officers, agents, representatives, consultants, employees, and volunteers ("City's Indemnified Parties") from any and all demands, liabilities, losses, damages, injury, claims, suits and actions ("Claims") of any kind, nature or description, including, but not limited to, personal injury, death, property damage and consultants' and/or attorneys' fees and costs, directly arising out of, connecting with or resulting from the performance of the Agreement or from any activity, work, or thing done, permitted, or suffered by the District in conjunction with this Agreement except to the extent that the Claims are caused by the negligence or willful misconduct of the City or the City's Indemnified Parties.

20. **INSURANCE.** Each Party shall, during the Term, obtain, procure and/or maintain current in force and effect the policies set forth in **Exhibit "B".** All policies, endorsements, certificates shall be subject to approval by the other Party's Risk Manager as to form and content. The insurance requirements are subject to amendment or waiver if so approved in writing by both Parties. Each Party agrees to provide the other Party with a copy of said policies, certificates and/or endorsements upon execution of this Agreement.

21. **TERMINATION**

21.1. **Termination For Convenience**

21.1.1. Either Party may terminate this Agreement by written notification sixty (60) days prior to the effective date of the termination.

21.1.2. Neither Party shall be required to provide cause for termination in the written notification.

21.2. **Termination for Cause**. Either Party may terminate this Agreement immediately for cause. Cause shall include, without limitation:

21.2.1. Material violation of this Agreement by City or District; or

21.2.2. Any act by City or City Use exposing District to liability to others for personal injury or property damage; or

21.2.3. City is adjudged a bankrupt, City makes a general assignment for the benefit of creditors or a receiver is appointed on account of City's insolvency.

21.2.4. If District terminates for cause, City's rights in the Pacific Sports Complex shall terminate upon City's receipt of notice of termination from District. Upon receipt of District's notice of termination, City shall surrender and vacate the Pacific Sports Complex in the condition required under this Agreement, and District may re-enter and take possession of the Pacific Sports Complex and all the remaining improvements or property and eject City or any of City's users, assignees or other person or persons claiming any right under or through City or eject some and not others or eject none. This Agreement may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not release City from the payment of any sum then due District or from any claim for damages previously accrued or then accruing against City.

21.3. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or City.

21.4. Upon termination of this Agreement, City shall restore the Pacific Sports Complex to a good condition, reasonable wear and tear excepted.

22. **NOTICES.** All notices required or permitted to be given under this agreement shall be in writing and personally delivered, or sent by U.S. mail, or facsimile or other electronic means, addressed as follows:

CITY	**DISTRICT**
City of San Leandro 835 East 14th Street San Leandro, CA 94577 Attn: City Manager Telephone: 510-577-3390	San Leandro Unified School District 14735 Juniper Street San Leandro, CA 94579 Attn: Superintendent Telephone:

Notice shall be deemed effective on the date personally delivered or, if mailed, three days after deposit in the mail. Notice transmitted by facsimile or other electronic means shall be deemed effective on the following business day. Notice provided by overnight delivery shall be deemed effective the next business day after delivery by the overnight delivery service. The Parties may change their respective addresses for purposes of delivering notices by sending notice of such change pursuant to this paragraph.

23. **ASSIGNMENT.** Neither Party shall assign its rights, duties or privileges under this Agreement, nor shall either Party attempt to confer any of its rights, duties or privileges under this Agreement on any third Party, without the written consent of the other Party.

24. **NON-DISCRIMINATION.** Neither Party shall employ any discriminatory practices in its performance hereunder, including its employment practices, on the basis of sex, race, color, religion, national origin, ancestry, age, sexual orientation, or physical or mental disability.

25. **INDEPENDENT CONTRACTOR STATUS.** This Agreement is by and between two independent entities and is not intended to and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association.

26. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both Parties.

27. **VERIFICATION OF QUALIFICATIONS.** Each Party shall be responsible for verifying the qualifications, credentials, certificates, and licenses of its staff, agents, consultants and/or subcontractors who may provide services in conjunction with each Party's duties or obligations pursuant to this Agreement or the use of the Recreational Facilities.

28. **FINGERPRINTING AND CRIMINAL BACKGROUND INVESTIGATIONS.** Each Party shall ensure compliance with the fingerprinting requirements of Education Code section 10911.5 for all employees, staff, and/or contractors who could have direct contact with District pupils, regardless of whether such individuals are paid or unpaid.

29. **DISPUTE RESOLUTION.** If a dispute arises related to the execution of interpretation of this Agreement the Parties agree to attempt first to resolve the dispute through negotiations. Negotiations shall first be attempted by the City Manager and the District Superintendent, or their designees. If negotiations are unsuccessful, the Parties agree to mediate the dispute prior to initiating legal action.

30. **CALIFORNIA LAW.** This Agreement shall be governed by and the rights, duties and obligations of the Parties shall be determined and enforced in accordance with the laws of the State of California.

31. **WAIVER.** The waiver by either Party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

32. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.

33. **AMENDMENTS.** Amendments to the terms and conditions of this Agreement shall be requested in writing by the Party desiring the revision, and any amendment to the Agreement shall only be effective upon the mutual agreement in writing of both Parties hereto.

34. **COUNTERPARTS.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.

35. **CAPTIONS.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intentions of the Parties hereto.

36. **SEVERABILITY.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.

37. **INCORPORATION OF RECITALS AND EXHIBITS.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference.

38. **APPROVAL.** The Parties agree that this Agreement shall not be binding on the Parties until the Agreement is approved by the District's Board of Education and the City Council.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2014	Dated: _____, 2014
SAN LEANDRO UNIFIED SCHOOL DISTRICT	**CITY OF SAN LEANDRO**
By: _____	By: _____
Print Name: _____	Print Name: _____
Print Title: Superintendent	Print Title: City Manager

EXHIBIT "A"

PACIFIC SPORTS COMPLEX

EXHIBIT "B"

INSURANCE

Each Party, at its sole cost and expense, shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services or use of the Pacific Sports Complex hereunder by the Parties, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. The coverage described in Insurance Services Office Form Number GL 0002 (Ed. 01/96) covering Commercial General Liability together with Insurance Services Office Form Number GL 0404 covering Broad Form Comprehensive General Liability; or that described in Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001 (Ed. 01/96), including X.C.U. (Explosion, Collapse and Underground) coverage.

2. The coverage described in Insurance Services Office Form Number CA 0001 (Ed. 12/93) covering Automobile Liability, Code 1 "any auto", or Code 2 "owned autos" and Endorsement CA 0025. Coverage shall also include Code 8 "hired autos" and Code 9 "non-owned autos"; and

3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and

B. **Minimum Limits of Insurance**

Each Party shall maintain limits no less than:

1. Commercial General Liability: $3,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage; and

3. Workers' Compensation and Employers' Liability: Workers' Compensation limits as required by the California Labor and Employers Liability limits of $1,000,000 per accident.

4. Builder's Risk: Completed value of the project. No deductible shall exceed $100,000.

C. **Deductibles and Self-Insured Retentions**

Any Party's deductibles or self-insured retentions must be declared, and approved by the other Party's Risk Manager.

D. **Other Insurance Provisions**

Each policy shall contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverage

a. The other Party, its officers, employees, agents, volunteers, and contractors are to be covered as additional insureds. Coverage shall contain no special limitations on the scope of protection afforded to the other Party, its officers, employees, agents, volunteers, and contractors.

b. Any failure to comply with reporting provisions of the policies by either Party shall not affect coverage provided to the other Party, its officers, employees, agents, volunteers, or contractors.

c. Each policy shall state that the policy 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.

2. All Coverage

Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in limits except after thirty (30) days' prior written notice has been given to the other Party.

E. **Acceptability of Insurers**

Insurance is to be placed with insurers acceptable to the other Party.

F. **Verification of Coverage**

Each Party shall furnish the other Party with certificates of insurance and with original endorsements affecting coverage required by this Agreement. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be mailed to the following address or any subsequent address as may be directed in by each PARTY:

CITY OF SAN LEANDRO
Risk Manager

SAN LEANDRO UNIFIED SCHOOL DISTRICT
Associate Superintendent, Business and Operations

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