

**JOINT USE AGREEMENT BY AND BETWEEN
SANTA ANA UNIFIED SCHOOL DISTRICT AND THE CITY OF SANTA ANA
(MONTE VISTA ELEMENTARY SCHOOL)**

THIS JOINT USE AGREEMENT ("Agreement") is dated as of June 28, 2012, by and between the Santa Ana Unified School District ("District"), a public school district duly organized and existing under the laws of the state of California, and the City of Santa Ana ("City"), a charter city and municipal corporation duly organized and existing under the constitution and laws of the state of California (together, "Parties").

RECITALS:

- A. The District owns and operates the Monte Vista Elementary School which is located at 2116 West Monte Vista Avenue, Santa Ana, California ("School").
- B. California Education Code §10900 et seq., authorizes District to organize, promote, and conduct programs for community recreation and to cooperate in providing community recreation programs and facilities.
- C. The District and City desire to undertake a coordinated use of the Monte Vista ball field and basketball courts in order to allow maximum use by community residents and youth sports organizations.
- D. The installation of fencing to secure the School site while providing community access to the ball field and basketball courts, and installation of security lighting is an approved use of Community Development Block Grant funds.
- E. The coordinated use of the Athletic Field is intended to benefit the families that live in the immediate vicinity of Monte Vista Elementary School.
- F. The partnership between the City and District created by this Joint Use Agreement is intended to improve general health and wellness for the residents of the Monte Vista community.

NOW, THEREFORE, for and in consideration of the mutual promises and agreements contained herein, the Parties hereto agree as follows:

- 1. **DEFINITIONS.** The following definitions shall apply to the terms as used in this Agreement:
 - A. "Joint Use Property" shall mean that certain real property and improvements thereon described in **Exhibit "A"** attached hereto.
 - B. "Joint Use Facilities" shall mean the (i) basketball courts and (ii) ball field as identified in **Exhibit "A"** attached hereto.
 - C. "Technical Advisory Committee" shall mean the committee created and appointed by the City Manager of the City and the Superintendent of the District pursuant to the Joint Use Agreement between the Parties pertaining to Godinez High School at Centennial Park. The Technical Advisory Committee shall be responsible for resolving conflicts in scheduling of the Joint Use Facilities which are the subject of this Agreement.

RT
INSURANCE NOT REQUIRED
WORK MAY PROCEED
CLERK OF COUNCIL
DATE 7-30-12

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COPY
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C: R. ONIG - PARKS
R. ONIG

- D. "Regular School Hours" shall mean 6:00 am through 4:00 pm, Monday through Friday (excluding state and national holidays observed by the District) unless changed by agreement of the Parties.
- E. "District Time" shall mean the time during Regular School Hours, when the District shall have the right to schedule use of the Joint Use Facilities.
- F. "City Time" shall mean those days and hours, outside of Regular School Hours and weekends, when the City shall have the right to schedule use of the Joint Use Facilities.
- G. "School" shall mean the specific District school identified in the above Recitals.

2. **TERM AND COMMENCEMENT.** This Agreement shall commence on September 1, 2012, and shall run for a term of 30 years. Upon the written agreement of the Parties, the term may be extended for up to two additional ten year terms.

3. **PERMITTED USE OF FACILITIES.** The rights of the City to schedule use of the Joint Use Facilities shall be determined based on the following.

- A. District Use. District shall have the right, without prior consent of the City, to schedule use of the Joint Use Facilities during Regular School Hours for both the regular school year and any summer school ("District Use").
- B. City Use. City shall have the right to schedule activities in the Joint Use Facilities during the City Time, for activities previously recommended by the Technical Advisory Committee, or for activities during Regular School Hours with the District's prior written consent ("City Use").
- C. Priority for Youth Sports. The City will utilize the Joint Use Facilities during City Time for youth sport organizations with priority given to youth sport organizations that have the greatest number of youth that live within a half-mile radius of the School. If facilities are not being utilized by youth sports organization, they will be available on a first come basis during City Time.
- D. District Priority. To the extent possible, priority will be given to a school or District use of the Joint Use Facilities during City Time. In the event that District desires to use the Joint Use Facilities outside of Regular School Hours, it agrees it will schedule use of the Joint Use Facilities through the City. If District's use preempts previously scheduled City or Youth Sports Organization, District will provide a suitable relocation site for the preempted organization.
- E. Scheduling Conflicts. To the extent scheduling conflicts cannot be resolved informally by the Parties, the Technical Advisory Committee shall be responsible for resolving conflicts in scheduling of the Joint Use Facilities at the School.
- F. City Programming. The City may conduct its own programs or do so through a third party, so long as done in the same manner and under the same conditions for programming of other City facilities and meets any applicable State or Federal anti-discrimination requirements or school-site safety standards such as prohibition of

per Education Code section 10900, et seq.. Reservation fees collected by City for City Use of the Joint Use Facilities shall be retained by City.

- G. Insurance. The City will ensure that each entity which receives from City a permit to utilize the Joint Use Facilities on City Time shall have general liability insurance coverage in the amount of at least \$1,000,000 per occurrence, and that the District and City are named as additional insureds on the applicable policies.
- H. Supervision of Joint Use Facilities.
 - 1) District shall be responsible for appropriate supervision while using the Joint Use Facilities.
 - 2) The City shall be responsible for appropriate supervision while using the Joint Use Facilities.
- I. Maintenance. The District shall be responsible for the normal maintenance of the Joint Use Facilities, such as trash pick-up, cleaning of courts, mowing lawns, edging, painting, upkeep of equipment such as nets.
- J. Repairs. District shall be responsible for repair of the Joint Use Facilities. However, District shall submit any plans for significant repairs to the Technical Advisory Committee. The Technical Advisory Committee shall review the plans and determine whether and to what extent the City will share in the cost of the significant repairs to the Joint Use Facilities. As used in this section, "significant repairs" will include, at a minimum, any repair or replacement of a component of the Joint Use Facilities that will cost in excess of fifty percent (50%) of the reasonable estimated value of the component needing repair or replacement. For example, if the value of a tennis court is \$24,000 and the estimated repair cost is over \$12,000, that will be a significant repair subject to this subsection.
- K. Utilities. District shall pay for all utility services furnished to the Joint Use Facilities for the use, operation and maintenance of the Joint Use Facilities during the Term of this Agreement, or any extension thereof. However, City shall be responsible for electricity to operate the security lighting.
- L. Further Funding Sources. The Parties to this Joint Use Agreement will cooperate in good faith to seek further funding for improvements to the Joint Use Facilities and other common areas at the School and agree that if such funding and improvements are made, that this Joint Use Agreement will be amended to encompass the renovated areas and additional provisions related thereto.

4. **LIABILITY AND INDEMNIFICATION.**

- A. District shall defend, indemnify and save and hold harmless City, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation of any nature) arising out of or in connection with District's performance of this Agreement or District's failure to comply with any of District's obligations contained in the Agreement caused by District, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of City. In the event City is named as codefendant, District shall notify City of such fact and

shall represent City in such legal action unless City undertakes to represent itself as codefendant in such legal action, in which case City shall bear its own litigation costs, expenses and attorney's fees.

- B. City shall defend, indemnify and save and hold harmless District, its officers, officials, employees, and agents from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation of any nature) arising out of or in connection with City's performance of this Agreement or City's failure to comply with any of City's obligations contained in the Agreement caused by City, its officers, agents or employees except such loss or damage which was caused by the sole negligence or willful misconduct of District. In the event District is named as codefendant, City shall notify District of such fact and shall represent District in such legal action unless District undertakes to represent itself as codefendant in such legal action, in which event District shall bear its own litigation costs, expenses and attorney's fees.

5. **INSURANCE.** Both the City and the District shall maintain, for the period covered by this Agreement, at their own respective costs, their own respective policy or policies of general liability insurance and property insurance. Each party waives subrogation of its insurance coverage for the other entity. Self-insurance authorized by state law and/or maintained by the City or the District in the regular course of business for its other activities shall satisfy this requirement.

6. **NOTICES.** All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other shall be in writing and shall be deemed given and served upon the other party, if delivered personally or three (3) days after depositing in the United States mail, postage prepaid, addressed as follows:

If to CITY:

City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702
Attn: Clerk of the Council

And

City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702
Attn: City Attorney

If to DISTRICT:

Santa Ana Unified School District
1601 E. Chestnut
Santa Ana, CA 92701
Attn: Assistant Superintendent, Facilities & Governmental Relations

7. **SEVERABILITY AND APPLICABLE LAW.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any

provision of this Agreement shall be invalid under the applicable law, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision, or the remaining provisions of this Agreement. This Agreement has been made and entered into in the State of California and the laws of that State shall govern the validity and interpretation hereof and the Parties' performance hereunder.

8. **AMENDMENTS.** This Agreement sets forth the entire understanding between the Parties with respect to the subject matter of this Agreement. Any modifications must be in the form of a written amendment agreed to by both Parties.

9. **REMEDIES FOR BREACH.** Any default in the performance of any terms or conditions of this Agreement, by either party, shall constitute a breach of this Agreement. The non-defaulting party shall provide thirty (30) day written notification to cure each and every breach identified in the notification. In the event that the defaulting party fails to cure its default within such period of time, the non-defaulting party shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity, or under this Agreement. The failure of a party to object to any default in the performance of the terms and conditions of this Agreement shall not constitute a waiver of either that term or condition or any other term or condition of this Agreement. Any dispute as to the existence of a material breach, the acceptability of a cure for each alleged breach, or the appropriate remedy for each and every material breach of this Agreement shall be resolved by mediation and/or arbitration by a mediator/arbitrator agreeable to both Parties. Arbitration of disputes as to material breach of this Agreement shall be final and binding as the exclusive remedy for enforcement of the rights and responsibilities of all Parties.

10. **BINDING EFFECT AND NONASSIGNABILITY.** This Agreement and all the terms, covenants, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and their respective successors. This Agreement shall not be assignable by either Party.

11. **TERMINATION.** Either party may terminate this Agreement, at will, with 60 days prior written notice to the other party.

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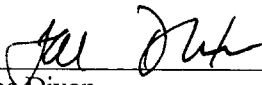
IN WITNESS WHEREOF, this Agreement has been duly approved by both District and City.

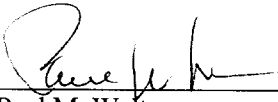
The "District"
Santa Ana Unified School District,
a political subdivision of the State of California

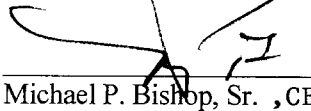
The "City"
City of Santa Ana
A Charter City

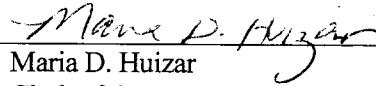
Dated: 8-27-12

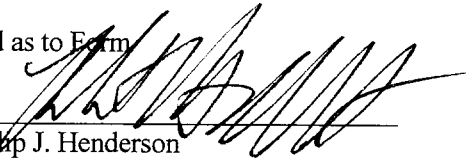
Dated: 7.26.12

By: 
Joe Dixon
Assistant Superintendent
Facilities & Governmental Relations

By: 
Paul M. Walters
City Manager

By: 
Michael P. Bishop, Sr., CBO
Deputy Superintendent, Operations

Attest:
By: 
Maria D. Huizar
Clerk of the Council

Approved as to Form
By: 
Philip J. Henderson
Attorney, Orbach Huff & Suarez


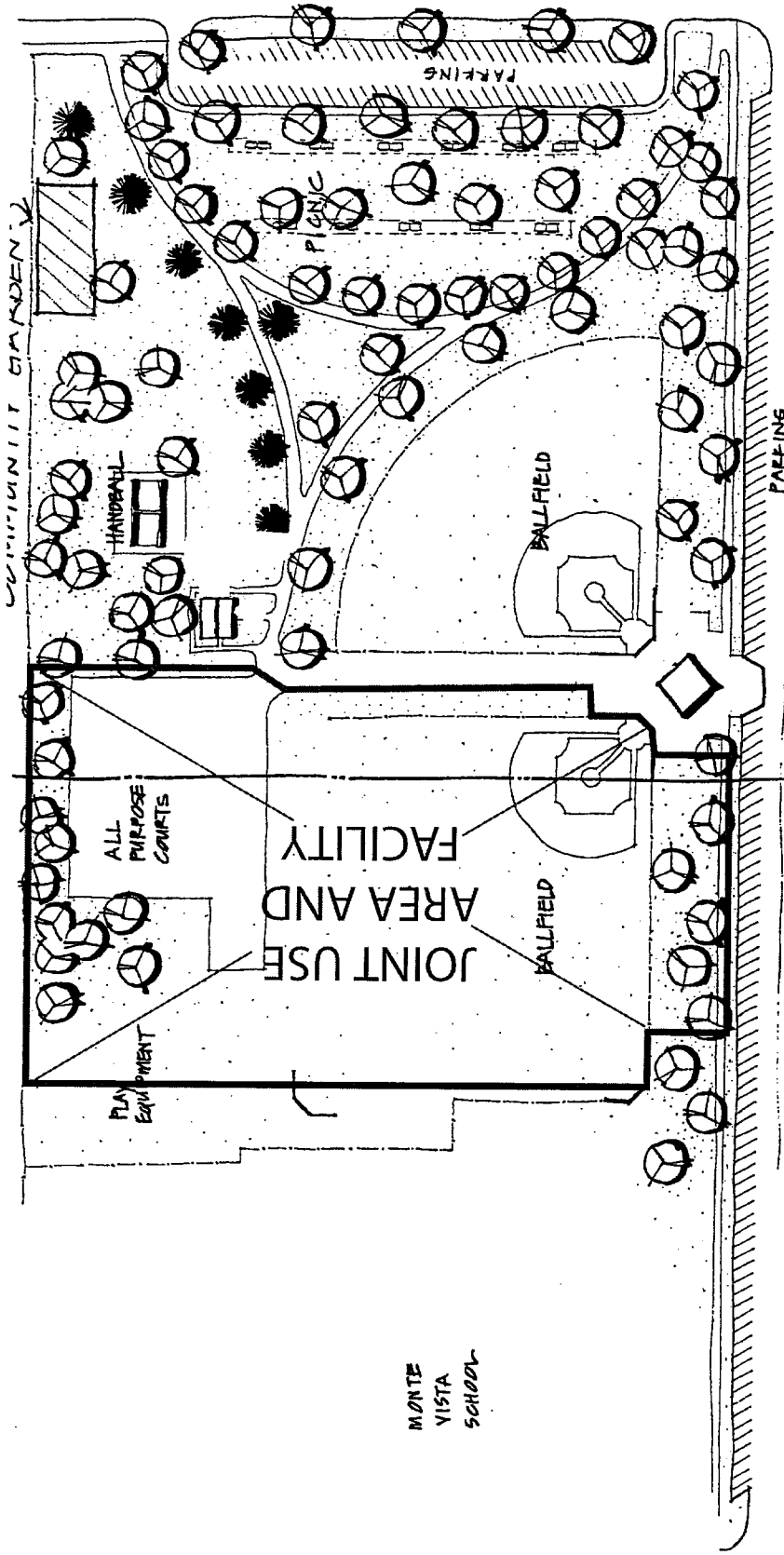
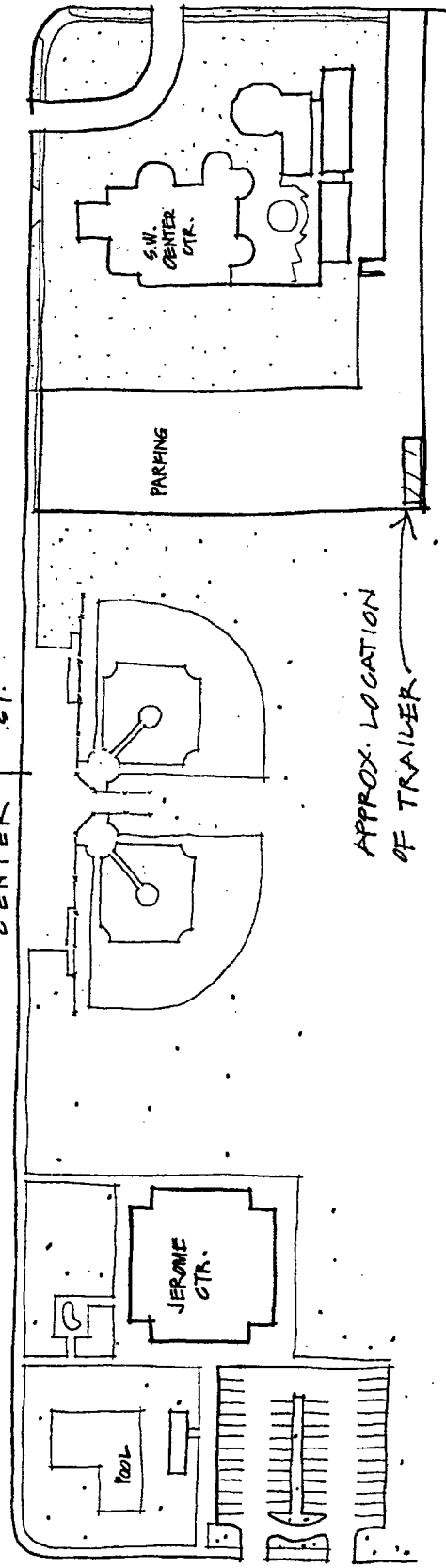
Approved as to Form:
Sonia R. Carvalho, City Attorney
By: 
Laura Sheedy
Assistant City Attorney

Exhibit "A"
Joint Use Property

- Two basketball courts;
- The baseball/softball field



MONTA VISTA SCHOOL



JEROME PARK
726 S. Center Street

