

DRAFT

LEASE AND MAINTENANCE AGREEMENT

THIS LEASE AND MAINTENANCE AGREEMENT (this "Lease") is entered into this _____ day of _____, 2018 (the "Effective Date"), by and between the CITY OF NEWARK, CALIFORNIA, a municipal corporation hereinafter referred to as "City", and the NEWARK UNIFIED SCHOOL DISTRICT, hereinafter referred to as "District" (and collectively with the City, the "Parties").

RECITALS

WHEREAS, the City and District entered into that certain School Playfield Development and Maintenance Agreement dated June 25, 1987 (the "Agreement");

WHEREAS, the Agreement, in summary, authorized the City to construct and maintain a playfield and a parking lot commonly known as the MacGregor School Playfields and, in exchange, District leased to City said premises for one dollar (\$1.00) per year for twenty (20) years;

WHEREAS, the purpose of the Agreement was to provide "wholesome recreation facilities for the residents of Newark";

WHEREAS, the Agreement further recognized that the construction and maintenance of the playfields would provide a "benefit to the City of Newark and the Newark Unified School District as well as the citizens of Newark";

WHEREAS, the Parties recognize that the playfields continue to be a benefit to the City, District, and citizens and residents of Newark by providing recreational facilities to organizations such as the Newark Soccer League and Newark Little Leagues and by providing a venue to host the City's annual birthday celebration commonly known as "Newark Days";

WHEREAS, the Parties wish to reaffirm their commitment to providing recreational amenities to the residents of Newark and therefore wish to continue this longstanding arrangement by entering into this Lease.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. LEASE AND DESCRIPTION OF PREMISES

District hereby leases to City, and City leases from District, on the terms and conditions hereinafter set forth in this Lease, that particular playfield and parking lot on property commonly known as 35777 Cedar Boulevard in Newark, California, as more specifically described in attached "Exhibit A" (hereinafter referred to as "MacGregor School Playfields").

6. **UTILITIES**

City shall pay for the service of water and electric utilities to the MacGregor School Playfields during the term of this Lease.

7. **MUTUAL INDEMNIFICATION**

To the fullest extent permitted by law, each Party to this Lease shall hold harmless, defend and indemnify the other Party, its officers, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from a Party's negligent and/or intentional misconduct in the performance of services under this Lease, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the respective Party's performance of this Lease (collectively, "Liabilities"). Each Party may participate in the defense of any such claim without relieving the other Party of any obligation hereunder.

8. **INSURANCE**

Each Party shall carry and maintain in full force and effect during the entire Term of this Lease, insurance coverage for general and auto liability including bodily injury and property damage, with a single combined liability limit of not less than two million dollars (\$2,000,000).

Either Party may meet these insurance requirements through self-insurance.

Each Party shall furnish the other Party with original certificates and amendatory endorsements effecting coverage required by this Section naming the other Party as an additional insured.

Each insurance policy required by this Section shall be endorsed to state that coverage shall not be canceled by either Party, except after ten (10) days' prior written notice by certified mail, return receipt requested, has been given to the other Party.

9. **EVENT OF DEFAULT**

An Event of Default under this Lease shall occur if any Party fails to comply with any of the covenants or obligations hereunder and does not cure such failure within thirty (30) days after receipt of written notice thereof (or fails to commence to cure such default within such thirty (30) day period and thereafter fails to proceed with due diligence to cure such default). Upon the occurrence of an Event of Default hereunder, the Parties may pursue all remedies at law or in equity, expressly including the remedy of specific performance of this Lease.

10. NOTICES

Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent), postage prepaid and addressed to:

City:

City Manager
City of Newark
37101 Newark Boulevard
Newark, CA 94560

with a copy to:

City Attorney
City of Newark
37101 Newark Boulevard
Newark, CA 94560

District:

Superintendent of Schools
Newark Unified School District
5715 Musick Avenue
Newark, CA 94560

11. HOLDING OVER

Any holding over after the expiration of the term or notice of termination shall be on the terms and conditions herein specified, so far as applicable.

12. COMPLIANCE WITH LAWS

City, at its sole cost and expense, shall comply with all applicable local state and federal laws pertaining to the use, operation and management of the MacGregor School Playfields. City shall not itself use the Lease for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the MacGregor School Playfields which would result in a nuisance or a violation of law. City shall use its best efforts to not permit any permittees, licensees, guests or invitees to use the MacGregor School Playfields for any unlawful purpose or perform, permit or suffer any act of omission or commission upon or about the MacGregor School Playfields which would result in a nuisance or a violation of law.

13. ENTIRE AGREEMENT

This instrument constitutes the entire agreement between CITY and DISTRICT relative to the MacGregor School Playfields and this Lease, and may be altered only by an instrument in writing signed by both CITY and DISTRICT. CITY and DISTRICT agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents or representatives relative to the leasing of the MacGregor School Playfields are merged in or revoked by this Lease.

14. **SEVERABILITY**

If any term or provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.

15. **HEADINGS**

The headings used in this lease are not a part of this lease and shall have no effect upon the construction or interpretation of any part hereof.

16. **GOVERNING LAW; VENUE**

This Lease shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any legal action filed in connection with this Lease shall be filed in the Superior Court of Alameda County, California or in the Federal District Court for the Northern District of California.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

“DISTRICT”
NEWARK UNIFIED SCHOOL DISTRICT

“CITY”
CITY OF NEWARK

By _____

By _____
Mr. John Becker
City Manager

Attest:

Ms. Sheila Harrington
City Clerk

DRAFT

LEASE AND MAINTENANCE AGREEMENT

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1. LEASE AND DESCRIPTION OF PREMISES

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2. **TERM**

This Lease commences on the Effective Date and terminates on June 30, 2025 (the “**Term**”). Either Party may terminate this Lease upon one hundred eighty (180) days advance written notice to the other Party to this Lease.

3. **RENT**

City shall pay rent in the amount of one dollar (\$1.00) per year on the Effective Date and annually each year during the Term, on each anniversary of the Effective Date.

4. **USE OF MACGREGOR SCHOOL PLAYFIELDS**

MacGregor School Playfields are hereby leased to City for purposes of: (1) providing playfields to Newark residents and community organizations, including, but not limited to, Newark Soccer League and Newark Little Leagues; and (2) for hosting Newark Days pursuant to Chapter 8.34 of the Newark Municipal Code (“**Newark Days**”).

Newark Days shall be given first priority for purposes of scheduling activities at the MacGregor School Playfields. Newark Days is held the second weekend following the Labor Day weekend, with activities commencing on Thursday evening and concluding on Sunday evening.

City shall be responsible for scheduling the use of the MacGregor School Playfields for community-related organized sports when not in conflict with Newark Days. District shall communicate to City any desire to use the playfields for educational purposes and City shall accommodate District’s request, provided the City has not already rented the MacGregor School Playfields to another organization.

5. **MAINTENANCE**

City shall, at its own cost, provide maintenance to the MacGregor School Playfields. Maintenance includes mowing, fertilization, irrigation and repairs, aeration, weed management, insect and rodent control, repairing damage from heavy use, vandalism and other work as necessary to keep the playfields in reasonably good playing conditions. City shall maintain the MacGregor School Playfields at the same standard that the City maintains for City-owned parks that are open to the public.

City shall also, at its own cost: (1) maintain the backstops and goalposts in reasonably good working order; (2) provide trash pick-up and disposal on a minimum weekly basis; and (3) provide maintenance of the MacGregor School Playfield parking lot (including curbs); and (4) maintain the park signage as identified in “Exhibit A” in reasonable order.

6. **UTILITIES**

City shall pay for the service of water and electric utilities to the MacGregor School Playfields during the term of this Lease.

7. **MUTUAL INDEMNIFICATION**

To the fullest extent permitted by law, each Party to this Lease shall hold harmless, defend and indemnify the other Party, its officers, employees and agents from and against any and all claims, losses, damages, liabilities and expenses, including but not limited to attorneys' fees, arising out of or resulting from a Party's negligent and/or intentional misconduct in the performance of services under this Lease, provided that any such claim, loss, damage, liability or expense is attributable to bodily injury, sickness, disease, death or to injury to or destruction of property, including the loss therefrom, or to any violation of federal, state or municipal law or regulation, which arises out of or is any way connected with the respective Party's performance of this Lease (collectively, "Liabilities"). Each Party may participate in the defense of any such claim without relieving the other Party of any obligation hereunder.

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“DISTRICT”
NEWARK UNIFIED SCHOOL DISTRICT

“CITY”
CITY OF NEWARK

By _____

By _____
Mr. David Benoun
City Manager

Attest:

Ms. Sheila Harrington
City Clerk