

Purchase Requisition # R 75369

MT. DIABLO UNIFIED SCHOOL DISTRICT
1936 Carlotta Drive
Concord, CA 94519



**AGREEMENT BETWEEN
MT. DIABLO UNIFIED SCHOOL DISTRICT
AND INDEPENDENT CONTRACTOR**

THIS AGREEMENT is made this 5 day of November, by and between the Mt. Diablo Unified School District (hereinafter "District") and Camp Arroyo (YMCA) (hereinafter "Contractor").

District hereby engages Contractor to render described services under the terms and conditions of this Agreement.

1. Performance of Services

- (a) Contractor agrees to perform the services described on Exhibit "A" (hereinafter "Services") on page 4 of this Agreement as an independent contractor. Contractor will determine the means, manner, method, and details of performing the Services. Contractor shall be responsible for providing the materials, tools, transportation, and workspace necessary for the performance of the services. Contractor may, at Contractor's own expense, use non-District employees to perform the Services under this Agreement. Subcontractors may be used with the written approval of the District only.
- (b) Contractor represents that Contractor has the qualifications and ability to perform the Services in a professional manner, without the advice, control, or supervision of the District. Contractor shall be solely responsible for the professional performance of the services, and shall receive no assistance, direction, or control from District. Contractor shall have sole discretion and control of Contractor's services and the manner in which they are performed.

2. Compensation. District agrees to compensate Contractor for the performance of the Services on the following basis:

\$ 3,288.00 total fee for Services 174 - 0343 - 10 - 5895
BUDGET CODE

The basis of the fee for Services shall be as follows:

- a. \$ _____ per hour,
- b. \$ _____ per day, or
- c. \$ _____ per engagement.

Check one:

- Partial Payments: Contractor shall invoice District on a monthly basis or as agreed to for all hours worked pursuant to this Agreement.
- Payment in Full: Contractor shall invoice District on completion of services. District Administrator will verify invoice indicating that all required services have been performed.

Contractor shall be responsible for all expenses incurred in association with the performance of the Services.

3. Term and Termination. This Agreement will become effective on _____. This Agreement will terminate upon the completion of the Services or when terminated as set forth below.

Either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. Should either party default in the performance of this Agreement or materially breach any of its provisions, the non-breaching party may terminate this Agreement by giving written notice to the breaching party. Termination shall be effective immediately on receipt of said notice.

4. Relationship of the Parties. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Under no circumstances shall Contractor be considered an employee of District within the meaning of any federal, state, or local law or regulation including, but not limited to, laws or regulations governing unemployment insurance, old age benefits, workers' compensation, industrial illness or accident coverage, taxes, or labor and employment in general. Under no circumstances shall Contractor look to District as his/her employer, or as a partner, agent, or principal. Contractor shall not be entitled to any benefits accorded to District's employees, including, without limitation, workers' compensation, disability insurance,

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vacation, or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in the Contractor's name, disability, workers' compensation or other insurance, as well as licenses and permits usual or necessary for conducting the Services hereunder.

Contractor shall pay, when and as due, any and all local, state and federal income or other taxes incurred as a result of Contractor's compensation hereunder, including estimated taxes, and shall provide District with proof of said payments upon demand. Contractor hereby indemnifies District for any claims, losses, costs, fees, liabilities, damages, or injuries suffered by District arising out of Contractor's breach of this Section.

- 5. Fingerprinting and Criminal Records Check of Contractor's Employees. Contractor shall comply with the provisions of Education Code §45125.1 regarding the submission of fingerprints to the California Department of Justice and the completion of criminal background investigations of the contractor and/or its employees. Contractor shall not permit any employee to have any contact with District pupils until such time as Contractor has verified in writing to the governing board of the District that such employee has not been convicted of a felony, as defined in Education Code §45125.1.
- 6. Rules and Regulations. All results and regulations of the Board of Education and all federal, state, and local laws, ordinances and regulations are to be observed strictly by Contractor pursuant to this Agreement.
- 7. Indemnification. Contractor shall and does hereby indemnify, defend, and hold harmless District, and District's officers, employees, agents and representatives from and against any and all claims, demands, losses, costs, expenses, obligations, liabilities and damages, including, without limitation, interest, penalties, and reasonable attorneys fees and costs, that District may incur or suffer and that arise, result from, or are related to any breach or failure of Contractor to perform any of the representations, warranties, and agreements contained in this Agreement.
- 8. Insurance. Insurance shall be endorsed to include the District, its officers, officials, agents, employees and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor. Such insurance shall contain a provision that the insurance afforded thereby to the District and its officers, officials, agents, employees and volunteers shall be primary insurance to the full limits of liability of the policy, and that if the District, its officers, officials, agents, employees and volunteers have other insurance against a loss covered by such a policy, such other insurance shall be excess insurance only.
- 9. Ownership of Designs and Plans. Contractor agrees that all designs, plans, reports, specifications, drawings, schematics, prototypes, models, inventions and all other information and items made during the course of this Agreement and arising from the Services shall be owned by and assigned to District as its sole and exclusive property.
- 10. Notice. Any notice required or permitted to be given under this Agreement shall be deemed to have been given, served and received if given in writing and either personally delivered or deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, or sent by telegram, overnight delivery service, or facsimile transmission, addressed as follows:

<u>DISTRICT</u>	<u>CONTRACTOR</u>
Mt. Diablo Unified School District	Name: <u>The YMCA Camp Arroyo</u>
1936 Carlotta Drive	Address: <u>5535 Arroyo Road</u>
Concord, CA 94519-1397	<u>Livermore, CA 94550</u>
Attn: Superintendent	
	Phone: <u>(925) 371-8401</u>
	Fax: <u>(925) 455-7977</u>
	Tax ID #: <u>94-1156317</u>

Any notice personally given or sent by telegram or facsimile transmission shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the business day next following delivery thereof to the overnight delivery service. Any notice given by mail shall be effective three (3) days after deposit in the United States mail.

- 11. Entire Agreement of Parties. This Agreement constitutes the entire agreement between the parties and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both parties.
- 12. California Law. This Agreement shall be governed by and the rights, duties and obligations of the parties shall be determined and enforced in accordance with the laws of the State of California. The parties further agree

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that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Contra Costa County, California.

- 13. **Attorneys' Fees.** If either party files any action or brings any proceedings against the other arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to its costs of suit and damages, reasonable attorneys' fees to be fixed by the court. The "prevailing party" shall be the party who is entitled to recover its costs of suit, whether or not suit proceeds to final judgment. No sum for attorneys' fees shall be counted in calculating the amount of a judgment for purposes of determining whether a party is entitled to its costs or attorneys' fees.
- 14. **Waiver.** The waiver by either party of any breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of such term, covenant, condition, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

MT. DIABLO UNIFIED SCHOOL DISTRICT

CONTRACTOR:

By: *An Vay* _____ Date _____
 Budget Administrator Principal

By: *[Signature]* 11/13/13 _____ Date _____
 Title: Senior Vice President

Authorized by: *Rose [Signature]* 12/6/13 _____ Date _____
 Assistant or Associate Superintendent

Approved: _____ Date _____
 Assistant Superintendent of Personnel

TO BE COMPLETED BY DISTRICT BUDGET ADMINISTRATOR	
<input type="checkbox"/> It is my determination that this contractor is not required to comply with Ed. Code §45125.1 regarding the submission of fingerprints to the Department of Justice.	
OR	
<input type="checkbox"/> This contractor is subject to the requirements of Ed. Code §45125.1 and will not begin services until I have received evidence that the Department of Justice has completed its criminal background investigation.	
_____ Administrator's Signature	_____ Date

Prior to commencement of service, sign and forward completed original contract to Fiscal Services.

An Vay _____
 Originator's Signature

Billing Address if reimbursed by outside agency---i.e. ASB, PTA, PFC

<i>Distribution</i>	
<i>original:</i>	<i>Fiscal Services for payment</i>
<i>copy:</i>	<i>Contractor</i>
<i>copy:</i>	<i>Originator/Budget Administrator</i>

Purchase Requisition # _____
EXHIBIT A

LIST OF SERVICES TO BE PERFORMED BY CONTRACTOR

See attached.

Services of Contractor arranged by

Ann Vally

Signature

Rio Vista Elementary/174

Department / School



Camp Arroyo Use Agreement Standard Terms

This use of facilities Agreement is between the YMCA of the East Bay, a California non-profit corporation (hereinafter referred to as "YMCA") and Rio Vista Elementary in Mt. Diablo Unified School District, (hereinafter referred to collectively as "User"). The Agreement provides for use of Camp Arroyo (hereinafter referred to as "Facility") for the activities and purposes as detailed below. Dates of use and financial considerations are addressed in the attached Facility Contract (a separate document), and both documents must be completed for this Agreement to be finalized.

IN FURTHER CONSIDERATION OF RECEIVING PERMISSION TO ENTER YMCA CAMP ARROYO FOR ANY PURPOSE CONSISTENT WITH THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO, EVALUATION OR USE OF FACILITIES OR EQUIPMENT, THE PARTIES MUTUALLY AGREE TO THE FOLLOWING:

1. To the fullest extent allowed by law, User shall defend, indemnify and hold harmless the YMCA of the East Bay ("YMCA"), the East Bay Regional Parks District and the Taylor Family Foundation, Inc. and its directors, officers, agents, employees and volunteers, against any claim or demand arising from any actual or alleged act, error, or omission by User or its directors, officers, agents, employees or volunteers arising from User's duties and obligations described in this agreement or imposed by law.
2. To the fullest extent allowed by law, YMCA shall defend, indemnify and hold harmless User and its directors, officers, agents, and employees, against any claim or demand arising from any actual or alleged act, error, or omission by YMCA or its directors, officers, agents, employees or volunteers arising from YMCA's duties and obligations described in this agreement or imposed by law.
3. User and YMCA agree to purchase and/or maintain through the duration of this agreement insurance or liability coverage (such as liability coverage provided by a Joint Powers Agency) ensuring their ability to meet their respective defense and indemnity obligations set forth above. Such insurance or liability coverage shall have a limit of liability of no less than \$5 million per occurrence and in the aggregate. The insurance or coverage shall include, as may be reasonable and appropriate given the acts and activities contemplated by this agreement, commercial general liability, premises liability, automobile liability (owned, non-owned, and hired), professional liability/errors and omissions, employer's liability, product liability and completed operation(s), and educator's legal liability coverages, if applicable. To the full extent of the Parties' respective indemnity obligations, but only up to the agreed limit of liability set forth above, the Parties' insurance or liability coverage agreements shall also be endorsed to extend "additional insured" status, or "additional covered party" status if applicable, to all proposed indemnities, with such coverage to be provided on a "primary" basis.
4. Each Party also represents that for the period of this agreement they will also purchase and maintain [real or personal property insurance or coverage, as well as

any] insurance or liability coverage required by law or regulation, including workers' compensation coverage. With respect to such coverage[s], and upon request, each Party shall provide evidence of such coverage by way of a Certificate of Insurance or Certificate of Coverage.

5. The Parties' indemnity and coverage obligations shall survive the termination of this agreement with respect to any claim arising from the Parties' actual or alleged performance or non-performance of or their respective rights, privileges, or obligations existing under this agreement.
6. In the event of a claim covered by these provisions, the Parties agree to take all steps reasonable or necessary to cooperate in defending and protecting their joint interests, including efforts to reduce defense costs (through joint representation whenever possible), expenses and potential liability exposures.

In the event that any portion of this Agreement results in a violation of any law of the State of California, the parties agree that such portion shall be severable, and that the remaining provisions of this Agreement shall continue in full force and effect.

IT IS FURTHER MUTUALLY AGREED between the parties that:

- (a) **USE:** User is granted the permit to use Camp Arroyo on the dates set forth in the Facility Contract.
- (b) **ASSIGNMENT:** User shall not assign or sublet this Agreement or any portion thereof without the prior written consent of the YMCA.
- (c) **INSURANCE:** User shall provide certificates of the required insurance that are updated annually and provide notice of cancellation to YMCA. A copy of the certificates and additional insured endorsements must be provided to the YMCA at least 15 days in advance of User's arrival at camp.
- (d) **FOOD SERVICE:** YMCA shall provide meals as set forth in the Facility Contract. User shall inform YMCA of the number of individuals for food service not less than two weeks prior to the beginning of camp. YMCA shall provide all meals, unless the site is being leased on a "Facility Use Only" basis; or User has fewer than 30 participants and is choosing a vendor from the YMCA's preferred catering list. No individual shall be permitted to use the kitchen or to prepare food at any time.
- (e) **CONDITIONS:** As a condition to holding this camp and receiving this use permit, User shall comply with each of the following conditions:
 - i. User shall not violate any city, county, or state law in or about the said Facility and shall comply with all camp rules and regulations now in force or subsequently adopted.
 - ii. Camp Arroyo has a maximum sleeping capacity of 144. Sleeping outdoors or in tents is not permitted. User agrees not to decrease its confirmed number of participants as stipulated in the Facility Contract.
 - iii. User agrees to complete and return the following forms and any additional forms that may be subsequently requested by the YMCA: Guest Cabin Housing Form; Group Needs Assessment Form; Orientation Guidelines; Table Groups, and Adventure Groups Forms. Forms must be received by YMCA by the specified due dates.
 - iv. The camp sessions shall be conducted under the overall personal supervision of User's Camp Director who will coordinate, control and supervise all camp

- activities. User's Camp Director may designate a substitute camp director as long as said substitute meets established qualification guidelines (e.g. CPR, First Aid certified etc.) and is covered by the insurance provided. User's Camp Director is responsible for immediately communicating in writing any unsafe conditions or problems to the YMCA Camp Arroyo Camp Director.
- v. Any additions to the site made by the User shall only be temporary in nature; and approved by YMCA Camp Arroyo in writing prior to installation; and comply with the list of approved temporary additions /changes attached to this Agreement and marked Exhibit A, when applicable to User's camp. User is responsible for the removal and, if necessary, the disposal, of all materials used in the temporary addition.
 - vi. No signs or barriers shall be placed or used in the Camp without the prior written authorization of the YMCA. Nothing shall be nailed or tacked to trees or other vegetation or structures.
 - vii. User shall be responsible for and its insurance shall apply to all participants, guests, invitees and/or entrants in all circumstances.
- (f) **UTILITIES:** The YMCA of the East Bay shall provide water, electricity, and garbage disposal on a "normal use" basis without charge to the User.
 - (g) **JANITORIAL:** The YMCA shall provide janitorial service prior to User's arrival and after User's departure. User agrees be responsible for the cleaning of the cabins during its stay. User agrees to pay for all damage to any portion of the Facility incurred during User's stay.
 - (h) **HEALTH & SAFETY:** User shall be solely responsible for all first aid and medical supervision or treatment.
 - i. User agrees to furnish qualified staff for health care needs and supervision, including, but not limited to, CPR and First Aid certification.
 - ii. User shall bring and have available at all times a current list of participants that includes: names, and addresses, emergency contact information, allergies and health conditions and in addition for each minor under the age of 18, a signed form granting permission to User for emergency medical treatment or a signed waiver exempting them from emergency treatment due to religious or personal beliefs.
 - iii. User is responsible for all emergency and non-emergency transportation.
 - iv. The YMCA prohibits hunting, fireworks, firearms, ammunitions or explosives at the Facility. The use of gasoline, flammables, poisonous substances and hand and power tools are also prohibited.
 - v. User will prohibit smoking except in designated areas and is responsible for warning all participants of the hazards of smoking outside of the designated areas at the Facility. Open fires are not permitted. BBQ units are permitted only with prior authorization and only under the supervision of YMCA staff.
 - vi. Use of vehicles at the Facility is restricted to roads and parking areas. The speed limit on all Facility roads is 10 mph. Speed limit is strictly enforced.
 - (i) **POOL AREA USE:** No one shall enter the pool area unless a YMCA lifeguard, or one approved by YMCA is present. The pool will be available for use May 1 through October 15, weather permitting.
 - (j) **CLIMBING WALL/CHALLENGE COURSE:** No one shall enter the climbing wall or challenge course areas unless a YMCA staff person, or one approved by YMCA, is present. The climbing wall will be available for use weather permitting. All participants must be at least 10 years of age, and free of medical or physical conditions, which might create undue risk to himself/herself or to others.
 - (k) **USER PERSONNEL:** YMCA reserves the right to require User to remove from the Facility any persons, who in the sole discretion of the YMCA, are creating a disturbance or who are otherwise disrupting activities at YMCA Camp Arroyo. User agrees to permit

only authorized persons to enter Camp Arroyo and shall take all necessary steps to remove unauthorized persons from the Facility. User shall provide at least one adult chaperone/counselor, age 18 or older, for every 11 campers.

- (l) **DAMAGES, OTHER FEES, COSTS AND EXPENSES.**
 - i. User agrees to pay YMCA for all damage to any portion of the Facility and/or equipment incurred during User's use of YMCA Camp Arroyo, that arises from or is caused by an error, omission or negligent act of the User, its officer, agents or employees. The determination of that amount shall be in the YMCA's sole discretion, but at all times will be reasonable, and will include, but is not limited to, YMCA's costs for contractors, maintenance personnel, and camp operations staff as well as any costs for materials, garbage removal, or equipment rental.
 - ii. The Guaranteed Minimum Fee is based on the number of persons guaranteed by the User. The fee is based on the guaranteed number whether or not the number of actual participants is fewer. The fee also applies if the User terminates this Agreement without 90 days prior written notice or does not attend Camp.
- (m) **MISCELLANEOUS:** User warrants that the person signing this Agreement has the authority to execute this Agreement on its behalf.
 - i. This Agreement may be altered or amended only by written agreement of both parties.
 - ii. User agrees that the total number of its group will not exceed the building maximum at any time.
- (n) **ATTORNEYS' FEES:** If legal action shall be brought by either of the parties in connection with this Agreement, the party prevailing in said action shall be entitled to recover from the party not prevailing its costs of suit and reasonable attorneys' fees, which shall be fixed by the court.
- (o) **SPECIAL RIGHT OF TERMINATION FOR BREACH:** In the event, after warning by authorized YMCA, The Taylor Family Foundation, or the East Bay Regional Parks District personnel or their agents, User continues to fail to perform any requirement of this Agreement, YMCA shall have the right to terminate this Permit by notice to any officer of User, User's Camp Director or substitute or other User personnel in charge, whereupon User shall immediately terminate its use of the Facility and cause all participants to promptly remove any equipment or other personal property owned by User's participants.
- (p) **CANCELLATION:**
 - i. The YMCA must receive written notice of cancellation from the User 90 days prior to arrival day or the User shall forfeit the deposit for the use of Camp Arroyo. The User will forfeit the total amount of their fees and deposit if the YMCA receives notice of cancellation by the user in less than 30 days.
 - ii. If the YMCA closes Camp Arroyo or is unable to make the Facility available to User for any reason, the YMCA will promptly give notice to User, and the YMCA will process a full refund of all fees and deposits which shall be the sole obligation of YMCA to User. This Agreement may be terminated at any time by YMCA by giving User thirty (30) days prior written notice.

[SIGNATURES ON NEXT PAGE]

ii User agrees that the total number of its group will not exceed the building maximum at any time.

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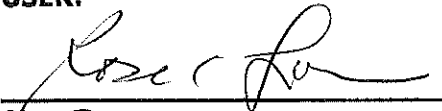
(p) **CANCELLATION:**

i. The YMCA must receive written notice of cancellation from the User 90 days prior to the arrival day as set forth in the Facility Contract. The User will forfeit the total amount of their fees and deposit if the YMCA receives notice of cancellation by the user in less than 30 days.

ii. If the YMCA closes Camp Arroyo or is unable to make the Facility available to User for any reason, the YMCA will promptly give notice to User, and the YMCA will process a full refund of all fees and deposits which shall be the sole obligation of YMCA to User. This Agreement may be terminated at any time by YMCA by giving User thirty (30) days' prior written notice.

USER HAS READ, UNDERSTANDS, AGREES TO BE BOUND BY AND VOLUNTARILY SIGNS THIS USE OF PREMISES AGREEMENT AND THE INCORPORATED RELEASE AND WAIVER OF LIABILITY AND INDEMNITY AGREEMENT, and further agrees that no oral representations, statements, or inducement inconsistent with the foregoing written agreement have been made.

USER:



Signature

Rose Locke

Name (printed)

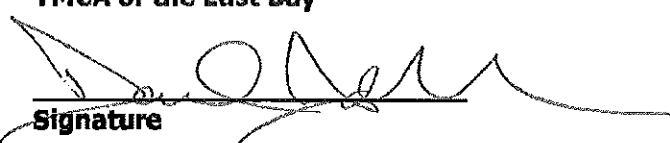
Asst. Supt

Title

12/6/13

Date

YMCA of the East Bay



Signature

David Johnson

Name (printed)

Senior Vice President

Title

6/13/13

Date

Contract No. OEE2014032

Signed Contract, Standard Terms & Deposit Due: June 3, 2013

The YMCA at Camp Arroyo
5535 Arroyo Road, Livermore, CA 94550
(925) 371-8401 ph (925) 455-7977 fax
email:camparroyo@ymcaeastbay.org



Facility Contract

Group Name: Rio Vista Elementary
Primary Contact: Jonathan Moses
goonie1322@gmail.com

Address: 611 Pacifica Avenue, Bay Point, CA 94565
Tel: 925.458.6101

Arrival: February 18, 2014 at 12:00 pm
Departure: February 21, 2014 at 1:00 pm

Qty	Description	Unit Price	Total
Fees for 4-Day Outdoor School Trip			
50	Students @ \$242.00 per person	\$ 242.00	\$ 12,100.00
7	Adults/Teachers @ \$205.00 per person (1:11 minimum ratio required) <i>Additional students/adults will be billed at the unit price.</i>	\$ 205.00	\$ 1,435.00
Total Trip Fee			\$ 13,535.00
Adjustments			
-1	Less Requested Parks Foundation Scholarship**	\$ 9,151.00	\$ (9,151.00)
Amount Due			
25% non-refundable deposit due June 3, 2013			\$ 1,096.00
Remaining balance due (minus deposit) January 18, 2014			\$ 3,288.00

Cancellation Policy & Guaranteed Minimum Fee:

If Group reserving camp terminates this agreement with less than 90 days advance notice without using the facilities as agreed, Group reserving camp agrees to pay the entire remaining balance of the Guaranteed Minimum Fee as liquidated damages. Group reserving camp will be released from payment of the Guaranteed Minimum Fee, but **not the non-refundable deposit**, provided written notice of the termination is received by Camp Arroyo no later than 90 days before the scheduled arrival date.

Guaranteed Minimum Fee: \$3,006.00

Based on Minimum Guaranteed Participants: 46 kids / 5 Adults

The Group reserving camp may not bring additional participants above the Maximum Participant Limit without approval from Camp Arroyo at least 4 weeks in advance of the scheduled trip.

Maximum Participant Limit: 55 kids / 9 adults

Our Check Policy:

If your check or automatic draft is returned NSF, it may be re-presented electronically and you will be assessed a processing fee of \$25.00 or the maximum amount allowed by law. The check writer is also responsible for all other recovery costs, including attorney's fees and taxes.

Please acknowledge your acceptance of this Facility Contract by signing and dating this form below and sending it with your deposit and the signed Use Agreement Standard Terms by the due date indicated above to Camp Arroyo Business Office at the address indicated above. Reservation is only guaranteed upon receipt of all Agreements and deposit. Please make checks payable to YMCA Camp Arroyo.

X
Authorized Signature

Date: 12/6/13

Name (printed) Rose Lock

Title Asst. Supt.