



MEMORANDUM

TO: Bobby Glover and Sandy Bonato, Land and Facility Development Committee

FROM: Recreation Superintendent, Tina Young

DATE: September 16, 2016

RE: September 27, 2016 - Land and Facility Development Committee Meeting

Review and Recommendation Regarding Entering into a Maintenance Agreement for Chilpancingo Park with Merlone Geier Partners (MGP X DVC, LLC)

Attached is an updated red-line version by Legal Counsel, Curt Kidder, with revisions noted from the 8/23 meeting. The goal is for the Committee to approve this draft so we can send to Merlone Geier Partners to review.

Review and Recommendation Regarding Proposed Tree Preservation Policy for Pleasant Hill Recreation and Park District

It was discussed at last month's meeting as to how we will enforce the policy. Attached is an updated draft of the policy with further suggestions by the Committee on 8/23 and further suggestions by Counsel, Curt Kidder.

Review and Recommendation Regarding Proposed Operator Agreement for Rodgers Ranch Historical Site with Rodgers Ranch Heritage Center

Attached is the most recent draft of the Operator Agreement for Rodgers Ranch Historical Site. I have a meeting set at Rodgers Ranch Heritage Center, on September 29th with Board Members from Rodgers Ranch Heritage Center, Northern California Unit of the Herb Society of America, Historical Society, and the Contra Costa Succulent Garden Club to go over the agreement in more detail and to make sure we can address any questions they may have before we take this to the Board for approval.

PLEASANT HILL RECREATION AND PARK DISTRICT

MANAGEMENT MAINTENANCE AGREEMENT--CHILPANCINGO PARK

THIS MAINTENANCE MANAGEMENT AGREEMENT is made and entered into as of _____, 2016, by and between the Pleasant Hill Recreation and Park District, a Special District of the State of California ("District"), and MGP X DVC, LLC, a Delaware limited liability company ("MGP"), regarding the management of Chilpancingo Park.

RECITALS

A. The District owns the park located on Golf Club Road in Pleasant Hill, California, commonly known as Chilpancingo Park (the "Park" or "Premises"), as shown on the Chilpancingo Park site plan, which is attached hereto as Attachment A and incorporated herein by reference, and as legally described in and pursuant to certain Grant Deed documents (collectively, "Deeds"), copies of which are attached hereto as Attachment B and incorporated herein by reference.

B. MGP currently owns and manages a mixed-use real estate project development located adjacent to the Park premises commonly known as the Diablo Valley Plaza Shopping Center (the "Shopping Center"). MGP also owns an approximate .46 acres parcel of land adjacent to the Park which MGP intends to develop as a dog park ("Dog Park").

C. MGP desires to manage, maintain and improve the Park to continue to provide community recreation and park facilities to the public and to improve its appearance, usability and safety so as to enhance the marketability, safety and ambience of the Shopping Center.

D. This Maintenance Management Agreement is to set forth the understandings and agreements of the parties and the terms and conditions by which MGP will manage, maintain and improve the Park.

NOW, THEREFORE, for good and valuable consideration, and faithful performance of the terms and conditions and covenants contained herein, the parties agree as follows:

1. **Maintenance of Park and Management**. District hereby engages MGP, subject to the terms and conditions stated herein, to manage, maintain and improve the Park under the direction of and in cooperation with the District. The Premises shall be used and managed maintained and improved solely and strictly for community recreation and park purposes as required by the California Public Resources Code (Sections 5780 et seq.) and in accordance with the Deeds. ~~MGP shall manage, maintain and improve the Premises as a community park, allowing members of the public to enter on to and use it during regular park hours for recreation purposes and for no other use ("Permitted Use").~~ While MGP is engaged on a non-exclusive basis to maintain, manage and improve the

Park hereby, it shall remain the property of the District and MGP shall not acquire any ownership, title and/or occupancy rights of any kind to the Premises under this Maintenance Agreement or otherwise.

~~2. Condition of Premises. MGP acknowledges that it has inspected the Park prior to the commencement of the term of this Management Agreement and is aware of the condition of the Premises. MGP agrees to accept the Park in its present condition, "As-Is", and District is not required to make any improvements, alterations, betterments or repairs to the Premises prior to MGP's performance of services under this Management Agreement.~~

32. Term. The term of this Maintenance Agreement shall be for a period of ten (10) years commencing on January 1, 2017, unless terminated earlier or extended pursuant to the terms herein ("Term"). MGP may request to extend the Term ~~for up to six (6) periods of five (5) years each~~ by giving written notice thereof at least three (3) months prior to the expiration of the Term to District. District shall ~~review such request and~~ provide a written response within sixty (60) days after receiving MGP's request. Any extension of the Term shall be upon the same terms and conditions contained herein, except as otherwise agreed to by the parties and documented as an amendment to this agreement.

43. Termination. This Maintenance Agreement may be terminated without cause by either party upon six (6) months written notice. This Maintenance Agreement may also be terminated by either party in the event the other party fails to perform any of its duties or obligations hereunder. The party seeking to terminate this Maintenance Agreement shall give the defaulting party written notice and an explanation of the defaulting party's failure of performance hereunder. Following receipt of such notice, the defaulting party shall have a period of sixty (60) days within which to correct said default. If the defaulting party fails to correct the default within said sixty (60) day period, then this Maintenance Agreement shall terminate.

Unless otherwise agreed to by the parties, MGP shall, within sixty (60) days following the expiration of the Term or the sooner termination of this Maintenance Agreement, remove all of its personal property ~~and fixtures~~ from the Premises, including ~~furniture~~, equipment, tools, vehicles, supplies, materials and other items of personal property. If MGP fails to remove all of its personal property ~~and fixtures~~ from the Premises at the end of the sixty-day period, then the District may dispose of or use it for its own purposes without any payment to MGP. MGP shall leave the Park in good condition and repair as determined by the District; District may require MGP to repair any damages to the Premises. Upon termination of this Maintenance Agreement, neither party shall have any further obligations to the other, except as stated otherwise herein.

54. Maintenance Fee. The District shall not pay MGP a maintenance fee or compensation of any kind for its services hereunder. ~~MGP, in further consideration of the rights provided hereby, agrees to (i) construct and/or install the improvements to the Park as set forth in the Park Improvement Plan as provided in Paragraph 6.1 herein, (ii) perform the repairs and maintenance obligations as provided in~~

~~Paragraph 7 herein, (iii) indemnify the District as required under Paragraph 11 herein, and (iv) perform the other duties and obligations set forth herein.~~

65. Improvements and Alterations.

a) Park Improvement Plan: District and MGP hereby approve MGP's proposed plan of improvements to the Park, entitled "Park Improvement Plan", which is attached hereto as Exhibit "C" and incorporated herein by reference. Any change(s) to the Park Improvement Plan shall be agreed to in writing by the parties and documented by an amendment to the plan. Any such improvements shall be installed or constructed at MGP's sole cost. Upon expiration or termination of this Agreement, all such improvements shall become the property of District without any payment of funds or other consideration to MGP.

b) Major Alterations or Improvements. MGP shall obtain prior written approval from the District before making any other major alterations or improvements to the Park. A major alteration or improvement shall include, but not be limited to, anything in, to or about the Premises that materially change the basic features of the Park beyond the scope of the approved Park Improvement Plan, including without limitation, construction of benches, common use shade structures or enclosures or similar scope of improvements or material changes to the walking trails and other features of the Park; ~~which are consistent with the Permitted Use~~. MGP shall provide District a written request to perform the alteration or improvement, along with plans and specifications and a site plan showing the location of the alteration or improvement. District may impose conditions of construction with its approval of the request. MGP may, in its request to perform an alteration or improvement, also request to temporarily close and/or fence off a portion of the Park as reasonably required for the purpose of constructing the alteration or improvement. Upon expiration or termination of this Agreement, all such major alterations or improvements shall become the property of District without any payment of funds or consideration to MGP.

c) Minor Alterations or Improvements: Minor alterations or improvements may be made without the prior written approval of the District; however, MGP shall provide prior written notification to the District of any such alteration or improvement and comply with the other requirements herein.

d) Works of Art: MGP shall, prior to the placement, installation or construction of any work of art, including, but not limited to statues, sculptures, metalwork and fountains, submit a request to District for approval of such work of art. The request shall include a representation of the work of art and a site plan showing the location of its placement, installation or construction. District may impose conditions on the placement, installation or construction of the work of art. Upon termination of this Agreement, MGP shall remove all works of art from the Park, except as otherwise agreed to by District.

e) Permits and Approvals: MGP shall be responsible for obtaining all required permits and approvals, if any, before starting work on any improvements identified in the Park Improvement Plan, any major or minor alterations or improvements to the Park

and/or work of art. MGP understands and acknowledges that the work on any improvements set forth in the Park Improvement Plan, major or minor alterations or improvements or work of art may constitute "public work" subject to the requirement of the payment of prevailing wages and compliance with certain reporting requirements pursuant to the provisions of the California Labor Code and other procurement requirements contained in the Public Contract Code and the Public Resources Code.

f) Ownership: Except as otherwise provided herein, all alterations and improvements to the Park resulting from repairs, restoration, alterations and improvements constructed or installed by MGP shall become a part of the Premises; MGP shall have no interest in such alterations and improvements upon termination of this ~~Maintenance~~ Agreement and shall receive no payment from the District therefor. ~~MGP's personal property and fixtures, including furniture, office equipment, exhibits, supplies, artifacts, souvenirs, memorabilia and merchandise, placed on the site by MGP shall remain the property of MGP and the District shall obtain no right or interest in such personal property and fixtures, except as otherwise provided herein.~~

~~g) District Alterations and Improvements: The District may perform any alterations or improvements to the Park, but is not otherwise obligated to do so under this Maintenance Agreement. In such case, the District will coordinate the performance of such improvements or modifications with MGP.~~

hg) Signs: Except as provided herein, MGP shall not place any commercial signs, including, but not limited to signs advertising a business, event or product, at the Park. ~~MGP may place other signs at the Park without~~ the prior written consent of the District and compliance with all applicable governmental requirements and District policies and procedures. MGP shall submit to the District documentation and information showing the sign, its size, materials and location of installation or posting. Any such sign installed or posted shall be removed upon the termination of this ~~Maintenance~~ Agreement, unless otherwise agreed to by District. MGP may, without District's consent, install reasonable way-finding signage and other similar signage consistent with ~~the intent and scale of the Permitted Use and in accordance with~~ all applicable laws and required permits and District policies and procedures.

ih) Liens: MGP shall not allow, and District shall not be responsible for, any Stop Payment Notice or ~~mechanics~~ lien of any kind recorded or filed against the Premises arising from work performed, or materials supplied to the Premises by or for MGP or MGP's agents, employees, contractors, subcontractors or materialmen. MGP agrees to indemnify and hold harmless District from and against any such Stop Payment Notice and liens, and MGP shall bond off or pay the same within 10 business days after MGP receives notice of same.

76. Maintenance and Repairs.

a) MGP's Obligations: ~~Except for District's obligations set forth herein,~~ MGP ~~shall agree,~~ at its expense, to keep the Park in good quality condition and repair at all

times and in any event in accordance with District's park maintenance standards and the requirements expressly set forth in the Deeds. MGP's maintenance obligations shall include, without limitation, (i) cleaning, maintaining and repairing the trails, (ii) keeping the Premises free of refuse and unreasonable obstruction and properly drained, (iii) maintaining, replacing and as necessary restoring the landscaping; (iv) maintaining and repairing the existing utility systems serving the Premises; (v) maintaining and repairing any approved work of art; (vi) repair or replace broken, bent or weathered signs; (vii) repair and replace fencing as required; (viii) promptly removing graffiti; (ix) maintaining existing lighting fixtures as operational at all times; (x) providing pedestrian connectivity between the Park, the Shopping Center, the Dog Park and the associated bicycle trail system; and (xi) providing and managing security for the Park. MGP may, in consultation with District, remove trees in accordance with good landscaping practices (e.g., without limitation, if the same are diseased or dead, etc.), provided that, notwithstanding its routine maintenance obligations set forth herein, MGP has no obligation to remove or replace ~~or restore~~ existing trees currently located on the Premises.

~~b) — District Obligations: District shall replace, restore and/or as necessary install trees on the Premises.~~

~~cb)~~ MGP agrees shall to be responsible for keeping the Premises in compliance with applicable laws, including without limitation the Americans with Disabilities Act of 1990 and related laws.

87. Utilities. MGP shall be responsible for the payment of all utilities provided to the Park premises, including, but not limited to electricity, gas, water and garbage removal ("Utilities"). District will provide MGP an invoice for the cost of Utilities on a monthly basis and MGP shall pay said costs within thirty (30) days thereafter.

98. Entry/Use by District. Notwithstanding any other provision of this ~~Maintenance~~ Agreement, the District, by this Maintenance Agreement, does not cede to MGP or abrogate any of its authority or rights to own, manage, operate and control the Park. As such, the District and its employees, agents, representatives and contractors shall have unrestricted access to the Park for any purpose, including, but not limited to inspecting the Premises to determine whether MGP is performing its agreed upon duties and obligations under ~~in compliance with the terms and conditions of~~ this agreement, performing alterations and improvements and ~~to doing~~ other acts that may be necessary to protect the health and safety of Park users and District's ownership of the Park. The District may, ~~with reasonable notice to MGP,~~ use the Park, or portions thereof, for District activities and events; the District shall provide MGP notice of such activities or events as appropriate. Absent its negligence or willful misconduct, MGP shall not be responsible for any injuries, damages or losses occurring at the Park as a result of District's use of the Park.

9. Use by MGP. MGP may use the Park, or portions thereof, for activities and events in compliance with District policies and procedures, including obtaining a park use permit or other District approval and the payment of any applicable use fee.

10. Insurance.

a) Fire and Casualty Loss Insurance: MGP shall maintain fire and casualty loss insurance on all personal property that is ~~placed or stored~~~~contained~~ within the Park's ~~structures~~. All insurance proceeds paid as a result of damage to or loss of such personal property shall be payable to MGP. MGP shall be solely responsible to direct appropriate insurance proceeds to the rightful owners of any such personal property. MGP shall supply evidence of adequate insurance coverage to the District on an annual basis. The District will not provide insurance on any of the personal property located within the Park's ~~structures~~.

~~The District shall maintain fire and casualty loss insurance on any and all Park structures, including all additions and improvements to the Premises. All insurance benefits paid as a result of damage to or loss of any structures shall be the property of the District. The District will use such insurance proceeds to repair and restore the Park to its condition prior to such casualty loss, unless otherwise determined by District.~~

b) Liability Insurance: MGP shall obtain and maintain throughout the Term General Liability insurance to protect MGP and the District against liability for injury or death of any person or damage to the Park in connection with MGP's ~~use, operation, management, maintenance and~~ improvement ~~and maintenance~~ of the Site and for the indemnity provided hereby. The limits of said insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. MGP's liability insurance shall be primary to the insurance coverage provided by the District and shall include an additional insured endorsement naming the District, its Board of Directors, officers, agents and employees. ~~The District shall insure the Park in the same manner the District insures its other recreational facilities and parks.~~

c) Workers Compensation Insurance: MGP shall obtain and maintain throughout the Term Workers' Compensation Insurance as required by State law.

11. Indemnity. MGP agrees to indemnify, defend and hold harmless the District, its Board of Directors, officers, agents, and employees from and against any and all claims, demands, causes of actions, suits, and other damages, costs, and expenses, including attorney and expert fees, for any injury to or death of any person, loss or damage to property and any other loss or damage arising out of or resulting from MGP's ~~use, operation, management, maintenance and/or~~ improvement ~~and/or maintenance~~ of the Park and from MGP's duties and obligation under this ~~Maintenance~~ ~~agement~~ Agreement. MGP's indemnity obligation shall commence upon the receipt of a demand or claims of injury, damage or loss and the District shall provide any such demand or claim to MGP's upon receipt. MGP's indemnity obligation hereunder shall not apply to claims, demands, causes of action, losses, damages, liabilities, costs or expenses which are caused by the sole active negligence or willful misconduct of the District.

12. Assignment. MGP shall not assign any of its rights, duties or obligation under this agreement without the prior written consent of District. MGP's request to assign any of

its right, duties or obligations hereunder shall be accompanied by sufficient information as may be required by District in reviewing the request.

13. Compliance with Laws. MGP, in its performance of the ~~management,~~ maintenance and improvement of the Park, shall comply with all applicable laws, including, but not limited to the Americans with Disabilities Act of 1990 and the rules and regulations promulgated thereto.

14. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests and/or other communications under this Maintenance Agreement by either party to the other shall be in writing and either personally delivered and/or sent by mail to the following address:

For the District:
General Manager
Pleasant Hill Recreation and Park District
147 Gregory Lane
Pleasant Hill, CA 94523

For MGP:
MGP X DVC, LLC
c/o Merlone Grier Mgmt., LLC
425 California Street, 10th Floor
San Francisco, California 94104-2113

15. Administration of Agreement. Designated representatives of both the District and MGP will meet on at least an annual basis at the District's administrative offices to review MGP's performance under this Maintenance Agreement. The parties may agree to revisions hereof ~~the Agreement~~ which shall be documented as amendments hereto.

16. Integration. The parties understand and agree that this Maintenance Agreement contains the entire agreement between them and that all prior understandings and agreement, oral or written, of whatsoever nature, regarding the ~~use, operation,~~ management, maintenance and improvement ~~and maintenance~~ of the Park are superseded by the Maintenance Agreement and are of no further force or effect.

17. Amendments. This Maintenance Agreement may be amended by a written amendment executed by each of the parties.

18. Governing Law. This Maintenance Agreement shall be interpreted and enforced pursuant to the laws of the State of California. Any action to interpret or enforce the terms hereof shall be filed in the Superior Court of the County of Contra Costa. In any such action, the prevailing party shall be entitled to an award of reasonable attorney's fees.

IN WITNESS WHEREOF, this Maintenance Agreement has been duly executed by the representatives of the District and MGP as of the date first above written.

PLEASANT HILL RECREATION AND PARK DISTRICT

By: _____
General Manager

Date: _____

MGP X DVC, LLC

By: _____

Date: _____

By: _____

Date: _____

DRAFT

Proposed Tree Preservation Policy for PHRPD

It shall be the ~~stated~~ policy of PHRPD to preserve all existing healthy trees growing on District property. District trees shall only be pruned or removed in a manner consistent with this policy.

Tree Pruning:

Tree Pruning, trimming or thinning shall be performed by District staff on an as needed basis to address specific health and/or safety issues that exist with the tree involved. Branches of District trees that extend over adjoining properties may only be pruned, trimmed or thinned by the owners of such properties if (i) the owner has received the prior written consent of the District, (ii) the pruning, trimming or thinning will not, as determined by District staff or a certified arborist, affect the health of the tree, and (iii) the owner has obtained any necessary permit required by the City of Pleasant Hill or County of Contra Costa.

Tree Removal:

~~All District trees removal shall only be removed in compliance with the municipal City of Pleasant Hill Ordinances No. 880, which is attached hereto as Attachment No. 1, for trees located within of the City of Pleasant Hill that has jurisdiction over the location on which the tree exists. All District trees located outside of Pleasant Hill City limits will comply with the or~~ Contra Costa County Tree Ordinance No. 816, which is attached hereto as Attachment No. 2, for trees located outside of the City of Pleasant Hill.

~~Tree r~~Removal of living trees will be considered after District staff receivesing a letter report by a certified arborist addressing the health/condition of the tree, the rationale for removal, the feasibility of any alternatives to removal, and any recommendations for replacement trees.

The criteria for ~~T~~tree R~~r~~emoval shall be as set forth in City of Pleasant Hill Ordinance No. 880 or Contra Costa County Tree Ordinance No. 816, as applicable, and include the following:

- Health or physical condition of the tree;
- Any potential hazard or any risk presented by the tree determined using the ANSI A-300, part 9 Standard for Tree Risk Assessment;
- Potential for the tree to be a detriment to other protected trees due to its location, overcrowding, or its health;
- Evidence of significant damage to property caused , or likely to be caused, by the tree;
- Whether the tree is located in close proximity to a structure in a high fire hazard area and removal is necessary to create defensible space per applicable fire safety laws, regulations or Fire District requirements;

~~Trees growing on District properties may have limbs that extend onto adjoining properties. The owners of those properties may trim the airspace above their property providing it can be done without causing health damage to the tree. Under no circumstances shall adjoining property owners or any other person be allowed to trim or remove trees growing on District property without the express prior written approval of PHRPD.~~

Enforcement:

This policy is to be enforced pursuant to Public Resources Code Section 5786.17. Any person that trims, pruns, or thins and/or removes any District tree in violation of this policy shall be liable to the District for any damages to the tree or for the value of the tree removed and the cost of a replacement tree.

PLEASANT HILL RECREATION AND PARK DISTRICT

OPERATOR AGREEMENT
RODGERS RANCH HISTORICAL SITE

This Operator Agreement is entered this ___ day of _____, 2016, by and between the Pleasant Hill Recreation and Park District, a California special district ("District"), and Rodgers Ranch Heritage Center ("RRHC"), a California non-profit corporation, in regards to the operation and use of the Rodgers Ranch Historical Site.

RECITALS

A. The District owns the Rodgers Ranch Historical Site, located at 315 Cortsen Road, Pleasant Hill, California 94523, consisting of the Ranch House, a barn, landscaping, other improvements and open space ("Rodgers Ranch" or "Site") and as shown on the Rodgers Ranch Site Plan, which is attached hereto as Attachment A and incorporated herein by reference.

B. RRHC and its community partners, the Contra Costa Succulent Garden Club, the Northern California Unit of the Herb Society of America, Pleasant Hill Historical Society and Rodgers Ranch Urban Farm, have a primary purpose of creating community by preserving history and fostering sustainable living. RRHC, in its use and operation of portions of Rodgers Ranch, intends to work cooperatively with the District to provide for community recreational activities and the public's use and enjoyment of Rodgers Ranch through programs, displays and education of the history of the ranch and its structures and through holding community events and other uses.

C. RRHC has operated and used Rodgers Ranch since approximately 1980, has made certain improvements to the premises and has continuously provided educational and other community events to the public. RRHC intends to continue to make improvements to Rodgers Ranch and to provide educational and other community events.

D. This Operator Agreement is to set forth the understandings of the parties and the terms and conditions by which RRHC will continue to use and operate Rodgers Ranch and to restore, improve and maintain the Site.

NOW, THEREFORE, for good and valuable consideration, and faithful performance of the terms and conditions and covenants contained herein, the parties agree as follows:

1. Operation of the Site. District hereby engages RRHC, subject to the terms and conditions stated herein, to operate, improve and maintain Rodgers Ranch in cooperation with the District. The Site shall be used and operated solely and strictly for community recreation and park purposes as required by the California Public Resources Code (Sections 5780 et seq.). RRHC shall operate, improve and maintain the Site as a

community park, allowing members of the public to enter on to, attend events at and otherwise use the Site during regular park hours for recreational purposes. While RRHC is engaged on a non-exclusive basis to operate, improve and maintain Rodgers Ranch, it shall remain the property of the District and RRHC shall not acquire any ownership rights, title or occupancy rights of any kind to the Site under this Operator Agreement or otherwise.

2. Operator Parties. RRHC shall be responsible for the actions of its community partners and take such actions to ensure that they comply with the duties, terms and conditions contained herein. RRHC shall submit to the District a copy of such agreements that RRHC enters with each of its community partners to assure their compliance with this Operator Agreement. RRHC shall notify the District should any community partner terminate its use of the Site or should a new community partner be added and RRHC shall provide the District with a copy of the agreement with that community partner to assure compliance with this agreement.

3. Condition of Premises. RRHC acknowledges that it has operated and maintained Rodgers Ranch for approximately 36 years prior to the commencement of the term of this Operator Agreement and is aware of the condition of the Site. RRHC agrees to accept the Site in its present condition, "As Is", and that the District is not obligated to make any alterations, additions, betterments or repairs to the Site except as may otherwise be provided in this Operator Agreement.

4. Term. The term of this Operator Agreement shall be for a period of twenty (20) years, effective upon the full execution hereof, unless terminated earlier pursuant to the terms herein ("Term"). The Term may be extended by written agreement of the parties as approved by the District's and RRHC's Board of Directors.

The parties recognize that the capabilities and the interests of RRHC may change and that the needs of the District for recreational facilities and programs may also change during the Term. In an effort to keep this Operator Agreement consistent with those changes in operational needs, development progress and maintenance programs, it is agreed that review of this Operator Agreement will be scheduled at least at five (5) year intervals. Any changes to the Operator Agreement as a result of such review, including an extension of the Term, shall be documented by an amendment hereto.

5. Termination. This Operator Agreement may be terminated by either party upon six (6) months written notice. This Operator Agreement may also be terminated by either party in the event the other party fails to perform any of its duties or obligations hereunder. The party seeking to terminate this Operator Agreement shall give the defaulting party written notice and an explanation of the defaulting party's failure of performance hereunder. Following receipt of such notice, the defaulting party shall have a period of sixty (60) days within which to correct said default. If the defaulting party fails to correct the default within said sixty (60) day period, or to commence correction within said period when the cure will take longer than sixty (60) days, this Operator Agreement shall terminate.

Unless otherwise agreed to by the parties, RRHC shall, within sixty (60) days following the expiration of the Term or the earlier termination of this Operator Agreement, remove all of its personal property and fixtures from the Site, including furniture, office equipment, memorabilia, exhibits, supplies, artifacts, souvenirs, and merchandise. If RRHC fails to remove all of its personal property and fixtures from the Site at the end of the sixty-day period, then the District may dispose of it or use it for its own purposes without any payment to RRHC. RRHC shall leave the Site in good condition and repair as determined by the District. Upon termination of this Operator Agreement, neither party shall have any further obligations to the other, except as stated otherwise herein.

6. Operator Fee. The District shall not pay RRHC an operator fee for its services hereunder. RRHC may charge fees, in amounts approved by the District, for admission to its exhibits and displays and for its educational programming and events. Such fees shall be used to fund RRHC's the cost incurred in performing its duties and obligations hereunder. RRHC may also perform fund raising and sell merchandise as further set forth herein.

7. Use of Rodgers Ranch.

a) Use: RRHC shall use the Site to assist the District in providing community recreation activities as allowed under the California Public Resources Code and in a manner consistent with RRHC's Mission Statement, Statement of Purpose and the Master Plan, which are identified as Attachments B, C and D, respectively, and attached hereto and incorporated herein by reference. Specifically, RRHC will use the portions of the Site as follows:

- 1) Farm House:
- 2) Gardens:
- 3) Parking Lot
- 4) Community Garden

b) Special Events: RRHC may use the Site for four special events per year. RRHC shall request District approval of a special event at least sixty (60) days prior to the proposed date of the event. A special event includes conferences, expositions and festivals and similar events at which fifty (50) or more persons will attend, which could impact parking on the Site and adjacent streets or which could raise health and safety concerns. RRHC shall take the necessary actions for special events to ensure the health and safety of members of the public attending the event. The District may impose additional conditions for the holding of special events at the Site. RRHC may hold additional special events at the Site with the prior written approval of the District.

c) Supervision: RRHC shall be responsible for opening Rodgers Ranch on a daily basis and ensuring that the Site is secured at the close of Site. RRHC shall be responsible for the set-up of the Site for such programs and special events and for the break-down and cleaning of the Site following such programs and special events. RRHC

shall provide adequate supervision and security for all programs and special events to ensure the health and safety of members of the public.

c) **Signs:** RRHC shall not place any signs at Rodgers Ranch without the prior written consent of the District and compliance with all applicable governmental requirements, if any. RRHC shall submit to the District documentation and information showing the sign, its size, materials and location of installation or posting. Any such sign installed or posted shall be removed upon the expiration or termination of this Management Agreement, unless otherwise agreed to by the District.

e) **Compliance with Laws:** RRHC shall comply with all laws, rules and orders of all federal, State and local governments or agencies and the District related to its operation, improvement and maintenance of Rodgers Ranch.

8. **Repairs and Maintenance.** Except for the duties of the District stated herein, RRHC shall, at its own expense, maintain the Site in good condition and make all repairs necessary to the Site during the Term. The District shall be responsible for (i) all exterior lighting of the Site, structures, and parking area, (ii) the repair, maintenance, and regulation of the main irrigation system (but not the lateral pipes from the main irrigation system to RRHC's urban farm and other gardens and the irrigation equipment), (iii) the inspection and maintenance of existing trees on property, (iv) all trash removal services required at the Site, and (v) the installation of a natural gas line from the street to the Ranch House.

9. **Alterations and Improvements.**

a) **Major Alterations or Improvements:** RRHC shall obtain prior written approval from the District before making any major alterations or improvements to Rodgers Ranch. A major alteration or improvement shall include, but not be limited to, any work of \$5,000 or more. RRHC shall submit to the District the plans and specifications for the major alteration or improvement and any other information or documents requested by the District. RRHC, in its construction of alterations or improvements, shall comply with all applicable laws and obtain all necessary permits and approvals. RRHC understands and acknowledges that the work of alteration or improvement may constitute a "public work" subject to the requirement of the payment of prevailing wages and compliance with certain reporting requirements pursuant provisions of the California Labor Code and other procurement requirements contained in the Public Contract Code and the Public Resources Code.

b) **Minor Alterations or Improvements:** Minor alterations or improvements may be made without the prior written approval of the District; however, RRHC shall provide prior written notification to the District of any such improvements and comply with the other requirements herein.

c) **Ownership:** All modifications and improvements to Rodgers Ranch, except fixtures placed on the site by RRHC, resulting from repairs, restoration, alterations and

improvements constructed or installed by RRHC shall become a part of the Rodgers Ranch property; RRHC shall have no interest in such alterations and improvements upon termination of this Operator Agreement and shall receive no payment from the District therefor. RRHC's personal property and fixtures, including furniture, office equipment, exhibits, supplies, artifacts, souvenirs, memorabilia and merchandise, placed on the site by RRHC shall remain the property of RRHC and the District shall obtain no right or interest in such personal property and fixtures, except as otherwise provided herein.

d) **District Alterations and Improvements:** The District may perform any alterations or improvements to the Site, but is not otherwise obligated to do so under this Operator Agreement. In such case, the District will coordinate the performance of such improvements or modifications with RRHC.

10) **Utilities.** The District shall be responsible for maintaining all utilities for the Site and for external security in keeping with the District's policy for its other properties. The District shall pay for all water, sewer, gas, and electrical services provided to the Site, including that portion of those services which facilitates use of the Site by RRHC.

The District shall provide such telephone and high speed internet services at the Site as may be required for its use and/or public safety at the District's determination. Similarly, RRHC shall provide such telephone and high speed internet services at the Site as may be required for its use.

The District shall provide trash removal services required at the Site. RRHC shall be required to regularly clean up and remove trash from the areas for which it is responsible hereby and place that trash into District provided receptacles.

11. **Entry/Use by District.** The District and the District's employees, agents, representatives and contractors may enter the Site at any time to inspect the property and determine whether RRHC is in compliance with the terms and conditions of this Management Agreement and to do other lawful acts that may be necessary to protect the District's interest in Rodgers Ranch. The District shall have immediate access to the Site in emergency situations. The District may, with the consent of RRHC, use the Site, or portions thereof, for District activities and events and the parties shall coordinate the scheduling of any such event. Absent negligence or willful misconduct, RRHC shall not be responsible for any injuries, damages or losses occurring at the Site during the District's use of Rodgers Ranch.

12. **Fundraising.** RRHC may conduct such fundraising activities as may be necessary or desirable to pay expenses incurred by RRHC in meeting its duties and obligations hereunder to operate, improve and maintain Rodgers Ranch. Unless a fundraising activity constitutes a special event for which approval is required pursuant to Paragraph 6(B) above, RRHC shall obtain the District's approval of any fundraising activity at least thirty (30) days prior to the scheduled date of the event. RRHC may also solicit donations of materials, supplies, labor, and technical, architectural, and engineering services necessary for repairs or improvements to the site.

In addition, RRHC may sell souvenirs and merchandise at the Site for fundraising purposes. All monies earned by RRHC through its public fundraising efforts, programs, events, classes, sales of souvenirs and merchandise shall be used by RRHC to pay expenses for the operation, improvement and maintenance of Rodgers Ranch. The District will include the Site in its overall public awareness activities. RRHC shall submit to the District, on an annual basis on a date to be determined by the parties, a financial report detailing all RRHC revenues and expenses.

13. Insurance.

a) **Fire and Casualty Loss Insurance:** RRHC shall maintain fire and casualty loss insurance on all personal property that is contained within the Site's structures. All insurance proceeds paid as a result of damage to or loss of such personal property shall be payable to RRHC. RRHC shall be solely responsible to direct appropriate insurance proceeds to the rightful owners of any such personal property. RRHC shall supply evidence of adequate insurance coverage to the District on an annual basis. The District will not provide insurance on any of the personal property located within the Site's structures.

The District shall maintain fire and casualty loss insurance on any and all Site structures, including all additions and improvements to the Site. All insurance benefits paid as a result of damage to or loss of any Site structures shall be the property of the District. The District will use such insurance proceeds to repair and restore the Site to its condition prior to such casualty loss. If more monies are needed to restore the Site to its prior condition, then RRHC will be responsible for raising them.

b) **Liability Insurance:** RRHC shall obtain and maintain throughout the Term General Liability insurance to protect RRHC and the District against liability for injury or death of any person or damage to the Site in connection with RRHC's operation, improvement and maintenance of the Site and for the indemnity provided hereby. The limits of said insurance shall be in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate. RRHC's liability shall be primary to the insurance coverage provided by the District and shall include an additional insured endorsement naming the District, its Board members, officers, agents and employees. The District shall insure the Site in the same manner the District insures its other recreational facilities and parks.

c) **Workers Compensation Insurance:** RRHC shall report quarterly to the District the following information: the names of all volunteers, the total hours those volunteers worked during the quarter, and a brief description of the work performed. An annual report with all the above information shall be provided to the District on August 1st. These volunteers will be covered under the District's Workers Compensation program. The District shall supply this information to its worker's compensation insurance provider and/or administrator. All members of RRHC, its partners, and committees must be volunteers of the District unless agreed to in writing between the District and RRHC.

14. Indemnity. RRHC agrees to indemnify, defend and hold harmless the District, its Board of Directors, officers, agents, and employees from and against any and all claims, demands, causes of actions, suits, and other damages, costs, and expenses, including attorney and expert fees, for any injury to or death of any person, loss or damage to property and any other loss or damage arising out of or resulting from RRHC's operation, improvement and maintenance of Rodgers Ranch and from RRHC's duties and obligation under this Operator Agreement. RRHC's indemnity obligation shall commence upon the receipt of a demand or claims of injury, damage or loss and the District shall provide any such demand or claim to RRHC's upon receipt. RRHC's indemnity obligation hereunder shall not apply to claims, demands, causes of action, losses, damages, liabilities, costs or expenses which are caused by the sole active negligence or willful misconduct of the District.

15. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests and/or other communications under this Agreement by either party to the other shall be in writing and either personally delivered and/or sent by mail to the following address:

For the District:
General Manager
Pleasant Hill Recreation and Park District
147 Gregory Lane
Pleasant Hill, CA 94523

For RRHC:
Secretary
Rodgers Ranch Heritage Center
P. O. Bo 23381
Pleasant Hill, CA 94523

16. Administration of Agreement. Designated representatives of both the District and RRHC will meet on a regular basis at the District's administrative offices at mutually agreed times and dates that permit RRHC Directors to attend, accommodating the volunteer nature of the positions. The General Manager of the District, or his/her designee, shall be the District's representative with regard to the administration of this Operator Agreement, the District's interpretation hereof, and the coordination of the party's rights and responsibilities hereunder. The General Manager, or his/her designee, may grant such approvals, waivers and extensions of time as may be necessary or desirable to carry out the intent of this Operator Agreement. Further, the General Manager, or its designee, shall be solely responsible for the supervision and scheduling of work and activities on behalf of the District, with regards to the Site and its structures.

17. Integration. The parties understand and agree that the Operator Agreement contains the entire agreement between them and that all prior understandings and agreement, oral or written, of whatsoever nature, regarding the operation, improvement and maintenance of Rodgers Ranch are superseded by this Operator Agreement and are of no further force or effect.

18. Amendments. This Operator Agreement may be amended by a written amendment executed by each of the parties.

19. Governing Law. This Operator Agreement shall be interpreted and enforced pursuant to the laws of the State of California. Any action to interpret or enforce the terms hereof shall be filed in the Superior Court of the County of Contra Costa.

IN WITNESS WHEREOF, this Operator Agreement has been duly executed by the representatives of the District and RRHC as of the date(s) written below.

PLEASANT HILL RECREATION AND PARK DISTRICT

By: _____
General Manager

Date: _____

RODGERS RANCH HERITAGE CENTER

By: _____
Secretary

Date: _____