

**AGREEMENT BETWEEN  
THE CITY OF SANTA ANA AND  
SANTA ANA UNIFIED SCHOOL DISTRICT REGARDING  
REIMBURSEMENT OF CONSTRUCTION COSTS  
FOR ROOSEVELT-WALKER ELEMENTARY SCHOOL  
INCORPORATING PROP. 84 GRANT REQUIREMENTS**

This Agreement Between the City of Santa Ana and Santa Ana Unified School District ("Agreement") is made this ~~10<sup>th</sup>~~ day of ~~March~~, 2013, by and between the **City of Santa Ana**, a charter city and municipal corporation ("City"), and the **Santa Ana Unified School District** ("District"), a public school district (collectively, "Parties"; individually "Party").

**RECITALS**

- A. The District is designing and constructing improvements at its Roosevelt-Walker Elementary School site (the "Project").
- B. The Project includes improvement of the multi-purpose sports and recreation facilities ("Facilities"), which are depicted in **Exhibit A**:
1. A decomposed granite running track,
  2. Basketball court Sports field lighting,
  3. Install a park site with tot lot, basketball/volleyball court and play area,
  4. Fencing and landscaping around the park site,
  5. Install a parking lot for access to the park site, and
  6. Construct a 10,000 sq. ft. community center,

The Parties intend to use the Facilities for joint use to benefit the community and District students.

- C. The City agrees to reimburse the District for costs associated with the design and construction of the Facilities, which will be constructed as part of the Project.
- D. The City, as a recipient of Proposition 84- Statewide Park Development and Community Revitalization Program Grant Funds under the Safe Drinking Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 ("Prop. 84") funds, desires to enter into this Agreement with the District for the expenditure of Prop. 84 funds in accordance with State Department of Parks and Recreation rules and regulations, to pay for certain construction costs for the Facilities. The enforceability of this Agreement is contingent upon the City's receipt of sufficient Prop. 84 funds to pay for the design and construction of the Facilities.
- E. The District, pursuant to, without limitation, section 17077.40, et seq. and/or section 17527, et seq., of the Education Code, is authorized to enter into joint use agreements with other public entities.
- F. The Parties intend to also enter into a separate agreement for joint use of the Facilities between the City and the District, that the Parties will approve separate from this Agreement ("Joint Use Agreement"). Upon completion of the Facilities, the District shall permit the City to access the Facilities for public use and recreation purposes pursuant to applicable law and to the Joint Use Agreement.

NOW, THEREFORE, the Parties agree as follows:

**AGREEMENT**

**1. Design and Construction of Facilities.**

- a. As part of the Project, the District shall cause the Facilities to be designed and built, subject to the City's

approval, which shall not be unreasonably withheld. The District or its agents or representatives shall meet and confer with the City prior to finalizing construction work on the Facilities, and at reasonable intervals during the development process.

- b. The District shall not be obligated to incur any expenses or be obligated by a third party contract to start the design or construction of the Facilities until the City gives the District notice that it has received from the State a certain sum of Prop. 84 funds that will be available for construction of the Facilities, and that the District has reasonably determined are sufficient funds available to complete construction of the Facilities. City shall provide the District with notice of each Prop. 84 disbursement received for use on the Facilities.
- c. The City acknowledges that the District is undertaking design and construction of the Project. The Facilities shall be constructed substantially to conform with the Scope of Development attached hereto as **Exhibit A**, and incorporated herein by reference, unless modified by written agreement between the Parties.

## **2. Payment for Design and Construction of the Facilities.**

- a. District shall be responsible for contract administration, including labor compliance administration as required by Prop 84 Grant funding. District shall monthly submit invoices to the City evidencing construction work completed in the previous month. Said invoice shall include District Contractor's invoice and backup documentation evidencing labor compliance. At its award of the Project construction contract, District shall provide to City a timeline and budget schedule for completion of the Project. District shall maintain and update these schedules.
- b. The City shall reimburse the District for preconstruction costs, which shall include design costs, and construction costs for the Facilities in a total not to exceed amount of **Four Million Nine Hundred Thirty Thousand Dollars (\$4,930,000.00)**. The City shall pay invoices submitted by the District within thirty (30) days following receipt of invoice as set forth above, subject to receipt of Prop 84 funds from the State. City shall retain Seventy Thousand Dollars (\$70,000.00) for costs associated with contract administration and CEQA compliance required by the grant.
- c. The City's reimbursement of preconstruction costs, including design, shall not exceed twenty-five percent (25%) of total Project costs, as set forth in Section 2.b, above.
- d. Any costs exceeding \$4,930,000.00 shall be the sole responsibility of the District.
- e. The Parties agree to take all reasonable actions to cooperate to enforce the provisions in this Agreement, including this provision, if other third party agencies, including the State of California, attempt to interpret this Agreement contrary to the language herein.

## **3. Record Drawings/Plans for Facilities.** District will provide City a set of record drawings of the Facilities and copies of all contractor-supplied use manuals and warranty information, as applicable.

## **4. Term/Termination.**

- a. This Agreement shall begin on the date first stated above and terminate ninety days after District files a Notice of Completion regarding the Facilities. Except as indicated herein, neither Party may terminate this Agreement.
- b. If the City breaches this Agreement in any material way, the District may elect to provide written notice to the City of the breach(es). If the City does not cure the breach(es) within ten (10) days of receipt of the notice by paying all overdue funds, the District may terminate this Agreement by providing written notice of termination to the City.
- c. If the District breaches this Agreement in any material way, the City may elect to provide written notice to the District of the breach(es). If the District does not cure the breach(es) within ten (10) days of receipt of

the notice, the City may terminate this Agreement by providing written notice of termination to the District. District shall be liable to City for all costs, fees, expenses, and other damages incurred by the City arising from District's breach(es). If a breach is not curable in ten (10) days, the District will provide the City notice thereof and so long as the District diligently works to cure the breach, the District will not be liable to the City thereon and the City may not terminate this Agreement based on that breach.

- d. The remedies in this paragraph are in addition to any other remedies available at law or under this Agreement. A decision by a Party not to terminate this Agreement pursuant to this paragraph does not constitute a waiver of any other claims or remedies that Party may have against the other.

**5. Indemnification and Cooperation in Claim Defense.**

- a. District shall indemnify, save, protect, defend and hold harmless the City, its officers, agents and employees from any and all claims, costs, and liability, including reasonable attorneys' fees, for any damage, injury or death, to persons or property arising from the negligent or wrongful acts or omissions of the District or its agents under this Agreement, except to the extent that such claims, costs, or liability arise directly or indirectly from the negligent or wrongful acts or omissions of City, its officers, agents and employees.
- b. City shall indemnify, save, protect, defend and hold harmless the District, its officers, agents and employees from any and all claims, costs and liability, including reasonable attorneys' fees, for any damage, injury or death, to persons or property arising from the negligent or wrongful acts or omissions of the City or its agents under this Agreement, except to the extent that such claims, costs, or liability arise directly or indirectly from the negligent or wrongful acts or omissions of District, its officers, agents and employees.

**6. Environmental Review.** The City shall be responsible for ensuring compliance with the California Environmental Quality Act and any other applicable environmental laws with regard to the Project inclusive of the Facilities.

**7. Confidentiality:** If either Party receives from the other Party information which due to the nature of that information is reasonably understood to be confidential and/or proprietary, the Parties agree that they shall not use or disclose that information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either Party by any subsidiary and/or agent of the other Party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Parties disclosed in a publicly available source; (c) is in rightful possession of the Parties without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by one of the Parties without reference to information disclosed by the other Party.

**8. Conflict of Interest.** The Parties shall ensure compliance with all applicable conflict of interest laws including, without limitation, the Fair Political Practices Act and Government Code section 1090, et seq. In addition, each Party agrees that it will not hire or permit the hiring of any person to fill a position funded through this Agreement if a member of that person's immediate family is employed in an administrative capacity by that Party. For the purposes of this section, the term "immediate family" means spouse, child, aunt, uncle, niece, nephew, stepparent and stepchild. The term "administrative capacity" means having selection, hiring, supervisor or management responsibilities.

**9. Drug Free Workplace.** The Parties confirm that both comply with Government Code Sections 8350 *et seq.*, the Drug-Free Workplace Act of 1990 and shall take diligent actions to ensure that there is no unlawful manufacture, distribution, dispensing, possession or use of a controlled substance on the Project.

**10. Anti-Discrimination:** It is the policy of the Parties that there be no discrimination against any employee engaged in the work, including work under contract, on the basis of sex, race, creed, color, ancestry, national

origin, religion, sexual orientation, disability, medical condition or marital status, and therefore each Party agrees to comply with applicable Federal and California laws including, but not limited to the California Fair Employment Practice Act beginning with Government Code Section 12900 and Labor Code Section 1735. In addition, the District agrees to require like compliance by all its contractor(s) and subcontractor(s) on the Project.

**11. Terms Required Based on Proposition 84 Funding.** The following terms are made a part of this Agreement, as required by the Parties participation in and use of funds from the Prop. 84 grant program.

**A. Project Administration.**

1. District shall comply with all applicable laws and regulations affecting acquisition and development projects, including but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including by not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and the California Unruh Act (California Civil Code §51 et. seq.)
2. The California Department of Parks and Recreation (hereinafter "DPR") and/or City shall have the right to inspect all property or facilities developed or constructed with Prop. 84 grant funding. District shall make said property available for inspection upon 24-hour notice from DPR or City.
3. District agrees that final payment may not be made until the work required to complete the Facilities, as described in City's Grant Application, is complete.

**B. Project Termination.** Because the benefit to be derived by the City from the full compliance by the District with the terms of this Agreement, is the preservation, protection and net increase in the quantity and quality of parks, public recreation facilities, opportunities and/or historical resources available to the people of the State of California and because such benefit exceeds to an immeasurable and unascertainable extent, the amount of money furnished through Prop. 84 grant monies under the provisions of this Agreement, the District agrees that payment by the District to the State and/or City of an amount equal to the amount of the Grant Monies disbursed under this Agreement by the City would be inadequate compensation for any breach by the District of this Agreement. The District further agrees therefore, that in addition to compensatory damages, the appropriate remedy in the event of a breach of this Agreement by the District shall be the specific performance of this Agreement, unless otherwise agreed to by the City or unless prohibited by applicable law.

**C. Budget Contingency Termination or Revision Clause.** If Prop. 84 funding for the Facilities is reduced or deleted by the State of California, the City shall immediately provide notice to the District and shall have the option to either terminate this Agreement or provide an alternative funding source. The Joint Use Agreement shall be revised accordingly to reflect the changed amount of funding and a corresponding changed amount of use, subject to the reasonable determination of the Parties. The District shall not be liable to reimburse the City for City-provided and/or Prop. 84 funds that have been expended prior to the notice of termination.

**D. Financial Records.**

1. The District shall maintain satisfactory financial accounts, documents and records for the project and make them available to the DPR and/or City for auditing at reasonable times. The District also agrees to retain such financial accounts, documents and records for five years following project termination or final payment, whichever is later.
2. The District shall keep such records as the DPR and/or City shall prescribe, including records which fully disclose (a) the disposition of the proceeds of Prop. 84 funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.

3. The District agrees that the DPR and/or City shall have the right (at its sole cost) to inspect and make copies of any books, records or reports pertaining to this Agreement or matters related thereto during regular office hours. The District shall maintain and make available for inspection by the DPR and/or City accurate records of all of its costs, disbursements and receipts with respect to its activities under this Agreement. Such accounts, documents, and records shall be retained by the District for five (5) years following final payment.
  4. The District shall use a generally accepted accounting system that clearly records costs incurred on the Facilities and accurately reflects fiscal transactions with necessary controls and safeguards. District shall submit written project status reports within 30 calendar days after the DPR, or City has made such a request. District shall provide the City a report showing total final Project expenditures within sixty (60) days of Project completion.
- E. Audit.** To the extent the District uses California Prop. 84 funds for the Project, the District is subject to audit by the DPR and/or City. Upon request of DPR or City, District shall provide all Project records, including the source documents and cancelled warrants, books, papers, accounts, time sheets, or other records requested by DPR. Additionally, District shall provide an employee having knowledge of the Project and its records to assist DPR's auditor.
- F. Prevailing Wage.** District shall require that its contractor(s) for construction of the Facilities pay prevailing wage. Additionally, if required by applicable law, the District or the California Department of Industrial Relations shall implement a Labor Compliance Program as described in California Labor Code §1771.5. The district shall hire a Labor Compliance Officer or shall utilize the Department of Industrial Relations' Compliance Monitoring Unit for the project to ensure all workers are paid the prevailing wage per his/her classification. The Parties intend that the costs of the Labor Compliance Officer are reimbursable construction expenses.

**G. Insurance/Bonding.**

1. With respect to performance of work under this Agreement, District shall require that Contractor maintain and shall require its subcontractors, if any, to maintain insurance as described below:
  - a. Workers' compensation insurance with statutory limits, and employer's liability insurance with limits of not less than \$1,000,000 per accident.
  - b. Commercial general liability insurance, which shall include, but not be limited to protection against claims arising from bodily and personal injury, including death resulting therefrom and damage to property, resulting from any act or occurrence arising out of Consultant's operations in the performance of the contract, including, without limitation, acts involving vehicles. The amounts of insurance shall be not less than the following: single limit coverage applying to bodily and personal injury, including death resulting therefrom, and property damage, in the total amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate. Such insurance shall (a) name the District and the City, their officers, employees, agents, volunteers and representatives as additional insured(s); (b) be primary and not contributory with respect to insurance or self-insurance programs maintained by the District and/or the City; and (c) contain standard separation of insureds provisions.

Contractor shall (a) furnish properly executed certificates of insurance to District and the City prior to commencement of work under this Agreement, which certificates shall clearly evidence all coverage required above and provide that such insurance shall not be materially changed or terminated except on thirty (30) days' prior written notice to District; and (b) maintain such insurance from the time work first commences until completion of the work under this Agreement; and (c) replace such certificates for policies expiring prior to completion of work under this Agreement.

2. District shall require Contractor to post performance and payment bonds to cover the entire construction period.

**H. Access to Records.** During District office hours and with reasonable notice, City and the DPR and/or their representatives shall have access for purposes of monitoring, auditing, and examining District's activities and performance, to books, documents and papers, and the right to examine records of District's subcontractors, bookkeepers and accountants, employees and participants in regard to said program. City and the DPR and/or their representatives shall also schedule on-site monitoring at their discretion. Monitoring activities may also include, but are not limited to, questioning employees and participants in said program and entering any premises or any site in which any of the services or activities funded hereunder is conducted or in which any of the records of District are kept. Nothing herein shall be construed to require access to any privileged or confidential information as set forth in federal or state law.

**I. Use of Facilities.**

1. District acknowledges that the City has applied for and received grant funds through California Prop. 84, and that the Facilities which will be developed with such Prop. 84 funds shall have operating hours consistent with the times proposed in the City Grant Application, and be open to members of the public, unless otherwise granted permission by the California Department of Parks and Recreation ("DPR").
  2. District agrees that any Facilities developed with Prop. 84 funds shall be used only for the purposes of the grant and consistent with the Grant Scope referenced in the City's Grant Application unless prior written approval is given by the State.
  3. District agrees to use the Facilities developed under this Agreement only for the purposes of the grant and, for the next thirty (30) years, no other use, sale, or other disposition shall be permitted except as authorized by a specific act of the California Legislature in which event the property shall be replaced by the District with property of equivalent value and usefulness as determined by DPR.
  4. The Facilities may be transferred to another eligible entity only if the successor entity assumes the obligations imposed under this Agreement and with written approval of the DPR.
  5. Any real property (including any portion of it or any interest in it) may not be used as security for any debt or mitigation, without the written approval of the State of California, acting through the DPR, or its successor, provided that such approval shall not be unreasonably withheld as long as the purposes for which the Grant was awarded are maintained. Any such permission that is granted does not make DPR a guarantor or a surety for any debt or mitigation, nor does it waive DPR's rights to enforce performance under the Grant Contract.
- 12. Attorneys' Fees.** In the event of a dispute(s) between the Parties related to this Agreement, each Party shall pay its own attorneys fees and related expenses incurred and shall not have a right to recover any of those fees from the other Party.
- 13. Force Majeure.** Neither Party shall be held responsible or liable for an inability to fulfill any obligation under this Agreement by reason of an act of God, natural disaster, rationing or restrictions on the use of utilities or public transportation whether due to energy shortages or other causes, war, civil disturbance, riot, or terrorism ("Force Majeure"). Any Party relying on a Force Majeure shall give the other Party reasonable notice thereof, and the Parties shall use their best efforts to minimize potential adverse effects from such Force Majeure, including, without limitation, subcontracting the obligations of the Party claiming such Force Majeure to a third party and extending the time periods for performance.
- 14. Assignment.** Neither Party may, without the other Party's prior written consent, assign its rights or delegate its duties pursuant to this Agreement. This provision does not apply to the District's contracting with contractor(s), consultant(s), or others to perform services or provide other items related to the planning, approval, design, or construction of Project, including the Facilities. The District's contracting with others shall not alter the District obligations pursuant to this Agreement.
- 15. Successors and Assigns.** This Agreement shall bind the successors and assigns of the Parties hereto.

16. **Further Assurances.** Each Party to this Agreement shall at its own expense perform all acts and execute all documents and instruments that may be necessary or convenient to carry out its obligations under this Agreement.
17. **Modifications.** The terms and conditions of this Agreement may be modified or changed only by written mutual consent of the Parties.
18. **Notices.** Any notices that either Party desires to or is required to give to the other Party or to any other person shall be in writing and either served personally or sent by prepaid first class mail. Such notices shall be addressed to the other Party at the address set forth below. Either Party may change its address by notifying the other Party of the change of address. Notice shall be deemed communicated within seventy-two hours from the date of mailing, if mailed as provided in this paragraph.

Santa Ana Unified School District 1601 East Chestnut Avenue Santa Ana, California 92701 Attn: Assistant Superintendent, Facilities & Governmental Relations	City of Santa Ana 20 Civic Center Plaza, M-75 P.O. Box 1988 Santa Ana, CA 92702 Attn: Executive Director - PRCS
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19. **Execution in Counterparts.** This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy, or an original, with all signatures appended together, shall be deemed a fully executed Agreement.
20. **Interpretation.** The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either Party.
21. **Severability.** Should all or any portion of any provision of this Agreement be held unenforceable or invalid for any reason, but the remainder of the Agreement can be enforced without failure of material consideration to any Party, then the remaining portions or provisions shall be unaffected.
22. **Governing Law.** This Agreement shall be governed by the laws of the State of California and venue shall be in the appropriate Superior Court in Orange County, California.
23. **Incorporation of Recitals and Exhibits.** The Recitals and all Exhibits attached hereto, are hereby incorporated herein and made a part of this Agreement by this reference.
24. **Captions.** The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
25. **Entire Agreement.** This Agreement constitutes the entire Agreement between the Parties and supersedes all prior negotiations, representations, or agreements, either written or oral.
26. **Time of the Essence.** Time is of the essence in the performance of each Party's respective obligations under this Agreement.
27. **Parties to Bear Their Own Costs.** Except as specifically set forth in this Agreement, the Parties shall each bear their own costs, including, without limitation, attorneys' and consultants' fees, incurred in connection with any negotiations, strategic planning, analysis and due diligence relating to this Agreement.
28. **Effective Date.** This Agreement must be executed by both Parties and approved or ratified by the City's City Council and the District's Board of Trustees. This Agreement shall be effective upon the latter date of approval of either the City Council or the Board of Trustees.

ACCEPTED AND AGREED on the date indicated below:

**City of Santa Ana**

Dated: March 26, 2013  
By: [Signature]  
Print Name: \_\_\_\_\_  
Print Title: City Manager

**Attest:**

By: [Signature]  
Print Name: Maria D. Huizar  
Print Title: Clerk of the Council

**Approved as to Form**

Sonia R. Carvalho, City Attorney  
By: [Signature]  
Print Name: Laura Sheedy  
Print Title: Assistant City Attorney

**Santa Ana Unified School District**

Dated: 3-14, 2013  
By: [Signature]  
Print Name: Joe Dixon  
Print Title: Assistant Superintendent, Facilities & Governmental Relations

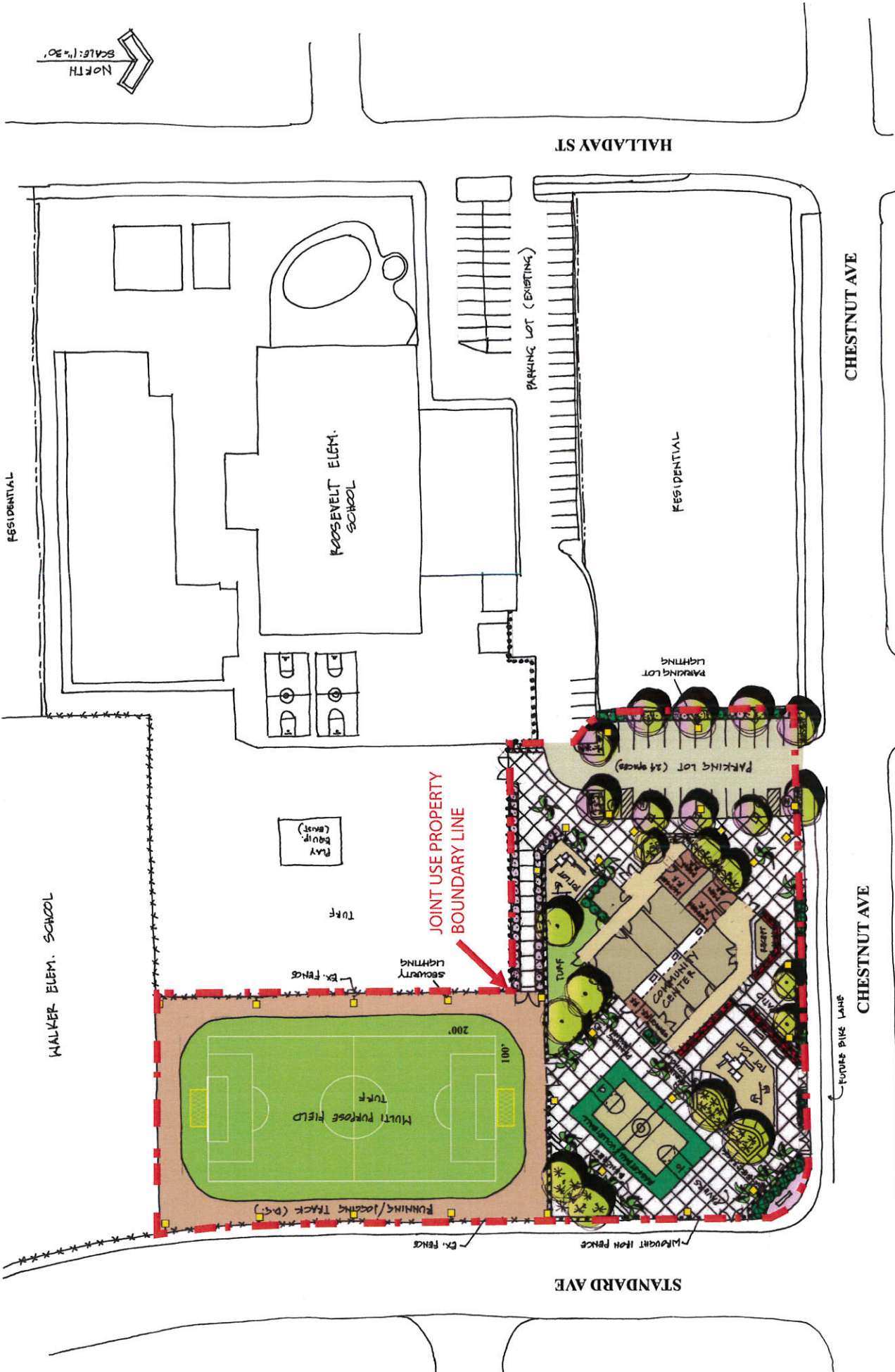
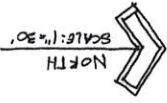
Dated: MARCH 15, 2013  
By: [Signature]  
Print Name: Michael P. Bishop, Sr., CBO  
Print Title: Interim Deputy Superintendent, Operations

**Approved as to Form**

Dated: 3-18, 2013  
By: [Signature]  
Print Name: Philip J. Henderson  
Print Title: Attorney, Orbach Huff & Suarez



**Exhibit "A"**



# ROOSEVELT JOINT USE SITE CONCEPT PLAN

JOINT USE PROPERTY

EXHIBIT "A"