

## JOINT USE AGREEMENT

### Allocation of Measure WW Park Bond Funds – Las Juntas Field

This joint use agreement (“Agreement”) is dated February 7, 2017 (the “Effective Date”), and is between the MARTINEZ UNIFIED SCHOOL DISTRICT, a California public school district (the “District”), and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “County”).

### RECITALS

- A. In November 2008, the voters of Alameda County and Contra Costa County approved the East Bay Regional Park District’s (“EBRPD”) Measure WW Park Bond Extension (“Measure WW”). A portion of the proceeds that resulted from the issuance of the Measure WW bonds have been set aside for a local grant program, under which eligible applicants are granted Measure WW funds for eligible projects.
- B. The County and EBRPD are parties to Master Contract No. 314500, as amended (the “Master Contract”), under which EBRPD is making a grant of Measure WW funds to the County for the acquisition and development of neighborhood, community and regional parks and recreation lands and facilities in the unincorporated area of Contra Costa County. The amount of such grant is referred to as the “Grant Proceeds.” A copy of the Master Contract is attached as Exhibit A.
- C. The District owns that certain property located at 4105 Pacheco Blvd, Martinez, California, which is the location of the Las Juntas Elementary School. A portion of the school site consists of approximately three (3) acres of play fields that are part of the school yard (the “Project Site”). An aerial photograph that shows the Project Site is attached as Exhibit B.
- D. The County desires to dedicate a portion of the Grant Proceeds to the renovation of the Project Site. To that end, the County is providing the District with Five Hundred Fifty Thousand Dollars (\$550,000) (the “Project Award”) to permit the District to perform the tasks described on Exhibit C. The performance and completion of such tasks is the “Project.”
- E. Education Code section 10900 et seq. (Community Recreation Programs) authorizes counties and school districts to organize, promote, and conduct programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults of the State and, accordingly, enter into an agreement to carry out those purposes. Specifically, Section 10902(c) authorizes counties and school districts to acquire, construct, improve, maintain, and operate recreation centers within or without their territorial limits.

- F. Education Code section 17527(a) authorizes the governing board of any school district to enter into agreements to make vacant classrooms or other space in operating school buildings available for lease to governmental units, and section 17534(b) authorizes agreements for capital outlay improvements to be made on school property for park and recreation purposes by public entities. The District's governing board must make the determination that the proposed joint use relationship will not: (1) interfere with the educational program or activities of the school or class conducted upon the school; (2) unduly disrupt the residents in the surrounding neighborhood; and (3) jeopardize the safety of the children of the school.
- G. Under Education Code section 35160, the governing board of a school district may initiate and carry on any program, activities, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by any law, and which is not in conflict with the purposes for which school districts are established.

NOW THEREFORE, to promote general educational and recreational objectives for children and adults of the community at large, the District and the County agree as follows:

#### AGREEMENT

1. Joint Use of Project Site. For the Term of this Agreement, the District and the County will jointly use the Project Site. Once the Project is complete, the District shall cause the Project Site to be available for general public recreation, at a minimum, during the following times: After 3:30 p.m. on weekdays and all day on Saturday.
2. Term. The "Term" of this Agreement begins on the Effective Date and ends on the date that is twenty-five (25) years after the date the Project is complete, except in the event of an Extraordinary Circumstance as defined in or as otherwise provided in the Master Agreement. If no record of the Project completion date can be found, the Term of this Agreement ends on the twenty-sixth (26th) anniversary of the Effective Date.
3. Consideration. In exchange for the Project Award, the District will carry out the Project.
4. Title to Property. The parties acknowledge that fee title to the Project Site is, and will continue to be, held by the District during the Term.
5. Surrender of Project Site. On the last day of the Term, the County shall peaceably and quietly leave and surrender to the District the Project Site and all improvements thereto.
6. Use. In addition to school purposes, the Project Site will be used for community park and recreation purposes. In accordance with Section B.10 of the General Provisions of the Master Contract, if the Project Site is no longer used for park and recreation purposes, or if the Project Site is sold or otherwise disposed of, the District shall pay to the County the Reimbursement. The "Reimbursement" is an amount that is equal to the amount the County would be obligated to repay EBRPD pursuant to Section B.10 of the General Provisions of the Master Contract. The District shall pay the Reimbursement to the

County within thirty (30) days of a demand from the County. The County shall use the Reimbursement to either make capital improvements related to parks and recreation facilities, in accordance with an agreement between the County and EBRPD, or to reimburse the Project Award to EBRPD.

7. Maintenance. The District is responsible for maintaining the Project Site throughout the Term, in accordance with District-wide standards and policies.
8. Funding Acknowledgment Sign. The District shall post, or permit the County to post, a funding acknowledgment sign on the Project Site. The funding acknowledgment sign is to remain onsite for at least three (3) years after completion of the Project.
9. Nondiscrimination. In accordance with Section I of the General Provisions of the Master Contract, the District shall not (i) discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of the Project Site during the Term, or (ii) discriminate against any person on the basis of residence, except to the extent reasonable differences in admission or other fees based on residence are permitted by law.
10. Site Visits. The District shall permit representatives of the County and representatives of EBRPD to make periodic inspections of the Project Site to determine that the District is complying with the terms of this Agreement.
11. Indemnification. The District shall indemnify, defend and hold the County harmless from District's share of any and all claims, costs and liability for any damage, injury or death of or to any person or the property of any person, including attorneys' fees, caused by the willful misconduct or the negligent acts, errors or omissions of the District, its officers, agents or employees with respect to the District's use and maintenance of the Project Site pursuant to this Agreement, except to the extent caused or contributed to by the negligent acts, errors, or omissions of the County, its officers, agents, or employees. During the Term of this Agreement, the District must maintain liability insurance or a self-insurance fund sufficient to protect the County from the risks stated in this section.
12. Notices. All notices required or permitted under this Agreement are to be in writing and delivered personally, or sent by overnight delivery service, or registered or certified mail, postage prepaid, and directed as follows:

If to the District:

Martinez Unified School District  
Attention: Superintendent  
921 Susana Street  
Martinez, CA 94553

If to County:

John Kopchik  
The County of Contra Costa  
Department of Conservation and Development  
30 Muir Road  
Martinez, CA 94553

Either party may, at any time or from time to time, designate in writing a substitute address for that above set forth, and thereafter notices are to be delivered to such substitute address for that above set forth. Notices to either party are effective on the date of delivery, if delivered personally, on the next business day if sent by overnight courier, and three (3) business days after depositing in the United States Postal system if sent via registered or certified mail.

13. Project Administration. The District shall cooperate with the County in preparing any Project Status Reports required by EBRPD during the Term.
14. Project Termination. If any portion of the grant being made to the County under the Master Contract that is intended to be used for the Project is terminated for any reason, the County has no obligation to fund the Project.
15. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to, or does, confer upon any other person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
16. Independent Status. This Agreement is by and between two independent public entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture, or association.
17. Entire Agreement. This Agreement, including the Master Contract, constitutes the entire understanding between the parties with respect to the subject matter and supersedes any prior negotiations, representations, agreements, and understandings.
18. Amendments. This Agreement may not be amended, modified, or changed, nor shall any waiver of any provision hereof be effective, except by an agreement in writing authorized by the parties' respective governing bodies and signed by the parties.
19. Governing Law. The laws of the State of California govern all matters between the parties that relate to this Agreement.
20. Severability. The provisions of this Agreement are severable. Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect.
21. Further Assurances. Each Party shall, at its own expense, perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement. This Agreement shall be approved or ratified by the

District's Board of Education and the County's Board of Supervisors, and executed by both Parties.

- 22. Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- 23. Recitals and Exhibits. The Recitals and Exhibits attached to this Agreement are hereby incorporated by this reference and made a part of this Agreement.
- 24. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

The parties are signing this Agreement as of the Effective Date.

**COUNTY**

COUNTY OF CONTRA COSTA, a political subdivision of the State of California

By: \_\_\_\_\_  
John Kopchik  
Director of Conservation  
and Development

**DISTRICT**

MARTINEZ UNIFIED SCHOOL DISTRICT, a California public school district

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**  
**(See attached Master Contract)**

**EAST BAY REGIONAL PARK DISTRICT  
MEASURE WW PARK BOND  
MASTER CONTRACT - LOCAL GRANT PROGRAM**

**MASTER CONTRACT No.: 314500**

GRANTEE: Contra Costa County

THE PROJECT PERFORMANCE PERIOD is from the date this agreement is signed below by the District through December 31, 2018

The Grantee agrees to the terms and conditions of this Contract, and the East Bay Regional Park District, acting through its Board of Directors pursuant to the Measure WW Park Bond, agrees to fund the total Project Grant Amount indicated.

**THESE FUNDS ARE FOR THE ACQUISITION AND DEVELOPMENT OF NEIGHBORHOOD, COMMUNITY, AND REGIONAL PARKS AND RECREATION LANDS AND FACILITIES.**

**The General Provisions, Local Grant Procedural Guide, Forms and individual Project Applications are attached hereto and made a part of and incorporated into the Contract.**

The District anticipates that WW Parks Bonds in the amount of \$3,046,374.00 will be issued for project.

CONTRA COSTA COUNTY DEPARTMENT OF  
CONSERVATION AND DEVELOPMENT

Grantee

By: \_\_\_\_\_

(Signature of Authorized Representative)

John Kopchik

(Print Name of Authorized Representative)

Title: Director of Conservation and Development

Date: 1-5-16

EAST BAY REGIONAL PARK DISTRICT

By: \_\_\_\_\_

(Signature of Authorized Representative)

Robert E. Doyle

(Print Name of Authorized Representative)

Title: General Manager

Date: 2/1/14

Approved as to Form:

Ka  
District Counsel, EBRPD





## General Provisions

### A. Definitions

1. The term "Measure" as used herein refers to the revenue generated from the sale of bonds for the Program.
2. The term "Application" as used herein refers to the individual Project Application(s) and its required attachments for grants, pursuant to the enabling legislation and/or procedural guidelines.
3. Acquisition: means to obtain fee title or permanent easement for public access rights in real property.
4. The term "District" means the East Bay Regional Park District.
5. The term "Development" means improvements to real property for parks and recreation purposes, including but not limited to construction of new facilities, renovation or additions to existing facilities or historic preservation and protection. WW Local Grant Program funds may only be used for Capital Improvement.
6. The term "Grantee" as used herein means the party described as the Grantee on page 1 of this Contract. The term "Project" as used herein means the project described in the Brief Description of Project on the Project Application form.

### B. Project Execution

1. Subject to the availability of grant monies in the Measure, the District hereby grants to the Grantee a sum of money (grant monies) not to exceed the amount stated on page 1, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set forth in the Measure WW Park Bond Local Grant Procedural Guide, and under the terms and conditions set forth in this Contract.  
  
The Grantee shall assume any obligation to furnish any additional funds that may be necessary to complete the Project. Any modification or alteration in the Project as set forth in the Application on file with the District must be submitted to the District for approval.
2. The Grantee shall complete the Project in accordance within the time of Project Performance set forth on page 1, and under the terms and conditions of this Contract.
3. The Grantee shall certify its compliance as lead agency with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq., Title 14, California Code of Regulations, Section 15000 et seq.).
4. The Grantee shall comply with all applicable current laws and regulations affecting Development Projects, including, but not limited to, legal requirements for construction Contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities.

5. The Grantee shall permit periodic site visits, including a final inspection upon Project completion by the District, to determine if Development work is in accordance with the approved Project Scope.
6. Prior to the commencement of any work, the Grantee agrees to submit any significant deviation from the original scope of work in writing to the District.
7. If the Project includes Acquisition of real property, the Grantee agrees to comply with all applicable state and local laws or ordinances affecting relocation and real property acquisition.
8. The Grantee shall provide public access to Project facilities commensurate with the intent of the Project.
9. Grantees shall have (1) fee title, (2) lease hold or (3) other interest to the Project lands and demonstrate to the satisfaction of the District that the proposed Project will provide public benefits that are commensurate with the type and duration of the interest in land that is held by the Grantee, as determined by the District.
10. The Grantee shall maintain and operate the property for a period that is commensurate with the type of Project and the proportion of District funds allocated to the capital costs of the Project. With the approval of the District, the Grantee, or the Grantee's successor in interest in the property, may transfer the responsibility to maintain and operate the property in accordance with this section. The Grantee shall use the property only for the purposes for which the grant was made and shall make no other use, sale or other disposition of the property, except as authorized by specific action of the District Board of Directors. The agreements specified in this section shall not prevent the transfer of the property from the Grantee to a public agency, if the successor public agency assumes the obligations imposed by those agreements. If the use of the property or portion of the property is changed to a use that is not for parks and recreation, or if the property is sold or otherwise disposed of, an amount equal to (1) the amount of the grant, (2) the fair market value of the real property, or (3) the proceeds from the sale or other disposition, whichever is greater, shall be used by the Grantee for a parks and recreation capital purpose, pursuant to agreement with the District as specified in this section, or shall be reimbursed to the District and be available for appropriation by the District Board of Directors only for an authorized purpose.
11. The Grantee shall post and maintain a funding acknowledgement sign at the Project site for three years following receipt of final payment for the project.

#### C. Project Costs

1. The District may disburse to the Grantee the grant monies as follows, but not to exceed in any event, the total Grant Amount set forth of page 1 of this Contract:
  - a. The Grantee may request progress payments up to a total of up to 80% of the approved Project Application amount for eligible expenditures made on the project.
  - b. The remaining grant funds shall be paid up to the amount of the Application or the actual Project cost, whichever is less, on completion of the Project and receipt of a Completion Package of Project costs from the Grantee.

D. Project Administration

1. The Grantee shall submit written Project Status Reports to the District every six months. The District shall withhold all payments until all Project Status Reports are properly submitted.
2. The Grantee shall make property and facilities developed pursuant to this Contract available for inspection upon request by the District.

E. Project Termination

1. Any Grant funds that have not been expended by the Grantee prior to the end of the performance period set forth on page I of this Contract shall revert to the District and be available for Appropriation by the District Board of Directors for one or more other projects for parks and recreation purposes.
2. The Grantee may unilaterally rescind this Contract at any time prior to the commencement of a Project. After Project commencement, this Contract may be rescinded, modified or amended only by mutual agreement in writing between the Grantee and the District.
3. Failure by the Grantee to comply with the terms of this Contract or any other Contract under the Bond Measure may be cause for suspension of all obligations of the District hereunder. However, such failure shall not be cause for the suspension of all obligations of the District hereunder if in the judgment of the District such failure was due to no fault of the Grantee. In such case, any amount required to settle at minimum cost any irrevocable obligations properly incurred shall be eligible for reimbursement under this Contract.

F. Hold Harmless

1. The Grantee shall waive all claims and recourse against the District including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this Contract except claims arising from the concurrent or sole negligence of the District, its officers, agents, and employees.
2. The Grantee shall indemnify, hold harmless and defend the District, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the Acquisition, Development, construction, operation or maintenance of the property described as the Project. This includes claims, demands or causes of action that arise under Government Code Section 895.2 or otherwise, except for liability arising out of the concurrent or sole negligence of the District, its officers, agents, or employees.
3. The Grantee agrees that in the event the District is named as codefendant under the provisions of Government Code Section 895 et seq., the Grantee shall notify the District of such fact and shall represent the District in the legal action, unless the District undertakes to represent itself as codefendant in such legal action, in which event the District shall bear its own litigation costs, expenses, and attorney's fees.
4. The Grantee and the District agree that in the event of judgment entered against the District and the Grantee because of the concurrent negligence of the District and the Grantee, their

officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.

5. The Grantee shall indemnify, hold harmless and defend the District, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the Grantee has certified. The Grantee acknowledges that it is solely responsible for compliance with items to which it has certified.

#### G. Financial Records

1. The Grantee shall maintain satisfactory financial accounts, documents and records for the Project and make them available to the District for auditing at reasonable times. The Grantee also agrees to retain such financial accounts, documents and records until December 31, 2021.

The Grantee and the District agree that during regular office hours each of the parties hereto and their duly authorized representatives shall have the right to inspect and make copies of any books, records or reports of the other party pertaining to this Contract or matters related thereto. The Grantee shall maintain and make available for inspection by the District accurate records of all of its costs, disbursements and receipts with respect to its activities under this Contract.

2. The Grantee shall use a generally accepted accounting system.

#### H. Use of Facilities

1. The Grantee agrees that the Grantee shall use the property developed with grant monies under this Contract only for the purposes for which the District grant monies were requested and no other use of the area shall be permitted except by specific written approval by the District.
2. The Grantee shall maintain and operate the property developed for 25 years after final payment of grant funds. The Grantee shall permit periodic inspection of the project by the District during this period and may be required to submit annual project status reports if requested by the District.

#### I. Nondiscrimination

1. The Grantee shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this Contract.
2. The Grantee shall not discriminate against any person on the basis of residence except to the extent those reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

#### J. Procedural Guidelines and Application Incorporation

The Project Application, Procedural Guidelines and Forms and any subsequent change or addition approved by the District is hereby incorporated in this Contract as though set forth in full in this Contract.

K. Severability

If any provision of this Contract or the application thereof is held invalid, that invalidity shall not affect other provisions of the Contract, which can be given effect without the invalid provision or application, and to this end the provisions of this Contract are severable.

**Exhibit B  
(Project Site)**

**Matinez Unified  
School District Project Site**



**Exhibit C  
(Project)**

The Martinez Unified School District will design and install a reconstructed playfield and track at Las Juntas Elementary School. The following outlines the scope of work  
Total Funds Allocated: \$550,000

**SCOPE OF WORK**

<b>Task</b>	<b>Budgeted Amount</b>
Demolition and Grading	\$50,000
Irrigation and Sod installation	\$300,000
Concrete Curb	\$35,000
Track Base rock and asphalt	\$55,000
Soft Costs (pre-construction)	\$110,000