

**JOINT USE AGREEMENT BY AND BETWEEN
SANTA ANA UNIFIED SCHOOL DISTRICT AND THE CITY OF SANTA ANA
(WILLARD INTERMEDIATE SCHOOL)**

THIS JOINT USE AGREEMENT (“Agreement”) is dated as of Oct. 7, 2011, 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 Willard Intermediate School which is located at 1342 N. Ross Street, 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 City has received a grant through the Statewide Park Development and Community Revitalization Program of 2008, providing funding to install improvements to the facilities, including a running track, synthetic turf field, sports lighting for the field, basketball courts, tot lot and restroom and fencing.
- D. The City and District desire to undertake a coordinated use of the improved Willard Athletic Field on the Willard Intermediate School site in order to allow maximum use by community residents and sports organizations.
- E. The coordinated use of the Athletic Field is intended to benefit the families that live in the immediate vicinity of Willard Intermediate 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 Willard 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 (i) the athletic field and track, (ii) three basketball

courts, (iii) the multi-purpose basketball/tennis court, and (iv) the parking lot, all as identified in **Exhibit "A"** attached hereto.

- C. "Public Facilities" shall mean the tot lot and restroom installed at the southeast corner of Parton Street and W. 15th Street. The Public Facilities shall be open during the hours that City parks are open to the public.
- D. "Technical Advisory Committee" shall mean that certain 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 at Willard Intermediate School.
- E. "Regular School Hours" shall mean 6:00 am through 6:00 pm, Monday through Friday (excluding state and national holidays observed by the District) unless changed by agreement of the Parties.
- F. "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.
- G. "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.
- H. "School" shall mean the specific District school identified in the above Recitals.

2. **TERM AND COMMENCEMENT.** This Agreement shall commence on _____, 2011, 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 and, on a first priority basis, for activities during City Time upon timely notice to the City and in compliances with the provisions herein ("District Use").
- B. City Use. City shall have the right at its discretion 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 exclusively for youth sport organizations with priority given to youth sport organizations that have the greatest number of youth that live within a ½ mile radius of the School.

- D. District Priority. Priority will be given to any School or District need for the use of the Joint Use Facilities during City Time. The City shall inform youth sport organizations of such District priority and that the District Use may preempt previously approved use by those organizations. If one of those organizations is unable to use the Joint Use Facilities during City Time due to District Use preemption, the District will find an alternative District site for that organization's use during the time of District Use.
- 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 in other City facilities and meets any applicable State or Federal anti-discrimination requirements or school-site safety standards such as prohibition of alcoholic beverages and tobacco, and all restrictions on admission fees or other charges 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 be responsible for ensuring that the Joint Use Facilities permit holder for programs scheduled through the City has proper insurance.
- H. Supervision of Joint Use Facilities. The City will be responsible for managing the Joint Use Facilities usage during City Time through use of City Field Attendants and City Park Rangers. The City shall provide a level of supervision and security commensurate with that provided at City-owned facilities at all times while using the Joint Use Facilities (and for reasonable periods of time immediately prior to and following such use).
- I. Maintenance. The City shall be responsible for the normal maintenance of the Public Facilities and all sports lighting at the Joint Use Facilities. Normal maintenance of the rest of the Joint Use Facilities will continue to be the responsibility of the District, including the synthetic turf field.
- J. Repairs. District shall be responsible for repair to the Joint Use Facilities. However, the Parties agree that the cost of significant repairs to the Joint Use Facilities will be shared by the Parties at an agreed upon prorated amount. The Parties agree to negotiate in good faith to determine what are significant repairs, the process for performing those significant repairs, and the cost sharing of those significant repairs. 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 twenty-five percent (25%) 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 \$6,000, 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, except for electrical service on the athletic field and track which will be paid for by City. District shall pay for its use of the sports lighting based on an hourly fee agreed between City and District when the sports lighting is used by the District.
- 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. The City shall be financially responsible for damages caused by during City Use.
- B. The City shall indemnify, defend, and hold harmless District, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of or in connection with City Use, activities or programs sponsored by City under this Agreement, third party activities programmed or sponsored by the City, and City programming outside of City Time, except those which arise out of a dangerous/defective condition of District property or due to the sole negligence of the District.
- C. The District shall indemnify, defend, and hold harmless the City, its officers, agents, employees, representatives, and volunteers from damage to property and for injury to or death of any person and from all claims, demands, actions, liability, or damages of any kind or nature arising out of its operation of the School, including use, operation, maintenance and repair of the Joint Use Facilities, except as provided in "B" above.

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: Superintendent

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 Willard Intermediate School. Any modifications must be in the form of a written amendment agreed to by both Parties.

9. REMEDIES FOR BREACH. Any material breach of this Agreement alleged by either party shall be subject of notification in writing to the alleged breaching party, as provided herein. Each party shall be accorded a 60-day period from actual receipt of written notification to cure each and every breach identified in the notification. Failure to provide notification in writing and the opportunity to cure any alleged breach shall constitute a waiver of that breach of the 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 subject to this Agreement.


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.

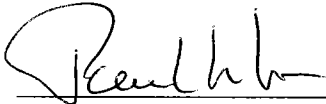
11. **TERMINATION.** Either party may terminate this Agreement, at will, with 60 days prior written notice to the other party.


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

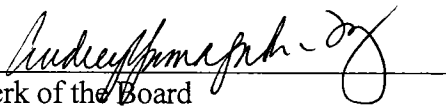
The "City"
City of Santa Ana
A Charter City

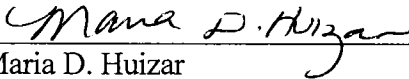
By: 
Superintendent

By: 
Paul M. Walters
Interim City Manager

By: 
President of the Board

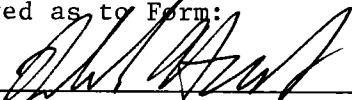
Attest:

Attest:
By: 
Clerk of the Board

By: 
Maria D. Huizar
Clerk of the Council

Approved as to Form:

Approved as to Form:
Joseph Straka, Interim City Attorney

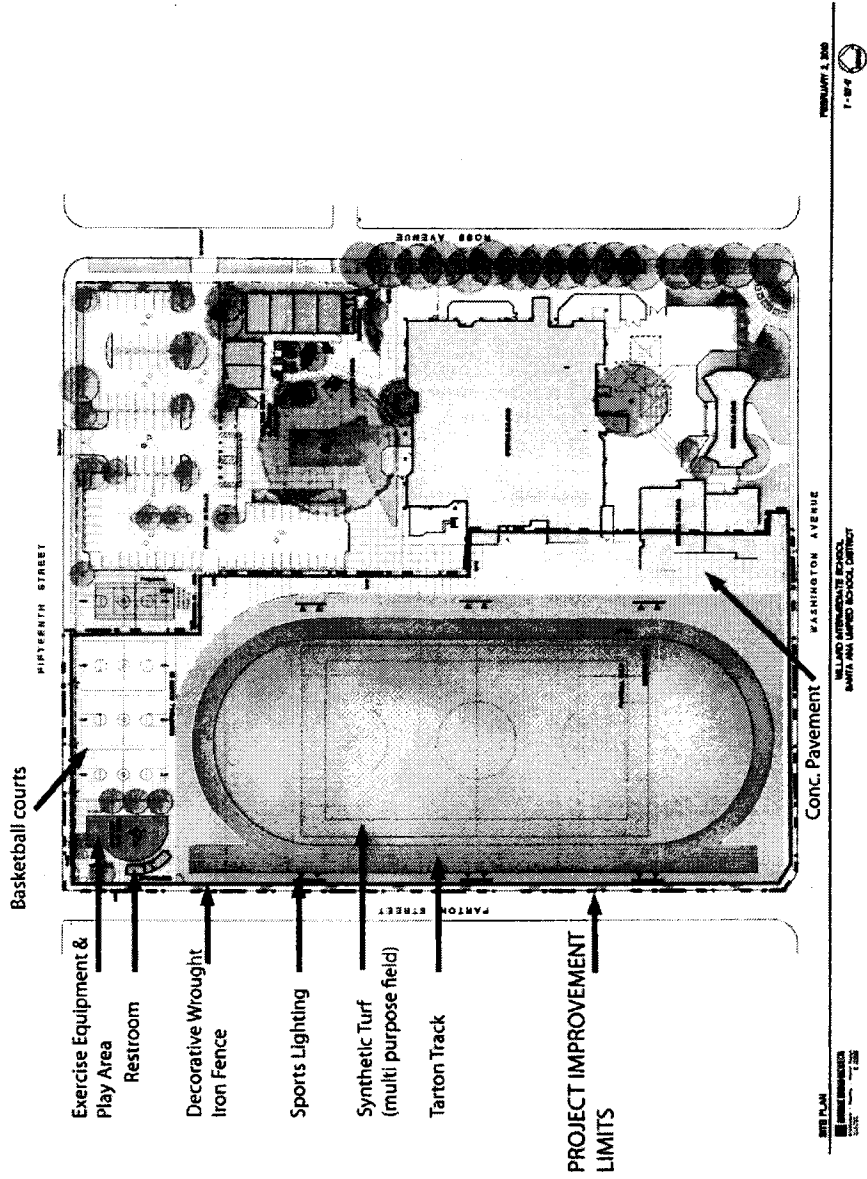
By: 
Phil Henderson, Attorney
Orbach, Huff, & Suarez

By: 
Laura Sheedy
Assistant City Attorney

Exhibit "A"
Joint Use Property
And

Joint Use Facilities, including identification of

- The athletic field and track;
- Three basketball courts;
- The multi-purpose basketball/tennis court
- The parking lot



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