

**AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY
FOR THE CITY OF CLAYTON, THE CITY OF CLAYTON,
AND THE MT. DIABLO UNIFIED SCHOOL DISTRICT
FOR THE CONSTRUCTION AND USE OF A GYMNASIUM
AT DIABLO VIEW MIDDLE SCHOOL**

This Agreement entered into on this 22 day of MAY, 2001, by and between the Redevelopment Agency for the City of Clayton (Agency), the City of Clayton (City), and the Mt. Diablo Unified School District (District) for the purpose of the construction of a gymnasium at the Diablo View Middle School, located at 300 Diablo View Lane, Clayton, California.

WHEREAS, the District wishes to construct a gymnasium (the "Project") and a parking lot on a portion of its Diablo View Middle School site which will be utilized by students during school hours; and

WHEREAS, the Agency and City have determined that there is a need for a gymnasium and a parking lot in the vicinity of this property and that the residents of the Agency and City would benefit from the construction of a gymnasium for their use and enjoyment; and

WHEREAS, the Redevelopment Agency Board for the City of Clayton desires to assist in the construction of the gymnasium by paying for a portion of the cost of the construction. The payments of these construction costs will enable the District to construct a gymnasium with one full-sized basketball court, two supplemental courts, and ancillary rooms which will benefit the District as well as the Agency and City.

NOW THEREFORE, the parties hereby agree as follows:

I. Construction Administration

Following the execution of this Agreement, the District and the Agency shall diligently complete development of final plans and specifications for the construction of the gymnasium, as defined and described in the tentative plans for the gymnasium which were filed with the Division of State Architect on or about April 2, 2001.

Upon completion of these plans and specifications, Agency's Board and the City's Council shall have the opportunity to review and comment on the proposed plans and specifications prior to their adoption by the District. The Board and Council agree to perform such review and comment on the plans and specifications within thirty (30) days of receipt thereof. The parties hereby agree to expeditiously and diligently work toward consensus of unresolved issues, if any, concerning design and construction and to perform their responsibilities pursuant to this contract. District has final authority regarding the design and construction of the gymnasium. The aforementioned tentative plans identify the specific

elements which comprise the improvements contemplated by this Agreement. All construction shall be pursuant to all applicable state and local laws and regulations.

District agrees to be the lead agency in any environmental review of this Project which is conducted pursuant to the California Environmental Quality Act (CEQA). The total cost of this environmental review shall be borne by the District. If District decides to opt out of the agreement after completion of environmental review, District shall reimburse Agency for architectural or engineering expenses incurred to date for design of the joint use gymnasium.

II. District Obligation

Once all required construction funds have been secured, District shall promptly solicit bids based upon the approved final plans and specifications in order to award a contract to the lowest responsible bidder. If the lowest bid received exceeds the available construction funds, the parties shall meet and confer in good faith regarding possible reductions in the scope of the Project and/or the availability of additional funds.

District shall have ultimate authority regarding construction of the gymnasium. District shall provide, at its own cost, any staff necessary to oversee and supervise the construction of the gymnasium with the exception of the construction management firm, the cost of which shall be borne by the District and the Agency according to their proportionate contributions. Agency or City may, but is not obligated to, conduct periodic inspections of the gymnasium's construction. Agency or City agrees to make all reasonable efforts to notify District of Agency's plans to inspect. District shall notify Agency and City of construction conferences to be held at the construction site and Agency or City may be present at these construction conferences.

District shall also notify Agency of any requests for change orders by the District and/or contractors and/or their subcontractors which will increase the cost of the Project in excess of five thousand dollars (\$5,000) or those less than five thousand dollars (\$5,000) which the District determines are likely to change the scope of the Project.

District shall contribute nine hundred thousand dollars (\$900,000) to construction of the gymnasium. District staff time spent in review, comment, and approval of plans, specifications, and this Agreement will not be charged against either the District's contribution or the Agency's contribution. Additional sources of funding include community funds (approximately \$1 million) and State funding of Joint Use Projects (approximately \$1.5 million).

At a time to be determined in the future, when the District is financially able, District shall construct an approximately forty (40) space parking lot in order to mitigate the increased need for parking related to the use of the gymnasium. The parking lot may be used by the parties as provided in this Agreement.

III. Agency Obligation

Agency agrees to pay District four hundred thousand dollars (\$400,000), such payment being applied to the construction of the gymnasium. When District has expended twenty-five percent (25%) of the District's total construction costs on the Project, it shall send a written request for payment to Agency, accompanied by an itemization of expenses incurred for this percentage of the construction work. Written documentation and approval of construction invoices by the architect, a representative of the District and a representative of the construction management firm shall constitute such itemization. Agency agrees to pay twenty-five percent (25%) of the total four hundred thousand dollars (\$400,000) to District within fourteen (14) days of receipt of this request. The remaining payments shall be made in twenty-five percent (25%) increments following the same method of payment as stated above. Expenditures shall include any and all amounts held by District for the benefit of any third party. A stop notice or any other lien notice requiring the District to hold funds for the benefit of a third party shall constitute sufficient substantiation for reimbursement.

Agency staff time spent in review, comment, and approval of plans and specifications and inspections noted in Section 1 and 2 above, will not be charged against the Project.

In no case shall the Agency pay to the District an amount greater than the maximum Agency contribution of four hundred thousand dollars (\$400,000) without Agency Board approval.

If costs are less than the original estimate, the balance will be returned to the parties in proportion to each party's contribution.

IV. Use and Control of Gymnasium

A. District and City Use and Control.

For purposes of this section, the District has ultimate control of the gymnasium.

For the term of this Agreement, District shall make the gymnasium and parking lot available for use by the City during non-school hours, Monday through Sunday, during the following times:

School days	3:30 p.m. through 11:00 p.m.
Non-school days	8:00 a.m. through 11:00 p.m.

Principal and City Manager may agree to extend hours for special events.

The City shall be responsible for use and control of the gymnasium and parking lot during its periods of use within the hours stated above and agreed upon extension of hours. City shall

have the right to use the gymnasium and parking lot during school breaks except as provided herein.

District shall have exclusive use, control of, and responsibility for the gymnasium and parking lot during school hours, Monday through Friday, on all days designated by the District as school days, including teacher in-service days. In the event a summer school or an extended year program is designated by the District at Diablo View Middle School, City and District shall renegotiate the terms of this Agreement relative to hours of use. Efforts shall be made to allow City continued use of the gymnasium during these programs.

City shall permit District to utilize the gymnasium and parking lot for a maximum of ten (10) one (1) day events per year during City's hours for District's benefit. Scheduling for this extracurricular use will be done at the commencement of each school year (September). District shall be responsible for the gymnasium and parking lot during these events.

During those hours the gymnasium and parking lot are under City control and responsibility, the City shall maintain a master use calendar and all scheduling of events shall be the City's responsibility. A copy of the master use calendar shall be forwarded to the District. During City hours, City shall be responsible for opening, closing, and security of the gymnasium and parking lot.

District shall have and be responsible for a permanent gymnasium office(s) at all times. City shall have access to those offices permanently assigned to the City for its use during all hours, including those hours of use by the District.

Nothing in this Agreement shall prevent District from utilizing the gymnasium during City hours provided permission is sought and granted from the City with sufficient advance notice. The District would then be responsible for and be required to provide exclusive control and supervision of that District event or function.

Nothing in this Agreement shall prevent City from utilizing the gymnasium during District hours, provided permission is sought and granted from the District with sufficient advance notice. The City would then be responsible for and be required to provide exclusive control and supervision of that City event or function.

B. Third party Use.

Nothing in this Agreement shall be construed to prevent use by groups or organizations that request use of the gymnasium provided it is not in use by the City or the District and sufficient advance notice is provided to the responsible agency. If the event occurs during District hours, responsibility for scheduling, control, and supervision rests with the District. If the event occurs during City hours, responsibility for scheduling, control, and supervision rests with the City.

Third party use occurring during City hours must conform to all use restrictions applicable to City use.

C. No City use fees.

Notwithstanding any fee paid by a third party to Agency, City, or District, no use fees shall be paid by either Agency or City to District for City's use of the gymnasium.

V. **Maintenance of Facilities**

During the term of this Agreement, District shall, at its own cost, maintain the gymnasium and parking lot in a manner such that it will not deteriorate from its condition after it is constructed, normal wear and tear excepted.

For purposes of this section, City's payment of charges shall be based on City's hours of use of the gymnasium.

A. Payment of Custodial Charges.

City shall pay the direct cost for custodial services which are deemed necessary to keep the gymnasium in a safe and sanitary condition during City use, consistent with the District's cleaning standards. The District shall calculate City share of the total custodial charges for operation of the gymnasium. Direct costs means those costs of janitorial services necessitated by the City's use of the gymnasium. The charges paid by the City may be reviewed by both parties at the request of either party.

District shall maintain the custodial care of the gymnasium to the standard set forth in this section above. In the event that the City believes that the District has failed to maintain that level of custodial care, the City may provide written notification to the District. The parties thereafter may review the custodial charges paid by the City for the purpose of an adjustment to the City due to the District's failure to maintain the gymnasium to the standard provided above.

B. Payment of Utility Charges.

City shall pay the direct cost for utility services which are necessary to operate the gymnasium during City use. The District shall calculate City share of the total utility charges for operation of the gymnasium. Direct costs means those charges for the furnishing of gas, water, electricity, other public utilities and for the removal of garbage and rubbish from the gymnasium (the utility charges) necessitated by the City's use of the gymnasium. The charges paid by the City may be reviewed by both parties at the request of either party.

C. Payment of Repairs and Equipment Replacement.

1. Gymnasium.

In the event that the City, or a City sponsored or City supervised group or organization damages the gymnasium or breaks or damages any gymnasium equipment or fixture, the City shall be responsible for payment to the District of the cost of the repair or replacement thereof. District shall be responsible for the repair or replacement thereof.

In the event that the District, or a District-sponsored or District-supervised group or organization damages the gymnasium or breaks or damages any gymnasium equipment or fixture, the District shall be responsible for payment for and performance of the repair or replacement thereof.

The District shall make all repairs or replacement in a timely manner.

Long term maintenance and capital improvements of the gymnasium and the equipment therein shall be shared by the Agency and/or City and the District. The percentage of cost contribution shall be borne by the Agency and/or City and the District based upon the actual hours of activity during the most recently completed fiscal year, commencing July 1 and ending June 30.

Items in the long-term maintenance program include, but are not limited to, the following: refinishing of floors and bleachers, replacement of nets, court or area dividers, and electrical and mechanical systems. Amendment of this long term maintenance program shall be done pursuant to Section 9 of this Agreement.

2. Parking Lot.

Long term maintenance and capital improvements of the parking lot shall be shared equally by the Agency or City and the District.

VI. Indemnity and Insurance

A. Indemnification.

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

This indemnification shall include any and all claims arising during any and all periods of time the indemnifying party has responsibility for the premises whether or not the premises at that time are actually being used by the indemnifying party with or without the knowledge or consent of the indemnifying party. Responsibility for the gymnasium is defined in Section 4 of this Agreement.

Nothing in this indemnification shall make either party liable for any dangerous or defective conditions in or on the premises caused by the other party, unless such dangerous or defective conditions are caused by the actual use of the premises by a non-owning party.

B. Liability Insurance.

Each party shall name the other party as an additional insured on all liability insurance policies or self insurance program which the party maintains in effect on the premises subject to this Agreement. Each party shall provide to the other party a Certificate of Insurance with a combined single limit of one million dollars (\$1,000,000) for damage to persons or property.

C. Fire Insurance.

In order that the use and occupation of the gymnasium may continue with as little interruption as possible, District shall, during the full term of this Agreement and any renewal(s) thereof, maintain at District's own cost and expense an insurance policy issued by a reputable company authorized to conduct insurance business in California. The District shall insure the full replacement of premises and all fixtures and equipment, in or on the premises, against damage or destruction by fire.

D. School Sale or Closure.

In the event that the District intends to dispose of the gymnasium, Agency and/or City shall have the first right of refusal for the purchase of the gymnasium. The parties agree that the sale of the gymnasium and the land underlying the gymnasium to Agency or City shall be at the value governed by the provisions of Education Code section 17485 et seq. This limitation on valuation shall apply only to the land underlying the gymnasium and not to the remaining land at the Diablo View Middle School site. In the event that Agency and/or City declines purchase of the gymnasium, Agency shall receive a prorated share of the proceeds of disposition based upon Agency's contribution.

In the event that the Diablo View Middle School closes but the District retains the school, the District shall continue with its regular daily and long-term maintenance obligations as set forth in Section 5. In addition, the District also agrees to maintain the parking area and walkway so that access to the gymnasium is feasible. In addition, District agrees that City may maintain previous hours of use as agreed to in Section 4. Providing the District does not need the

gymnasium during the school hours designated in Section 4 for other District uses, the District agrees to offer to City the use of the gymnasium during these vacated school hours.

VII. Notice

All correspondence and notices to the parties indicated herein shall be sent to the parties as follows:

AGENCY

Executive Director
City of Clayton Redevelopment Agency
6000 Heritage Trail
Clayton, CA 94517

DISTRICT

Superintendent
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

CITY

City Manager
City of Clayton
6000 Heritage Trail
Clayton, CA 94517

VIII. Amendment of Agreement

Any changes to this agreement must be approved by the Clayton City Council and Agency Board and the District Board of Education or its designee.

IX. Term

The term of this Agreement shall be forty (40) years. The parties will renew this Agreement for unlimited, consecutive, additional five (5) year periods unless written notice of intent to terminate the Agreement, or any prior renewal of the Agreement, is given by either party to the other party ninety (90) days prior to the expiration of the Agreement or any prior renewal of the Agreement. After the initial forty (40) year term, if during any renewal period the District chooses to cancel this Agreement but retains the gymnasium, District agrees to provide use of the gymnasium to the City according to City's previous hours of use. In addition, City agrees to continue to pay its share of custodial and utility charges as set forth in Section 5.

X. Binding on Successors

This Agreement is binding on the heirs, successors, and assigns of the parties hereto.

XI. Entire Agreement

This Agreement may be executed in counterparts and contains the entire Agreement between the parties hereto. No promise, representation, warranty, or covenant not included in the Agreement has been or is relied on by any of the parties hereto.

IN WITNESS WHEREOF the parties have executed this Agreement which shall become effective upon the date of the execution of the Agreement by all parties.

REDEVELOPMENT AGENCY OF THE
CITY OF CLAYTON

William C. Noto
Executive Director, Redevelopment Agency

MT. DIABLO UNIFIED SCHOOL
DISTRICT

Mac Dewey 5/24/01
Superintendent

APPROVED AS TO FORM

Ka Tuck
Redevelopment Agency Attorney *Goldfarb, C. Lepore*

APPROVED AS TO FORM

Deanne K. Barry
Legal Counsel for District *MILLER BROWN + DANNIS*

ATTEST

Frances Douglas
City Clerk

CITY OF CLAYTON

William C. Noto
City Manager, City of Clayton

APPROVAL AS TO FORM

M E Huggett
Legal Counsel for City

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