AGREEMENT BETWEEN THE CITY OF SAN LEANDRO AND THE SAN LEANDRO UNIFIED SCHOOL DISTRICT (SLUSD) FOR THE JOINT USE OF THE DISTRICT'S FRED T. KOREMATSU (FTK) GYMNASIUM

THIS AGREEMENT is made and entered into by and between the CITY OF SAN LEANDRO, a municipal corporation of the State of California, herein called "City," and the SAN LEANDRO UNIFIED SCHOOL DISTRICT, a political subdivision of the State of California, herein called "District" (collectively, the "Parties.")

WITNESSETH:

WHEREAS, Section 10900 et. seq. of the Education Code (the Community Recreation Act) authorizes cities and school districts to organize, promote and conduct programs of community recreation for the promotion and attainment of general educational and recreational objectives, and to construct, maintain and operate recreation centers, including playgrounds and outdoor playing fields; and

WHEREAS, Section 10910 of the Education Code provides that the governing body of any school district may use or grant the use of grounds of the school district to any other public authority for the purposes of such act, whenever such use does not interfere with school uses; and

WHEREAS, City and District desire to enter into contract for the use of such property by City for community recreation activities, and for use by District for education and recreation purposes pursuant to said Community Recreation Act, as the provisions thereof exist, or hereafter may be amended.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter set forth, and pursuant to the provisions of the Education Code hereinabove referred to, it is agreed as follows:

1. USE

a. The District has constructed and developed a recreation improvement, hereinafter referred to as "school gymnasium," at the Fred T. Korematsu (FTK) campus, San Leandro High School, 13701 Bancroft Avenue. To the extent permitted by law, the City shall be entitled to schedule exclusive use of the school gymnasium for recreational purposes by the general public beginning at 6:00 p.m. on days during which school instructional classes are being conducted on the school site except during a four-month period (November - February). The City shall also be entitled to exclusive use on weekends and non-student days. The City shall submit a schedule for exclusive use no later than July 31 for usage dates between January 1 to June 30, and no later than January 31 for usage dates between July 1 to December 31. The District shall submit to the City a schedule of the District use of gymnasium on non- student days no later than mid-September for fall and

winter and no later than mid-January for spring. Upon agreement between the the City and the District on the the City's scheduled use, the District may make the gymnasium available to other groups. Should hours of use of the gymnasium become available during times which the District was scheduled to use the gymnasium, the City has first right of refusal of use of the gymnasium before it is offered to another entity. The District shall be entitled to exclusive use all other hours, except as otherwise agreed to by the City Manager and the Superintendent of the District.

b. The District shall provide lockable space for the City for storage of City owned supplies and sports equipment.

c. The City Manager and the Superintendent of the District shall,by mutual agreement, determine those portions of the school gymnasium that can be used by the public during days on which school instructional classes are in session.

2. OPERATION AND MAINTENANCE

a. The District shall maintain the school gymnasium including cleaning, routine maintenance and all repairs. The City shall repair any damage to the interior of the school gymnasium that is caused by participants or activities associated with City's use during the hours the City has exclusive use. The District shall repair any damage to the school gymnasium caused during the hours the District has control over the school gymnasium. The City and the District shall each be responsible for maintaining the school gymnasium and restrooms during their respective hours of use, including assignment of staff, and removing trash and debris from the area. Following each party's respective use of the school gymnasium, the City and the District shall leave the school gymnasium and associated facilities and grounds in a clean and safe condition.

b. The City Manager and the Superintendent of the District shall, upon mutual agreement, establish a maintenance schedule for the school gymnasium. Such maintenance and/or repairs shall not interfere with the District's or the City's use of the school gymnasium.

c. The District shall pay ongoing utilities, including electricity and other costs associated with the City's use of the school gymnasium.

d. The City shall reimburse the District an amount sufficient to pay all utility costs incurred during such times that the City has exclusive use of school gymnasium. That amount shall be $34.21 per hour of use the first year (2020). After the first year and in following years, the cost shall be adjusted to reflect a 5% per hour increase, but shall not be increased by more than 5% annually.

e. The City shall have the right to charge fees and receive revenues derived from the

City's use of the school gymnasium. The City shall have the right to designate the amount of fees and charges it may impose on activity participants or users when practicing exclusive use of the school gymnasium.

f. The City shall pay all claims or damage to property resulting from grossly negligent or grossly inadequate supervision of any activities conducted by the City at the school gymnasium during hours the City has exclusive use, or by reason of failure to properly maintain the school gymnasium in a safe condition during the City's exclusive use.

g. The District shall pay all claims or damage to property resulting from the negligent or inadequate supervision of all activities conducted by the District at the school gymnasium.

h. The District shall inspect the school gymnasium regularly and make repairs as needed.

i. The City shall be provided a key or keys and all alarm codes for access to all exterior gates leading to and into the school gymnasium. It is the responsibility of the City to secure the building and set the alarm after each City use. Failure to do so shall result in the City compensating the District for security call outs. A minimum call out shall be two hours.

3. SPECIAL PROVISIONS

a. Insurance. The District and the City shall each maintain comprehensive General Liability insurance in the amount of Ten Million Dollars ($10,000,000) combined single limit naming each other as additional insureds, including each Party's respective elected and appointed officers, directors, agents, servants and employees against claims for bodily injury, and property damage arising from the District's or City's participation in the activities described herein. The form of such insurance shall be satisfactory to the District and the City and may include self-insurance at levels acceptable to both parties.

b. Indemnification. For this Agreement only, to the fullest extent permitted by law, the District agrees to hold harmless, indemnify, and defend with counsel reasonably acceptable to the City, the City and its elected and appointed officers, officials, employees, agents, contractors and consultants from and against any and all claims, demands, suits, actions, and liability of any kind, including injuries to persons or damages to property arising out of or connected to the District's responsibilities under this Agreement, except to the extent any such claims, loss, liability, damage, judgment, expense, or injuries is caused by the gross negligence or willful misconduct of the City.

c. Resolution of Disputes. Any dispute arising as to the use, operation, or maintenance of the school gymnasium shall be resolved by the City Manager and Superintendent of the District. In the event that the City Manager and

the Superintendent are unsuccessful in resolving any dispute, the parties agree to submit the dispute first to mediation and, failing that, to binding arbitration.

d. Review. The District and the City will review the use of the school gymnasium annually on or about the anniversary date of this Agreement to determine if mutually acceptable revisions should be made in (a) use schedules, (b) payment for utilities, or (c) responsibility for upkeep and maintenance.

e. Entire Agreement and Amendment. This Agreement supersedes all oral or written agreements concerning the subject matter herein, represents the entire agreement between the Parties and may not be amended without a writing signed by the Parties. An assignment of this Agreement by either Party shall automatically begin termination procedures pursuant to Section 5.B.

f. Governing Law. This Agreement shall be construed and interpreted under the laws of the State of California.

4. TERM AND TERMINATION

a. This Agreement shall be in effect from October 1, 2019 until June 30, 2030.

b. B. This Agreement may only be terminated by joint agreement of the Parties. The District and the City may jointly agree to terminate this Agreement by delivery of written notice of election to terminate at least one (1) year in advance. Notices shall be served either by personal delivery or mail, as follows:

CITY:
City Manager
City of San Leandro
Civic Center
835 East 14th Street
San Leandro, CA 94577

DISTRICT:
Superintendent
San Leandro Unified
School District
835 East 14th Street, Suite 200
San Leandro, CA 94577

SIGNATURES ON FOLLOWING PAGE

WHEREFORE, the Parties hereto have executed this Agreement on the 26th day of August, 2019.

CITY OF SAN LEANDRO

By: _____
Jeff Kay
City Manager

SAN LEANDRO UNIFIED SCHOOL DISTRICT

By: _____
Mike McLaughlin
Superintendent

APPROVED AS TO FORM:

By: Richard D. Pio Roda
City Attorney

ATTEST:

By: _____
Leticia I. Miguel
City Clerk

3334403.1