

**DAVIS JOINT UNIFIED SCHOOL DISTRICT
AND
DAVIS PARENT NURSERY SCHOOL
FACILITY USE AGREEMENT**

This Agreement, made this _____, 2015 (“Effective Date”) by and between DAVIS PARENT NURSERY SCHOOL ASSOCIATION, a nonprofit corporation hereinafter called DPNS, and the Davis Joint Unified School District, a California public school district, hereinafter called the DISTRICT;

RECITALS:

1. The DISTRICT operates an Adult Education Program called the Davis Adult School, and offers parent education classes through such Adult School.
2. DPNS has established and is operating a nursery school which serves as a laboratory for parent education courses offered under the Adult Education Program.
3. Since 1951, the DISTRICT and DPNS have participated in a mutually satisfactory arrangement which has involved DPNS operation and maintenance of laboratory nursery schools for the Adult Education Program at several sites within the DISTRICT.
4. The DISTRICT AND DPNS entered into a Facility Use Agreement Effective July 6, 1995 that covered DPNS’s use of classrooms at the DISTRICT’s Susan B. Anthony Administrative Center and the DISTRICT’s land located at 426 West Eighth Street (“1995 Agreement”).
5. As a result of changed circumstances, the DISTRICT and DPNS agree to terminate the 1995 Agreement and replace it with this Agreement to delete DPNS’s use of the Susan B. Anthony Administrative Center site under this Agreement, and to revise certain terms pertaining to the 426 West Eighth Street site and more fully described herein.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

I. Termination of 1995 Agreement.

- A. On the Effective Date the DISTRICT and DPNS agree that the 1995 Agreement is hereby terminated and replaced with this Agreement.

II. Building and Grounds.

- A. The DISTRICT shall license to DPNS land located at 426 West Eighth Street (“Land”), as follows:

A square plot of land, 200 feet x 200 feet, located in the northeast corner of the property purchased from Elizabeth Esther Jameson, located on the south side of West Eighth Street in the City of Davis, California, situated opposite the Parkside subdivision, and shown as Parcel No. 1-643-01 in the Yolo County Recorder’s Office.

- B. Said Land shall be used by DPNS for the primary purpose of providing additional laboratory nursery school facilities. The license fee for the use of the Land shall be Five Dollars (\$5.00) per year, payable upon execution of this Agreement. Nothing contained in this Agreement shall limit the right of the DISTRICT to sell or otherwise dispose of the Land described above, or any part thereof, at any time and for any reason, provided the DISTRICT gives notice of at least six (6) months to DPNS. In the event of such sale or disposal, the DISTRICT, shall make reasonable efforts to assist DPNS in locating suitable alternative facilities, but shall have no obligation to provide any such facilities. To the extent permitted by laws and regulations then in effect governing the sale of real property by school districts, DPNS shall have a right of first refusal in the event the DISTRICT decides to sell.
- C. In the event any modifications of the facilities located on the Land are required, DPNS agrees to submit all site improvement and development plans to the Davis Adult School Director and subsequently to the Associate Superintendent of Business Services for written approval prior to commencing any such site improvement or development projects.

III. Term of Agreement/Termination.

- A. The DISTRICT shall make the above described Land available to DPNS for an uninterrupted period from the date hereof through June 30, 2020. Thereafter, this agreement shall renew automatically for additional terms of twelve (12) months each, commencing July 1 until either party elects to terminate this agreement earlier pursuant to Section III.B. hereof.
- B. DPNS or the DISTRICT may terminate this agreement with respect to the facilities and grounds described above by giving written notice of at least six (6) months of the intention to terminate. Notwithstanding the foregoing, the DISTRICT may terminate this agreement in its entirety on thirty (30) days written notice to DPNS upon the occurrence of any of the following events,
 - 1. DPNS ceases to be a non-profit corporation;
 - 2. DPNS ceases to use the facilities for the operation of nursery school classes and appropriate parent education classes;
 - 3. DPNS fails to maintain the insurance required by this agreement; or
 - 4. DPNS violates any term of this Agreement. Provided, however, that if DPNS cures any such default not later than thirty (30) days after receipt of such notice, such termination shall not take effect.

IV. Program Responsibilities.

- A. DPNS shall operate nursery school sessions at the above-described location in accordance with the provisions of the DPNS Association Bylaws relating to

nursery school programs in effect on the effective date of this Agreement. A copy of said Bylaws are attached hereto as Exhibit A, and incorporated herein by this reference.

V. Indemnification and Insurance.

- A. Except as otherwise provided herein, DPNS shall hold the DISTRICT harmless from all damages, costs, expenses and attorneys fees arising out of any injury to any person, including wrongful death of a person, or to property, occurring in, or about the facilities, except that, with respect to any activity on any of the facilities which is operated by or at the direction of the DISTRICT acting independently of DPNS, the DISTRICT *shall hold* DPNS harmless for all damages, costs and expenses and attorneys fees arising out of any injury to any person, including the wrongful death of a person, or to property, occurring in, or about the facilities.
- B. DPNS at its cost shall maintain insurance as follows:
 - 1. Public Liability and Property Damage Insurance with liability limits of not less than One Million Dollars (\$1,000,000.00) per person and One Million Dollars (\$1,000,000.000) per occurrence, and property damage limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, insuring against all liability of DPNS, its agents and employees arising out of and in connection with DPNS use of the premises under this agreement and arising out operations of DPNS, including all uses of premises covered by this agreement by third parties with DPNS' consent. Such insurance shall insure performance by DPNS of the indemnity provisions of this agreement.
 - 2. Workers Compensation Insurance as required by applicable statute.
 - 3. Automobile Liability Insurance covering owned, non-owned and hired vehicles with liability limits of not less than Three Hundred Thousand Dollars (\$300,000.00) per person and Three Hundred Thousand Dollars (\$300,000.00) per occurrence, and property damage limits of not less than Fifty Thousand Dollars (\$50,000.00) per occurrence. Such insurance shall insure performance by DPNS of the indemnity provisions of this agreement.
- C. DPNS shall provide the District with Certificates of Insurance evidencing insurance per Section V.B.1-3 above. All such certificates shall provide that there will be no cancellation or modification of coverage without thirty (30) days written notice to the DISTRICT. All insurance required by this Section V shall carry endorsements naming the DISTRICT and its governing board and its officers, employees, agents and volunteers as an additional insured.
- D. This Agreement is made upon the express condition that DPNS agrees to hold the DISTRICT harmless as set forth in Section V.A. hereof and to obtain the above described insurance. Failure to obtain and maintain such insurance in force at all

times, and to promptly indemnify the DISTRICT as herein provided, may be treated as a material breach of this Agreement.

VI. Assignment and Permitted Use.

DPNS shall not assign its interest in this Agreement, nor shall DPNS permit any other person or entity to occupy or use all or any part of the premises described in this Agreement except as provided for in this Agreement, without the prior written consent of the DISTRICT. DPNS shall not attempt to lease or sublease all or any part of the premises described in this Agreement. Any assignment, or permission to use, or purported lease or sublease shall be void. Nothing contained in this section shall limit the right of DPNS to use the premises located at 426 West Eighth Street in ways incidental to the educational purposes of DPNS, and to permit such premises to be put to other occasional uses not interfering with the educational use of the building by DPNS.

VII. Amendment of Bylaws.

Bylaw amendments affecting program effectiveness or responsibilities made subsequent to the Effective Date of this Agreement shall not operate to alter the obligations of the parties under this Agreement unless this Agreement is thereafter amended to reflect such change in the Bylaws.

VIII. Termination.

- A. Upon termination of the use of DPNS of the premises located at 426 West Eighth Street, DPNS may, at its option, remove the improvements and fixtures located thereon, provided that all resultant injuries to the premises and any remaining improvements are completely remedied and DPNS complies with the reasonable requirements of the DISTRICT respecting the resultant appearance of the property. If DPNS exercises this option, it shall have six (6) months within which to remove the improvements and fixtures and to restore the property as herein provided. Any improvement or fixture not removed within such time shall be the property of the DISTRICT.
- B. Nothing contained in this Agreement shall preclude the DISTRICT from terminating this agreement should future legislation or regulation significantly alter the existing legal relationship of DPNS and the DISTRICT or if the agreement is contrary to law.

IX. Independent Contractor.

The parties hereto expressly agree that DPNS is an independent contractor and not an agent or servant of the DISTRICT.

X. Governing Law.

This agreement shall be construed in accordance with, and governed by, the laws of the State of California.

XI. Severability.

If any provision(s) of this agreement or the application of such provision to any person or circumstances shall be held invalid, the remainder of this agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby.

XII. Notice.

Any notice or other communication in this agreement provided or permitted to be given by any party to another must be in writing given by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid, and registered or certified with return receipt requested, or by delivering the same in person to the party or to an officer of such party. Notice deposited in the mail in the manner hereinabove described shall be deemed given seven (7) days after the date of deposit thereof in the United States mail, for purposes of notice, the address of the parties shall be as follows:

DPNS:

Davis Parent Nursery School
426 West Eighth Street
Davis, CA 95616

DISTRICT:

Davis Joint Unified School District
526 B Street
Davis, CA 95616

WHEREFORE, the parties have executed this agreement as of the date first above written.

DISTRICT:

DAVIS JOINT UNIFIED SCHOOL DISTRICT

BY: _____
District Superintendent

DPNS:

DAVIS PARENT NURSERY SCHOOL ASSOCIATION

BY: _____
President