

**AGREEMENT BETWEEN MT. DIABLO UNIFIED SCHOOL DISTRICT
AND
CITY OF CONCORD
FOR THE COLLABORATION OF THE
MT. DIABLO CARES AFTER SCHOOL PROGRAM**

THIS AGREEMENT, entered this first day of July, 2010, by and between the **Mt. Diablo Unified School District**, herein called the "**DISTRICT**" and **City of Concord**, herein called the "**CITY**."

WHEREAS, the DISTRICT has secured grant funding from the California State Department of Education (CDE) and the 21st Century Learning Centers for the purpose of development of the After School Education and Safety Program; and

WHEREAS, the DISTRICT is the lead agency for the purposes of administering the CDE grant, and is authorized to enter into this agreement with the CITY to develop the Programs at various locations within the City of Concord; and

WHEREAS, CITY, through its Community and Recreation Services Department, is qualified to assist DISTRICT to develop the Programs to provide direction and organization by providing assistants and Concord Community and Recreation Services coordinator to facilitate and coordinate each program element; and

WHEREAS, the DISTRICT wishes to engage the CITY to assist as stated above in the utilization of the grant funds in the manner in which it is mutually beneficial.

WHEREAS, the DISTRICT lacks the personnel to provide such programs; and

WHEREAS, the CITY holds itself out as qualified to operate and provide such programs; and

NOW, THEREFORE, in consideration of the performance of mutual promises contained herein, the parties agree, as follows:

I. SCOPE OF SERVICE:

The CITY, in a manner satisfactory to the DISTRICT, shall provide afterschool programs during FY 2010-11, in accordance with the Scope of Service submitted to the DISTRICT, and adopted herein as Exhibit "A" to this Agreement. The CITY further agrees that, should it fail to maintain the services proposed for the time specified by this Agreement, it shall reimburse the DISTRICT for all funds advanced pursuant to this Agreement.

Program Delivery

A. Activities

1. CITY shall provide staff to operate an afterschool program at two Concord elementary schools and three middle schools for fiscal year 2010-11. Activities include enrichment classes, tutoring, life skills, sports, and mentoring programs.
2. Program components and service levels are set forth in Exhibit "A."

B. Staffing

Using the funds provided by the DISTRICT pursuant to this Agreement, CITY shall employ the personnel listed in Exhibit "A." CITY shall notify DISTRICT within five (5) working days if any of the above positions becomes vacant for any reason.

C. Performance Monitoring

The DISTRICT will monitor the performance of the CITY against the goals and performance standards required herein. Substandard performance as determined by the DISTRICT will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the CITY within ten (10) working days after notice is given by the DISTRICT, agreement suspension or termination procedures will be initiated, consistent with the provisions set forth in Section V H, "Suspension or Termination."

II. TIME OF PERFORMANCE

Services of the CITY shall start on the 1st day of July 2009 and end on the 30th day of June 2010.

III. PAYMENT

- A. It is expressly agreed and understood that the total amount to be paid by the DISTRICT under this Agreement shall not exceed \$785,825 in Exhibit "A." Drawdowns for the payment of eligible expenses shall be made in accordance with performance. CITY shall be paid monthly upon its submission of an itemized invoice.
- B. Each month, as part of its progress report, CITY shall submit to DISTRICT supporting financial information, which clearly documents the eligible expenses for which reimbursement is sought. Eligible expenses for which reimbursement shall be made shall be based upon Scope of Services set forth in Exhibit "A." The report is due within fifteen (15) days of the last day of the following month.

IV. NOTICES

Communication and details concerning this Agreement shall be directed to the following agreement representatives:

DISTRICT:

Alexandria Medina
Mt. Diablo Unified School District
1266 San Carlos Avenue, A-6
Concord, CA 94518-1199
(925) 691-0351

CITY:

Joan Carrico,
Director of Community & Recreation Svcs.
City of Concord
1950 Parkside Drive, MS/10
Concord, CA 94519-2578
(925) 671-3440

V. GENERAL CONDITIONS:

A. General Compliance

The CITY agrees to comply with all applicable state and local laws and regulations governing the program and funds provided under this Agreement.

B. Independent Contractor

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The CITY shall at all times remain an independent contractor with respect to the services to be performed under this Agreement.

C. Indemnification:

The DISTRICT shall indemnify, defend, and hold harmless CITY against and from any and all claims or suits for damages or injury arising from DISTRICT's performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the CITY in conjunction with the performance of

this Agreement, and shall further indemnify, defend, and hold harmless CITY against and from all claims or suits arising from any breach or default of any performance of any obligation of DISTRICT hereunder, and against and from all costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

The CITY shall indemnify, defend, and hold harmless DISTRICT against and from any and all claims or suits for damages or injury arising from CITY's performance of this Agreement or from any activity, work, or thing done, permitted, or suffered by the DISTRICT in conjunction with the performance of this Agreement, and shall further indemnify, defend, and hold harmless DISTRICT against and from all claims or suits arising from any breach or default of any performance of any obligation of CITY hereunder, and against and from all costs, attorney's fees, expenses, and liabilities related to any claim or any action or proceeding brought within the scope of this indemnification.

D. Workers' Compensation

The CITY shall provide Workers' Compensation Insurance coverage for all employees involved in the performance of this Agreement. CITY will provide DISTRICT with a thirty (30) day written Notice of Cancellation of the Workers' Compensation Policy.

E. Insurance

CITY shall hold DISTRICT free, clear, and harmless from all claims of third persons for damages arising out of negligent acts of CITY and its agents and, in furtherance thereof, CITY shall, at its expense, procure and maintain in full force at all times during the term of this contract the following insurance which shall be provided on an occurrence basis.

CITY represents that it is self-insured and participates in the CSAC Excess Insurance Authority and that it has sufficient insurance to pay claims for bodily injury, personal injury, or property damage which may arise as a result of CITY'S performance of this Agreement. The CITY agrees to name the DISTRICT as an additional insured on this policy.

CITY agrees to provide DISTRICT a thirty (30) day notice of any reduction or cancellation.

F. DISTRICT Recognition

The CITY shall ensure recognition of the role of the DISTRICT in providing services through this Agreement. All activities, facilities and items utilized pursuant to this Agreement shall be prominently labeled as to funding source. In addition, the CITY will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

G. Amendments

1. DISTRICT or CITY may amend this Agreement at any time, provided that such amendments make specific reference to this Agreement, and are executed in writing, signed by a duly authorized representative of both organizations, and approved by the DISTRICT. Such amendments shall not invalidate this Agreement, nor relieve or release DISTRICT or CITY from its obligations under this Agreement.
2. DISTRICT may, in its discretion, amend this Agreement to conform with federal, state or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the DISTRICT and CITY. In the event performance of this agreement becomes impracticable because of changes in federal, state, or local guidelines, policies, available funding amounts, or other reasons, either party may terminate the agreement pursuant to Paragraph H.1.

H. Suspension or Termination

1. Either party may terminate this Agreement at any time by giving written notice to the other party of such termination and specifying the effective date thereof at least thirty (30) days before the effective date of such termination. In the event of any such termination for convenience, all finished or unfinished documents, reports or other materials prepared by CITY under this Agreement shall, at the option of the DISTRICT, become the property of the DISTRICT. Also, the DISTRICT is not responsible for any identified invoices in Paragraph III of the Agreement after the effective date of termination. However, invoices may be submitted for payments due within in the 30 day time period within a reasonable time after termination.
2. DISTRICT may also suspend or terminate this Agreement, in whole or in part, where, in the determination of the DISTRICT:
 - a. There is an illegal or improper use of the funds provided by the DISTRICT; or
 - b. There is a failure to comply with any terms, covenants, or conditions of this Agreement or exhibits thereto; or
 - c. There are reports submitted to the DISTRICT that are incomplete, untimely or incorrect in any material respect; or
 - d. The CITY is incapable of carrying out the proposed services, or those services are improperly performed; or
 - e. There are insufficient funds budgeted to continue the provision of services under this Agreement.
3. If the CITY materially fails to comply with any term of this Agreement or with any of the laws, rules, regulations or provisions referred to herein, the DISTRICT may declare the CITY ineligible for any further participation in DISTRICT agreements, in addition to other remedies as provided by law.
4. In the event there is probable cause to believe the CITY is in noncompliance with any applicable laws, rules or regulations, the DISTRICT will notify CITY as soon as practicable. CITY, in turn, will be given ten (10) working days within which to comply or remedy the situation. In the absence of compliance, the DISTRICT may withhold up to fifty (50) percent of said Agreement funds until such time as the CITY is found to be in compliance by the DISTRICT, or is otherwise adjudicated to be in compliance.
5. If suspension or termination is in order, the DISTRICT will provide at least ten (10) days written notice to the CITY.

VI. **ADMINISTRATIVE REQUIREMENTS:**

A. Financial Management

1. Accounting Standards

CITY shall bill the DISTRICT on a monthly basis with a detailed accounting of expenditures incurred by CITY.

B. Documentation and Record-Keeping

1. Records to be Maintained

The CITY shall maintain all records required by the terms of the grant and that are pertinent to the activities to be funded under this Agreement. Such records shall generally include, but not be limited to:

- a. Records providing a full description of each activity undertaken pursuant to this Agreement.
- b. Records of all expenditures, project funds, all persons employed in the program including volunteers, and records showing compliance with all legal requirements for the program and funding.

2. Retention

The CITY shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must be kept for three (3) years after he/she has received final payment.

3. Close-Outs

The CITY shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for non-expendable property acquired with funds under this Agreement shall be retained for three (3) years after final disposition of such property. Records for any displaced person must be kept for three (3) years after he/she has received final payment.

4. Audits & Inspections

All CITY records with respect to any matters covered by this Agreement shall be made available to the DISTRICT or its designees at any time during normal business hours, as often as the DISTRICT deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data. Any deficiencies noted in audit reports must be fully cleared by the CITY within 30 days after receipt by the CITY. Failure of the CITY to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments or termination of the agreement. The CITY hereby agrees to have an annual agency audit conducted in accordance with current DISTRICT policy concerning CITY audits.

C. Reporting and Payment Procedures

1. Budgets

Prior to the release of any funds under this Agreement, the CITY must have submitted a detailed budget to be approved by DISTRICT. The DISTRICT and the CITY may agree to revise the budget from time to time by DISTRICT in accordance with existing DISTRICT policies. Any such revisions must be approved in writing, and will not necessarily change the amount approved previously.

2. Indirect Costs

If indirect costs are charged, the CITY will develop an indirect cost allocation plan for determining the appropriate DISTRICT share of administrative costs and shall submit such plan to the DISTRICT for approval.

3. Payment Procedures

The DISTRICT will pay to the CITY funds available under this Agreement based upon information submitted by the CITY and consistent with any approved budget and DISTRICT policy concerning payments. The DISTRICT reserves the right to liquidate funds available under this Agreement for costs incurred by the DISTRICT on behalf of the CITY.

VII. PERSONNEL & PARTICIPANT CONDITIONS:

A. Conflict of Interest

Consistent with applicable state limitations, no officer(s), employee(s) or agent(s) of the DISTRICT who exercise(s) any function or responsibility with respect to this grant may participate as a board member or officer of CITY in the planning or carrying out of the activities or program herein proposed and approved for funding.

B. Fingerprinting

The CITY shall comply with the fingerprinting requirements of Education Code section 45125.1 with respect to all CITY's employees and all of its Subcontractors' who may have contact with District pupils in the course of providing services pursuant to the Contract and the California Department of Justice shall have determined that none of those employees has been convicted of a felony, as that term is defined in Education Code section 45122.1. Before the commencement of any work under this agreement, a complete and accurate list of CITY's employees and of all of its subcontractors' employees who may come in contact with District pupils during the course and scope of the Contractor shall have been provided to The DISTRICT.

C. Proficiency Tests

The CITY shall ensure that all staff have met the minimum qualifications of an instructional assistant per DISTRICT requirements. The CITY shall retain copies of all documents and make immediately available upon request to the DISTRICT a list of qualified staff.

D. Civil Rights

1. Compliance

The CITY agrees to comply with all local and state civil or human rights requirements, and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246, as amended by Executive Orders 11375 and 12086. CITY will ensure that, consistent with the ADA, all facilities wherein services are provided under this Agreement are accessible to all Concord residents, regardless of handicapping condition. If a facility is not accessible, but the CITY has developed an alternative plan that meets ADA requirements for such, it must be

submitted to DISTRICT for its approval within thirty (30) days of the date of the execution of this Agreement. Failure to do so may result in suspension or termination of this Agreement.

2. Nondiscrimination

The CITY will not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, or status with regard to public assistance. The CITY will take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices include but are not limited to the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CITY agrees to post in conspicuous places, available to employees and applicants for employment or service, a notice to be provided by the DISTRICT setting forth the provisions of this nondiscrimination clause.

3. Access to Records

The CITY shall permit access to its books, records and accounts by the DISTRICT for purposes of investigation to ascertain compliance with the laws, rules, regulations and provisions stated herein.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

MT. DIABLO UNIFIED SCHOOL DISTRICT, a district organized under the laws of the State of California:

Date

By: _____
Steven Lawrence
Superintendent

CITY OF CONCORD, a municipal corporation:

Date

By: _____
Daniel E. Keen
City Manager

ATTEST:

Mary Rae Lehman
City Clerk

APPROVED AS TO FORM:

City Attorney

Counsel for
Mt. Diablo Unified School District

Agreements/MDUSD After School contract FY10-11.doc

Agreement entered into on May 5, 2010 by and between the City of Concord, a municipal corporation, (hereinafter "CITY") and Mt. Diablo Unified School District (hereinafter "DISTRICT"), for agreement effective July 1, 2010.



Community & Recreation Services Department

The City of Concord Community & Recreation Services Department will be responsible for program delivery in Concord. School-year sites include Cambridge Elementary, Meadow Homes Elementary, El Dorado Middle, Glenbrook Middle, and Oak Grove Middle schools.

Community & Recreation Services will employ a full-time After School Program Coordinator to oversee staff and program. After School Program Coordinator will recruit, hire and train Recreation Specialist and Lead Recreation Specialist staff for the summer and school-year program 2010-11.

Program Description

Implement an Afterschool Program at five sites in the Concord community. Activities include enrichment classes, tutoring, life skills, sports and mentoring programs.

Hours of Operation

School Year: End of school day to 6:00 p.m. Monday through Friday 8/30/10-6/8/11

Summer Program: Monday through Friday 7/1/10-7/30/10
8:00 a.m. – 2:00 p.m.

ASP Budget 2010-2011

School - Cambridge		
# Staff		Total Salary + Benes
13	Rec Specialists	\$ 172,269.44
2	Site Coordinators	

School - Meadow Homes		
# Staff		Total Salary + Benes
13	Rec Specialists	\$ 172,269.44
2	Site Coordinators	

School - Glenbrook		
# Staff		Total Salary + Benes
7	Rec Specialists	\$ 128,204.16
3	Site Coordinators	

School - El Dorado		
# Staff		Total Salary + Benes
7	Rec Specialists	\$ 109,773.44
2	Site Coordinators	

School - Oak Grove		
# Staff		Total Salary + Benes
5	Rec Specialists	\$ 88,941.44
2	Site Coordinators	

Administration - Program Coordinator		
# Staff		Total Salary + Benes
1	Prog. Coordinator	\$ 90,057.00

Total Payroll Costs	\$	761,514.92
Supplies	\$	24,310.00
Total Program Cost	\$	785,824.92
Total Cost to Grant	\$	785,825