

JOINT USE AGREEMENT

**RIVERVIEW MIDDLE SCHOOL
205 PACIFICA AVE., BAY POINT
BAY POINT LIBRARY**

This joint use agreement (“Agreement”) is dated March 31, 2020 (the “Effective Date”), and is between the MT. DIABLO UNIFIED SCHOOL DISTRICT, a California public school district (the “School District”) and the COUNTY OF CONTRA COSTA, a political subdivision of the State of California (the “County”).

RECITALS

- A. The School District owns that certain property located at 205 Pacifica Avenue, Bay Point, California, which is the location of the Riverview Middle School (the “School Site”). The School District operates a school library on the School Site.
- B. The School District and the County agree that the presence of a public library in a community enhances the quality of life and the educational opportunities in that community. The School District and the County therefore desire to work cooperatively to permit the County to use of a portion of the school library at the School Site to operate a public library. That portion of the school library that is used by the County for the operation of a public library is the “Premises” and is shown on Exhibit A.
- C. California Education Code section 17527 authorizes the governing board of any school district to enter into agreements permitting the use of vacant classrooms or other space in operating school buildings by other governmental units, including during normal school hours if the school is in session.
- D. The Governing Board of the School District hereby finds that this joint use by County will not:
 - a. Interfere with the educational program or activities of any school or class conducted upon the real property or in any building.
 - b. Unduly disrupt the residents in the surrounding neighborhood.
 - c. Jeopardize the safety of the children of the school

The parties therefore agree as follows:

AGREEMENT

1. **Joint Use of School Site**. The School District and the County will jointly use the School Site, and the County will have exclusive use of the Premises during hours as scheduled herein during the Term, as defined below.

2. **Consideration.** In exchange for the use of the Premises, the County will perform Library Services and related activities at the Premises throughout the Term of this Agreement for the benefit of the public as stated herein. No rent is due or payable from the County to the School District during the Term of this Agreement.
3. **Term.** The initial term of this Agreement is five years, beginning on the Effective Date.
 - a. **Renewal.** County has one option to renew this Agreement for a term of five years (the, “**Renewal Term**”) upon all the terms and conditions set forth herein.
 - i. County will provide Lessor with written notice of its election to renew this Agreement ninety days prior to the end of the Term. However, if County fails to provide such notice, its right to renew this Agreement will not expire until fifteen (15) working days after County’s receipt of Lessor’s written demand that County exercise or forfeit the option to renew.
 - ii. Upon the commencement of the Renewal Term, all references to the Term of this Agreement will be deemed to mean the Term as extended pursuant to this Section.
 - b. **Termination.** Either party may terminate this Agreement at any time by giving the other party written notice at least one year prior to the proposed termination date.
4. **Use.**
 - a. **Premises.** At the County’s sole cost, the County may use the Premises for the purpose of providing Library Services to the public and related activities. For the purpose of this Agreement, “Library Services” includes lending books and other media to the public, offering programs to the public, and providing collection management and technical services in the course of operating a library. Except as otherwise provided herein, Library Services does not include maintaining the School Site.
 - b. **Parking Lot.** The County may use the parking lot at the School Site, but may not park in driveways, loading area, spaces designated for School District staff, or areas not specifically designated for parking. Parking in the parking lot is limited to standard-size automobiles.
 - c. **Hours.** The hours during which the County will provide Library Services to the public at the Premises are set forth in **Exhibit B**. If the County determines that it must reduce, or can expand, the hours during which Library Services are provided at the Premises, the County will (i) notify the School District in writing at least thirty (30) days prior to the proposed change, and (ii) provide a supplement to this Agreement in the form of an updated **Exhibit B**. Any supplements to this Agreement that modify **Exhibit B** will be numbered sequentially and indicate the date on which the revised schedule is effective. Any increase in the hours under this provision will only occur upon written consent of the School District, which will not be withheld unreasonably.

5. **Maintenance and Repairs.** The School District shall provide the maintenance and repairs described below to keep and maintain the School Site in good order, condition and repair. School District responsibilities for maintenance and repair include:
 - a. **Exterior.** All exterior building maintenance including but not limited to the roof, landscaping, hardscape, grounds, pest control, lighting and parking.
 - b. **Interior.** All interior building maintenance including but not limited to mechanical and electrical systems, including gas, electrical, water, plumbing, elevators, voice and data communication systems infrastructure, heating, ventilating, air-conditioning (HVAC) systems, pest control, and all interior lighting systems, including the replacement of all fixtures and bulbs.
 - c. **Fixtures and Furnishings.** Maintenance and replacement of fixtures and furnishings in the Premises including shelving, lighting, furniture, carpeting, and window treatments.
6. **Custodial Services.** The School District shall provide the following custodial services at the Premises: cleaning the floors, cleaning the bathroom(s), emptying trash receptacles, stocking the bathroom(s) with paper towels, soap and toilet paper. The County will reimburse the School District for the cost of custodial services that result from having the Premises open to the public in the evenings and on Saturday at a rate of \$42 per hour, with a minimum of four hours per day. The School District will invoice the County for this cost quarterly in arrears.
7. **Ownership of Contents.**
 - a. **County.** All books, furnishings, fixtures, equipment, and materials purchased by the County, or foundations or private or public fundraising efforts on behalf of the County, are owned by the County.
 - b. **School District.** All books, furnishings, fixtures, equipment, and materials purchased by the School District, or foundations or private or public fundraising efforts on behalf of the School District, are owned by the School District.
8. **Insurance.**
 - a. **Liability Insurance.**
 - i. **County.** Throughout the Term, the County shall maintain in full force and effect, at its sole expense, either (i) comprehensive general liability insurance in commercially reasonable amounts, but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Premises, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting

from use of the Premises. Any policy of insurance obtained by the County must (1) name the School District, its officers, agents, and employees, as additional insureds, (2) be endorsed to provide that the insurance is primary to and non-contributory to insurance carried by the School District with respect to liability imposed on the County under this Agreement, and (3) contain a severability of interest clause.

- ii. School District. Throughout the Term, the School District shall maintain in full force and effect, at its sole expense, either (i) comprehensive general liability insurance in commercially reasonable amounts, but in no event in an amount less than \$3,000,000 per occurrence, protecting and insuring against claims for bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Premises, or (ii) a general self-insurance program covering bodily injury, death, property damage, and personal injury occurring within or resulting from use of the Premises. Any policy of insurance obtained by the School District must (1) name the County, its officers, agents, and employees, as additional insureds thereunder, (2) be endorsed to provide that the insurance is primary to and non-contributory to insurance carried by the County with respect to liability imposed on the School District under this agreement, and (3) contain a severability of interest clause.

b. Property Insurance.

- i. County. Throughout the Term, the County shall maintain in full force and effect, at its sole expense, fire insurance and a standard “all risk” policy covering the County-owned personal property located at the Premises. Such coverage must (i) contain a waiver of subrogation endorsement in favor of the School District, and (ii) cover loss or damage to the County-owned personal property in the amount of the full replacement value. Covered perils are to include fire, all risk, vandalism, malicious mischief, and sprinkler leakage.

- ii. School District. Throughout the Term, the School District shall maintain in full force and effect, at its sole expense, fire insurance and a standard “all risk” policy covering all structures and improvements at the School Site and any personal property owned by the School District located at the Premises. Such coverage must contain a waiver of subrogation endorsement in favor of the County. Covered perils are to include fire, all risk, vandalism, malicious mischief and sprinkler leakage.

- c. Workers Compensation and Employers Liability. Both parties shall maintain in full force and effect Workers Compensation Insurance or self-insurance, and Employers Liability Insurance or self-insurance with limits that conform to legal requirements.

9. **Indemnification.**

- a. **County.** County shall indemnify, defend and hold the City harmless from the County'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 County, its officers, agents or employees in using the Property pursuant to this Lease, except to the extent caused or contributed to by (i) the structural, mechanical, or other failure of buildings owned or maintained by the City, and/or (ii) the negligent acts, errors, or omissions of the City, its officers, agents or employees.
- b. **School District.** The School District shall indemnify, defend and hold the County harmless from School 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 School District, its officers, agents or employees with respect to the Property, or the School District's performance under this Lease, or the School District's use of the Property, or the structural, mechanical or other failure of buildings owned or maintained by the School District, except to the extent caused or contributed to by the negligent acts, errors, or omissions of the County, its officers, agents, or employees.

10. **Hazardous Material.** The School District warrants to the County that the School District does not have any knowledge of the presence of Hazardous Material (as defined below) or contamination of the Premises or the School Site in violation of environmental laws. The School District shall defend, save, protect and hold the County harmless from any loss arising out of the presence of any Hazardous Material on the School Site that was not brought to the School Site by or at the request of the County, its agents, contractors, invitees or employees. The School District acknowledges and agrees that the County has no obligation to clean up or remediate, or contribute to the cost of clean-up or remediation, of any Hazardous Material unless such Hazardous Material is released, discharged or spilled on or about the School Site by the County or by any of County's agents, employees, contractors, invitees or other representatives. The obligations of this Section shall survive the expiration or earlier termination of this Agreement.

"Hazardous Material" means any substance, material or waste, including lead based paint, asbestos and petroleum (including crude oil or any fraction thereof), that is or becomes designated as a hazardous substance, hazardous waste, hazardous material, toxic substance, or toxic material under any federal, state or local law, regulation, or ordinance.

11. **Rules of Conduct.** The County, its employees, volunteers and invitees must refrain from disorderly conduct, including conduct that creates loud and unusual noises or unpleasant odors. The County may not knowingly permit any person to engage in the consumption of alcohol or other controlled substances, smoking, gambling, fighting, use of profane language, or indecent exposure on or near the Premises.

12. **Notices.** Any notice required or permitted under this Agreement must be in writing and will be deemed given and served upon delivery, if delivered personally, or three days after mailing, if mailed postage prepaid and directed as follows:

To County: County Librarian
Contra Costa County
777 Arnold Drive, Suite 210
Martinez, California 94553
Phone: (925) 682-8000, (925) 608-7700

With Copy to: Public Works – Real Property Division
Contra Costa County
255 Glacier Drive
Martinez, California 94553
Phone: (925) 313-7250

To School District: Chief Business Officer
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, California 94519
Phone: (925) 682-8000, ext. 4007

The parties may at any time designate in writing a substitute address for that set forth above and thereafter notices are to be directed to the substituted address.

13. **Independent Contractor Status.** This Agreement is by and between two independent entities and is not intended to and does not create the relationship of agent, servant, employee, partnership, joint venture, or association.

14. **Nondiscriminatory Services.** All goods and services provided by either party to this Agreement must be available to all qualified persons regardless of age, sex, race, religion, color, national origin, ethnic background or disability.

15. **Governing Law.** The laws of the State of California govern all matters between the parties that relate to this Agreement.

16. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of this Agreement will not in any way be affected or impaired.

[Remainder of Page Intentionally Left Blank]

17. **Entire Agreement.** Neither party has relied on any promise or representation not contained in this Agreement. All previous conversations, negotiations, and understandings are of no further force or effect. This Agreement is not to be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. This Agreement may be modified only by a writing signed by both parties.

The parties are executing this Agreement as of the date set forth in the introductory paragraph.

COUNTY

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

By: _____
Brian M. Balbas
Director of Public Works

SCHOOL DISTRICT

Mt. Diablo Unified School District, a political subdivision of the State of California

By: _____
Robert A. Martinez, Ed.D
Superintendent

RECOMMENDED FOR APPROVAL:

By _____
Melinda Cervantes
County Librarian

By _____
Stacey Sinclair
Senior Real Property Agent

APPROVED AS TO FORM:

SHARON L. ANDERSON
COUNTY COUNSEL

By: _____
Kathleen M. Andrus
Deputy County Counsel

Mount Diablo Unified School District

Cesar A. Alvarado, Esq.
Associate General Counsel

Exhibit A

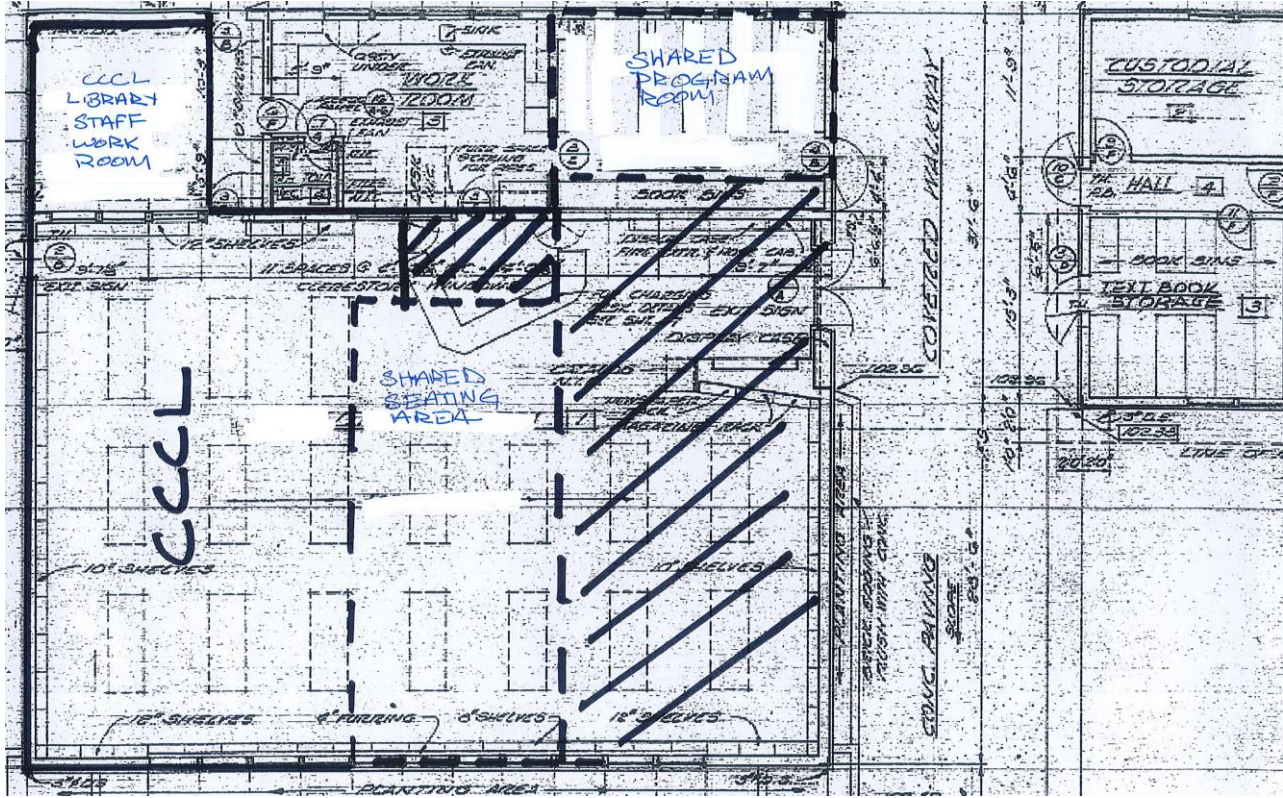


Exhibit B

HOURS OF OPERATION

The hours during which the County will provide Library Services to the public at the Premises are set forth below.

Beginning on March 10, 2020, the hours of operation at the Bay Point Library are as follows:

Monday	2:30 pm – 8:00 pm
Tuesday	2:30 pm – 8:00 pm
Wednesday	1:30 pm – 8:00 pm
Thursday	2:30 pm – 8:00 pm
Friday	2:30 pm – 6:00 pm
Saturday	10:00 am – 6:00 pm