

AGREEMENT NO: _____

DESCRIPTION: **AGREEMENT BETWEEN THE AUBURN AREA RECREATION AND PARK DISTRICT AND THE COUNTY OF PLACER**

THIS AGREEMENT is made and entered into this _____ day of _____, 2021, by and between the COUNTY OF PLACER, hereinafter referred to as "COUNTY", and the AUBURN AREA RECREATION AND PARK DISTRICT, hereinafter referred to as "ARD", to provide funding for baseball field renovations at Recreation Park in Auburn, California.

WHEREAS, COUNTY has received funds for public parks and recreation facilities pursuant to California Government Code Section 66477, commonly known as the Quimby Act, and Placer County Code Sections 15.34.010, 16.08.100 and/or 17.54.100 (D); and,

WHEREAS, Meadow Vista Park is a 22-acre park in Meadow Vista; and,

WHEREAS, Meadow Vista Park is owned and operated by ARD; and,

WHEREAS, ARD has identified the replacement of the playground structure at Meadow Vista Park as a priority based on the poor current conditions of the current equipment; and,

WHEREAS, both ARD and COUNTY find that the aforesaid improvements will serve to promote the safety of the park users of Meadow Vista Park.

WHEREAS, the Project will provide improvements to the accessible path of travel as well as ADA compliance for the new playground structure.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES HEREIN CONTAINED, IT IS AGREED AS FOLLOWS:

1. COUNTY grants to ARD Park Dedication Fees in an amount not to exceed **Sixty Thousand and no/100 Dollars (\$60,000.00)** (the "Funds"). Funds shall be released on a reimbursement basis. After the improvements are complete, COUNTY shall perform an audit of all expenses incurred. COUNTY will also physically inspect the facility before releasing any funds.
2. ARD shall use the Funds to procure and install a new playground structure and appurtenant path of travel and fall protection amenities, therefore replacing the existing playground structure at Meadow Vista Park (the "Project" or "Improvements").
3. Prior to beginning work on this Project, ARD shall submit plans and/or specifications to COUNTY for review to verify the work to be done is consistent with the scope of work specified in this Agreement.
4. ARD shall post a sign near the Improvements during the term of this Agreement recognizing County funding was used to pay for a portion of Project costs.
5. Construction shall be completed by December 31, 2022, unless COUNTY grants an extension in writing.

6. ARD shall comply, to the extent applicable, with the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.) with regard to its use of the Funds received hereunder.
7. ARD, at its sole cost and expense, shall obtain all necessary permits, provide all utilities for the Improvements and shall operate, maintain, and repair the Improvements during the term of this Agreement.
8. All Improvements purchased and/or installed by ARD pursuant to this Agreement shall become the sole and separate property of ARD as of the time said Improvements are installed.
9. ARD agrees the Funds shall not be used for any purpose not specified in this Agreement.
10. ARD shall keep detailed accounting records. COUNTY shall have the right to inspect said records at any reasonable time.
11. The term of this Agreement shall be for a period of ten (10) years commencing on the _____ day of _____, 2021 and ending on the _____ day of _____, 2031. Either party may terminate this Agreement, without cause, upon providing a minimum sixty (60) days advanced written notice to the other party. If ARD cancels this Agreement during the ten (10) year term, ARD shall reimburse COUNTY a specified percentage of the actual amount granted by COUNTY to ARD, not to exceed the amount specified in Section 1, in accordance with the following schedule:

| <u>Years in use</u> | <u>Percent Reimbursed</u> |
|---------------------|---------------------------|
| 1 | 90 |
| 2 | 80 |
| 3 | 70 |
| 4 | 60 |
| 5 | 50 |
| 6 | 40 |
| 7 | 30 |
| 8 | 20 |
| 9 | 10 |
| 10 | 0 |

12. All notices to either Party that may be required or authorized by this Agreement shall be in writing and either deposited in the United States Mail, postage prepaid, or personally delivered. The notice shall be effective upon the date of personal delivery or date of mailing. Notices regarding this Agreement shall be sent or delivered to ARD or COUNTY at:

COUNTY: Placer County Parks Administrator
County of Placer
Department of Parks & Open Space
3091 County Center Dr., Ste 220
Auburn, CA 95603

ARD/Remit To: District Administrator
Auburn Recreation District

123 Recreation Drive
Auburn, CA 95603-5427

13. ARD hereby agrees to protect, defend, indemnify, and hold COUNTY free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by COUNTY incident to, in connection with, or arising directly or indirectly out of, this Agreement, including but not limited to the completion of the Project and subsequent use of the Improvements. ARD agrees to investigate, respond to, provide defense for, and defend any such claims, demands, or suits at the sole expense of ARD. ARD also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. As used in this section, the term COUNTY means Placer County or its officers, agents, employees, and volunteers. This section shall survive expiration or termination of this Agreement.

14. This Agreement shall inure to the benefit of, and bind the parties hereto, and their successors and assigns, including any and all public agencies to which the real property and facilities herein referred to may be transferred by reason of incorporation, annexation, unification, consolidation or for any other reason.

15. If any provision of this Agreement, as applicable to either party, or to any other person or circumstance, is for any reason held to be invalid, it shall not affect the validity of any other provision of this Agreement.

16. Any waiver of any covenant, obligation or requirement under this Agreement must be in writing and signed by both parties. Waiver by either party of a breach of any covenant or a waiver of any obligation of this Agreement shall not constitute a waiver of any subsequent breach or obligation of this Agreement.

17. This is an integrated Agreement and contains all of the terms, conditions, understandings and promises of the parties. The terms of this Agreement may not be modified except upon the mutual written consent of the parties.

18. Each person executing this Agreement on behalf of a party represents and warrants that such person is duly and validly authorized to do so on behalf of the entity which it purports to bind

19. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when affixed together shall constitute but one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
by the persons duly authorized on behalf of the governing boards of the parties hereto.

Auburn Area Recreation and Park District (ARD)

By: _____ Date: _____
Title:

Placer County (COUNTY)

By: _____ Date: _____
Director of the Department of Public Works

Approved as to Form:

By: _____ Date: _____
Placer County Counsel

Approved as to Funds:

By: _____ Date: _____
Placer County Auditor

Exhibit A: Insurance Requirements

* * * * *

EXHIBIT A
INSURANCE REQUIREMENTS

1. ARD shall file with COUNTY concurrently herewith a Certificate of Insurance, in companies acceptable to COUNTY, with a Best's Rating of no less than A- VII showing.

2. WORKER'S COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than one million dollars (\$1,000,000) each accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit for bodily injury by disease, and one million dollars (\$1,000,000) each employee for bodily injury by disease.

If there is an exposure of injury to ARD'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer".

Waiver of Subrogation - The workers' compensation policy shall be endorsed to state that the workers' compensation carrier waives its right of subrogation against the County, its officers, directors, officials, employees, agents or volunteers, which might arise by reason of payment under such policy in connection with performance under this agreement by the ARD.

ARD shall require any of its contractors and subcontractors to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the County upon demand.

3. GENERAL LIABILITY INSURANCE:

- A. Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of ARD, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

- (1) Contractual liability insuring the obligations assumed by ARD in this Agreement.

- B. One of the following forms is required:

- (1) Comprehensive General Liability;
- (2) Commercial General Liability (Occurrence); or
- (3) Commercial General Liability (Claims Made).

- C. If ARD carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

→One million dollars (\$1,000,000) each occurrence
→Two million dollars (\$2,000,000) aggregate

- D. If ARD carries a Commercial General Liability (Occurrence) policy:

- (1) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
→One million dollars (\$1,000,000) for Products-Completed Operations
→Two million dollars (\$2,000,000) General Aggregate

- (2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be two million dollars (\$2,000,000).

- E. Special Claims Made Policy Form Provisions:

ARD shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of COUNTY, which consent, if given, shall be subject to the following conditions:

- (1) The limits of liability shall not be less than:

→One million dollars (\$1,000,000) each occurrence (combined single limit for bodily injury and property damage)
→One million dollars (\$1,000,000) aggregate for Products Completed Operations
→Two million dollars (\$2,000,000) General Aggregate

- (2) The insurance coverage provided by ARD shall contain language providing coverage up to one (1) year following the completion of the contract in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims-made policy.

Conformity of Coverages - If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all policies shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the County as noted above. In no cases shall the types of polices be different.

4. ENDORSEMENTS:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific language:

- A. "The County of Placer, its officers, agents, employees, and volunteers are to be covered as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Agreement."
- B. "The insurance provided by the ARD, including any excess liability or umbrella form coverage, is primary coverage to the County of Placer with respect to any insurance or self-insurance programs maintained by the County of Placer and no insurance held or owned by the County of Placer shall be called upon to contribute to a loss."
- C. "This policy shall not be changed without first giving thirty (30) days prior written notice and ten (10) days prior written notice of cancellation for non-payment of premium to the County of Placer"

5. AUTOMOBILE LIABILITY INSURANCE:

Automobile Liability insurance covering bodily injury and property damage in an amount no less than one million dollars (\$1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned, non-owned, and hired automobiles/trucks.

6. ADDITIONAL REQUIREMENTS:

Premium Payments - The insurance companies shall have no recourse against the COUNTY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles - The ARD shall be responsible for all deductibles in all of the ARD's insurance policies. The maximum amount of allowable deductible for insurance coverage required herein shall be \$25,000.

ARD's Obligations - ARD's indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Verification of Coverage - ARD shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ARD's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Material Breach - Failure of the ARD to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.