

AGREEMENT
between the
CITY OF PLEASANTON
and
PLEASANTON UNIFIED SCHOOL DISTRICT
FOR THE CITY'S USE OF
AMADOR VALLEY HIGH SCHOOL TENNIS COURTS

THIS AGREEMENT ("Agreement") is by and between the CITY OF PLEASANTON, a municipal corporation ("City") and the PLEASANTON UNIFIED SCHOOL DISTRICT ("District"), each also individually referred to as "Party" and collectively referred to as the "Parties."

The Parties agree as follows:

Recitals

WHEREAS, Sections 10900-10916, inclusive, of the Education Code of the State of California, authorize cities, counties and school districts to organize, promote and conduct programs of community recreation as well as contribute to the attainment of general education and recreational objectives for children and adults of the State; and

WHEREAS, District currently owns, maintains and operates the tennis courts on the Amador Valley High School grounds; and

WHEREAS, City currently promotes and conducts recreational programs and activities for the community, and currently needs additional tennis courts.

Terms

City's authorization to use the tennis courts is expressly conditioned on the following provisions:

1. **Effective Date, Termination.**

- a. **Term.** The term of this Agreement shall commence on July 10, 2021 and terminate on December 21, 2023 ("Term").
- b. **Early Termination Without Cause.** Either Party may terminate this Agreement prior to the Expiration of its Term by giving the other Party a thirty (30) day written notice of termination.
- c. **Early Termination for Cause.** Either Party may terminate this Agreement upon the other Party's material breach of this Agreement by providing notice to the breaching Party in accordance with Section 10 of this Agreement. Such notice of termination shall be effective as set forth in Section 10 below.

2. **Use of Tennis Courts.**

- a. The tennis courts shall be available for use by City to conduct a tennis program as follows:
By mutual agreement, any time during weekday evenings (afterschool), weekdays during school breaks when school is not in session, and weekends, year-round (weather permitting), when District-sanctioned activities are not taking place.

- b. District Right to Cancel. With ten (10) calendar days' written notice, District may cancel Hours of Use by City set forth in Section 2.a above for the purpose of hosting District events or conducting routine and/or emergency maintenance. District may cancel the Hours of Use by City at any time to perform emergency maintenance required to prevent injury to person or property.
- c. Rules Applicable to City Use. At all times when the tennis courts are designated for use by City, the tennis courts shall be under supervision and control of City, its agents and employees, and administered and operated in accordance with all the rules and regulations established by both District and City. If conflict occurs between the Parties' rules and regulations, the stricter rule or regulations shall apply. City agrees to assume full responsibility for the scheduling, supervision and control of recreational activities conducted by City. City further agrees to provide adequate and qualified recreational personnel to fulfill these responsibilities. All personnel employed in connection with City's use of the tennis courts for recreational programs shall be deemed City's employees or agents. The hiring, supervision and discipline of all such personnel shall be the responsibility of the City. City agrees to procure and maintain in full force and effect, workers' compensation insurance coverage, or be lawfully self-insured, for such personnel for any death, injury or illness arising in connection with City's performance of its rights or obligations under this Agreement. City shall not make any modifications to the tennis courts.
- d. Each agency shall be responsible for clean-up of the tennis courts after use. Should either agency be required to assume custodial costs due to the other agency's use of the tennis courts, the costs may be billed to the responsible agency with sufficient information accompanying the billing to identify the reason for required service. Should District be required to assume custodial costs due to City's use of the tennis courts, the costs shall be billed to City with information that identifies the reason for required service. City shall pay such an invoice within fourteen (14) days of receipt. Each party shall communicate information regarding clean-up problems noted to the other Party in an effort to improve housekeeping.
- e. City shall be responsible for damage to the tennis courts, and any other District facilities or property, that specifically occurs during and stemming from City's use of the tennis courts and shall notify District in writing the next workday of any damage noted.
- f. City will consider needed repair or maintenance costs of the tennis courts based on the mutual agreement.
- g. City shall secure and lock-up the tennis courts and District facilities after each use. City shall conduct a sweep of any buildings open for City's use under this Agreement, including by way of illustration and not limitation, restroom facilities,

and ensure that no person is inside the building(s) when City secures and locks the buildings(s).

3. **Amounts of Insurance.**

City shall obtain and maintain insurance required by this Agreement as set forth below. City shall provide thirty (30) calendar days' written notice to District prior to cancellation or modification of any insurance required by this Agreement.

City shall name District and its governing Board members, employees, and agents as additional insureds. City shall provide District with certificates of insurance and original endorsements naming District as an additional insured on each policy set forth below within one (1) week of full execution of this Agreement.

City shall obtain Commercial General Liability insurance, or the equivalent through a pooled liability program, within minimum limits as follows:

- a. Personal Injury
 - i. \$1,000,000 each occurrence
 - ii. \$2,000,000 aggregate

- b. Property Damage
 - i. \$1,000,000 each occurrence
 - ii. \$2,000,000 aggregate

4. **Indemnification.**

- a. Indemnification by City. City shall defend, indemnify, and hold harmless District and District's governing Board, officers, employees, and agents, from and against any and all claims, actions, liability, damage, loss, or obligations including all costs, demands, expenses, and attorney's fees, arising out of the negligent acts, negligent omissions, or willful misconduct of City, its governing Board, officers, employees, or agents, related to City's performance of City's obligations under this Agreement.

- b. Indemnification by District. District shall defend, indemnify, and hold harmless City, and City's governing Board, officers, employees, and agents, from and against any and all claims, actions, liability, damage, loss, or obligations including all costs, demands, expenses, and attorney's fees, arising out of the negligent acts, negligent omissions, or willful misconduct of District, its governing Board, officers, employees, or agents, related to District's performance of District's obligations under this Agreement.

- c. Neither City nor District shall be liable to the other for liability that arises out of the sole negligence or willful misconduct of the other.

5. **Release of Claims and Damages.** City releases District, and District's respective authorized representatives, from any claims for damage to any person or to the premises

and the buildings and other improvements on the promises that are caused by or result from City's use of the tennis courts pursuant to this Agreement.

6. **Assignment.** City may not assign its rights or delegate its duties pursuant to this Agreement.
7. **Successors and Assigns.** This Agreement shall bind the successors and assigns or the Parties hereto.
8. **Previous Agreements.** This Agreement supersedes and replaces all previous agreements by and between City and District as they may pertain to the use of the subject property.
9. **Modifications.** The terms and conditions of this Agreement may be modified or changed only by written mutual consent of the Parties.
10. **Notices.** Any notice that either party desires to or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid first-class mail. Such notices shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed communicated within seventy-two (72) hours from the date of mailing, if mailed as provided in this paragraph.


To City:
Nelson Fialho, City Manager
City of Pleasanton
123 Main Street
Pleasanton, CA 94566

To District:
David Haglund, Superintendent
Pleasanton Unified School District
4665 Bernal Avenue
Pleasanton, CA 94566

11. **Governing Law and Venue.** This Agreement is governed by the laws of the State of California. Venue shall be in Alameda County, California.
12. **Counterparts and Electronic Signature.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. An electronic or facsimile signature shall be as valid as an original.
13. **No Third-Party Rights.** Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, any third party (that is not a party to this Agreement) against either District or City.
14. **Waiver.** Waiver of a breach or default by a Party under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this Agreement.
15. **Warranty of Authority.** The individual executing this Agreement on behalf of a Party warrants that he/she is authorized to execute the Agreement on behalf of that Party.

16. **Headings and Construction.** Headings at the beginning of each paragraph and subparagraph are solely for the convenience of the Parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both parties had prepared the same. Unless otherwise indicated, all references to paragraphs, sections, subparagraphs, and subsections are to this Agreement.
17. **Attorney's Fees.** If suit is brought by a Party of Parties to enforce any of the terms of this Agreement, the prevailing Party of Parties shall be entitled to recover its or their respective reasonable attorney's fees and costs.
18. **Approval of the District Board.** This Agreement shall not be binding upon District until District's governing Board has approved all the terms and conditions contained herein.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the day and year first written above.

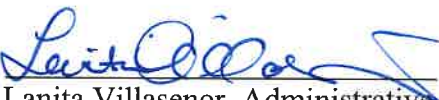
By: 
Nelson Fialho, City Manager

By: 
David Haglund, Superintendent

ATTEST:

By: 
Jocelyn Kwong, Deputy City Clerk

ATTEST:

By: 
Lanita Villasenor, Administrative
Assistant to the Superintendent

Approved as to Form:

By: 
Daniel Sodergren, City Attorney