

**Joint Use Agreement Between
Mountain View Whisman School District
and the
City of Mountain View
for
Recreational Use of School Sites**

This Joint Use Agreement (“**Agreement**”) is made on _____, 2022, (“**Commencement Date**”) between the Mountain View Whisman School District, a California public school district (“**District**”) and the City of Mountain View, a California Charter City and Municipal Corporation (“**City**”). District and City may be referred to herein individually as a “**Party**” or collectively as the “**Parties**.”

RECITALS

WHEREAS, Education Code section 10900, authorizes cities and public school districts to cooperate with one another for the purpose of authorizing, promoting and conducting programs of community recreation that will contribute to general recreational and educational objectives for children and adults of this State; and

WHEREAS, City is authorized to operate and maintain public playgrounds and park and recreation facilities and, by virtue of that authority, does operate and maintain playgrounds and park and recreation facilities; and

WHEREAS, District owns and operates multiple schools and school sites (“**School Site(s)**”) within City’s boundaries which are available for park and recreation purposes; and

WHEREAS, the School Sites include recreational play fields, hardscapes and facilities, as further described below and in **Attachments 1 through 11** attached hereto and made a part of this Agreement (“**Recreational Areas**”); and

WHEREAS, City and District have engaged in a decades-long cooperative partnership whereby City has developed and/or improved and maintains portions of many of the Recreational Areas for joint use with District; and

WHEREAS, District and City desire to enter into this Agreement to provide for the continued joint use of the Recreational Areas for public playground, public restroom, and public park and recreation uses, as further detailed herein below; and

WHEREAS, District, pursuant to and if deemed required by section 17529 of the Education Code, has determined by approving this Agreement, that allowing use of the Recreational Areas to City will not (1) interfere with the educational programs or activities of any school or class conducted on the School Sites, (2) unduly disrupt the residents in the surrounding neighborhood, or (3) jeopardize the safety of the children at the School Sites; and

WHEREAS, the Parties intend that, except as expressly identified herein, this Agreement shall supersede and replace any prior agreements between the Parties related to the Recreational Areas;

NOW THEREFORE, in consideration of the covenants and agreements hereinafter set forth, District and City agree as follows:

AGREEMENT

1. Description of Recreational Areas

1.1. For the purposes of this Agreement, the Recreational Areas shall mean the recreational facilities, equipment, landscaping, and other recreational buildings, including public restrooms, all as further described in the Attachments hereto and that are located at the following School Sites (hereinafter referred to as School Site Attachment(s)):

- Benjamin Bubb Elementary School (**Attachment 1**)
- Mariana Castro Elementary School & Gabriela Mistral Elementary School (**Attachment 2**)
- O.J. Cooper Elementary School (**Attachment 3**)
- Crittenden Middle School (**Attachment 4**)
- Graham Middle School (**Attachment 5**)
- Amy Imai (formerly Huff) Elementary School (**Attachment 6**)
- Edith Landels Elementary School (**Attachment 7**)
- Monta Loma Elementary School (**Attachment 8**)
- Stevenson/Theurkauf Elementary School (**Attachment 9**)
- Jose Antonio Vargas Elementary School (**Attachment 10**)
- Whisman School Site (**Attachment 11**)

The Parties intend that each School Site Attachment will include Recreational Area-specific information including, without limitation, additional terms of use, maintenance and repair obligations, payment provisions, schedule restrictions, etc., to the extent that such information is unique to those specific Recreational Areas.

2. **Title to School Site(s) / Classroom Buildings.** The Parties acknowledge that title to the Recreational Areas is held by District, except for the Mountain View Sports Pavilion (located in Graham Middle School) and the Whisman Sports Center (located in Crittenden Middle School), of which both City and District have an undivided one-half ownership interest.

3. **Term.**

3.1. The term of this Agreement shall be for **twenty-five (25) years** from the Commencement Date and, unless sooner terminated under any provision hereof, this Agreement shall end on _____, 20____, (“**Term**”).

3.2. This Agreement may be extended on mutually agreed upon terms and conditions beyond the initial Term (“**Extended Term**”). Any Extended Term shall be evidenced as an amendment to the Agreement and shall be in writing and approved by the Parties’ governing bodies.

3.3. This Agreement satisfies California Education Code section 17534 in that the City has contributed to or made capital outlay improvements on the School Sites for park and recreation purposes.

3.4. **Utilities.** Each Party’s responsibility for utilities and services, including water, irrigation, gas, electricity, security and fire alarm monitoring, trash pick-up, parking lot sweeping, and sewer, including any such related fees, shall be as set forth in each School Site Attachment.

4. **Parking.**

4.1. City shall have non-exclusive use of the parking lots located on the School Site during the City’s Use Period, as defined below, except in circumstances in which District requires use

of the parking lots for District operations. If reasonably practicable, District will notify City if any such District operations restrict the usage of the parking lots by the City for a period of seven (7) days or more, and, if available, alternative parking options will be offered. City shall abide by District's policies concerning the use of the parking lots. City's use of the parking lots shall be on a first come, first serve basis. City shall coordinate with the School Site administration for ongoing direction related to this section and may instruct its visitors, invitees and guests to park in the parking lots located on the School Site.

4.2. City shall not abandon any inoperative vehicles or equipment on any portion of the School Site(s). District shall not be liable for any personal injury suffered by City or City's visitors, invitees and guests for any damage to or destruction or loss of any of City's personal property located or stored in the parking lots, street parking, or the School Site(s). City accepts parking "as is" and City acknowledges that District has not made and is not making any warranties whatsoever with respect to the parking. Notwithstanding the foregoing, City shall not be liable for any personal injury suffered by District or District's visitors, invitees and/or guests for any damage to or destruction or loss of any of District's personal property located or stored in the parking lots, street parking, or the School Site(s).

5. **District's Use of the Recreational Areas.** District's use of the Recreational Areas for any purpose shall take precedence and priority over City's or any other person or entity's use of the Recreational Areas. District will provide City with as much notice as reasonably possible, of District's use that conflicts with City's use of any of the Recreational Areas. District shall also inform its user groups of the need to provide sufficient notice to District regarding scheduling use of the Recreational Areas. District's use includes the following without limitation:

5.1. Use during any time when the School Site is in session, including, but not limited to, school uses related to after-school activities, student programs occurring during Thanksgiving, Holiday, Spring and Summer Recess periods and use by any program, event or class for District students; and

5.2. Use during any time that has been scheduled in advance by a School Site principal or other school officials and staff for classes, activities, exercises, or school functions; and

5.3. Use for any District program or purpose, regardless of prior scheduling; and

5.4. Use during any time by District when District has permitted another use of the Recreational Areas for specific event(s) or activity(ies)

(collectively "**District Use Period**"). City shall have no use of the Recreational Areas during the District Use Period.

6. **City's Use of the Recreational Areas.**

6.1.1. City shall have use of the Recreational Areas when its use does not conflict with the District's Use Period ("**City Use Period**"). For District's middle school sites, timing of access will be after 5:00PM Monday-Friday, and for District's elementary school sites, timing of access will be after 4:00PM Monday-Friday. Additionally, City Use Period will include City's use on holidays, weekends, and any time it is not in use by District, such as school breaks throughout the school year and summer recess, and the timing of City's use shall be from 6:00AM to one-half (1/2) hour after sunset.

- 6.1.2. City may allow other groups to use the Recreational Areas pursuant to City's scheduled recreational programs. All scheduling, use, fee collection and other activities shall be compliant with the Civic Center Act (Ed. Code, § 38130 et. seq.). Any fees collected by City for use of the Recreational Areas that is not spent by City to maintain the Recreational Areas, including program administration, shall be paid to the District. City shall provide an accounting of all fees collected for use of the Recreational Areas to the District at the same times as the master calendar is developed by the Parties as more detailed herein in the section entitled "Schedule of Use."
- 6.1.3. City shall be responsible for managing and overseeing the use of the Recreational Areas through City, in accordance with the terms and conditions set forth herein. District reserves the right, after consultation with City, to reasonably preclude or prohibit the use of the Recreational Areas by any person or entity consistent with the District's Rules and Regulations.
7. **City's Use of Other Areas.** District, in its sole discretion, may furnish to City, for use as park and recreational facilities, other areas of the School Sites, including areas on which playgrounds and other school recreation equipment are located. For purposes of this section, "School Area" is defined as the area upon which the school buildings, blacktop area and normal school play equipment are located. The use of any School Area, classroom, and restroom by City shall be subject to the approval of District and shall be at times, and in such a manner, as not to interfere with District use and cleaning of the School Areas. Any such use by City shall be scheduled through the District. The City's use of any School Area may be subject to payment of fee as established by the District's fee schedule for such use.
8. **Schedule of Use.** The District Superintendent or designee and the City Manager or designee, shall meet to jointly establish, modify, and approve a master calendar for the Parties' use of the Recreational Areas ("**Master Calendar**"). These meetings shall occur on or about January, June, and August of each year of the Term of this Agreement. The Master Calendar shall establish each Party's use of the Recreational Areas.
9. **Rules and Regulations.** City's use of the Recreational Areas shall be pursuant to the District's then existing Policies and Regulations for Use of District Facilities pertaining to the use of the Recreational Areas ("**District Use Rules**"), as may be amended from time to time. City shall use reasonable efforts to exclude persons and entities whom City is aware have violated the District Use Rules from using the Recreational Areas. The District's current District Use Rules can be found here:

https://www.mvwsd.org/UserFiles/Servers/Server_418774/File/Services%20and%20Requests/Use%20Facilities/1718FacilitiesUsePermitApplicationTermsConditionsREV.pdf
- 9.1. The Parties agree that District does not permit the possession, use, sale or consumption of tobacco products, or of any controlled substance on District property, including the School Sites and Recreational Areas, provided that controlled substances may be used pursuant to a valid prescription.
10. **Condition of Recreational Areas.** The Recreational Areas are offered for use to City on an "AS IS" basis.

- 10.1. District shall not be required to make or construct any alterations including structural changes, additions or improvements to the Recreational Areas. By City's entry and use of the Recreational Areas pursuant to this Agreement, City accepts the Recreational Areas in their "AS IS" condition.
- 10.2. City acknowledges that neither District nor District's agents have made any representation or warranty as to the suitability of the Recreational Areas for City's uses as described herein. Any agreements, warranties or representations not expressly contained in this Agreement shall in no way bind the District or City, and District and City expressly waive all claims for damages by reason of any statement, representation, warranty, promise or agreement, if any, not contained in this Agreement.
11. **Maintenance and Repairs.** The Recreational Areas will be maintained as set forth in the School Site Attachments hereto.
12. **Damage.** City shall pay all costs to repair any damage or vandalism to the Recreational Areas and School Sites to the extent that damage or vandalism arises out of City's or City user's use of the Recreational Areas and School Sites, excluding general public use. District shall pay all costs to repair any damage or vandalism to the Recreational Areas and School Sites to the extent that damage or vandalism arises out of District, District users' use or general public use of the Recreational Areas and School Sites.
 - 12.1. If it cannot be determined when the damage or vandalism occurred during City or District use, the Parties shall equally share the costs of such damage or vandalism. Notwithstanding the foregoing, District agrees that if the irrigation systems supplying the Recreational Areas are damaged or destroyed as a result of District's construction activities, District shall be responsible to repair the same at its own cost and expense.
13. **Alterations and Improvements.** City may, at its sole cost and expense, construct or cause to be constructed on the Recreational Areas those improvements that City deems necessary for its uses, provided such improvements are subject to local site, zoning, and design review and other required approvals, and provided District has approved all those improvements. Prior written approval of the District shall be required for any such improvements that cost \$10,000 or more.
 - 13.1. Regarding the improvements constructed on the Recreational Areas consistent with the provisions of this Agreement, City shall, prior to construction, major repair, renovation or demolition of any improvements on the Recreational Areas, obtain the prior written consent of District thereto and to the final plans, specifications, and schedule for completion thereof. City shall also, prior to construction of any improvements, obtain written approval from District and if applicable, the Division of the State Architect (DSA) for the improvements. Said approval or disapproval must be expressly made by District in writing. City must deliver DSA's written approval to District within ten (10) calendar days after City's receipt. City shall not proceed with any construction of improvements until City has obtained District's and DSA's written approvals. District and City recognize that approvals may be completed in phases, such that City may initially request conceptual approval and, if approved by District, then proceeds to draw the plans and specifications. District will respond to City with its approval or disapproval within fifteen (15) business days after District receives a written request with architectural plans and drawings from City. District's approval shall be at District's sole and absolute discretion and District may withhold or disapprove of any improvements without reason. As a condition of its approval, District may require that City agree to remove certain improvements and restore the Recreational Areas to its original condition, reasonable wear and tear excepted, upon expiration or earlier termination of this Agreement, and/or provide District with adequate security for removal of improvements.

- 13.2. Not less than forty-five (45) calendar days prior to the construction, major repair, renovation or demolition of any improvements on the Recreational Areas, City shall provide District with information regarding the contractor's financial condition and evidence to District's satisfaction that adequate funds to complete the improvements are committed and available or that completion has been otherwise adequately assured. Such assurances may include, in District's discretion, a completion guarantee. No construction shall commence until District has given City written acceptance of such assurances.
- 13.3. City shall give District fifteen (15) calendar days prior written notice before commencing any work on the Recreational Areas so that District may post such notices of non-responsibility with respect thereto as District may deem appropriate.
- 13.4. Not less than forty-five (45) calendar days prior to the construction, major repair, renovation or demolition of any improvements on the Recreational Areas, City shall provide District with sufficient evidence that it has obtained all required approvals and permits for the work and that City or City's contractor(s) has in effect, with premiums paid, a 100% payment bond and a 100% performance bond for its work, adequate casualty and liability insurance (including builder's risk) coverage and workers compensation, all that is satisfactory to District in its sole discretion.
- 13.5. Upon commencement of construction of any improvements, City shall cause the work to be diligently pursued to completion in accordance with the schedule for completion approved by District, subject to unavoidable delays caused by weather, supply shortages, strikes or acts of God.
- 13.6. All work or improvements shall be performed in a sound and workmanlike manner, in compliance with all applicable laws and building codes, in conformance with the plans and specifications approved by District and DSA, if applicable, or any modifications thereto which have been approved in writing by District. If an improvement project requires the use of DSA-approved Inspector services, City shall reimburse District for the costs related to said services.
- 13.7. District or District's agent shall always have a continuing right during the period that improvements are being constructed on the Recreational Areas to enter the Recreational Areas and to inspect the work provided that such entries and inspections do not unreasonably interfere with the progress of the construction. City shall require its contractors who construct improvements on the Recreational Areas to reasonably cooperate with District or its agent in such inspections.
- 13.8. Within ninety (90) days after completion of construction of any work of improvement on the Recreational Areas, City shall deliver to District two (2) full and complete sets of as-built plans for the work so completed.
- 13.9. If District seeks to install facilities and/or equipment which impact the City's use of the Recreational Areas, including but not limited to fencing, buildings, permanent or portable classrooms or offices, storage facilities, restroom facilities, parking lots, hard-court and/or black top areas, and shade structures, District shall first notify City in writing regarding the proposed installation(s), and obtain City's comments in writing regarding location and other concerns. Notwithstanding the foregoing the Parties acknowledge and agree that the District does not and shall not need City's approval of any proposed installation or project District undertakes in the Recreational Areas.

- 13.10. The Parties agree that City has made and installed certain improvements to the Recreational Areas, as detailed in the Attachments. Such improvements are and shall remain property of City, unless payment is made to the City as set forth in Section 17.8.
14. **Fingerprinting and Criminal Background Verification.** City shall be responsible for ensuring compliance with all applicable fingerprinting and criminal background investigation requirements, as determined by the City. Upon request by District, City shall provide written verification of compliance with the aforementioned fingerprinting and criminal background investigation requirements to District. City's obligation to provide documentation verifying compliance with this section shall survive termination of the Agreement, but any such documentation will be retained as consistent with City's record retention schedule.
15. **Safety of Recreational Areas.** The Recreational Areas may be monitored by a safety system or protocol implemented, maintained and operated by District ("**District's Safety Measures**"). However, City specifically acknowledges, understands, and agrees that District is neither responsible for nor has the obligation to supply, provide, establish, maintain, or operate District's Safety Measures for either City or the Recreational Areas. City further expressly acknowledges and agrees that District shall not be liable for and is hereby released from any and all responsibility for any damage, loss, or injury to City or its personal property resulting or arising out of any criminal activity (including, but not limited to, any damage, loss, or injury resulting from intrusions, petty theft, vandalism, or other similar acts) that may occur on or near the Recreational Areas, regardless of whether District was able to, actually did, or failed to provide notice to City of a safety incident or situation occurring on the Recreational Areas which led to the damage, loss, or injury. District makes no warranties or representations as to the safety or security of the Recreational Areas, or District's Safety Measures. City may, at its sole cost, supply, provide, establish, maintain, and operate its own safety measures, protocols, personnel, or systems to encourage and ensure the security of City, its agents, officers, employees, licensees and invitees, and the Recreational Areas ("**City's Safety Measures**"); provided, however, that City must obtain prior written approval from District prior to employing City's Safety Measures and provided that all of City's Safety Measures are compatible with District's Safety Measures.
- 15.1. **Accident/Incident Reporting.** City shall keep written accident/incident reports in accordance with City's usual practices and in compliance with any applicable City policies, including its record retention schedule, and any other applicable laws. Any accident/incident reports relating to the facilities on the Recreational Areas shall be provided to District at District's request. City shall notify District of incidents requiring notification to the City's Risk Manager per City's policies or practices and any related written accident/incident reports shall be provided to District at District's request. District shall provide City with notice of incidents that may implicate the City's maintenance obligations on the Recreational Areas, including any accident/incident reports if applicable.
- 15.2. Submission of written accident/incident reports shall be made pursuant to the section entitled "Notices" and by email to District's Director of Maintenance, Operations & Transportation.
16. **Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly and initially by representatives of the Parties in the following manner:
- 11.1 If a dispute should arise, an authorized representative for each Party will meet or teleconference within fourteen (14) calendar days of written notification of the dispute to resolve the dispute. Prior to such meeting or teleconference, the Party bringing the dispute will draft and submit to the other Party a written description, including any factual support,

of the disputed matter. After receiving this written description, the other Party will provide a written response to such written description within a reasonable period of time.

- 11.2 If no resolution of the dispute occurs at this meeting or teleconference, the issue will be elevated to an executive-level manager of each Party (i.e. Superintendent or higher-level executive manager for District and Assistant City Manager or higher-level executive for City). Each Party's executive-level manager will meet or teleconference as soon as practical, but, in no event, later than twenty-one (21) calendar days after the matter has been referred to them, with the initial meeting to occur at a location to be selected by the Parties.
 - 11.3 If the dispute remains unresolved after forty-five (45) calendar days from their receipt of the matter for resolution, and either Party is not willing to continue negotiations, the Parties agree to submit the dispute to nonbinding mediation.
 - 11.4 If the Parties are not able to agree on a mediator, either Party may request the American Arbitration Association or other acceptable mediation service to nominate a mediator. The Parties will share the cost of the mediator equally.
 - 11.5 In the event mediation is unsuccessful, either Party may submit such dispute to Santa Clara County Superior Court.
17. **Termination.** Termination of this Agreement may be for convenience or cause as specified below. Additionally, the Parties' right to terminate this Agreement may be exercised as to a particular School Site or Recreational Areas or any combination of School Sites or Recreational Areas.
- 17.1. **Termination for Convenience.** Either Party may terminate this Agreement by written notification one year prior to the effective date of the termination. Neither Party shall be required to provide just cause for termination in the written notification.
 - 17.2. **Termination for Cause.** Either Party may terminate this Agreement immediately for cause. Cause shall include, without limitation:
 - 17.2.1. Material violation of this Agreement by City or District; or
 - 17.2.2. Any act by City exposing District to liability to others for personal injury or property damage; or
 - 17.2.3. City is adjudged a bankrupt, City makes a general assignment for the benefit of creditors or a receiver is appointed on account of City's insolvency.
 - 17.3. Either Party may allow a time period for the defaulting Party to "cure" the default, at the non-defaulting party's sole discretion. If District terminates for cause, City's rights in the Recreational Areas shall terminate upon City's receipt of notice of termination from District. Upon receipt of District's notice of termination, City shall surrender and vacate the Recreational Areas in the condition required under this Agreement. This Agreement may also be terminated by a judgment specifically providing for termination.
 - 17.4. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District and/or City.
 - 17.5. Upon termination of this Agreement, City shall be responsible to restore the Recreational Area(s) to the condition required by the School Site Attachments hereto.

- 17.6. Notwithstanding the foregoing, such termination shall have no effect on City's rights under the following agreements:
- 17.6.1. The Agreement for the Mutual Construction, Ownership, Maintenance, and Operation of a Sports Center (currently Whisman Sports Center), dated May 28, 1992;
 - 17.6.2. The Agreement Between Mountain View Whisman School District and the City of Mountain View for the Design and Construction of the Permanente Creek Trail Extension from Rock Street to W. Middlefield Road (Crittenden Middle School Site), dated June 21, 2016;
 - 17.6.3. The Joint Ownership and Use Agreement for the Graham School Gymnasium (currently Mountain View Sports Pavilion), dated October 16, 1984;
 - 17.6.4. The Inter-Agency Disposition and Development Agreement (DDA) Between the City of Mountain View and Mountain View-Whisman School District Park Area/Reservoir Project Graham Middle School, dated October 1, 2013; and
 - 17.6.5. The Agreement Between the City of Mountain View and Whisman School District, Santa Clara County, State of California, for Joint Use of the Whisman School Site for Park and Recreation Purposes, dated February 17, 1994.
- 17.7. Additionally, such termination shall have no effect on the City's and the public's rights of use contained in the School Site Attachments for:
- 17.7.1. The restrooms at Mariana Castro Elementary School & Gabriela Mistral Elementary School, Crittenden Middle School, Graham Middle School, Amy Imai (formerly Huff) Elementary School, Edith Landels Elementary School, Stevenson/Theuerkauf Elementary Schools, and Jose Antonio Vargas Elementary School; and
- 17.8. If District terminates for convenience or for cause, the City shall be reimbursed for the costs of any construction/improvements/amenities on the Recreational Areas and referenced in the School Site Attachments that are not removed by City upon any such termination. The price to be paid by the District to the City shall be a sum equal to the installation costs (e.g., all costs incurred in connection with installation, including, but not limited to, labor, materials, and equipment) of the item(s) constructed by City in the Recreational Areas, less one-twenty-fifth (1/25) of the installation costs for each year or part of a year that has elapsed following the installation by City of the improvements.
18. **Indemnification.** To the fullest extent permitted by California law, each Party shall defend, indemnify, and hold harmless the other Party, its agents, representatives, officers, employees, and trustees (the "indemnified parties") from any and all losses, liabilities, claims, suits, and actions of any kind, nature, and description, including, but not limited to, attorneys' fees and costs, directly or indirectly arising out of, on account of, connected with, or resulting from, this Agreement and/or the indemnifying Party's operation, condition, use or occupancy of the Recreational Areas, all improvements thereon, and all areas appurtenant thereto.
19. **Insurance.** City and District shall each maintain comprehensive general Liability Insurance in the amount of Ten Million Dollars (\$10,000,000) combined single limit to protect City and District, their officers, agents, servants and employees against claims for bodily injury, and property damage arising from City's or District's participation in the activities described herein. The form of such

insurance shall be satisfactory to City and District and may include self-insurance at levels acceptable to both Parties. Each Party's policy or policies shall name the other as additional insured.

20. **Signs.** City may, at City's sole cost, have the right and entitlement to place a sign on the Recreational Areas to advertise City's uses, provided City obtains the prior written approval and consent of District of all aspects of any sign, including the location, size, verbiage and appearance of each sign. District's approval and consent shall not be unreasonably withheld. Any signs shall be at City's cost and in compliance with the local ordinances pertaining thereto. In connection with the placement of City's signs, District agrees to cooperate with City in obtaining any governmental permits which may be necessary. Throughout the Term of this Agreement City shall, at its sole cost and expense, maintain the signage and all appurtenances in good condition and repair. At the termination of this Agreement, City shall remove any signs which it has placed on the Recreational Areas and shall repair any damage caused by the installation or removal of City's signs.
21. **Surrender of Agreement Not Merger.** The voluntary or other surrender of this Agreement by City, or a mutual cancellation thereof, shall not work a merger and shall, at the option of District, terminate all or any existing subleases or sub-tenancies, or operate as an assignment to District of any or all subleases or sub-tenancies.
22. **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 personally delivered or sent by overnight delivery service, addressed as follows:

District: Mountain View Whisman School District 1400 Montecito Avenue [200 San Pierre Way] Mountain View, CA 94403 Attn: Chief Business Officer	City: City of Mountain View City Hall 500 Castro Street (P.O. Box 7540) Mountain View, CA 94039 Attn: Community Services Director
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Any notice personally given 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.

23. **Subcontract, Assignment and Sublease.** City shall not have the right, voluntarily or involuntarily, to assign, license, transfer or encumber this Agreement or sublet all or part of the Recreational Areas. Any purported transfer shall be void and shall, at District's election, constitute a default. No consent to transfer shall constitute a waiver of the provisions of this Section.
24. **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.
25. **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 that any action or proceeding brought to enforce the terms and conditions of this Agreement shall be maintained in Santa Clara County.
26. **Compliance with All Laws.** District and City shall comply with all requirements of all governmental authorities, in force either now or in the future, affecting the Recreational Areas, and shall faithfully observe in use of the Recreational Facilities all laws, regulations and ordinances of these authorities, in force either now or in the future including, without limitation, all applicable federal, state and local laws, regulations, and ordinances pertaining to air and water quality,

hazardous material, waste disposal, air emission and other environmental matters (including the California Environmental Quality Act (“CEQA”) and its implementing regulations) and all District policies, rules and regulations (“Environmental Laws”).

- 26.1. District declares that, to the best of its knowledge and to the knowledge of its governing board members, officers, employees, and agents or contractors, that there are no environmental hazards and/or toxic substances of any kind on or near the Recreational Areas.
- 26.2. District and City shall not cause or permit any Hazardous Material to be generated, brought onto, used, stored, or disposed of in or about the Recreational Facilities and any improvements by District and City or its respective agents, employees, contractors, subtenants, or invitees, except for limited quantities of standard office, classroom and janitorial supplies (which shall be used and stored in strict compliance with Environmental Laws). District and City shall comply with all Environmental Laws. As used herein, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Materials" includes, without limitation, petroleum products, asbestos, PCB's, and any material or substance which is (i) defined as hazardous or extremely hazardous pursuant to Title 22 of the California Code of Regulations, Division 4.5, Chapter 11, Article 4, section 66261.30 et seq., (ii) defined as a "hazardous waste" pursuant to section (14) of the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq. (42 U.S.C. 6903), or (iii) defined as a "hazardous substance" pursuant to section 10 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 et. seq. (42 U.S.C. 9601). As used herein, the term "Hazardous Materials Law" shall mean any statute, law, ordinance, or regulation of any governmental body or agency (including the U.S. Environmental Protection Agency, the California Regional Water Quality Control Board, and the California Department of Health Services) which regulates the use, storage, release or disposal of any Hazardous Material.
- 26.3. District and City will promptly notify the other Party in writing if either Party has or acquires notice or knowledge that any Hazardous Substance has been or is threatened to be, released, discharged, disposed of, transported, or stored on, in, or under or from the Recreational Facilities in violation of Environmental Laws. Each Party shall promptly provide copies to the other Party of all written assessments, complaints, claims, citations, demands, fines, inquiries, reports, violations or notices relating to the conditions of the Recreational Facilities or compliance with Environmental Laws. Each Party shall promptly supply the other Party with copies of all notices, reports, correspondence, and submissions made by City to the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and any other local, state, or federal authority that requires submission of any information concerning environmental matters or Hazardous Substances pursuant to Environmental Laws. Each Party shall promptly notify the other Party of any liens threatened or attached against the Recreational Facilities pursuant to any Environmental Laws.
- 26.4. District and District's agents, servants, and employees including, without limitation, legal counsel and environmental consultants and engineers retained by District, may (but without the obligation or duty to do so), at any time and from time to time, on not less than ten (10) business days' notice to City (except in the event of an emergency, in which case, no notice will be required), inspect the Recreational Facilities to determine whether City is complying with City's obligations set forth in this Section, and to perform environmental

inspections and samplings, during regular business hours (except in the event of an emergency) or during such other hours as District and City may agree.

- 26.5. City shall indemnify, defend (by counsel reasonably approved in writing by District), protect, release, save and hold harmless District and District Parties from and against any and all Claims arising from any breach of City's covenants under this Section.
27. **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.
28. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, legal representatives, successors, and assigns.
29. **Counterparts.** This Agreement and all amendments and supplements to it may be executed in counterparts, and all counterparts together shall be construed as one document.
30. **Captions.** The captions contained in this Agreement are for convenience only and shall not in any way affect the meaning or interpretation hereof nor serve as evidence of the interpretation hereof, or of the intention of the Parties hereto.
31. **Severability.** Should any provision of this Agreement be determined to be invalid, illegal or unenforceable in any respect, such provision shall be severed and the remaining provisions shall continue as valid, legal and enforceable.
32. **Incorporation of Recitals and Attachments.** The Recitals and each Attachments attached hereto are hereby incorporated herein by reference.
33. **Modification.** This Agreement, or any Attachments attached hereto, may be amended in writing signed by both City and District. Any modification to this Agreement, or any Attachments attached hereto, shall be prepared by City at no cost to District. City's Council and District's School Board must approve the Agreement and Attachments and any changes or modifications thereto. Notwithstanding the foregoing, changes to the School Site Attachments to reflect the City's construction/improvements/amenities under Section 17.8 of this Agreement shall not be considered an amendment or modification subject to the requirements of this Section 33 if such construction/improvements/amenities have prior written approval of the District in accordance with the section herein entitled "Alterations and Improvements".
34. **Authorization to Sign Agreement.** Each individual executing this Agreement on behalf of City represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of City in accordance with a duly adopted resolution of City's Council, and that this Agreement is binding upon City in accordance with its terms, and City shall, concurrently with its execution of the Agreement, deliver to District upon its request a certified copy of a resolution of its Council authorizing the execution of this Agreement. Each individual executing this Agreement on behalf of District represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of District and this Agreement is binding upon District in accordance with its terms.

ACCEPTED AND AGREED on the date indicated below:

Dated: _____, 2023

Dated: _____, 2023

Mountain View Whisman School District

City of Mountain View

By: _____

By: _____

Print Name: _____

Print Name: _____

Print Title: Superintendent

Print Title: City Manager

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