

**JOINT USE AGREEMENT
BETWEEN
PLEASANT HILL RECREATION AND PARK DISTRICT
AND
MT. DIABLO UNIFIED SCHOOL DISTRICT
REGARDING THE TENNIS COURTS AT
PLEASANT HILL MIDDLE SCHOOL**

WHEREAS,

Pleasant Hill Recreation and Park District, (hereinafter “Park District”) and Mt. Diablo Unified School District (hereinafter “School District”), are duly organized political subdivisions of the State of California; and

Education Code §§ 10900 *et seq.* authorizes and empowers public authorities to promote and conduct programs of community recreation, to establish systems of recreation, and to acquire, improve, maintain and operate recreation centers within or without the territorial limits of such districts; and

Park District is authorized, pursuant to Public Resources Code § 5786.11, to enter into a cooperative agreement with other governmental units in the execution of its authorized powers; and

School District is authorized pursuant to Education Code §§ 10902 and 10910 to enter into such an agreement for community recreational purposes; and

Park District and School District (collectively, the “Parties” and individually, a “Party”) believe that this Joint Use Agreement (the “Agreement”) will provide recreational opportunities that will benefit the entire community; and

The Parties desire to enter into this cooperative agreement for the use of certain facilities, appurtenant areas and supporting equipment at Pleasant Hill Middle School, owned by School District; and

A cooperative agreement is required to set forth the rights and obligations of the Parties in connection with the use of certain facilities.

NOW, THEREFORE,

In consideration of the terms, covenants, and conditions set forth in this Agreement for Park District's use and occupation of the tennis facilities (the "Facilities"), described further below, the sufficiency of such consideration being hereby acknowledged, the Parties agree as follows:

1. Term

This Agreement shall begin on the day that the last of the two Parties has executed this Agreement and shall end twenty (20) years from that date.

2. Scope

This Agreement concerns the use and occupation of the tennis courts and supporting equipment located at Pleasant Hill Middle School ("Tennis Courts"), and the adjacent parking lot (collectively "the Facilities").

3. Use of Facilities

a) School District shall permit Park District to use the Facilities for community recreation programs in accordance with the terms of this Agreement. The use of the Facilities by Park District shall not at any time interfere with the regular conduct of school activities nor shall such use be inconsistent with the use of said areas for school purposes.

b) During the school year the Park District shall, subject to the terms herein, have exclusive use of the Tennis Courts from 4:00 p.m. to 9:00 p.m. during each day of the week and from 7:00 a.m. to 9:00 p.m. on weekends. School District shall have exclusive use of the Tennis Courts from 7:00 a.m. to 4:00 p.m. when school is in session during the regular school year. Park District shall have exclusive use and scheduling of the Tennis Courts during the summer vacation period and when school is not in regular session.

c) Park District understands that School District may sometimes need the Facilities during a time that Park District has a scheduled use. Park District understands that School District programs and events at the Facilities take precedence over Park District programs in these situations. School District shall endeavor to provide as much notice as reasonably possible to Park District of the scheduling conflict so that Park District can inform its program participants, but at a minimum shall provide thirty (30) days' notice of such scheduling conflict.

d) Park District agrees to comply with Education Code § 10911.5 and all applicable policies established by School District for the use of the Facilities. Park District shall establish protocols to ensure that its personnel are properly trained and certified in their respective fields (if applicable), are trained in cardiopulmonary resuscitation, and that all classes are staffed and supervised by an appropriate number of personnel.

e) It is understood and agreed that all School District activities at the Facilities shall be supervised and conducted by School District, and that all Park District activities at the Facilities shall be supervised and conducted by Park District. Each district shall be responsible for said Facilities during its period of use, will bear the costs of all necessary supervising and teaching personnel during said period, and will keep the Facilities clean.

f) Park District shall not sublet or assign its use of the Facilities to any other person or entity without the express written consent of School District. In the event School District consents, said person or entity shall be allowed to use the Facilities pursuant to the terms of School District's use permit and/or this Agreement.

4. Modification of Agreement

The terms of this Agreement may be modified only by the written and executed agreement of School District and Park District.

5. Termination of Agreement

a) The Parties have the right to terminate this Agreement without cause by written notification sixty (60) days prior to the effective date of the termination. School District may, upon ten (10) days written notice, temporarily suspend usage of the Tennis Courts to the extent the costs to repair said courts to render them suitable for public use in accordance with the laws and regulations of a public agency with jurisdiction are prohibitive.

b) School District may terminate this Agreement immediately for cause. Cause shall include without limitation, the material, uncured breach of this Agreement by Park District; any act by Park District exposing School District to liability to others for personal injury or property damage; or notification from a public authority that all or a substantial part of the Facilities must be closed to public use.

6. Insurance

a) Park District shall, at its own expense during the term of this Agreement, maintain with a California admitted insurer with a rating of not less than an A- from A.M. Best Company,

an insurance-rating and information agency, a commercial general liability insurance policy with policy limits in the amount of not less than two million dollars (\$2,000,000) per occurrence. As an alternative to the requirement of maintaining such commercial general liability insurance policy, Park District may satisfy this requirement through its membership in CAPRI, a joint powers agency providing liability coverage for Park District, in an amount not less than that required by this Agreement.

b) Park District's insurance shall name School District, its employees and agents, as additional insureds with respect to liability in connection with Park District's use of the Facilities and shall provide for a thirty (30) day written notice of cancellation or reduction of such insurance to School District. Park District shall provide School District a certificate of insurance and additional insured endorsement CG 2026 0704 ["Additional Insured – Designated Person or Organization"] or equivalent evidencing School District's additional insured status.

c) Defense costs shall not erode the limits of Park District's insurance policy.

d) Park District shall not have a self-insured retention or deductible greater than \$25,000 without the consent of School District.

7. Indemnification

a) Park District agrees to defend, indemnify, and hold School District, its officers, directors, employees, and agents, harmless from and against any and all claims, suits, costs, and damages, including reasonable attorneys' fees, arising from or relating to Park District's activities at the Facilities, excepting any such claims, suits, costs, and damages caused by School District's negligence or willful misconduct.

b) Park District agrees to defend School District immediately upon tender of any claims or suits covered by the aforesaid indemnity agreement, it being the intent of the Parties that a determination of fault is not a prerequisite to the defense obligation.

8. Notices

a) Park District shall immediately notify School District in writing of any injuries requiring medical treatment beyond first aid connected with Park District's use of the Facilities. Communications shall be sent via e-mail or facsimile to the following number and address:

Jeff McDaniel: mcdanielj@mdusd.org Fax: (925) 691-5246

b) The Parties shall immediately notify each other in writing of any condition at the Facilities that are potentially dangerous or defective and also provide to the other Party any and all communications from any public agency regarding the use of the Facilities. Communications shall be sent via e-mail or facsimile to the following numbers and addresses:

School District:

Executive Director Jeff McDaniel: mcdanielj@mdusd.org Fax: (925)
691-5246

Park District:

Recreation Supervisor–

Lance Hurtado: lhurtado@pleasanthillrec.com Fax: (925) 682-1633

c) All other notices shall be sent by facsimile and first class mail to the following numbers and addresses:

Park District:

General Manager
Pleasant Hill Recreation and Park District
147 Gregory Lane
Pleasant Hill, California 94523
Facsimile: 925-____-_____

School District:

Superintendent
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, California 94519
Facsimile: (925) _____

9. Partial Invalidity

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.

10. Succession

This Agreement shall inure to the benefit of and bind any and all successors of the respective districts and all future political subdivisions to whom the Facilities herein referred to may be transferred by incorporation, annexation, unification or other consolidation.

11. Dispute Resolution

The Parties shall meet and confer and attempt to amicably resolve any dispute arising from or relating to this Agreement, subject to the following provisions:

a) Any Party desiring to meet and confer shall so advise the other Party pursuant to a written notice.

b) Within fifteen (15) days after provision of that written notice by the Party desiring to meet and confer, the Parties shall meet in person and attempt to amicably resolve their dispute. Each Party shall send to the meeting a person with full authority to resolve the dispute, and shall be prepared to devote at least an entire day thereto.

c) If any dispute remains unresolved at the end of the meeting, any Party to this Agreement shall have the right to invoke the following mediation process:

- (i) Any dispute that remains unresolved after the meet and confer shall immediately be submitted to mediation.
- (ii) The Parties agree to commit to at least one full day to the mediation process.
- (iii) The costs of the mediator will be paid for by each Party on an equal basis.
- (iv) The mediator, to be selected by mutual agreement of the Parties, shall be one from the panel of JAMS mediators, or similar.

d) No Party will be permitted to file legal action without first following the provisions in this section.

e) Venue for any legal action shall be the Superior Court of the County of Contra Costa.

IN WITNESS WHEREOF,

Mt. Diablo Unified School District of Contra Costa County, California, has, by authority of its Board of Trustees, caused this Agreement to be signed by its President and the Superintendent of said school district, and Pleasant Hill Recreation and Park District of Contra Costa County, California, has, by authority of its Board of Directors, its governing body, caused this Agreement to be signed by the Chair of the Board and attested by the Clerk of the Board as set forth below.

MOUNT DIABLO UNIFIED SCHOOL DISTRICT

Dated: _____, 2015

Superintendent,
Mt. Diablo Unified School District

Dated: _____, 2015

President
Board of Trustees
Mt. Diablo Unified School District

PLEASANT HILL RECREATION AND PARK DISTRICT

Dated: _____, 2015

Chairperson
Board of Directors
Pleasant Hill Recreation and Park District

Dated: _____, 2015

Clerk
Board of Directors
Pleasant Hill Recreation and Park District