

**AGREEMENT BETWEEN THE CITY OF SAN MATEO AND THE SAN MATEO FOSTER CITY SCHOOL DISTRICT  
FOR THE USE OF A PARKING LOT FOR A COMMUNITY SANDBAG STATION AT THE TURNBULL CHILD  
DEVELOPMENT CENTER**

THIS USE AGREEMENT ("Agreement") is made and entered into in the City of San Mateo, County of San Mateo, State of California, as of the 12<sup>th</sup> day of December 2024, by and between the CITY OF SAN MATEO, a municipal corporation, hereinafter "City", and the SAN MATEO FOSTER CITY SCHOOL DISTRICT, hereinafter "District." City and District may collectively be referred to as "the Parties," or individually as "Party."

**RECITALS:**

WHEREAS, District owns the Turnbull Child Development Center located at 715 Indian Avenue San Mateo, CA ("Property"); and

WHEREAS, the Property includes a parking lot located at the intersection of North Humboldt Street and Indian Avenue ("Premises"); and

WHEREAS, the Parties agree it is reasonable and desirable that the City utilize a portion of the Premises for the purpose of establishing a community sandbag station in order to facilitate wet weather preparations; and

WHEREAS, under this Agreement, District intends to grant use of the Premises to City for the purpose of establishing a community sandbag station; and

WHEREAS, the Parties find the establishment of a community sandbag station at the Premises to be a benefit to the Parties and the community as a whole.

NOW, THEREFORE, in consideration of the promises set forth above, the Parties mutually agree as follows:

**SECTION 1 - PURPOSE**

Allowing the City to establish a community sandbag station at the Premises.

**SECTION 2 - TERM**

The term of this Agreement shall commence upon execution and end on February 28, 2025.

### **SECTION 3 - GRANT OF USE, AND USE OF PREMISES**

The District grants to the City a non-exclusive use of a portion of the Premises, as depicted in Attachment A, which is attached and incorporated by reference. This grant of use does not constitute a grant by District of any ownership, leasehold, easement or other property interest or estate whatsoever in the Property, or any portion thereof. The City shall limit its use of the Premises to maintaining a community sandbag station only. The City agrees it shall ensure all sandbag station activities occur in the area "Sand Fill Only," as depicted in Attachment A.

The District shall ensure the Premises is open and available for such use, subject to the following conditions:

1. The City shall install a temporary barrier between "Staff Parking Only" and "Sand Fill Only" areas, as depicted in Attachment A.
2. Sandbag station activities shall only occur on the following days/hours:

Monday-Saturday:	9am-7pm
Sunday:	10am-7pm
3. The City shall ensure the community sandbag station activities do not interfere with District activities at the Property.
4. The City shall not introduce or store any hazardous materials on the Premises.

### **SECTION 4 - USE AGREEMENT NOT ASSIGNABLE**

City shall not assign this Agreement, or any portion thereof, without the prior written consent of District.

### **SECTION 5 - CONDITION OF PREMISES**

The City accepts the Premises in its existing condition, and without limiting such agreement, City on behalf of itself and its successors and assigns, waives its right to recover from, and forever release and discharges District from any and all claims, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any law or regulation applicable thereto or

the suitability of the Premises for the City's intended use.

The City shall ensure the Premises is kept in a clean and orderly condition at all times to the satisfaction of the District. The City shall ensure the Premises is substantially restored to pre-existing conditions upon expiration or termination of this Agreement.

#### **SECTION 6 - TERMINATION**

The District may terminate this Agreement for any reason, or if the District determines that the City has failed to maintain and operate the community sandbag station in accordance with the terms of this Agreement. The District may begin the termination process of the Agreement at any time by notifying the City of its intent, or a notice of Agreement violations. The City will, upon receipt of notice, cease all operations and/or ensure any violations are corrected within a reasonable period.

If the City fails to correct the violations in a reasonable time or manner, or otherwise comply with the terms of this Agreement, the District may require that all community sandbag station operations immediately cease and the Premises be returned to its previous condition at the expense of the City.

If for any reason, the City no longer intends to use or maintain the community sandbag station, it may terminate this Agreement. If so, the City must notify the District in writing.

#### **SECTION 7 - WAIVER; INSPECTION; COMPLIANCE WITH LAWS**

The Premises shall be open to inspection at all times by authorized employees and representatives of the District, and the City shall at all times maintain and operate the community sandbag station in full compliance with all applicable laws. District's right to inspect shall in no way diminish City's duty to keep the Premises in good and safe condition.

#### **SECTION 8 - INDEMNITY**

The Parties agree to hold harmless and indemnify the other, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of the performance of this Agreement, except for those claims arising out of a Party's sole negligence or willful misconduct. An indemnifying party agrees to defend the indemnified party, its elected and appointed officials, employees, and agents against any such claims. The duty to indemnify shall survive expiration or early termination of this Agreement.

#### **SECTION 9 - INSURANCE**

The City shall provide proof of general liability insurance to the satisfaction of the District, which shall include the District, its elected and appointed officials, employees and agents as additional insureds with respect to this Agreement and the performance of services in the Agreement.

#### **SECTION 10 - COSTS AND ATTORNEY'S FEES**

In the event of a dispute, the prevailing Party in any dispute under this Agreement shall be paid all of its costs and expenses including, without limitation, reasonable attorneys' fees incurred in connection with enforcement of either Party's performance of all of its obligations under this Agreement.

#### **SECTION 11 - MEDIATION**

Should any dispute arise out of this Agreement, either Party may request that it be submitted to mediation. The Parties shall meet in mediation within thirty (30) days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by the American Arbitrations Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process. The cost of mediation shall be borne equally by the Parties. Neither Party shall be deemed the prevailing party. No Party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the Parties but not more than sixty (60) days, unless the maximum time is extended by the Parties.

#### **SECTION 12 - GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

#### **SECTION 13 - NOTICES**

NOTICES: All notices required to be given hereunder shall be in writing, and delivered in person or transmitted by Certified Mail, postage prepaid.

Notices required to be given to City shall be addressed as follows:

City of San Mateo, Public Works Department  
c/o Matt Fabry

City Hall - 330 West 20th Avenue  
San Mateo, CA 94403

Notices required to be given to District shall be addressed as follows:

San Mateo Foster City School District  
c/o Patrick K Gaffney  
1170 Chess Drive  
Foster City, CA 94404

#### **SECTION 14 - NO PARTNERSHIP OR AGENCY**

Nothing in this Agreement shall be deemed to constitute a partnership in law between City and District, or to constitute either party as an agent of the other for any purpose; or to entitle either Party to commit or bind the other in any manner unless expressly agreed upon in this Agreement.

#### **SECTION 15 - SEVERABILITY**

If any part or provision of this Agreement is determined by any court to be illegal, invalid, or unenforceable, in whole or in part, the Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision, unless it can be concluded from the circumstances that, in the absence of the provisions found to be null and void, the Parties would not have entered into the Agreement. The Parties shall use all reasonable efforts to replace any and all provisions or parts found to be null and void with provisions that are valid under the applicable law and come closest to their original intention.

#### **SECTION 16 - WAIVER**

The waiver by either Party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either Party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other Party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

#### **SECTION 17 - APPROVALS**

Each of the Parties hereby represents and warrants that its execution of this Agreement has been duly authorized by all necessary corporate or other action and constitutes a valid and binding obligation of said Party.

**SECTION 18 - COUNTERPARTS**

This Agreement may be executed by facsimile or other electronic means (including portable document format (".pdf") or electronic signature) in any number of counterparts, each of which is an original, but all of which shall constitute one instrument.

**SECTION 19 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT**

This document represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations, and agreements, either written or oral. This document may be amended only by written instrument, signed by both Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written to be effective upon the date, and for the period, specified in the term herein.

[SIGNATURES PAGES FOLLOW]

SAN MATEO FOSTER CITY SCHOOL DISTRICT:

DocuSigned by:  
By: Patrick Gaffney Dated: 12/20/2024  
Patrick K Gaffney  
Deputy Superintendent

CITY OF SAN MATEO:

By: Alex Khojikian Dated: 1/2/2025  
Alex Khojikian  
City Manager

Approved as to form:

Prasanna W. Rasiah for Dated: 12/31/2024  
Linh Nguyen  
Assistant City Attorney

EXHIBIT A

