

REDEVELOPMENT AGENCY OF MIDVALE CITY, UTAH

RESOLUTION NO. 2020-10-RDA

**A RESOLUTION AUTHORIZING THE EXECUTION OF A USAGE AGREEMENT
BETWEEN THE AGENCY AND JUST DON'T QUIT FOUNDATION PERTAINING TO
THE USAGE OF THE BASKETBALL COURT OWNED BY THE AGENCY**

WHEREAS, the Redevelopment Agency of Midvale City (the "Agency") was created to transact the business and exercise the powers provided for in the Utah Redevelopment Agencies Act;

WHEREAS, the Agency owns the basketball court located at 695 West 5th Avenue Midvale, Utah, referred to in the Usage Agreement as the "Rec Site";

WHEREAS, the Rec Site is believed to be currently underutilized by the public, and the Agency has concerns with going through an RFP process to sell the Rec Site in the midst of the pandemic;

WHEREAS, Just Don't Quit Foundation ("JDQF") is interested in sponsoring events at the Rec Site, including workshops, trainings, games, and tournaments related to pickleball, basketball, and wheelchair basketball; and

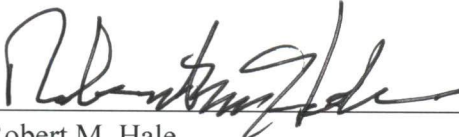
WHEREAS, Measures can and will be taken to ensure the safe enjoyment of those recreational activities.

This Resolution shall become effective immediately upon passage thereof.

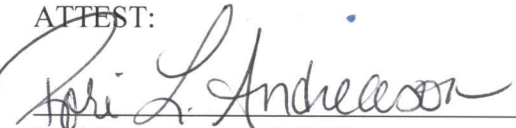
NOW THEREFORE BE IT RESOLVED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY, that the Board of Directors does hereby enter into the Usage Agreement with Just Don't Quit Foundation (attached hereto as Exhibit A) which relates to the usage of the Rec Site, located at 695 West 5th Avenue.

PASSED AND ADOPTED BY THE REDEVELOPMENT AGENCY OF MIDVALE CITY BOARD OF DIRECTORS, this 18th day of August, 2020.




Robert M. Hale
Chief Administrative Officer


Kane Loader
Executive Director

ATTEST:

Rori L. Andreason, MMC
Secretary

Voting by the Board of	"Aye"	"Nay"
Directors:		
Bryant Brown	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Glover	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Quinn Sperry	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Paul Hunt	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Dustin Gettel	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Exhibit A:

USAGE AGREEMENT

THIS USAGE AGREEMENT is made and entered into this _____ day of _____ 2020, by and between **MIDVALE CITY REDEVELOPMENT AGENCY**, a redevelopment agency created under Utah law (the “Agency”), and **JUST DON’T QUIT FOUNDATION** (“JDQF”), a nonprofit organization registered with the IRS and governed by US Internal Revenue Code 501(c)(3), in contemplation of the following facts and circumstances:

A. **WHEREAS** the Agency exercises its functions and powers and is organized and existing under the provisions of the Limited Purpose Local Government Entities -- Community Reinvestment Agency Act, Section 17C-1-101, et seq., Utah Code 1953, as amended from time to time (the “Act”) and is authorized and empowered there under to undertake various activities and actions pursuant to the Act;

B. **WHEREAS** the Agency approved, and Midvale City (the “City”) through its City Council adopted, the Main Street Community Development Area (“CDA”) Plan on November 17, 2015 (the “Project Area Plan”), which covers that certain real property located in Midvale City, Utah, as depicted in the Project Area. The CDA will be a tool the Agency will use to direct development efforts in the area. The CDA will also act as a catalyst to increase the pace at which development in the area occurs;

C. **WHEREAS** the Agency owns two parcels of land at 695 West 5th Avenue on Main Street in Midvale, (Parcel ID #s 21253070010000 and 21253070020000) located immediately to the east of the Midvale Senior Citizens Center. The parcels (“Agency Rec Site”) add up to 0.32 acres and are open to the public for recreational uses, including basketball and pickleball;

D. **WHEREAS** the Agency Rec Site appears to be underutilized and in need of some superficial improvements, and the Agency wishes to increase public enjoyment from and interaction with the site. This aligns with the aims of the Midvale Main Street Small Area Plan and the Midvale City Housing Plan, which both encourage improving the access to recreational opportunities in the area; and

E. **WHEREAS** JDQFF is a nonprofit organization which focuses on increasing public engagement in recreational activities including pickleball, basketball, and wheelchair basketball. In a proposal submitted to the Agency on July 20, 2020, JDQF stated that they will, “Promote and preserve Open Spaces on Old Town Main Street, through a Pilot Program that introduces new Recreational Amenities and Activities that develop an identity for Midvale City and the community it serves.”

NOW, THEREFORE, the parties hereby agree as follows:

1. **Use of the Agency Rec Site.** The Agency will allow the Just Don’t Quit Foundation to use the Agency Rec Site according to the following conditions. The Agency will prevent counter programming from occurring by not allowing any other nonprofit or private entity from reserving the Rec Site during the duration of the Agreement.

1.1 **Scheduling.** JDQF will schedule and reserve the Agency Rec Site at no cost through communicating with the Agency’s Executive Assistant. The Executive Assistant will maintain

a calendar, available online, that will detail the dates and times that JDQF has events scheduled. JDQF must reserve the Agency Rec Site at least 48 hours in advanced. When not reserved, the Agency Rec Site will be available to the public for use.

1.2 **Agency Rec Site Use.** JDQF may reserve the Agency Rec Site to hold pickleball lessons and workshops, sponsor pickleball scrimmages and tournaments, other similar activities for basketball and wheelchair basketball, and introduce potential sponsors and other interested parties to pickleball and JDQF. This also includes complementary activities like stretching, yoga, or light weight training.

1.3 **Vendor Tents.** JDQF will meet with local businesses and invite them to exhibit, sell, promote, and market their goods and/or services at events. This will help increase community engagement. Recreation participants will become more familiar with the local businesses in the area while local businesses will have the opportunity to engage with participants and advertise their businesses. JDQF is permitted to host up to four different vendors on the Agency Rec Site at vendor tents. The vendor tents may be erected prior to scheduled events and must be broken down after events have concluded. Vendor tents may be erected an hour before a scheduled event and must be broken down and stored away no more than an hour after an event has ended.

1.4 **Public Use.** When the Agency Rec Site is not reserved by JDQF, it is open for public use. JDQF may not limit or restrict use of the space by the public in any way. To ensure the public can access and use the Agency Rec Site, JDQF will break down and store off-site all equipment, tables, speakers, nets, and poles related to their operations and activities.

1.5 **Hours & Noise.** Per Chapter 8.01A, of the Midvale Municipal Code related to noise ordinance, the Agency Rec Site may not be used for events between the hours of 10:00 pm and 7 am. JDQF will be familiar with and strictly adhere to all aspects of the Municipal Code that may or may not limit certain on-site activities.

1.6 **Public Health Orders.** JDQF's activities at the Agency Rec Site must follow any public health orders in effect by the State of Utah or the Salt Lake County Health Department.

2. **Agency Contribution.** The support from the Agency to JDQF is limited to use of the Agency Rec Site without requiring compensation. The City will continue to provide the same level of service and upkeep to the Agency Rec Site as it does now.

3. **Lighting.** Any lighting improvements made to the Agency Rec Site must be in compliance with the City's code, Section 17.7-11.6(H).

4. **Painting.** JDQF may repaint the pickleball court outlines on the Agency Rec Site. If JDQF desires to change where the current courts' lines are located, JDQF must receive express permission from the Agency to carry out any form of works on site. All requests to the Agency must be made in writing and addressed to the Agency Director. JDQF may rearrange court outlines after receiving express permission from the Agency. JDQF may use chalk or dissolvable paints on the Rec Site near the perimeters of the pickleball courts and the non-volley zones of the pickleball courts.

5. **Power.** JDQF may request a temporary power line from Rocky Mountain Power. JDQF is responsible for the temporary power line, including paying for the utility, maintaining it, and ensuring it remains in a state of good repair. JDQF must arrange for and see to the removal of the line at the termination of the agreement. JDQF will be responsible for all bills and payments related to this utility for the duration of this agreement and until the utility has been removed from site. This includes any subsequent time after termination of this agreement should JDQF fail to remove the service upon

termination. The Agency accepts no responsibility for any fees incurred in providing utility services to the site beyond the already existing services provided as an element of this agreement.

6. **Shade.** JDQF is permitted to install six poles in the Agency Rec Site for the purpose of supporting a shade structure. The poles may not extend more than twenty (20) feet from the ground. The poles must be easily removable. When not in use, JDQF must cover the holes created to support the poles. The material used to shade the courts must be in good repair and may in no way diminish the appearance of the area. It is the responsibility of JDQF to ensure that the shade structure is satisfactorily secured when erected to ensure the safety and wellbeing of all patrons of the site and members of the public who will be in the immediate area of the erection. The instillation of any shade structures must conform with the applicable land use requirements.

7. **Signs.** JDQF may post an A-Frame sign to advertise their involvement, advertise events, and invite participation. JDQF must ensure that the placement of any signage will not impede pedestrians, in particular those who require added space (such as wheel chair users) or that it will not be a visible obstruction such that it may act as a visual barrier to obstruct the line of sight for motorists at any street junction. JDQF may post signs facing the interior of the Rec Site that are not visible from the street.

8. **Fencing.** JDQF may erect temporary fencing along the perimeter of the Rec Site. JDQF may also temporarily install a windscreen on no more than 40 percent of the existing fencing. All fencing improvements (including windscreens) must be approved by the City Community Development Department.

9. **Allowable Uses.** JDQF is not authorized to make any changes, permanent or temporary, to the Agency Rec Site that are not explicitly stated in this usage agreement. JDQF must limit its use of the Agency Rec site to the uses listed in Section 1. If JDQF wishes to use the Agency Rec Site for any other purpose other than those listed in Section 1, it must first submit a written request to the Agency and receive approval. JDQF is responsible for the payment of any expenses incurred with any uses expressly permitted by the Agency. JDQF may beautify the Rec Site by planting flowers, small plants, and laying down artificial grass near the perimeter of the Res Site. JDQF must receive approval from the City's Community Development Department prior to plating.

10. **Indemnification.** JDQF recognizes that sports are inherently dangerous activities and that its participants play at their own risk. JDQF agrees to defend, indemnify, and hold harmless the Agency and its officials, officers, employees, volunteers, and all others acting on Agency's behalf from and against all damages, liabilities, and claims relating to JDQF's activities, its performance under this Agreement, and its use of the Agency Rec Site.

11. **Terminating the Usage Agreement.** This usage agreement will terminate at the earliest of the following to occur:

11.1 **Required Usage.** JDQF is required to use the Agency Rec Site when it schedules and reserves it for events. If JDQF fails four times within a 30-day period to utilize the Agency Rec Site when it has been reserved, it will cause this usage agreement to become null and void.

11.2 **Unauthorized Usage.** JDQF makes unauthorized alterations to the Agency Rec Site or uses the Agency Rec Site for a purpose not explicitly permitted in Section 1 (with the exception of receiving written permission as stated in Section 5).

11.3 **Default.** JDQF fails to cure a default under this Agreement within 14 days of notice from the Agency except as provided under subsection 10.1 and 10.2.

11.4 **Proof of Insurance.** JDQF does not provide proof of liability insurance to the Agency within two weeks of execution of this Agreement. The comprehensive general liability insurance must be at least at the level of \$1,000,000 with respect to its activities at the Agency Rec Site. The Agency must be listed as an additional insured on the certificate.

11.5 **Length of Agreement.** The usage agreement will become valid and in effect once signed and will terminate on December 31, 2020.

12. **Sale of Agency Rec Site.** The Agency may issue a request for proposals ("RFP") to purchase and develop the Agency Rec Site while this usage agreement is still active and valid. The Agency may also accept a proposal responding to the RFP and sell the property. In such event, the Agency will stipulate, as part of the contract, that development may not occur until this usage agreement is terminated. The Agency will notify JDQF when an RFP to develop the Site is made public, and JDQF may submit a response to the Agency's RFP.

13. **Amending Usage Agreement.** Any modification to the Agreement is prohibited without prior written consent by both parties.

14. **Assignment.** JDQF may not sublease or assign any part of this Agreement without the Agency's written consent.

15. **Waiver.** Failure by either party to insist upon the strict performance of any condition of this Agreement or to exercise any right or remedy found under the Agreement does not constitute a waiver. Any party may waive any of its rights or any conditions by written notice to the other party. No waiver may affect or alter the remainder of this Agreement. Every other condition in the Agreement will remain in full force with respect to any other existing or subsequently occurring breach.

16. **Applicable Law.** The Agreement is governed in accordance with the laws of the State of Utah.

17. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day specified above.

Agency: MIDVALE CITY REDEVELOPMENT AGENCY
a municipal agency of the state of Utah

Attest: Rui L Anderson

By: Robert Hughes

Its: Chief Administrative Officer

Secretary

Approved as to form:

[Signature]
Attorney for Agency



JUST DON'T QUIT FOUNDATION,
a nonprofit organization

By: DD Crawford

Its: Creative Director

Attest: _____