

MEMORANDUM OF UNDERSTANDING

This is a Memorandum of Understanding ("MOU") between the City of Davis, a municipal corporation ("City") and the Davis Joint Unified School District (DJUSD) ("Organization") working in partnership with Davis Kids Klub (DKK), a community recreation enrichment program ("Organization"). The effective date of this MOU is the date approved by the Davis City Council.

This MOU sets forth the understandings concerning the relationship between the City and DJUSD, partnered with Davis Kids Klub (DKK), regarding certain real property owned by the City, commonly known as the Redwood Building.

RECITALS

WHEREAS, City owns certain real property, commonly known as the Redwood Building, located at 1001 Anderson Street in Davis, California; and

WHEREAS, the Organization desire to enter into agreement with the City to receive non-exclusive access to, and use of, the Redwood Building, for purposes of providing a place for its staff and participants to conduct recreational enrichment activities afterschool; and

WHEREAS, this Memorandum of Understanding formalizes the relationship with the Organization, relative to the ongoing use of the Redwood Building as described herein:

1. The City shall provide ongoing access to the Redwood Building, Mondays, Tuesdays, Thursdays and Fridays, from 2:30 to 6:00 pm, and Wednesdays from 1:30 to 6:00 pm, effective with the start of the 2019-20 school year, excluding weekends and school holidays;
2. The ongoing access to the Redwood Building is not exclusive, and is granted in coordination with the monthly use by the high school for Friendship Days (Sept. 13, Oct. 18, Nov. 8, Dec. 8, Jan. 17, Feb. 7 and March 7) from 7:30 am to 3:00 pm. Future dates of use during the 2020-21 school year have yet to be determined;
3. Additional dates that the facility will be unavailable and/or have partial availability will be Friday, December 20, 2019 (after 5:00 pm), Monday, March 2, 2020, Tuesday, March 3, 2020 and Friday, December 18, 2020 (after 5:00 pm);
4. The ongoing access to the Redwood Building is for the sole purpose of providing afterschool enrichment activities to elementary aged youth not to exceed 50 persons;
5. Ongoing access to the Redwood Building shall include the use of existing tables and chairs in the facility, storage space for office and craft supplies and access to AV storage as needed;
6. Said Organizations are financially responsible for any and all direct staffing and/or equipment rental costs associated with their facility use;
7. Said Organizations must still provide to the City a current insurance certificate endorsing the City as an additional insured;

8. Said Organization is subject to the general availability of the rental facility and all approved reservation and cancellation policies as set forth by the City Council each year.

WHEREAS, the parties wish to enter into a mutually beneficial long-term relationship:

NOW, THEREFORE, in consideration of the mutual conditions, promises and covenants hereinafter contained, the parties set forth the following understandings:

UNDERSTANDINGS

1. **Incorporation of Recitals.** The recitals set forth above, and all defined terms set forth in such recitals and in the introductory paragraphs preceding the recitals, are hereby incorporated into this MOU as if set forth herein in full.
2. **Term.** This MOU constitutes the entire agreement between the City and the Organizations with respect to subject matter hereof for a two (2) year term upon same terms and conditions as provided in this agreement for each additional year. This MOU supersedes all prior agreements, oral or written.
3. **Authorized Uses.** Subject to the terms and conditions of this MOU, including those contained in **Exhibit A**, the City hereby grants to the Organizations permission to use the Redwood Building on a non-exclusive basis. Without limiting the foregoing, the Organizations shall use the Redwood Building only for afterschool enrichment activities. The Organizations shall not assign or sublet this MOU or any of its terms and conditions under this MOU to any other organization or entity without the written consent of the City, which may be withheld and/or deemed void.

Approved facility use as described in the above recitals must be used on an annual basis, and cannot be accumulated from year-to-year. Additionally, facility use requests beyond that which is included in the above recitals, shall be charged at the Community Group/Co-Sponsored rate, and are subject to the approved reservation and cancellation policies as set forth by the City Council each year. The City may give scheduling preference to one group over another based on traditional or historical use of that facility.

A maximum of two (2) keys shall be provided to designated representatives of the Organization by the Community Services Supervisor. The City will charge said organization \$50.00 for any keys that are lost. The City shall issue additional keys to the Organizations, as needed, upon written request by said Organizations to the Parks & Community Services Director. Approval is at the discretion of the Parks & Community Services Director.

4. **Operation Costs.** Except as otherwise specified in this section, the City shall pay all costs for ongoing operation and maintenance of the rental facility, including without limitation, all electrical, landscaping, maintenance and repair costs with the exception of damages caused by Organization's use of the facility. The Organizations are responsible for City staffing, facility and equipment rental costs. The City shall provide facility access for each approved

facility use as requested in advance by said Organizations. These additional costs are at the sole expense of said Organizations.

Current Fee Schedule would be \$200 refundable deposit, \$15/hour facility rental fee for an ongoing user, plus any direct staffing or equipment use fees. These fees are subject to change per City Council on annual basis.

5. **Scheduling and Payments.** Any fees or charges assessed to the Organizations shall be paid to the City within thirty (30) days of receipt of notice. If a charge is not paid within thirty (30) days of notice, the City may terminate this MOU.
6. **Equipment and Props.** The Organizations are responsible for the safety of their equipment, supplies and materials. All of the Organization's materials are subject to a safety inspection by City representatives. The City is not responsible for any damage or loss to said materials or equipment. The City of Davis reserves the right to prohibit the use of any materials, property or equipment that is deemed by the City to be unsafe. Equipment judged to be unsafe must be brought up to minimum standards before being used, or must be removed from the premises. Use of any weapons (including knives or swords), firearms, explosives and other pyrotechnical effects, open flames or lasers must have prior written permission by the City. Open flames, candles, and/or pyrotechnic effects are NEVER allowed in or near carpeted areas. Hay/straw bales are not allowed.

If the Organizations desire to use equipment or decorations listed as "Unauthorized Equipment," the Organizations shall submit a request to use or install unauthorized equipment or decorations at the facility in writing to the City at least two weeks prior to the date of use. The Community Services Supervisor shall review the Organization's request and determine whether the unauthorized equipment or decorations proposed to be used or installed is appropriate for the Organization's use of the facility and meets the City's safety and use concerns. The Community Services Supervisor shall consider such factors as the necessity of the unauthorized equipment or decorations for the Organization's use of the facility, the potential damage that could be caused to the facility and surrounding City property from the use or installation of the equipment, and whether any alternative equipment could be used or installed in lieu of the equipment or decorations the Organizations propose to use or install.

7. **Improvements.** The Organizations agree to make no alterations, additions or improvements to the Redwood Building without first obtaining the City's written consent, which consent will not be unreasonably withheld. Any alterations, additions or improvements, which are approved and made shall become the property of the City.

The Organizations shall not hire or pay any person to perform work on the property without first obtaining written City approval. Any person hired or paid to perform work must comply with all prevailing wage requirements of the State of California.

8. **Maintenance and Public Safety.** The City reserves the right to close and/or restrict access to the Redwood Building for the public and/or members of the Organizations in order to

perform annual maintenance, and/or if circumstances arise which in the opinion of the City require the closure to protect public health and safety. The City reserves the right to close the facility for emergency maintenance or repairs with no prior notice to the Organizations; provided that the City shall provide notice as soon as reasonably practicable of any emergency closures.

9. **Business License.** The City of Davis requires all businesses and organizations that sell retail items to secure a City of Davis business license. Before selling any item, the Organizations shall annually secure a business license from the City of Davis. The Organizations will provide a current copy of its business license to the City annually, as part of the annual reservation requests. No food or beverage (including alcohol) sales are allowed at this facility.
10. **Insurance.** The Organizations shall, at their sole cost and expense, obtain and keep in force during the term hereof: commercial general liability insurance insuring the Organization and naming the City as an additional insured against claims for bodily injury, personal injury and property damage, providing coverage in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence, covering the activities and maintenance of the Redwood Building, with the general aggregate coverage limit applying separately to the City for the duration of this Agreement. If the aggregate limit does not apply separately to the City for the duration of this Agreement, the minimum general aggregate limit shall be TWO MILLION DOLLARS (\$2,000,000). The liability insurance certificate should state the following in the Description of Operations/Certificate Holder and Endorsement page:

- *City of Davis, its agents, directors and employees, are all included as additional insured on this policy.*

Upon execution of this MOU, the Organizations shall deliver to the City current certificates evidencing the existence and amounts of this insurance, with the additional insured required under this section. Each policy shall contain an endorsement providing that it cannot be cancelled or subject to nonrenewal or reduction in coverage except after thirty (30) days' prior written notice from the insurance company to the City. Proof of liability insurance in compliance with the terms and conditions of this section shall be provided to the City by the Organizations annually, prior to expiration of the previous insurance certification, or by May 31, whichever occurs first.

11. **Non-Discrimination.** In accordance with the City of Davis' non-discrimination policy, the Organizations agree that by using City facilities for events, meetings, fundraisers, or similar events open to the public, the Organizations shall not deny admittance to any person based on race, national origin, religion, sex, age, handicap or sexual orientation.
12. **Communication Between Parties.** The parties shall make a good faith effort to conduct all communications with one another in a positive and respectful manner. Representatives of the Organizations shall meet with City representatives on an annual basis to review and discuss terms and conditions of this MOU.

13. **Termination.** This agreement may be terminated by either party upon thirty (30) days written notice provided all fees and charges owed to the City are paid in full prior to termination. Should the agreement be so terminated by either party, the City shall have the right to resume full care of the area during the notification period. All facility keys must be returned to the City within 48 hours of terminating facility use or the facility reservation deposit shall be forfeited in its entirety.
14. **Indemnification.** The Organizations shall be solely responsible for, and shall indemnify, defend (by Counsel reasonably acceptable by the City) and hold the City, its members, officers, directors, agents, employees, volunteers and any other person acting for or on behalf of the City (collectively, the “Indemnified Parties”) harmless from and against any and all costs, claims, losses, damages, causes of action and liability which may arise by reason on any occurrence attributable to or arising out of the Organization’s use of the Redwood Building, including but not limited to failures to observe or perform any obligation of the Organization’s under this MOU or the Organization’s presence, activities, equipment, property and maintenance of the facility, including without limitation any claim or cause of action for injury to or death of any person or damage to any property arising out of any such occurrence occurring from and after the date hereof. The City shall have no liability to the Organizations, and the Organizations waive all claims against the City, arising from, or in any way related to, occurrences within the scope of the indemnity set forth in this section, except to the extent caused by the sole negligence or willful misconduct of the City or its employees.
15. **Amendments.** All future amendments to this document shall be in writing.
16. **Attorney Fees.** Should any action be brought arising out of this MOU including, without limitation, any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys’ fees and costs and expenses of investigation incurred, including those incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 of the Bankruptcy Code or any successor statutes, and any judgement or decree rendered in any such actions or proceedings shall include an award thereof.
17. **Binding Effect.** The provisions of this MOU shall inure to the benefit of and be binding upon the City and the said Organizations and their respective successors.
18. **No Waiver.** No waiver of any of the provisions of this MOU shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
19. **Governing Law and Choice of Forum.** This MOU shall be construed in accordance with and governed by the laws of the State of California as if written by both parties. Any litigation arising from this MOU shall be brought in the Superior Court of Yolo County.

20. **Captions.** The captions of this MOU are for convenience only and are not a part of this MOU and do not in any way limit or amplify the terms and provisions of this MOU.
21. **Force Majeure.** Except as otherwise provided in this MOU, if the performance of any act required by the MOU to be performed by either City or the Organizations are prevented or delayed by reason of any act of God, strike, act of terrorism, lockout, labor trouble, inability to secure materials, restrictive governmental laws or regulations or any other cause (except financial inability) not the fault of the party required to perform the act, the time for performance of the act will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.
22. **Entire Agreement.** This MOU, including **Exhibits A**, attached hereto and incorporated into this MOU by reference, constitutes the entire MOU between the City and the Organizations with respect to the subject matter hereof and supersedes all prior negotiations, oral and written.
23. **Authorized Signatory.** The Organizations hereby warrant that the persons signing this MOU on behalf of the Organizations affirmatively represent that they have the requisite legal authority to enter into this MOU on behalf of the Organizations and to bind the Organizations to the terms and conditions of the MOU.

The following persons shall be considered the key contacts for this MOU. All written correspondences shall be directed to the names listed below, and who shall be responsible for communicating to all other parties within their respective group.

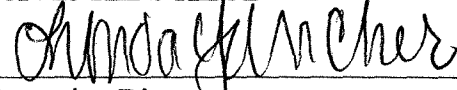
CITY OF DAVIS

Mike Webb, City Manager

Dated: _____

City of Davis
Parks & Community Services Department
23 Russell Blvd.
Davis, CA 95616
(530) 757-5626


DAVIS KIDS KLUB



Executive Director

Dated: 8-19-19

**DAVIS JOINT UNIFIED SCHOOL
DISTRICT**



Bruce Colby, Chief Business and Operations
Officer

Dated: 8-19-19

ATTEST:

Zoe Mirable, City Clerk

Dated: _____

EXHIBIT A

House Rules Redwood Building

Renters are expected to adhere to the following rules to ensure both the safety of the participants and the preservation of the building. If you have any questions regarding the guidelines set forth below, please contact Parks & Community Services at (530)757-5626 (option 2). The Davis Police Department (530) 747-5400 may be called to summon City staff for **emergencies only**. **Alcohol is not permitted at this location.**

Location: 1001 Anderson Road in Redwood Park next to Cesar Chavez Elementary

Available uses: small classes, meetings, and birthday parties. The building includes a small kitchen. Actual use may be limited by available furniture.

<u>Room</u>	<u>Maximum Users by Use</u>	<u>Available Furniture:</u>
Multipurpose Room	Approximately 1,300 square feet	60 chairs
Dining	50 persons	4 eight foot tables
Seating	60 persons	1 five foot oval table
Assembly-no tables/chairs	60 persons	

General

- All participants must be supervised by the renter, in all areas of the facility, at all times.
- **Renter is responsible for checking out and returning** the building keys from the Parks & Community Services Office at 23 Russell Boulevard. If a key is not picked up and City staff is summoned to open the building, there will be a **\$100.00 non-refundable charge each time someone is called out.**
- If a key is not returned, the renter is responsible to pay the lost key charge.(Deposit may not be refunded)
- It is the responsibility of the renters to understand the limitations of the building and its furniture/equipment.
- All items brought into the facility must be removed (i.e. taken home or thrown away) from the facility at the end of the day, or unless otherwise pre-arranged with the City.
- Decorations/furniture cannot block or obstruct any exits. Decorations may not cause damage to the building.
- Furniture may not be removed from the building.
- Vehicles are not allowed in the Cesar Chavez parking lot during school hours.
- Vehicles are not allowed to drive in the park without a Drive in Park City permit. This permit is for drop off and pick up only.
- Full use of refrigerator cannot be guaranteed due to City recreation programs using the facility.

Set-Up and Clean-up

- Clean all tables and counters.
- Sweep, mop, and vacuum.
- Take the garbage out to the outside trash cans.
- Replace the tables, chairs, and other equipment back to their original locations.
- Remove all food from the facility.

Before Leaving Facility

- Turn off all lights, oven and stove.
- Set the Heating and A/C timer at zero.
- Lock all doors and windows.
- Leave the facility in the same condition in which it was found. Failure to do so could result in a charge to the damage/cleaning deposit.