

JAN 15 2015

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519

[Signature]
SBS/MDUSD

AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR

THIS AGREEMENT is made this 3 day of November 2014, by and between the Mt. Diablo Unified School District (hereinafter "District") and The YMCA at Camp Arroyo (hereinafter "Contractor").

District hereby engages Contractor to render services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools and transportation necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used only with the written approval of the District.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the services on the following basis:

Not to exceed \$ 4,540.00 for Services 115-0343-10-5895 \$ 4,540.00

The basis of the fee for Services shall be as follow _____ \$ _____

a. \$ _____ per hour, _____ \$ _____

b. \$ _____ per day, or _____ BUDGET CODE(S) _____

c. \$ _____ per engagement.

Check One:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Partial Payments: District shall make a payment per schedule detailed in Exhibit A. District Administrator will verify invoice indicating that all required services have been performed by each timeline.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on 2-25-15. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

Purchase Requisition # R82812

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance, vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand.

5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of California Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. To the extent Education Code §45125.1 is applicable, Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1. Contractor shall provide the certification document attached hereto as Exhibit ____ prior to commencing work under this Agreement.
6. Rules and Regulations. All rules, policies, and regulations of the Mt. Diablo Unified School District Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
7. Indemnification. Contractor shall hold harmless, defend and indemnify District and its officers, elected and appointed officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with Contractor's performance of work hereunder or its failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the District.
8. Insurance. Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, his agents, representatives, employees or subcontractors. 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 District.

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 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. EXCEPTION: Contracts of less than \$5,000 need only provide general liability insurance of \$1,000,000 per occurrence.
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 a 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.
4. Professional Liability/Errors & Omissions Liability, if applicable: \$1,000,000 per occurrence.

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

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

Additional Insured Status

The District, its officers, officials, employees, and volunteers are to be named as additional insured by endorsement to the Commercial General Liability 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.

Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the District, its officers, officials, employees, or volunteers 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 with notice to the District.

INSURANCE REQUIREMENTS

No waiver will be granted to eliminate the insurance requirements outlined in this contract. However, in special circumstances, certain insurance requirements may be modified or waived. The following items in Insurance section 8 are hereby waived or modified as follows:

Limits: _____

Other: _____

The initials of the Superintendent, or his/her designee, and the General Counsel, are required to waive or modify any Insurance requirements in this Agreement:

Superintendent

General Counsel

- 9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

DISTRICT

Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519-1397
Attn: Superintendent

CONTRACTOR

Name: The YMCA at Camp Arroyo
Attn: Max Myers, Program Director
Address: 5535 Arroyo Road
Livermore, CA 94550
Phone: 925-371-8481
Fax: 925-455-7977
Tax ID #: 94-1156317

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the next business day following delivery thereof to

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the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. **Entire Agreement of Parties.** 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.
- 12. **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. The parties further agree that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.
- 13. **Attorneys' Fees.** If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit as awarded by a court of competent jurisdiction, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 14. **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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

By: [Signature] 11/4/14
Signature of Principal/Budget Administrator Date

Title: Principal
Print Name and Title

The YMCA at Camp Arroyo
Name of Company/Organization or Independent Contractor/Consultant

By: [Signature] 1/9/15
Signature of Contract Administrator Date

Title: David Watson Senior Vice President
Print Name and Title

Authorized and Approved by:

[Signature] 1/13/15
Superintendent or Designee Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

[Signature] 11/4/14
Originator's Signature Date

Nancy Klinkner, Principal
Print Name of Originator and Title

Bel Air Elementary
Site/Department Originating this Contract

Billing Address if reimbursed by outside agency—i.e. ASB, PTA, PFC

Distribution
original: Fiscal Services for payment
copy: Contractor
copy: Originator/Budget Administrator

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EXHIBIT A

**LIST OF SERVICES, INCLUDING DATE(S), TO BE PERFORMED
BY CONTRACTOR**

**IF PARTIAL PAYMENTS ARE TO BE MADE TO CONTRACTOR ON A SCHEDULE
AS INDICATED ON PAGE 1, PLEASE LIST PAYMENT SCHEDULE HERE**

*See attached Camp Arroyo
Facility Contract No. OEE2015003.*

Camp dates Feb 25 - 27, 2015

Bel
Mr

Purchase Requisition # R82812


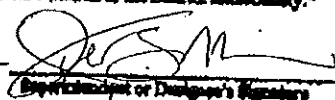
EXHIBIT B Contractor **REQUIRED** to Complete CRIMINAL BACKGROUND CHECK CERTIFICATION

Mt. Diablo Unified School District
Consultant/Independent Contractor Agreement - Criminal Background Check

Name of Independent Consultant/Contractor		YMCA of the East Bay
Services to be performed under the Agreement:		See Facility Agreement
Schools/Locations where services will be performed:		Feb 25, 2015 - Feb 27, 2015
Total amount to be paid by the District under this Agreement:		
Term of Agreement:		
Check the applicable box(es) and fill in any blanks.		
1	<input type="checkbox"/>	I certify that none of my employees, nor myself, will have more than limited contact (as defined by the District) with District students during the term of the Agreement. Therefore, we have not been fingerprinted.
2A	<input checked="" type="checkbox"/>	If this box is checked, Item 2B also applies and must be checked to indicate those employees have been fingerprinted. The following employees will have more than limited contact (as defined by the District) with District students during the term of the Agreement (attach and sign additional pages, as needed):
2B	<input checked="" type="checkbox"/>	I certify that the employees noted in 2A above have been fingerprinted under procedures established by the California Department of Justice, and the results of those fingerprints reveal that none of those employees have been arrested or convicted of a misdemeanor or violent felony, as defined by the California Penal Code.

Certification by Contractor/Consultant

"I certify that the information provided herein is true and accurate. I further acknowledge that during the term of my Agreement with the District, if I learn of additional information which differs from the responses provided above, I promise to forward this additional information to the District immediately."

	
Independent Contractor/Consultant Signature	Superintendent or Designer's Signature
<u>David Johnson</u> 1/15/15	1/15/15
Print Name	Date
Independent Contractor/Consultant	Superintendent or Designer's Signature
Date	Date

038583

Form **W-9**
(Rev. November 2005)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
YMCA of the East Bay

Business name, if different from above
dba The YMCA at Camp Arroyo

Check appropriate box: Individual/Sole proprietor Corporation Partnership Other ▶ **non-profit** Exempt from backup withholding

Address (number, street, and apt. or suite no.)
5535 Arroyo Road

City, state, and ZIP code
Livermore, CA 94550

List account number(s) here (optional)

Requestor's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Social security number								

OR

Employer identification number								
9	4	1	1	5	6	3	1	7

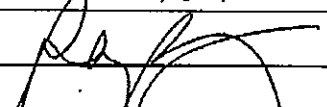
Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification Instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶
		4/23/10

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,



CERTIFICATE OF LIABILITY INSURANCE

6/1/2015

DATE (MM/DD/YYYY)

10/29/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Lockton Insurance Brokers, LLC CA License #OP15767 Two Embarcadero Center, Suite 1700 San Francisco CA 94111 (415) 568-4000	CONTACT NAME:	
	PHONE (A/C No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIG #
INSURER A: Philadelphia Indemnity Insurance Company		18058
INSURER B: Travelers Property Casualty Co of America		25674
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
1068653 Young Men's Christian Association of the East Bay
2330 Broadway
Oakland CA 94612

COVERAGES YMCEA01 CERTIFICATE NUMBER: 13179040 REVISION NUMBER: XXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EBL @ \$1M <input checked="" type="checkbox"/> Abuse & Mol \$1M GENL AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOG OTHER:	Y	N	PHPK1195607	6/30/2014	6/30/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			NOT APPLICABLE			COMBINED SINGLE LIMIT (Ea accident) \$ XXXXXXXX BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE DED RETENTIONS			NOT APPLICABLE			EACH OCCURRENCE \$ XXXXXXXX AGGREGATE \$ XXXXXXXX \$ XXXXXXXX
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	TC2JUB6A05045214	6/1/2014	6/1/2015	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 RE: District Schools bring classes to Camp Arroyo for Outdoor Ed, 2014-2015 school year. Mount Diablo Unified School District is an Additional Insured to the extent provided by the policy language or endorsement issued or approved by the insurance carrier.

CERTIFICATE HOLDER

13179040
Mount Diablo Unified School District
1936 Carlotta Dr.
Concord CA 94564

CANCELLATION See Attachment

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

All rights reserved.

ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement, effective 12.01 a.m. 6/30/2014 forms part of

Policy No. PHPK1195607

Issued to: Young Men's Christian Association of the East Bay

By: Philadelphia Indemnity Insurance Company

In regards to:

ADDITIONAL INSURED PROVISION

L. Additional Insureds

SECTION II - WHO IS AN INSURED is amended as follows:

1. If coverage for newly acquired or formed organizations is not otherwise excluded from this

Coverage Part, Paragraph 3.a. is deleted in its entirety and replaced by the following:

a. Coverage under this provision is afforded until the end of the policy period. 2. Each of

the following is also an insured:

a. **Medical Directors and Administrators** - Your medical directors and administrators, but only while acting within the scope of and during the course of their duties as such. Such duties do not include the furnishing or failure to furnish professional services of any physician or psychiatrist in the treatment of a patient.

b. **Managers and Supervisors** - Your managers and supervisors are also insureds, but only with respect to their duties as your managers and supervisors. Managers and supervisors who are your "employees" are also insureds for "bodily injury" to a co-"employee" while in the course of his or her employment by you or performing duties related to the conduct of your business.

This provision does not change Item 2.a.(1)(a) as it applies to managers of a limited liability company.

c. **Broadened Named Insured** - Any organization and subsidiary thereof which you control and actively manage on the effective date of this Coverage Part. However, coverage does not apply to any organization or subsidiary not named in the Declarations as Named Insured, if they are also insured under another similar policy, but for its termination or the exhaustion of its limits of insurance.

d. **Funding Source** - Any person or organization with respect to their liability arising out of:

(1) Their financial control of you; or

(2) Premises they own, maintain or control while you lease or occupy these premises.

in the performance of your ongoing operations for the additional insured when required by a contract.

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (a) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- (b) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

m. State or Political Subdivisions - Any state or political subdivision as required, subject to the following provisions:

- (1) This insurance applies only with respect to operations performed by you or on your behalf for which the state or political subdivision has issued a permit, and is required by contract.
- (2) This insurance does not apply to:
 - (a) "Bodily injury," "property damage" or "personal and advertising injury" arising out of operations performed for the state or municipality; or
 - (b) "Bodily injury" or "property damage" included within the "products-completed operations hazard."

Contract No. OEE2015003

Signed Contract, Terms and Deposit Due June 3, 2014

R82812

The YMCA at Camp Arroyo
5535 Arroyo Road, Livermore, CA 94550
(925) 371-8401 ph (925) 455-7977 fax
email:camparroyo@ymcaeastbay.org

Facility Contract

Group Name: Bel Air Elementary

Address: 663 Canal Road, Bay Point, CA 94563

Primary Contact: ~~Michelle Howisey~~ Rebecca Campos
~~howiseym@mdusd.org~~ camposr@mdusd.org

Tel: 925.458.2606

Arrival: February 25, 2015 at 12:00 pm

Departure: February 27, 2015 at 1:00 pm

Qty	Description	Unit Price	Total
Fees for 3-Day Outdoor School Trip			
50	Students @ \$212.00 per person	\$ 212.00	\$ 10,600.00
8	Adults/Teachers @ \$180.00 per person (1:11 minimum ratio required) <i>Additional students/adults will be billed at the unit price.</i>	\$ 180.00	\$ 1,440.00
Total Trip Fee			\$ 12,040.00
Adjustments			
-1	Less Regional Parks Foundation Scholarship	\$ 7,500.00	\$ (7,500.00)
Amount Due			
25% deposit due June 3, 2014			\$ 1,135.00
Remaining balance due (minus deposit) January 25, 2016			\$ 3,405.00

Cancellation Policy & Guaranteed Minimum Fee:

If Group reserving camp terminates this agreement with less than 90 days advance notice without using the facilities as agreed, Group reserving camp agrees to pay the entire remaining balance of the Guaranteed Minimum Fee as liquidated damages. Group reserving camp will be released from payment of the Guaranteed Minimum Fee, but **not the non-refundable deposit**, provided written notice of the termination is received by Camp Arroyo no later than 90 days before the scheduled arrival date.

Guaranteed Minimum Fee: \$3,152.00

Based on Minimum Guaranteed Participants: 46 kids / 5 Adults

The Group reserving camp may not bring additional participants above the Maximum Participant Limit without approval from Camp Arroyo at least 4 weeks in advance of the scheduled trip.

Maximum Participant Limit: 55 kids / 10 adults

Our Check Policy:

If your check or automatic draft is returned NSF, it may be re-presented electronically and you will be assessed a processing fee of \$25.00 or the maximum amount allowed by law. The check writer is also responsible for all other recovery costs, including attorney's fees and taxes.

Please acknowledge your acceptance of this Facility Contract by signing and dating this form below and sending it with your deposit and the signed Use Agreement Standard Terms by the due date indicated above to Camp Arroyo Business Office at the address indicated above. Reservation is only guaranteed upon receipt of all Agreements and deposit. Please make checks payable to YMCA Camp Arroyo.

x *Nancy Klinkner*
Authorized Signature

Date: November 4, 2014

Name (printed) Nancy Klinkner Title Principal

[Signature] Created April 23, 2014

Camp Arroyo Use Agreement Standard Terms

This use of facilities Agreement is between the YMCA of the East Bay, a California non-profit corporation (hereinafter referred to as "YMCA") and Bel Air Elementary in Mt. Diablo Unified School District, (hereinafter referred to collectively as "User"). The Agreement provides for use of Camp Arroyo (hereinafter referred to as "Facility") for the activities and purposes as detailed below. Dates of use and financial considerations are addressed in the attached Facility Contract (a separate document), and both documents must be completed for this Agreement to be finalized.

IN FURTHER CONSIDERATION OF RECEIVING PERMISSION TO ENTER YMCA CAMP ARROYO FOR ANY PURPOSE CONSISTENT WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, EVALUATION OR USE OF FACILITIES OR EQUIPMENT, THE PARTIES MUTUALLY AGREE TO THE FOLLOWING:

1. To the fullest extent allowed by law, User shall defend, indemnify and hold harmless the YMCA of the East Bay ("YMCA"), the East Bay Regional Parks District and the Taylor Family Foundation, Inc. and its directors, officers, agents, employees and volunteers, against any claim or demand arising from any actual or alleged act, error, or omission by User or its directors, officers, agents, employees or volunteers arising from User's duties and obligations described in this agreement or imposed by law.

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1. User and YMCA agree to purchase and/or maintain through the duration of this agreement insurance or liability coverage (such as liability coverage provided by a Joint Powers Agency) ensuring their ability to meet their respective defense and indemnity obligations set forth above. Such insurance or liability coverage shall have a limit of liability of no less than \$5 million per occurrence and in the aggregate. The insurance or coverage shall include, as may be reasonable and appropriate given the acts and activities contemplated by this agreement, commercial general liability, premises liability, automobile liability (owned, non-owned, and hired), professional liability/errors and omissions, employer's liability, product liability and completed operation(s), and educator's legal liability coverages, if applicable. To the full extent of the Parties' respective indemnity obligations, but only up to the agreed limit of liability set forth above, the Parties' insurance or liability coverage agreements shall also be endorsed to extend "additional insured" status, or "additional covered party" status if applicable, to all proposed indemnities, with such coverage to be provided on a "primary" basis.

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any] insurance or liability coverage required by law or regulation, including workers' compensation coverage. With respect to such coverage[s], and upon request, each Party shall provide evidence of such coverage by way of a Certificate of Insurance or Certificate of Coverage.

1. The Parties' indemnity and coverage obligations shall survive the termination of this agreement with respect to any claim arising from the Parties' actual or alleged performance or non-performance of or their respective rights, privileges, or obligations existing under this agreement.
1. In the event of a claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

In the event that any portion of this Agreement results in a violation of any law of the State of California, the parties agree that such portion shall be severable, and that the remaining provisions of this Agreement shall continue in full force and effect.

IT IS FURTHER MUTUALLY AGREED between the parties that:

- (a) **USE:** User is granted the permit to use Camp Arroyo on the dates set forth in the Facility Contract.
- (b) **ASSIGNMENT:** User shall not assign or sublet this Agreement or any portion thereof without the prior written consent of the YMCA.
- (c) **INSURANCE:** User shall provide certificates of the required insurance that are updated annually and provide notice of cancellation to YMCA. A copy of the certificates and additional insured endorsements must be provided to the YMCA at least 15 days in advance of User's arrival at camp.
- (d) **FOOD SERVICE:** YMCA shall provide meals as set forth in the Facility Contract. User shall inform YMCA of the number of individuals for food service not less than two weeks prior to the beginning of camp. YMCA shall provide all meals, unless the site is being leased on a "Facility Use Only" basis; or User has fewer than 30 participants and is choosing a vendor from the YMCA's preferred catering list. No individual shall be permitted to use the kitchen or to prepare food at any time.
- (e) **CONDITIONS:** As a condition to holding this camp and receiving this use permit, User shall comply with each of the following conditions:
 - i. User shall not violate any city, county, or state law in or about the said Facility and shall comply with all camp rules and regulations now in force or subsequently adopted.
 - ii. Camp Arroyo has a maximum sleeping capacity of 144. Sleeping outdoors or in tents is not permitted. User agrees not to decrease its confirmed number of participants as stipulated in the Facility Contract.
 - iii. User agrees to complete and return the following forms and any additional forms that may be subsequently requested by the YMCA: Guest Cabin Housing Form; Group Needs Assessment Form; Orientation Guidelines; Table Groups, and Adventure Groups Forms. Forms must be received by YMCA by the specified due dates.
 - iv. The camp sessions shall be conducted under the overall personal supervision of User's Camp Director who will coordinate, control and supervise all camp

- activities. User's Camp Director may designate a substitute camp director as long as said substitute meets established qualification guidelines (e.g. CPR, First Aid certified etc.) and is covered by the insurance provided. User's Camp Director is responsible for immediately communicating in writing any unsafe conditions or problems to the YMCA Camp Arroyo Camp Director.
- v. Any additions to the site made by the User shall only be temporary in nature; and approved by YMCA Camp Arroyo in writing prior to installation; and comply with the list of approved temporary additions /changes attached to this Agreement and marked Exhibit A, when applicable to User's camp. User is responsible for the removal and, if necessary, the disposal, of all materials used in the temporary addition.
 - vi. No signs or barriers shall be placed or used in the Camp without the prior written authorization of the YMCA. Nothing shall be nailed or tacked to trees or other vegetation or structures.
 - vii. User shall be responsible for and its insurance shall apply to all participants, guests, invitees and/or entrants in all circumstances.
- (f) **UTILITIES:** The YMCA of the East Bay shall provide water, electricity, and garbage disposal on a "normal use" basis without charge to the User.
- (g) **JANITORIAL:** The YMCA shall provide janitorial service prior to User's arrival and after User's departure. User agrees to be responsible for the cleaning of the cabins during its stay. User agrees to pay for all damage to any portion of the Facility incurred during User's stay.
- (h) **HEALTH & SAFETY:** User shall be solely responsible for all first aid and medical supervision or treatment.
- i. User agrees to furnish qualified staff for health care needs and supervision, including, but not limited to, CPR and First Aid certification.
 - ii. User shall bring and have available at all times a current list of participants that includes: names, and addresses, emergency contact information, allergies and health conditions and in addition for each minor under the age of 18, a signed form granting permission to User for emergency medical treatment or a signed waiver exempting them from emergency treatment due to religious or personal beliefs.
 - iii. User is responsible for all emergency and non-emergency transportation.
 - iv. The YMCA prohibits hunting, fireworks, firearms, ammunitions or explosives at the Facility. The use of gasoline, flammables, poisonous substances and hand and power tools are also prohibited.
 - v. User will prohibit smoking except in designated areas and is responsible for warning all participants of the hazards of smoking outside of the designated areas at the Facility. Open fires are not permitted. BBQ units are permitted only with prior authorization and only under the supervision of YMCA staff.
 - vi. Use of vehicles at the Facility is restricted to roads and parking areas. The speed limit on all Facility roads is 10 mph. Speed limit is strictly enforced.
- (i) **POOL AREA USE:** No one shall enter the pool area unless a YMCA lifeguard, or one approved by YMCA is present. The pool will be available for use May 1 through October 15, weather permitting.
- (j) **CLIMBING WALL/CHALLENGE COURSE:** No one shall enter the climbing wall or challenge course areas unless a YMCA staff person, or one approved by YMCA, is present. The climbing wall will be available for use weather permitting. All participants must be at least 10 years of age, and free of medical or physical conditions, which might create undue risk to himself/herself or to others.
- (k) **USER PERSONNEL:** YMCA reserves the right to require User to remove from the Facility any persons, who in the sole discretion of the YMCA, are creating a disturbance or who are otherwise disrupting activities at YMCA Camp Arroyo. User agrees to permit

only authorized persons to enter Camp Arroyo and shall take all necessary steps to remove unauthorized persons from the Facility. User shall provide at least one adult chaperone/counselor, age 18 or older, for every 11 campers.

(l) DAMAGES, OTHER FEES, COSTS AND EXPENSES.

i. User agrees to pay YMCA for all damage to any portion of the Facility and/or equipment incurred during User's use of YMCA Camp Arroyo, that arises from or is caused by an error, omission or negligent act of the User, its officer, agents or employees. The determination of that amount shall be in the YMCA's sole discretion, but at all times will be reasonable, and will include, but is not limited to, YMCA's costs for contractors, maintenance personnel, and camp operations staff as well as any costs for materials, garbage removal, or equipment rental.

ii. The Guaranteed Minimum Fee is based on the number of persons guaranteed by the User. The fee is based on the guaranteed number whether or not the number of actual participants is fewer. The fee also applies if the User terminates this Agreement without 90 days prior written notice or does not attend Camp.

(m) MISCELLANEOUS: User warrants that the person signing this Agreement has the authority to execute this Agreement on its behalf.

i. This Agreement may be altered or amended only by written agreement of both parties.

ii User agrees that the total number of its group will not exceed the building maximum at any time.

(n) ATTORNEYS' FEES: If legal action shall be brought by either of the parties in connection with this Agreement, the party prevailing in said action shall be entitled to recover from the party not prevailing its costs of suit and reasonable attorneys' fees, which shall be fixed by the court.

(o) SPECIAL RIGHT OF TERMINATION FOR BREACH: In the event, after warning by authorized YMCA, The Taylor Family Foundation, or the East Bay Regional Parks District personnel or their agents, User continues to fail to perform any requirement of this Agreement, YMCA shall have the right to terminate this Permit by notice to any officer of User, User's Camp Director or substitute or other User personnel in charge, whereupon User shall immediately terminate its use of the Facility and cause all participants to promptly remove any equipment or other personal property owned by User's participants.

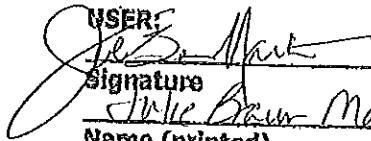
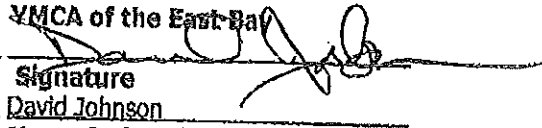
(p) CANCELLATION:

i. The YMCA must receive written notice of cancellation from the User 90 days prior to arrival day or the User shall forfeit the deposit for the use of Camp Arroyo. The User will forfeit the total amount of their fees and deposit if the YMCA receives notice of cancellation by the user in less than 30 days.

ii. If the YMCA closes Camp Arroyo or is unable to make the Facility available to User for any reason, the YMCA will promptly give notice to User, and the YMCA will process a full refund of all fees and deposits which shall be the sole obligation of YMCA to User. This Agreement may be terminated at any time by YMCA by giving User thirty (30) days prior written notice.

[SIGNATURES ON NEXT PAGE]

USER HAS READ, UNDERSTANDS, AGREES TO BE BOUND BY AND VOLUNTARILY SIGNS THIS USE OF PREMISES AGREEMENT AND THE INCORPORATED RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, and further agrees that no oral representations, statements, or Inducement inconsistent with the foregoing written agreement have been made.

USER:	YMCA of the East Bay
	
Signature	Signature
<u>Julie Brown-Martin</u>	<u>David Johnson</u>
Name (printed)	Name (printed)
<u>Asst Supt</u>	<u>Senior Vice President</u>
Title	Title
<u>1/15/15</u>	
Date	Date

NKlinkner
Nancy Klinkner
Principal
1/13/15

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