

San Mateo-Foster City School District
1170 Chess Drive
San Mateo, CA 94404

City of San Mateo
330 West 20th Avenue
San Mateo, CA 94403

RIGHT OF ENTRY AGREEMENT

This Agreement is entered into this day of _____, between the San Mateo-Foster City School District ("SMFCSD"), a school district, and the City of San Mateo ("City").

1. Right of Entry. City agrees to allow the SMFCSD, its officers, officials, employees, and agents at all times to enter and use as a construction staging area, over and upon City land with Assessor's Parcel Number (APN) listed above, as delineated on the map attached hereto as Exhibit A and made a part hereof, (the "Premises") for the purpose of excavation/grading within the City's property designated as the location of the future Fire Station and for purposes of constructing a retaining wall on the District's property inside the property line between the District and a part of the City's property designated by the City as a new park, both of which are adjacent to the Borel Middle School site.

2. Term. It is understood and agreed that permission to do the work and perform the acts stated shall remain in force and effect until no later than the written notice of the District to the City that no further access is needed but no later than July 31, 2019.

3. Condition of Premises. It is understood and agreed that SMFCSD will leave the premises in a clean and orderly condition and will repair, replace, or compensate for any existing improvements that may have been disturbed or removed as a result of SMFCSD's access with the exception of the overlay which is herein agreed to on the part of the City's property which is designated as the future Fire Station.

4. Construction Hours. SMFCSD will access the property between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, 9:00 a.m. and 5:00 p.m. on Saturday, and 12:00 noon and 4:00 p.m. on Sundays and holidays.

5. Access of Premises. SMFCSD will access the property from the Borel Middle School property or Borel Avenue only and will keep all construction related equipment on the property. Use of the right-of-way will require an encroachment permit obtained from the City.

6. Tree Removal. In consideration of the District's partial soil layback on the site of the City's proposed Fire Station which is of benefit to the City, the City agrees to remove the adjacent eucalyptus trees on the site by no later than January 15, 2019.

7. Indemnification.

(a) City shall defend, hold harmless and indemnify District, its officers, agents, and/or employees from all claims for injuries to persons and/or damage to property which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of City, its officers, agents and/or employees.

(b) District shall defend, hold harmless and indemnify City, its officers, agents and/or employees from all claims for injuries to persons and/or damage to property, which arise out of the terms and conditions of this Agreement and which result from the acts or omissions of District, its officers, agents, and/or employees.

(c) In the event of the concurrent negligence of City, its officers, agents and/or employees, and District, its officers, agents and/or employees, then the liability for all claims for injuries or damages which arise out of the terms and conditions of this Agreement shall be apportioned under California's Theory of Comparative negligence as presently established or may be hereafter modified.

8. Insurance. SMFCSD will obtain the insurance described in Exhibit B to this Agreement.

9. Termination. City may terminate this Agreement for any reason upon 30 days written notice to SMFCSD.

10. Non-assignability. Both parties recognize that this Agreement is with SMFCSD and cannot be transferred or assigned without the prior written consent of City.

11. 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, 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.

12. Attorney Fees. Attorney fees in an amount not exceeding \$85 per hour per attorney, and in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this Agreement that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

13. Mediation. Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 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 either the American Arbitration 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 60 days, unless the maximum time is extended by the parties.

14. Notices. All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To SMFCSD: San Mateo-Foster City School District
 Attn: Joan Rosas, Superintendent
 1170 Chess Drive
 Foster City, CA 94404

To CITY: Larry A. Patterson or
 Successor, City
 Manager, City of San
 Mateo 330 W. 20th
 Avenue
 San Mateo, CA 94403

15. 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.

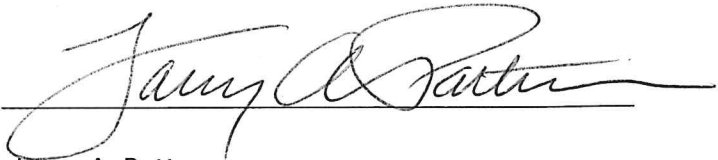
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, SAN MATEO-FOSTER CITY SCHOOL DISTRICT and CITY OF SAN MATEO have executed this Agreement the day and year first above written.

San Mateo-Foster City School District

CITY OF SAN MATEO
PROPERTY OWNER

Joan Rosas
Superintendent



Larry A. Patterson
City Manager

APPROVED AS TO FORM

APPROVED AS TO FORM

Adam Ely
Deputy County Counsel



Gabrielle Whelan
Assistant City Attorney

**EXHIBIT A
LOCATION MAP**



EXHIBIT B
INSURANCE REQUIREMENTS

SMFCSD will require its contractor to obtain the insurance described in Exhibit B and to name the City as an additional insured. Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, 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:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of San Mateo, its elected and appointed officials, employees, and agents are to be covered as insureds on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this contract, the **Contractor's insurance coverage shall be primary** insurance as respects the City of San Mateo, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City of San Mateo, its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Each insurance policy required above shall provide that **coverage shall not be canceled, except after thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

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

Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

SAMPLE ENDORSEMENT

POLICY NUMBER: XXXXXXXXXX

**THIS ENDORSEMENT CHANGES THE POLICY, PLEASE
READ IT CAREFULLY.**

**ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS
(FORM B)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
AUTOMOBILE LIABILITY COVERAGE PART

SCHEDULE

Name of Person or Organization:

The City of San Mateo, its elected and appointed officials, employees and agents are named as additional insured.