

JUN 06 2019

BY Julie Racht
DEPUTY CLERK OF THE BOARD

MEMORANDUM OF UNDERSTANDING
AND
JOINT USE AGREEMENT BETWEEN
WOODLAND JOINT UNIFIED SCHOOL DISTRICT
AND
THE COUNTY OF YOLO

FOR THE CONSTRUCTION AND USE OF RECREATION CENTER FACILITIES

THIS AGREEMENT made and entered into this 23rd day of May, 2019, by and between the Woodland Joint Unified School District (“School District”), a California public school district, and the County of Yolo (“County”), a California community services district.

RECITALS

WHEREAS, California Education Code section 10900, *et seq.*, (“Community Recreation Programs Law”) authorizes public authorities to organize, promote and conduct such programs of community recreation as will contribute to the attainment of general educational and recreational objectives for children and adults and further empowers public authorities to cooperate with each other to attain such objectives;

WHEREAS, the Community Recreation Programs Law defines “recreation” to include “any activity, voluntarily engaged in, which contributes to the . . . mental, or moral development of the individual or group participating therein, and includes any activity in the fields of . . . art, handicrafts . . . nature contacting, aquatic sports, and athletics . . .”;

WHEREAS, School District and County are authorized under California law to operate and maintain recreation centers, as defined in Education Code section 10901(f), for community recreation (“Recreation Centers”);

WHEREAS, the School District and County wish to improve the recreational opportunities for the population of eastern Yolo County;

WHEREAS, County proposes to construct a community Recreation Center Facilities as more fully described in Section 2 herein to meet the needs of the community and the School District;

WHEREAS, the School District owns an approximate 7.26 acre parcel of vacant Land as more fully described in Section 1 herein that would be suitable for the Recreation Center Facilities and that would be consistent with the School District purposes;

WHEREAS, the School District desires to make available to County such Land for the construction and joint use of the Recreation Center Facilities;

WHEREAS, County will apply to the California Department of Parks and Recreation (“Grantor”) for a grant to develop and construct the Recreation Center Facilities (“Grant”), and it is anticipated that such Grant requires the Land be available for such recreational uses for thirty (30) years;

WHEREAS, the effectiveness of this Agreement is contingent upon County's receipt of a Grant from the Grantor and approval by the Grantor of the location of the Recreation Center Facilities.

WHEREAS, in providing the Land pursuant to this Agreement, the School District reaffirms such action as lying within the purpose and mission of the School District;

WHEREAS, the School District determines that this Agreement fulfills school purposes; and

WHEREAS, County determines that it is in the best interest of the community of Knights Landing and eastern Yolo County, its citizens and school children to participate in providing recreation services in Knights Landing.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises of the covenants hereinafter contained, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. DESCRIPTION OF LAND.

The land is an approximate 7.26 acre vacant parcel of real property located at the corner of Highway 116 and Locust Avenue Street, Knights Landing, California ("Land"). A description of the Land subject to this Agreement is attached hereto as Attachment "A." As of the Effective Date as specified in Article 7 herein, the District hereby grants a non-exclusive license to County to use the Land for purposes of constructing and operating the Recreation Center Facilities as described herein pursuant to the terms of this Agreement.

2. DESCRIPTION AND OWNERSHIP OF RECREATION CENTER FACILITIES.

a. Description of Recreation Center Facilities. The Recreation Center Facilities to be constructed by County consist of improvements to the Land to include a multi-age play area, a water play feature, outdoor basketball court, athletic fields (baseball, softball and soccer), parking lot and central gathering area, as more fully described in Attachment "B" which is hereby incorporated by reference.

b. Ownership of the Recreation Center Facilities. County shall own the Recreation Center Facilities constructed on the Land during the term of this Agreement. Naming of the Recreation Center Facilities as a whole or any of the individual features that constitute the Recreation Center Facilities is subject to approval of both the County and the School District. The title to the Land shall remain with the School District throughout the term of this Agreement. Upon expiration or sooner termination of this Agreement, the Recreation Center Facilities and all buildings and improvements shall automatically belong to and become the property of School District, free from any rights, claims and liens of County or any person, agency, political subdivision, firm or corporation claiming under County without any compensation therefore from School District to County or to any other person, agency, political subdivision, firm or corporation. On the expiration of this Agreement such building and improvements shall be surrendered to School District, excepting that movable furniture, personal property and trade fixtures may be removed by County at or before the expiration or sooner termination of this Agreement, provided, however, that the removal of any of the property so

excepted will not structurally injure the building or improvements or render the buildings or improvements or any part thereof unfit for use and occupancy. County shall pay the cost of restoration of, or repairing any damage to, the Land arising from the removal of the property so excepted.

3. CONSTRUCTION OF RECREATION CENTER FACILITIES.

a. Construction of Recreation Center Facilities. County shall be responsible for the design, permitting, construction, financing and maintenance of the Recreation Center Facilities. The School District shall be consulted concerning the design of the Recreation Center Facilities and shall review the plans and specifications. County agrees that all design, permitting and construction shall comply with all applicable state, federal, and/or local laws, ordinances pertaining to construction of a community park and athletic facilities. The Parties agree and understand that the approval of design, permitting and construction of the Recreation Center Facilities are under the jurisdiction of the County of Yolo. The School District authorizes County to construct, operate and maintain the Recreation Center Facilities in accordance with this Agreement and the terms of the Grant between the State of California Department of Parks and Recreation and County.

b. Construction Obligation; Condition Precedent to Construction. County shall enter into a construction contract with a licensed California general contractor (“General Contractor”) for construction of the Recreation Center Facilities on the Land in accordance with the approved plans.

c. Condition Precedent to Construction. Before commencement of any work upon the Land, County shall deliver to School District (i) copies of all site permits and approvals obtained to date, (ii) evidence of builder’s risk insurance in accordance with requirements of the School District, (iii) evidence of proper worker’s compensation insurance as procured to cover all persons employed by County and its agents in connection with the construction of the improvements on the Land, and (iv) evidence of construction funding and construction equity for the entire Recreation Center Facilities.

d. Compliance with Law and Quality. The Recreation Center Facilities shall be constructed, and all work performed on said Land and all buildings or other improvements erected on said Land shall be in accordance with all valid laws, ordinances, regulations and orders of all federal, state, county or local governmental agencies or entities having jurisdiction over the Recreation Center Facilities. All work performed on said Land pursuant to this Agreement, or authorized by this Agreement, shall be done in a good workmanlike manner. Completion of construction of the Recreation Center Facilities (“Completion of Construction”) shall be deemed to have occurred in full compliance with all valid laws, ordinances, regulations and orders when valid final Certificates of Occupancy or their equivalent have been issued by the proper governmental agencies or entities for all structures or other improvements comprising the Recreation Center Facilities

e. Mechanics’ Lien. County hereby agrees to indemnify and save School District harmless from and against any loss, damage or liability arising out of any mechanics’ liens for claims for labor or services, materials or supplies or equipment performed or furnished to the Land after the Commencement Date.

f. **Obligation to Maintain Insurance.** County shall maintain, and shall cause any contractor making substantial improvements on the Recreation Center Facilities to procure or shall have procured and continuously maintain such insurance policies as are required under this Section 3.f. (individually an “Insurance Policy” and collectively, the “Insurance Policies”).

i. **Insurance Policies.** County shall procure or cause to be procured and maintain or cause to be maintained in full force and effect the Insurance Policies:

A) **General Liability Insurance.** Comprehensive or commercial general liability insurance, including supplementary coverage of Blanket Contractual Liability (specifically including County’s indemnity obligations under this Agreement and any other Documents), Broad Form Property Damage, Personal Injury Liability with the “employee” and “contractual” exclusions deleted, Product and Completed Operations Liability, Fire Legal Liability, Business Automobile Bodily Injury and Property Damage Liability extending to owned, non-owned and hired vehicles of County or its general contractor used in performance of any County obligations hereunder, amended as necessary to comply with Governmental Requirements. Such coverage shall insure on an occurrence basis against claims for “personal injury” and “property damage”, including but not limited to bodily injury, death or property damage occurring upon, in or about the Recreation Center Facilities, including construction and staging areas, or any adjoining sidewalk, streets and passageways. Such coverage shall take effect and afford protection immediately upon execution of this Agreement. Such policy shall have an initial minimum coverage limit per occurrence of not less than \$5,000,000 with respect to personal injury or death to any one or more persons or damage to property (i.e. combined single limit), and carry a deductible per occurrence of not more than \$25,000. At any time during the term of this Agreement, and from time to time, School District may provide notice to County that the level of general liability insurance being maintained by County under this subsection (i) is no longer adequate because it is less than the level of insurance coverage that is then customary with comparable operations in Yolo County, and request that the minimum limit hereinabove designated shall be increased accordingly. County shall promptly provide for the requested increase in general liability insurance coverage.

B) **Builder’s Risk Insurance.** Throughout the course of any Work of Improvement that is “substantial”, coverage of the type now known as builder’s completed value risk insurance, as delineated on an All Risk Builder’s Risk 100% Value Non-Reporting Form. Such insurance shall insure against direct physical loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance. Such policy shall include (i) an endorsement for earthquake, unless earthquake insurance is not commercially available, (ii) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, (iii) a “Replacement Cost Endorsement” in amount sufficient to prevent County from becoming a co-insurer under the term of the policy, but in any event in an amount not less than 100% of the then full replacement cost, to be determined at least once annually and subject to reasonable approval by School District, and (iv) an endorsement to include coverage for budgeted soft costs. The replacement cost coverage shall be for work performed and equipment, supplies and materials furnished to the Property or any adjoining sidewalks, streets and passageways, or to any bonded warehouse for storage pending incorporation into the work, without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence (except that earthquake coverage shall carry a deductible not to exceed 10% of the

policy amount, or such other deductible amount as the School District may determine is acceptable, in light of the cost of the premium for such insurance.

C) All Risk Insurance. Coverage of the type now known as All Risk Replacement Cost Insurance, insuring against loss or damage by fire, lightning, wind, storm, explosion, collapse, underground hazards, flood, vandalism, malicious mischief, glass breakage and such other causes as are covered by such form of insurance, covering all improvements on the Land against direct physical loss or damage. Such policy shall include (A) an endorsement for earthquake, unless earthquake insurance is not commercially available, (B) an endorsement for broad form property damage, breach of warranty, demolition costs and debris removal, and (C) a "Replacement Cost Endorsement" in amount sufficient to prevent County from becoming a co-insurer under the terms of the policy, but in any event in an amount not less than 100% of the then full replacement cost of the improvements at the Recreation Center Facilities (exclusive of the cost of excavations, foundations and footings below the lowest basement floor), to be determined at least once annually and subject to reasonable approval by School District without deduction for physical depreciation and with a deductible not exceeding \$25,000 per occurrence (except that earthquake coverage shall carry a deductible not to exceed 10% of the policy amount); and

D) Workers' Compensation Insurance. Workers' compensation insurance, to be carried by County and all its general contractors, subcontractors and consultants, in an amount and form sufficient to meet all applicable Governmental Requirements and employer's liability coverage to a limit of not less than \$1,000,000, with respect to personal injury or death to any one or more persons or damage to property. Such policies shall cover all persons or damage to property. Such policies shall cover all persons providing labor or services to or on behalf of County, its general contractor, subcontractors or consultants and all risks to such persons arising out of construction, ownership, use, occupancy, repair or maintenance of the Recreation Center Facilities or entry onto the Recreation Center Facilities.

E) Errors and Omissions Insurance. Unless waived by School District, errors and omissions insurance, specifically and exclusively designated for the Recreation Center Facilities, to be carried by each of County's architects and engineers on any Work of Improvement that is "substantial." Such insurance shall provide a minimum coverage limit per claim of not less than \$500,000, or such lesser amount as School District may approve, in writing. Such policy may be written on a "claims made" basis provided it commences as to each named insured upon execution of each covered contract, continues until Completion and includes at least a five (5) year discovery period after the end of each such policy period for submitting claims. Such policy shall provide coverage against loss or liability arising out of willful, negligent or innocent errors, omissions and misfeasance of the insured party in performing its contractual and professional obligations relating to the design, engineering and construction of the Subsequent Work of Improvement, and shall include such endorsements as reasonably required by School District.

ii. Requirements Regarding Insurance. Each Insurance Policy required under this Section (or the particular Insurance Policies specified below) shall;

A) Be in a form and substance as is then standard in California for policies of like coverage;

B) Be issued by insurance carriers qualified and licensed to engage in the insurance business in the State of California and having a current Policyholder's Management and Financial Size Category Rating of not less than "A X" according to A. M. Best's Insurance Reports Key Rating Guide or if such rating system shall cease, then of recognized financial responsibility approved by School District in writing;

C) Provide coverage on an occurrence basis, except for the errors and omissions Insurance Policies;

D) Provide that the Insurance Policy cannot be canceled, suspended, lapsed or modified upon less than thirty (30) days' prior written notice by registered or certified mail to School District and County;

E) Delivery of Insurance Policies. After delivery of each initial Insurance Policy pursuant to this Agreement, not less than thirty (30) days prior to the expiration date of each Insurance Policy required hereunder, County shall deliver to the School District: (a) a complete certified copy of each such Insurance Policy or renewal or replacement Insurance Policy provided, however, if the insurance carrier agrees in writing to provide such certified copy to the School District upon request, delivery of a certificate of insurance shall be sufficient for purposes of this clause (a); (b) satisfaction evidence of payment of the premium therefor; and (c) a certificate of the insurance broker or agent in form reasonably satisfactory to School District, stating the identity of all carriers, identity of named and additional insureds, type of coverage, description of all endorsements, policy limits, deductibles, subrogation waiver, other essential policy terms (e.g. full replacement coverage, tail periods, etc.) and a statement of noncancellation.

iii. No Limit on Liability. School District makes no representation that the limits of liability specified for the Insurance Policies to be carried pursuant to this Section 3.f. are adequate to protect County against its undertakings under this Agreement, or to protect any general contractor, architects, engineers or other consultants against their respective undertakings. In no event shall the limits of any coverage maintained or caused to be maintained by County limit County's liability under this Agreement or limit the liability of any general contractor, architect, engineer or other consultants under their respective contracts, warranties, guarantees and indemnities, School District shall not be limited to the amount of the insurance premium not paid in the proof of any damages any of them may claim against County or any other person arising out of or by reason of failure of County, any general contractor, architects, engineers or other consultants to provide and keep in force the Insurance Policies required by this Section 3.f.; but School District shall instead be entitled to recover the full amount of damages available.

g. The School District understands that County may delegate construction and/or operational roles of the Recreation Center Facility to other entities provided, however, such entities comply with the terms of this Agreement.

h. County shall be responsible for complying with the California Environmental Quality Act ("CEQA") and all applicable statutes, regulations, ordinances and rules applicable to this Agreement.

i. Easements. Both parties recognize that utility easements may be required for

sewer, water, telephone, electrical, and gas lines in connection with the construction of the Recreation Center and use of the Land. Both parties agree to cooperate in determining the location of any such easements prior to the construction of the Recreation Center Facilities. County acknowledges that the School District must comply with California legal requirements as a prerequisite to the granting of easements on District property. Both parties agree to cooperate in the grant of any additional easements which may become necessary in connection with the construction, use and operation of the Recreation Center Facilities. To the extent any such utility easements would result in shared utility use between the School District property other than the Land and County, the parties shall share responsibility for such costs on a pro rata basis in accordance with their respective uses. Should County draw electricity or other utility services to the Land from School District utility suppliers, separate meters shall be installed at County's sole expense. County shall pay for the electricity and other utility services it consumes in its operations to the utility provider or to the School District if necessary, except as otherwise agreed between the parties. County shall have no responsibility for easements used solely for School District property other than the Land.

4. JOINT USE OF RECREATION CENTER FACILITIES.

a. Joint Use Terms and Conditions. The County and School District agree that the specific terms and conditions of the joint use of the Recreation Center Facility by each Party will be agreed to and added to this Agreement as Attachment "C" prior to commencement of any work on the Land. County acknowledges that School District use as provided for in this Agreement shall include use of the Recreation Center Facility by the District's Science & Technology Academy at Knights Landing Charter School. The Parties agree to negotiate in good faith the joint use terms and conditions which shall include, but not be limited to, the following minimum terms:

i. School District and County may utilize the Recreation Center Facilities without monetary consideration to the other Party.

ii. With respect to the use of Recreation Center Facilities, School District and County shall conduct quarterly meetings for the purpose of scheduling anticipated uses of the Facilities ("Scheduling Meetings").

A) School District and County shall each designate a representative as the contact person for conducting Scheduling Meetings.

B) At each Scheduling Meeting the School District and County shall agree upon a schedule, in writing, for the coming quarter with respect to the use of the Recreation Center Facilities, including, but not limited to, the proposed times, and scheduled uses of the Recreation Center Facilities.

C) After the schedules are set at the Scheduling Meetings, both Parties shall notify each other in case of any scheduling changes. In the event of an unanticipated event that is not included on the schedules set at the Scheduling Meetings, each Party agrees to reasonably accommodate the other Party with respect to such event.

D) In order to best effectuate the Recreation Center Facilities for their intended public purpose, School District will first use its own playing fields and not supplant that use with use of Recreation Center Facilities playing fields.

b. Recreation Center Hours. The Recreation Center Facilities will be open all day every day to the public.

c. School District Use. Notwithstanding anything in this Agreement to the contrary, School District shall have first priority use of the Recreation Center Facilities, from 9:15 a.m. to 3:45 p.m. during the academic year on Monday through Friday (except on School Holidays). School Holidays shall be defined as those days or portions of days when school is not in session. The School District agrees to notify the County during the Scheduling Meetings of any dates and times specified in this Section that the School District will require exclusive use or will not require use of the Recreation Center Facility. In addition, the School District may utilize the Recreation Center Facility for athletic events or other school related activities to be scheduled during Scheduling Meetings. The Recreation Center Facility will be available to County to schedule for general public use when not otherwise scheduled for School District use.

d. Athletic Events. School District shall notify County at the Scheduling Meetings of any school athletic events that are anticipated to extend more than one half (1/2) hour beyond a school's closing time so that such games may be included in the schedule which is agreed upon at the Scheduling Meetings. In addition, should School District require the use of any Recreation Center Facilities for any California Interscholastic Federation activity, such use shall take precedent over any pre-existing use at any of the Recreation Center Facilities as long as forty-eight (48) hours' notice is given, whether or not such use is during school hours or included in the schedules agreed upon at the Scheduling Meetings.

e. Compliance with Laws. Each Party agrees to utilize the Recreation Center Facilities in conformance with federal and state law, as well as School District and County administrative regulations, ordinances, and policies.

f. Noninterference. The use of Recreation Center Facilities by County shall be in such a manner as not to interfere with the School District's scheduled use of Recreation Center Facilities.

g. Materials and Equipment. The Parties agree that each Party shall provide all materials and equipment to be used in their respective activities. Selected permanent equipment, which is owned by the District on the Land, may be used by County. Selected permanent equipment, which is owned by County on the Land, may be used by the District.

h. Locks - Keying and Access Authorization. The lock style, types of gates, and key/code authorization to be utilized at each individual facility within the Recreation Center Facilities will be coordinated in such a manner to allow dual access while maintaining the safety and property security of such facility.

i. Utilities. County shall promptly pay, when due, all charges for any and all utilities (including, without limitation, water, sewage, electricity and gas) supplied to Recreation Center Facilities.

j. Recreation Program Costs. Except as otherwise provided, neither Party shall be responsible to the other Party for the cost of the other Party's recreation programs or the cost of any third-party organization, which might benefit from a particular aspect of this Agreement. County covenants and agrees to bear all costs that it should incur with respect to the operation of any recreation program, including the cost of service of its employees and incidental costs in connection therewith. School District covenants and agrees to bear all costs that should incur in respect to the operation of any school activity. The Parties acknowledge that each Party may charge reasonable fees for the use of Recreation Center Facilities as permitted under the laws of California to offset the costs associated with establishing, coordinating and conducting certain recreation programs.

k. Recreation Organizations. With respect to Recreation Organizations, County shall be responsible for the scheduling of recreation programs by such Recreation Organizations. County shall require each of the Recreation Organizations to execute a document stating the following:

[Name of Recreation Organization] agrees to hold harmless, defend, and indemnify School District and County against all actions, claims, or demands, for injury, death, loss or damages, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss, or damage was solely due to the willful acts or omissions of County and/or School District, its agents, servants, or employees), whenever such injury, death, loss, damage or claim is a consequence of, or arises out of the use of the Facilities by **[Name of Organization]** or its agents, servants or employees.

5. MAINTENANCE, OPERATIONS AND REPAIR RESPONSIBILITIES.

a. County shall be responsible for the maintenance and operations of the Recreation Center Facilities. County may delegate such maintenance responsibilities to other entities, provided that such entities comply with the terms of this Agreement. Each Party shall exercise due care in the use of, and keep the Recreation Center Facilities clean, sightly, and sanitary at all times while using it and shall not permit any garbage, debris, or waste of any kind to collect or remain on the Land.

b. Each Party shall be wholly responsible to repair, remediate or fund the replacement or remediation of any and all damages or vandalism to the Recreation Center Facilities caused by its respective uses.

c. The Parties agree that a County sponsored local recreation organization ("Recreation Organization"), may be allowed to provide special maintenance or improvements to a Facility which is considered beneficial to all Parties as long as such other Party or Recreation Organization complies with any and all applicable laws and regulations regarding the provision of maintenance and/or construction of improvements to facilities owned by public entity.

d. The Parties agree that all Recreation Center Facilities will be kept in good repair and in a manner suitable for usage by County, School District and Recreation Organizations.

However, to maintain the condition of the Recreation Center Facilities, downtime maintenance is required. Activities cannot be scheduled at Recreation Center Facilities during this maintenance period.

e. The Parties agree to schedule any planned renovation and/or repairs in a manner to minimize impact upon each other, Recreation Organization and other community uses and to submit any planned renovation/repairs to Recreation Center Facilities at the Scheduling Meetings so as to assist in accurate seasonal planning.

f. The Parties agree to inform the other Party of any unsafe conditions on the Land by the close of business on the next day following the observation.

g. Improvements.

i. The School District shall obtain prior written consent of County to make any alterations, additions, or improvements to the Recreation Center Facilities; County shall obtain prior written consent of the School District to make any alterations, additions, or improvements to the Recreation Center Facilities.

ii. Any such alterations, additions, or improvements will be at the expense of the requesting party, unless otherwise agreed upon.

6. CIVIC CENTER ACT.

a. Both Parties acknowledge that Recreation Center Facilities are identified as a "Civic Center" pursuant to the Civic Center Act (Education Code section 38130, *et seq.*) and that the use of Recreation Center Facilities must comply with the provisions of the Civic Center Act. Both Parties understand that other individuals and/or entities may utilize the Recreation Center Facilities pursuant to the Civic Center Act and other provisions of law, including, but not limited to, such license agreements as the District may determine to enter into.

7. TERM OF THIS AGREEMENT.

a. **Effective Date.** The Parties agree that a condition precedent to the effectiveness of this Agreement is the receipt by the County of Grant funding for the construction of the Recreation Center Facility. The Parties agree that the "Effective Date" of this Agreement shall be the same date as the Grant award date. Upon receipt of the Grant, County shall provide written notice to the School District that it has secured funding for purposes of constructing the Recreation Center Facility and intends to proceed with construction of the Recreation Center Facility ("Notice of Funding"). Effective upon Notice of Funding to the School District, the School District hereby grants a license to County to use the Land for purposes of constructing and operating the Recreation Center Facility as described herein pursuant to the terms of this Agreement; provided however, that prior to the Notice of Funding, the Parties shall have developed a mutually agreeable schedule for the construction of the Recreation Center Facility and finalized the terms of the Joint Use Agreement in accordance with Article 4 herein.

b. **Original Term.** The term of this Agreement shall be for a period of thirty (30) years and shall commence upon Notice of Funding from County to the School District which notice shall be delivered no later than June 30, 2020. In the event County fails to provide notice

to the School District of receipt of Grant funds pursuant to this Section, this Agreement shall automatically be null and void without further action by the Parties.

c. Option to Renew. The Parties may extend this Agreement by mutual agreement for an additional term of up to five (5) years (“Subsequent Term”).

8. TERMINATION OF AGREEMENT.

a. School District may terminate this Agreement in the event County materially breaches the terms of this Agreement. In such case, notice of breach must be delivered to County who then shall have thirty (30) calendar days to cure the breach, unless an additional thirty (30) day extension of time to cure is granted in the sole discretion by the School District. In the event County fails to cure the breach within thirty (30) calendar days, then this Agreement shall immediately terminate.

b. Upon expiration or termination of this Agreement, title to the Recreation Center Facilities shall automatically vest in the School District without any act of County or any third party. County shall remove any personal property housed on the land, or such personal property shall be otherwise disposed of as mutually agreed upon in writing.

9. INDEMNIFICATION AND INSURANCE.

a. Mutual Indemnification.

i. School District agrees to hold harmless, defend, and indemnify County against all actions, claims, or demands for injury, death, loss, or damage, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss, or damage was solely due to the willful acts or omissions of County, its agents, servants, or employees), whenever such injury, death, loss or damage is a consequence of, or arises out of the use of the Recreation Center Facilities by School District or its agents, servants, employees, or implementation of this Agreement. Notwithstanding the foregoing, the District’s obligation to defend County or any of its agents and employees for any judgment or settlement shall extend only to the percentage of negligence of the District in contributing to such claim, damage, loss and expense. The District waives all subrogation rights against County for benefits paid to its employees for injuries growing out of the performance of this contract.

ii. County agrees to hold harmless, defend, and indemnify School District against all actions, claims, or demands for injury, death, loss or damages, regardless of fault or cause, by anyone whomsoever (except where such injury, death, loss, or damage was solely due to the willful acts or omissions of School District, its agents, servants, or employees), whenever such injury, death, loss, damage or claim is a consequence of, or arises out of the use of the Facilities by County or its agents, servants, employees, or implementation of this Agreement including, without limitation, negligent acts or omissions of County and/or Recreation Organizations involving the condition of the Recreation Center Facilities for which County was obligated to maintain. Notwithstanding the foregoing, County’s obligation to defend the District or any of its agents and employees for any judgment or settlement shall extend only to the percentage of negligence of County in contributing to such claim, damage, loss and expense. County waives all subrogation rights against the District for benefits paid to its employees for injuries growing out of the performance of this contract.

iii. The provision of indemnity set forth in this Section shall not be construed to obligate a Party to pay any liability, including, but not limited to, punitive damages, which by law would be contrary to public policy or otherwise unlawful.

b. Insurance.

i. During the term of this Agreement, School District and County shall either be self-insured or maintain a comprehensive liability insurance policy providing coverage for public liability, bodily injury and property damage. It is understood by both parties that they are both covered members of YCPARMIA, and that payments made under the indemnification agreement will be counted as costs against the responsible party for premium purposes.

c. Privileges and Immunities. Notwithstanding anything to the contrary in this Agreement, neither Party waives any of the privileges and immunities from liability, exemptions from laws, ordinances, rules, pension, relief, disability, worker's compensation, and other benefits which apply to the activity of officers, agents, or employees of either Party.

10. NOTICES.

a. All formal notices, demands, and communications between the Parties shall be given either by: (i) personal service; (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery; or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

If to School District: Attention: Superintendent
Woodland Joint Unified School District
435 6TH Street
Woodland, CA 95695

If to County: Attention: County Administrator's Office
Attn: Jill Cook
County of Yolo
625 Court Street, Suite 202
Woodland, CA 95695

b. Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective at noon on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent to such other addresses as any Party may from time to time designate in a notice delivered in accordance with the requirements of this Section.

c. The Parties will provide each other after-hours emergency contact phone numbers of appropriate supervisory staff which shall be periodically updated. Such lists will also include emergency contact numbers for other facilities which may be utilized in the event of a community emergency.

11. DISPUTE RESOLUTION.

a. The Parties shall exercise good faith efforts to resolve through negotiation any disputes arising out of this Agreement. In the event the Parties are unable to resolve any such disputes, each party shall nominate a representative, who together shall appoint a third individual. The three individuals shall resolve the dispute by majority decision which shall be put in writing and distributed to the Parties. Such decision shall be final unless either Party elects to seek relief from a court of competent jurisdiction within thirty (30) calendar days from the date of the mailing of the written decision. Any costs and fees associated with the services of a third party provided herein shall be shared equally between the Parties. Any lawsuit filed regarding this Agreement shall be filed in Superior Court of the State of California, County of Yolo, Woodland, California.

12. MISCELLANEOUS.

a. Binding on Successors. The terms and conditions herein contained shall apply to and bind the heirs, successors in interest, executors, administrators, representatives and assigns of all the Parties hereto.

b. Inconsistent Use.

i. In the event that School District's governing board should determine that County's use of Recreation Center Facilities are inconsistent with School District's use of the Facilities for school purposes or that County's use interferes with the education programs and activities at Recreation Center Facilities, the Parties agree to resolve such dispute pursuant to Section 11 of this Agreement.

ii. In the event that County's governing board should determine that School District's use of Recreation Center Facilities are inconsistent with County's use of the Facilities for County purposes or that School District's use interferes with the community programs and activities at Recreation Center Facilities, the Parties agree to resolve such dispute pursuant to Section 11 of this Agreement.

c. Official Representatives. The official representatives for School District and County shall be the Superintendent or his/her designee and County Board Vice Chair or his/her designee respectively. These official representatives shall be responsible for assuring compliance with the rules for use of the Facilities including, without limitation, School District and County's administrative regulations.

d. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

e. Effect Of Recitals. The Recitals and Exhibits herein are deemed true and correct, are hereby incorporated into this Agreement as though fully set forth herein, and the Parties acknowledge and agree that they are bound by the same.

f. Force Majeure. Notwithstanding any other terms and conditions hereof, in the event that a Party is materially unable to perform any of its obligations hereunder because of

severe weather, natural disasters, riots, wars, acts of terrorism, governmental action or other events of force majeure beyond the Party's control, then such Party shall, upon written notice to the other Party hereof, be relieved from its performance of such obligations to the extent, and for the duration, that such performance is prevented by such events; provided that such Party shall at all times use its best efforts to resume such performance.

g. No Assignment of Rights. No rights which School District or County has under this Agreement may be assigned to any other person, persons, or corporation without prior written approval of the other Party.

h. Employees.

i. For purposes of this Agreement, all persons employed in the performance of services and functions for County shall be deemed County employees and no County employee shall be considered as an employee of the School District under the jurisdiction of the School District, nor shall such County employees have any School District pension, civil service, or other status while an employee of County.

ii. For purposes of this Agreement, all persons employed in the performance of services and functions for the School District shall be deemed School District employees and no School District employee shall be considered as an employee of County under jurisdiction of County, nor shall such School District employees have any County pension, civil service, or other status while an employee of the School District.

i. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California and to the extent that there is any conflict between this Agreement and the laws of the State of California, the laws of the State of California shall prevail.

j. Entire Agreement. This Agreement is intended by the Parties hereto as a final expression of their understanding with respect to the use of recreational use of facilities and is a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral or written, in connection therewith. This Agreement may be changed or modified only upon written consent of the Parties hereto.

k. Execution in Counterparts. This Agreement may be executed in counterparts, and all so executed shall constitute one Agreement binding on all Parties hereto notwithstanding that all Parties are not signatories to the original or the same counterpart.


l. Third-Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

m. Joint Preparation. This Agreement shall be deemed to have been prepared jointly by the Parties, and the usual rule that the provisions of a document are to be construed against the drafter shall not apply.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the Effective Date.

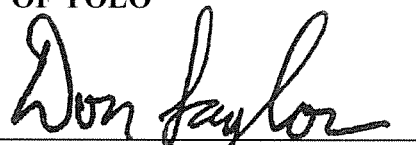
SCHOOL DISTRICT

**WOODLAND JOINT UNIFIED
SCHOOL DISTRICT**


By: 
Tom Pritchard, Superintendent

COUNTY

COUNTY OF YOLO

By: 
**Don Saylor, Chair, Yolo County
Board of Supervisors**

Approved as to form:
Philip J. Pogledich, County Counsel

By: 
Carrie Scarlata
Assistant County Counsel

ATTACHMENT "A"

DESCRIPTION OF LAND

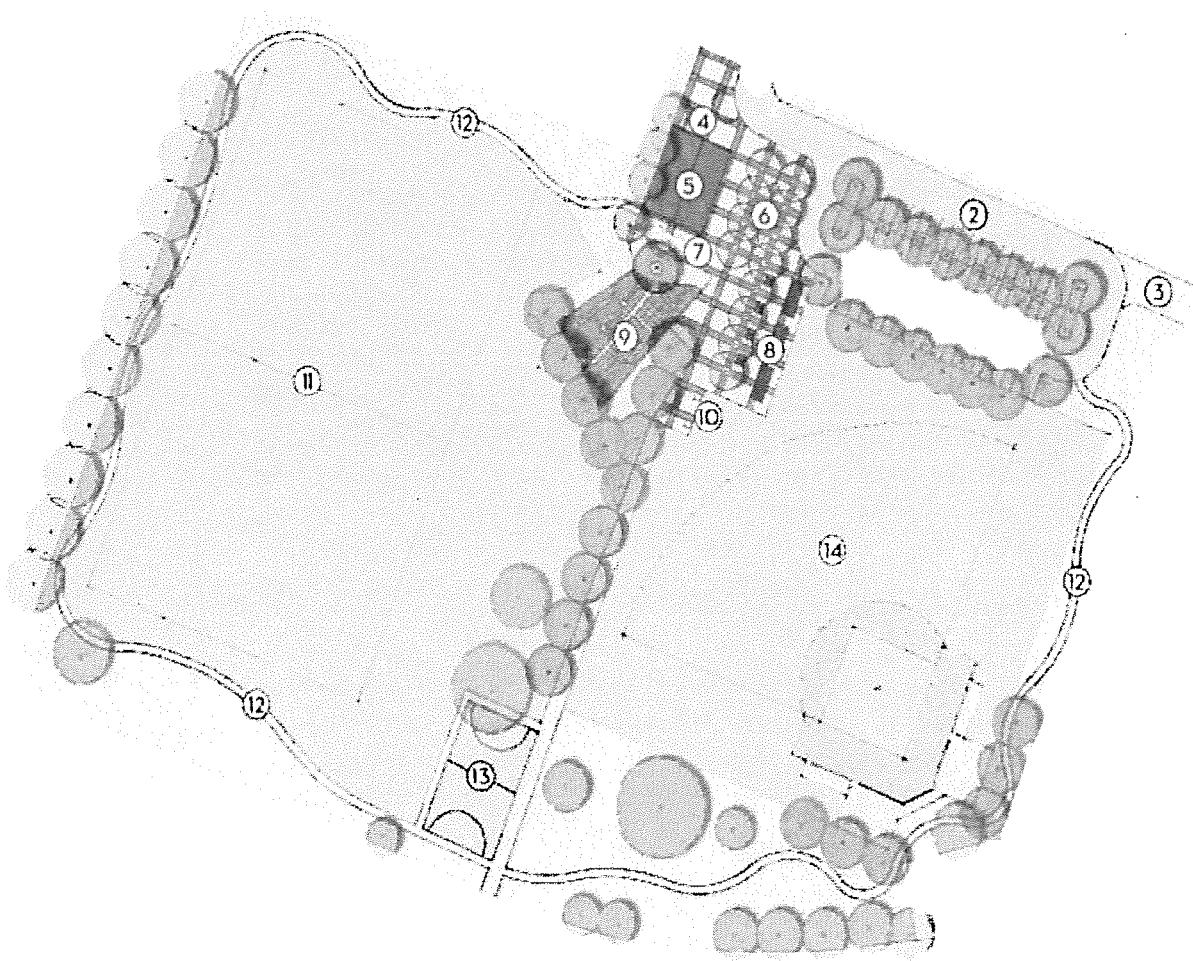
An approximate 7.26 acre parcel located in the unincorporated community of Knights Landing, California, Yolo County at the most southern portion of Grafton Elementary School site, bounded on the west by Locust/-113, the south by Road 116 and the East by Railroad Street.

ATTACHMENT "B"

DESCRIPTION OF FACILITIES

The complete plans and specifications for the construction of the Recreation Center Facility shall be attached hereto and incorporated herein by reference once developed and approved by both School District and County.

Attached hereto is a site plan showing a preliminary/conceptual drawing of the proposed Recreation Center Facility.



ATTACHMENT “C”
JOINT USE TERMS AND CONDITIONS
(To Be Attached)