

AGREEMENT BETWEEN MOUNT DIABLO UNIFIED SCHOOL DISTRICT AND THE TODOS SANTOS BUSINESS ASSOCIATION ARTS FOUNDATION INC. FOR RISKSHARING PARTICULAR TO THE 2019 FOURTH OF JULY CELEBRATION

This Agreement ("Agreement") is entered into by and between MOUNT DIABLO UNIFIED SCHOOL DISTRICT (hereinafter "District") and the TODOS SANTOS BUSINESS ASSOCIATION ARTS FOUNDATION INC. (hereinafter "Foundation").

RECITALS

A. The District is the responsible and supervising entity of Mount Diablo High School (hereinafter "Mount Diablo"). The District owns the structure(s) and land upon which Mount Diablo is currently situated.

B. The District and Foundation wish to work together to provide the Concord community with a Fourth of July celebration in the summer of 2019.

C. The District and Foundation understand that each entity risks being the subject of legal action from performing this public service.

D. The District and Foundation wish, to the extent allowed by law and reasonably feasible to the parties, to share the risk and responsibility of claims, if any, arising out of the 2019 Fourth of July event.

In consideration of the terms of this Agreement and notwithstanding any differing terms in any other agreement between the parties, the parties agree as follows:

1. **Indemnification**

(a) Foundation's Indemnification of District.

Foundation hereby agrees to indemnify, defend, and hold District and its board of trustees, administrators, agents and employees harmless from any claims, losses, damages, injuries, liabilities, costs and expenses, including attorneys' fees (collectively, "Claims"), incidental to, arising from, or related in any way to Foundation's 2019 Fourth of July celebrations at Mount Diablo High School, except to the extent such Claims result from the negligence or intentional misconduct of District or its board of trustees, administrators, agents and employees.

(b) District's Indemnification of Foundation.

District hereby agrees to indemnify, defend, and hold Foundation and its directors, officers, and agents harmless from any Claims incidental to, arising from, or related in any way to Foundation's 2019 Fourth of July events at Mount Diablo High School, except to the extent such Claims result from the negligence or intentional misconduct of Foundation or its directors, officers, or agents.

5/21/19

(c) Limits on Duty to Indemnify.

The parties' agreement to indemnify each other shall extend only to the limits of insurance available to each party, individually or collectively, with respect to the Claims.

2. Liability Insurance

(a) Foundation Liability Insurance.

Foundation shall maintain, at its own expense, insurance for the duration of this Agreement against injuries to persons or damage to property which may arise from or be related in any way to Foundation's 2019 Fourth of July events at Mount Diablo High School. This coverage shall be written on an occurrence basis and shall be maintained during the entire period covered by the Agreement. The policy limits shall be not less than \$1,000,000.00 per occurrence, with an aggregate of \$2,000,000.00.

(b) District Liability Insurance.

District shall maintain, at its own expense, insurance for the duration of this Agreement against injuries to persons or damage to property which may arise from or be related in any way to Foundation's 2019 Fourth of July events at Mount Diablo High School. This coverage shall be written on an occurrence basis and shall be maintained during the entire period covered by this Agreement. The policy limits shall be not less than \$10,000,000.00 per occurrence.

(c) Additional Insured Endorsements.

Each party shall name the other party as an additional insured on all liability insurance policies or insurance programs that each party maintains. Prior to the events for which this Agreement is made, each party shall provide to the other (1) certificates evidencing their respective liability insurance, and (2) endorsements naming each party as an additional insured on the other's liability insurance policies or insurance programs, as the case may be. Such insurance shall provide for waivers of subrogation rights against the insurance of the other, and provide that Foundation's policy of insurance shall be primary with respect to Claims.

(d) Delivery of Evidence of Insurance and Endorsements.

Each party shall provide to the other certificates of insurance and original endorsements affecting coverages required in this Agreement, no later than ten (10) calendar days prior to Foundation's 2019 Fourth of July event at Mount Diablo High School.

3. **Notice**

All correspondence and notice provided for hereunder shall be sent to the parties as follows:

TO DISTRICT:

Mount Diablo Unified School District
c/o Dr. Nellie Meyer, Superintendent
1936 Carlotta Drive
Concord, CA 94519

TO FOUNDATION:

TODOS SANTOS BUSINESS ASSOCIATION ARTS FOUNDATION INC.
c/o Turtle Pfeiffer, President
P.O. Box 921
Concord, CA 94522

4. **Term**

The term of this Agreement shall be for one (1) year or through the end of the 2019 Fourth of July event at Mount Diablo, whichever is later. Thereafter, the parties may renew this Agreement prior to any subsequent Fourth of July event.

5. **Entire Agreement**

This Agreement may be executed in counterparts and contains the entire agreement between the parties hereto with respect to the matters set forth herein. No promise, representation, warranty or covenant not included in this Agreement has been or is relied on by any of the parties hereto.

6. **Effective Date**

This Agreement shall be effective on the last date shown below on which this Agreement is executed.

7. **Severability**

If any provision of this Agreement is determined to be illegal or unenforceable for any reason, the same shall be severed from the Agreement and the remainder of the Agreement shall be given full force and effect.

[signatures follow on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement:

MOUNT DIABLO UNIFIED SCHOOL DISTRICT:

By: _____ Date _____
Dr. Nellie Meyer, Superintendent

APPROVED AS TO FORM:

By: _____ Date _____
Lawrence M. Schoenke, Interim General Counsel

TODOS SANTOS BUSINESS ASSOCIATION ARTS FOUNDATION INC.:

By: _____ Date _____
Turtle Pfeiffer, President 5/20/19