

**AGREEMENT BETWEEN THE CITY OF LEMOORE
AND
LEMOORE UNION HIGH SCHOOL DISTRICT**

(JOINT USE AGREEMENT FOR CITY-SCHOOL PARK PROJECT)

THIS AGREEMENT, effective _____, 2010, is entered between the City of Lemoore ("City"), the Lemoore Union High School ("District") with respect to the following recitals, which are a substantive part of this Agreement:

RECITALS

- A. City is in the business of providing general governmental services within the jurisdictional boundaries of City, including public recreational programs and facilities.
- B. District is in the business of providing educational services to students within its jurisdictional boundaries, including related athletic programs and facilities. District allows general public use of its facilities, including its athletic facilities, pursuant to the LUHS "District" and Board policies when such use does not interfere with school uses.
- C. It is the intent of both parties to create a new public park for use by residents and citizens. During off-school hours, the facilities shall be considered a public park for use by City residents. During school hours, the area shall be used by District for physical education programs for District students.
- D. District intends to construct and build a new public park on District property in the City of Lemoore consisting of the following facilities: pavilion, barbeque area, play structure, Restroom/concession stand, artificial turf soccer/football fields, lighting and storage facility, (hereinafter "Facility"). The Facility is more particularly described and depicted in preliminary **Exhibits A and B**, and detailed Facility plans. Funding for the Facility will come from Prop 84 grant.
- E. California Government Code § 6500 et seq. authorizes public agencies through their governing bodies to jointly exercise any power common to the contracting agencies. In addition, California Education Code § 17051 authorizes cities and Districts to jointly use District property for park and recreation facilities.
- F. City and District recognize the public need for recreational facilities and desire by this Agreement to ensure that quality community recreational facilities are made available to City residents and District students.
- G. District has determined that City's use of the Facility as set forth in this Agreement will not interfere with the educational program or activities of the District that may be conducted in the Facility.

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NOW, THEREFORE, the parties agree as follows:

1. Construction of Facility. District shall be solely responsible for constructing the Facility in accordance with plans approved by District, which plans are on file with District. This includes, but is not limited to, the preparation of all bid documents, the awarding of construction contracts, the granting of change orders, the payment to contractors, and acceptance of Facility upon completion. District shall hold harmless and indemnify City from all liability associated with construction of the Facility. The Facility shall be constructed in accordance with the time table established by District.
2. Costs of Facility and Agency Contribution. The estimated cost for the Facility is estimated to be between \$4,000,000 and \$ 5,000,000.
3. Use and Scheduling of Park Facility. During off-school hours the Facility shall be used by City for its sports and recreation programs and other events consistent with the purposes of this Agreement. City use of the Facility includes use by local athletic organizations affiliated with City, such as the adult soccer league, Lemoore Youth Football, Lemoore Babe Ruth or Lemoore Little League. Any use by an affiliated organization shall be with the approval of City. During off-school hours, the Facility shall be governed by Chapter 11 of Title 7 of the Lemoore Municipal Code, "Public Parks and Recreational Facilities".

District shall make available to City suitable storage for City athletic equipment used at the Facility. District shall also make available for City's use Facility concession stand(s).

a. Soccer and Baseball Fields.

(i) Annual Schedule. District and City shall establish a schedule of use on a calendar year annual basis ("Annual Schedule"), which sets forth dates and times that District is scheduled to use the Facility and dates and times that the Facility will be made available to City. Except for the first year the Facility is open, negotiations for the Annual Schedule shall commence on October 1 of each year.

(ii) Additional Usage. Any times not identified as available to the District or City on the Annual Schedule shall be made available equally to District and City, under the following terms: (1) City shall provide not less than seven (7) days written notice ("Notice") of its intent to use the Facility; and (2) District shall not schedule any events, or allow third party users to use the Facility, after the City Notice is provided.

(iii) Master Schedule. District shall maintain a "Master Schedule" of Facility use, which shall be updated and made available to City on a regular basis. The Master Schedule shall supplement the Annual Schedule.

(iv) Joint Use Committee. District and City shall establish a "Joint Use Committee" consisting of the Parks and Recreation Director from City and the Athletic

Director from District, or their designees. The Joint Use Committee shall meet on a regular basis, and not less than once monthly to review and evaluate implementation of this Agreement and to review the Annual and Master Schedules.

(v) Modifications.

a) Annual Schedule. The parties may mutually agree in writing at any time to modify the Annual Schedule.

b) Master Schedule. In addition, if due to unforeseen circumstances District finds a need to add a class or program after a City event has been added to the Master Schedule following the required seven (7) days notice, City agrees to work cooperatively with District in rescheduling the City event where feasible. District also agrees to work cooperatively with City in rescheduling a District class or program where feasible, if due to unforeseen circumstances City finds a need to add a program or event after a District event has been added to the Master Schedule. Disputes shall be resolved pursuant to the Dispute resolution process set forth herein. It is expected that requests for modifications under this subsection would be used occasionally and that neither District nor City shall use this section to fundamentally alter the rights of District or City to use the Facility.

(vi) Dispute Resolution. Disputes over the Annual Schedule or adding/removing events from the Master Schedule shall be resolved as follows:

a) Written Dispute. The Joint Use Committee shall outline the dispute in writing. If the members cannot agree on the exact language, each committee member shall specify in a separate writing the basis for the dispute.

b) City Manager/Superintendent Resolution. The written dispute shall be presented to the City Manager for City and the Superintendent for District who shall meet and attempt to resolve the dispute within five (5) business days.

c) Mediation Panel. If the City Manager and Superintendent cannot resolve the dispute, the dispute shall be referred to mediation before a panel of three (3) mediators consisting of the following: City's Mayor, District's Board President, and a third person selected by them. The third person shall be a community stakeholder, such as the Chamber of Commerce President or West Hills College Superintendent. Each party shall share in the costs of the mediation, if any. The mediation shall occur within ten (10) business days.

d) District Governing Board. If the dispute is not resolved following mediation, the matter shall be referred to the District Governing Board for a final decision at the District's next Board meeting for which required notice may be provided, subject to City's rights and remedies for a breach of this Agreement.

For Master Schedule events in which there is insufficient time to complete any step of this dispute resolution process before scheduling the event, District's Superintendent shall have final say over the Master Schedule subject to City's right to follow any uncompleted steps of this process after scheduling the event for review of the District's unilateral decision, and subject to City's rights and remedies for a breach of this Agreement. Nothing in this section is intended to allow the District to unilaterally change the Annual Schedule.

b. Pavilion. Scheduling of the Pavilion shall, at all times, go through the City's Parks and Recreation Department. All revenue and fees associated with rental and use of the pavilion shall be forwarded to the District.

c. Field Spaces. Scheduling of the soccer/football/baseball fields shall, at all times, go through the District Superintendent's office. All revenue and fees associated with rental and use of the fields shall remain with the District.

4. Rules Governing City Use of Facility. The following rules shall govern City's use of the Facility:

a. District Policies and Rules and Regulations. City shall comply with District Governing Board Policies and Rules and Regulations governing use of the Facility, provided that such Board Policies and Rules and Regulations shall not substantially or unreasonably restrict City's use of the Facility as contemplated by this Agreement. For example, City anticipates a need to use the Facility for 24-hour tournaments and any rule or regulation restricting the hours of use would substantially interfere with City's use of the Facility. Absent an emergency, District shall consult with City at least thirty (30) days before making any material changes to District Policies or Rules and Regulations governing use of the Facility.

b. Compliance With Applicable Laws. City's use of the Facility shall be in compliance with all applicable Federal, State, County, and City laws.

c. Reasonable and Prudent Manner. City shall use the Facility in a reasonable and prudent manner, including all electrical, plumbing, sanitary, heating, ventilating, or other fixtures or facilities in or near the Facility.

d. Condition of Facility. City and/or its affiliates shall leave the Facility in a clean and neat fashion as originally found at the start of its use, except for normal wear and tear, including, but not limited to, ensuring that all trash, debris, or other items from the City use or event is removed or disposed of properly in trash receptacles and ensuring that the City agents, invitees, licensees, or attendees do not deliberately or negligently deface, destroy, damage, remove, or impair the Facility and furnishings, or other District property. City and District shall have the right to restrict the future use of violating organizations and affiliates.

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e. Alterations. City shall not make any alterations, changes, repairs, or replacements in the Facility or furnishings, or to other District property without obtaining the prior written consent of District.

f. Costs for Damages to Facility. City shall be responsible for any damages to the Facility and its furnishings, other than ordinary wear and tear and other than the maintenance obligations of District as set forth in Section 5, caused by or as a result of the negligent or willful misconduct of City, or its officers, agents, employees, volunteers, and invitees. City shall pay the reasonable costs of repairing same to District within thirty (30) days after the District has submitted a reasonably detailed invoice for the corrective work.

5. Maintenance of Facility. Except for City's obligations to pay for damages caused by City negligence or willful misconduct, as set forth in Section 4, District shall be responsible, at its sole costs, for maintenance of the Facility. Maintenance includes, but is not limited to, cleaning, painting, repair, graffiti abatement, vandalism mitigation & repair, janitorial services and mowing, etc.

6. Utilities. District shall be solely responsible for all utilities consumed at the Facility. Utilities include, but are not limited to, electric, gas, water, sewer and garbage.

7. Term and Termination. The following provisions shall govern the term of this Agreement:

a. Term of Agreement. This Agreement shall commence upon the Effective Date and continue for a period of thirty (30) years from the time the Facility is first made available for use by City.

8. Assignment. The parties may not assign any of their rights under this Agreement without the express written consent of the other parties.

9. Mutual Indemnification. City and Agency shall indemnify, defend, and hold harmless District, its officers, agents, employees, and volunteers, from any and all liabilities, claims, or losses of any nature, including attorney's fees, from alleged acts or omissions of City and Agency, their officers, agents, employees, volunteers, and invitees during those times City shall have use of the Facility.

District shall indemnify, defend, and hold harmless City and Agency, their officers, agents, employees, and volunteers, from any and all liabilities, claims, or losses of any nature, including attorney's fees, from alleged acts or omissions of District, its officers, agents, employees, volunteers, and invitees during those times District shall have use of the Facility.

In all other respects, and during such times as neither City or District shall have exclusive use of the Facility, each Party agrees to indemnify, defend, and hold harmless the other Party, its officers, agents, employees, and volunteers, from any and all

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liabilities, claims, or losses of any nature, including attorney's fees, to the extent caused by, arising out of, or in connection with the indemnifying Party's negligent acts or omissions pursuant to this Agreement.

The provisions of this Section shall survive termination of this Agreement.

10. Insurance. City, Agency and District shall each maintain comprehensive general Liability Insurance in the amount of Ten Million Dollars (\$10,000,000) combined single limit to protect City, Agency and District, their officers, agents, employees, and volunteers against claims for bodily injury and property damage arising from City's or District's use of the Facility. The form of such insurance shall be satisfactory to City, Agency and District and may include self-insurance at levels acceptable to all Parties. Each Party's policy or policies shall name the other Party (City, Agency or District) as additional insured.

This provision shall supplement the dispute resolution provisions of section 3f relating to disputes over adding/removing events from the Master Schedule and shall apply at the conclusion of that process if necessary.

11. Entire Agreement; Modifications; Governing Body Approval. This Agreement, including all exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein and this Agreement may be amended only in writing signed by City, and District. City Council, and District Governing Board must approve this Agreement and any material changes or modifications thereto before any changes and/or modifications become effective.

12. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be personally served or mailed, postage prepaid and addressed to the respective parties as follows:

To City/RDA: City Manager/Executive Director
City of Lemoore/
119 Fox Street
Lemoore, CA 93245

To District: Superintendent
Lemoore Union High School District
5 Powell Ave.
Lemoore, CA 93245

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the mail.

13. Governing Law and Venue. The parties agree that the law governing this Agreement shall be that of the State of California and venue for court proceedings shall be Kings County or the Eastern District Federal Court, as appropriate.

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14. Interpretation. This Agreement shall be construed as if all parties drafted it and any question of interpretation shall not be resolved by any rule providing for interpretation against the drafting party.

15. Authority to Carry Out Terms of Agreement. The City Manager shall have the authority to carry out the terms and conditions of this Agreement, and to do any and all other necessary or required processes to fully implement this Agreement, including minor modification thereto. The parties further agree to execute and deliver to the other any such further instruments and perform any such further acts as may be reasonably necessary to carry out the intent and purposes of this Agreement.

16. Waiver. A waiver of any breach or any of the covenants, terms or provisions of this Agreement shall not be construed as a continuing waiver of any subsequent breach of the same or any other covenant, term or provision and the parties may insist on strict adherence to that term or any other term of this Agreement.

WITNESS THE EXECUTION HEREOF on the day and year last written below:

DISTRICT: LEMOORE UNION HIGH SCHOOL DISTRICT

Date: _____

Superintendent
Dwight M. Miller

Approved by the Board of Lemoore Union High School District
on _____ Resolution No: _____

CITY: CITY OF LEMOORE

Date: _____

City Manager
Jeff Briltz

Approved by the City Council of the City of Lemoore
on _____ Resolution No: _____

Identify and Attach Exhibits

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Exhibit A

Map of Park spaces defined by grant:

- A Park with Pavilion, play structure and building with snack bar, bathroom and storage
- B Lighted football/soccer field #1 with artificial turf. Includes scoreboard and bleachers
- C Lighted football/soccer field #2 with artificial turf. Includes bleachers
- D Artificial turf soccer/football field without lights
- E Lighted baseball field

Exhibit B

Hours of use:

1. Except when lighting is provided to 2300, the park area will be considered closed from dusk to dawn each day.
2. For the purposes of this agreement, District hours are considered to be 0700 to 1600 during the 180 days that school is in session or 1,620 hours throughout the year or the equivalent of 28% of available hours during the year.
3. School affiliated programs will require an additional 5% of the available time, not to exceed three days per week, subject to the annual and the master schedule referred to in section 3 above.
4. The remaining 67% of the time over the course of a year, the park would be available for use by City-affiliated organizations such as youth soccer, youth football and adult soccer, subject to the annual schedule and the master schedule referred to in section 3 above.