

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

C1, 3 mg - COA - K. Hernandez

THIS JOINT USE AGREEMENT ("Agreement") is made and entered into to be effective on the 1st day of sept., 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.

RECITALS:

1. The District owns and operates Garfield Elementary School which is located at 850 Brown Street, Santa Ana, California ("School"), and has property on the School site that is suitable for use for community programs.
2. California Education Code §10900 et seq. authorizes the District to organize, promote and conduct programs for community recreation, and to cooperate in providing community recreation programs and facilities.
3. The City and District desire to undertake a coordinated use of a 10,000 sq. ft. Community Center on the School site ("Community Center") to allow maximum use by community residents in order to coordinate, schedule and conduct community programs.
4. The coordinated use of the Community Center is intended to benefit the families that live in the immediate vicinity of Garfield Elementary School.
5. 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 Garfield community.
6. City and District desire to enter into this Agreement to provide for joint use and maintenance of the Community Center, and parking lots at Garfield School.

AGREEMENT:

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. **DEFINITIONS.** The following definitions shall apply to the terms as used in this Agreement:

- A. **Joint Use Facilities** shall mean the Community Center and parking lots, but not the 2nd floor of the Community Center, which is available for City use and programming at all times, all as identified in **Exhibit "A"** attached hereto,
 - B. **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 the Godinez High School at Centennial Park. The Technical Advisory Committee shall be responsible for resolving conflicts in scheduling of the Joint Use Facilities at Garfield School.
 - C. **Regular School Hours** shall mean 8:00 am through 4:00 pm, Monday through Friday (excluding state and national holidays observed by the District) unless changed by agreement of the parties.
 - D. **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.
 - E. **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.
 - F. **School** shall mean the specific District school identified in the above Recitals.
2. **TERM AND COMMENCEMENT.** This Agreement shall commence within thirty (30) days after the Notice of Completion is issued, 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 (10) 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 compliance with the provisions herein ("District Use"). However, if City has already scheduled a program for the 1st Floor, then District shall use its reasonable efforts to provide City with an acceptable alternate location on the Garfield School Site.
 - 1) District Use shall not include use of the 2nd floor of the Community Center.
 - 2) A separate point of access or agreed upon control system will be provided for the City's use of the 2nd floor of the Community Center.

B. City Use and Overall Programming Responsibilities.

- 1) CITY shall have exclusive use of the 2nd floor of the Community Center and the parking lot located north of the Community Center during school hours. During non-school hours and weekends, City shall have access and use of all parking lots on the Garfield site.
- 2) The CITY shall be responsible for and have the authority to schedule use of the Joint Use Facilities during City Time.
- 3) The CITY shall establish a system to provide for the coordination and scheduling of its use of the Joint Use Facilities, including a procedure for reserving the use of the Joint Use Facilities.

C. District Priority for Use of Joint Use Facilities. 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 third-party organizations that those organizations may not have use of the Joint Use Facilities due to District Use during City Time. If one of those organizations is unable to use the Joint Use Facilities during City Time because of a District Use, the District will use its reasonable efforts to attempt to find an acceptable alternative location on the Garfield School site for that organization's use during the time of District Use.

D. City Programming.

The City may conduct programs itself or do so through a third party, so long as they are done in the same manner and under the same conditions as programming in other City facilities and so long as they meet any applicable State and Federal anti-discrimination requirements and school-site safety standards, such as the prohibition of alcoholic beverages and tobacco. The City shall also comply with all restrictions on admission fees or other charges per Education Code Section 10900, et seq., when it charges and collects and retains reservation fees, user fees or other charges for City Use of Joint Use Facilities. The City shall not charge the District and the District shall not charge the City for any use of the Joint Use Facilities and/or the 2nd floor of the Community Center. District acknowledges that the funds being provided by City for the Community Center are received by City pursuant to the CDBG Program, as amended, and that expenditures of CDBG funds must be in accordance with the CDBG Program and its requirements (24 CFR 570.503 and 24 CFR 570.504). Upon the expiration of this Agreement, any unexpended CDBG funds received by District shall be returned to City unless otherwise provided for in this Agreement or directed by the City.

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 the Joint Use Facilities at the School.

F. Insurance.

The CITY shall insure that, as to the reservation of use of the Joint Use Facilities by persons and organizations, that each such person or organization shall have in effect at the time of use general liability insurance coverage in the amount of at least \$1,000,000 per occurrence, and that the City and District are named as additional insureds on the applicable insurance policies.

G. Supervision of Joint Use Facilities.

- 1) The 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. The City shall provide a level of supervision and security commensurate with that provided at City-owned facilities at all times while using Joint Use Facilities (and for reasonable periods of time immediately prior to and following such use).

4. Repair, Maintenance and Utilities

A. Except as indicated herein, District shall be responsible for and pay all necessary costs of the Joint Use Facilities incurred for the following:

- 1) All maintenance and repairs;
- 2) Additionally, at the end of each use of the 2nd floor of the Community Center, the District shall return it to its original state, including the timely repair of any damage done during the District's use.

B. CITY shall be responsible for and pay all necessary costs on the 2nd floor of the Community Center incurred for the following:

- 1) All maintenance and repairs;
- 2) Additionally, at the end of each use of the Joint Use Facilities, the CITY shall return it to its original state, including the timely repair of any damage done during the City's use.

C. Written notification of any damage shall be made known to the other party within five (5) working days of the discovery of damage.

D. Utilities.

- 1) The DISTRICT will pay for all electrical costs for the Joint Use Facilities.

2) The CITY will pay for all electrical costs for the 2nd floor of the Community Center.

5. 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.

6. Materials and Equipment.

A. The CITY shall supply all equipment and supplies to be provided or shared by the parties in carrying out the programs by this Agreement for the 2nd floor of the Community Center.

B. The District shall supply all equipment and supplies to be provided or shared by the parties in carrying out the programs by this Agreement for the Joint Use Facilities.

7. Change in Use Of Joint Use Facility.

Since Community Development Block Grant (CDBG) funds are being used for construction of the Joint Use Facility, and to the extent required by applicable statutes or regulations, the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made, cannot be changed, unless the City as the recipient and the District as the subrecipient, provide affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

A. The new use of such property qualifies as meeting one of the national objectives in 24 CFR Sec. 570.208 (formerly Sec. 570.901) and is not a building for the general conduct of government; or

B. The following requirements are met: If the recipient determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under this section, it may retain or dispose of the property for the changed use if the recipient's CDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property.

C. If the change of use occurs after closeout, the provisions governing income from the disposition of the real property in 24 CFR Sec. 570.504(b)(4) or (5), as applicable, shall apply to the use of funds reimbursed.

D. Following the reimbursement of the CDBG program in accordance with this section, the property no longer will be subject to any CDBG requirements.

8. Cooperation of the Parties. The City and District shall cooperate and take all actions necessary to achieve the purposes of this Agreement. Each party shall designate a particular person to be responsible for the performance of that party's duties and responsibilities pursuant to this Agreement.
9. Liability And Indemnification.
 - A. The City shall be solely financially responsible for damages caused by or 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 to the extent 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.
10. 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.
11. 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.

CITY: Attn.: Gerardo Mouet,
Executive Director, Parks, Recreation & Community Services Agency
20 Civic Center Plaza, M-75
P.O. Box 1988
Santa Ana, CA 92702

SAUSD: Attn.: Joe Dixon
Assistant Superintendent, Facilities & Governmental Relations
Santa Ana Unified School District

1601 E. Chestnut Avenue
Santa Ana, Ca, 92701

12. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California. Any legal action in which enforcement of the terms and conditions of this Agreement is requested, or in which it is alleged that a breach of this Agreement has taken place, shall be filed and prosecuted in the County of Orange, California.
13. Breach of Agreement. If either party defaults in the performance of any of the terms or conditions of this Agreement, it shall have thirty (30) days after service upon it of written notice of such default in which to cure the default by rendering a satisfactory performance. In the event that the defaulting party fails to cure its default within such period of time or provides notice to the other party of the defaulting party's diligent efforts to cure the default, 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.
14. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
15. Successors and Assigns. The terms and conditions of this Agreement shall be binding on the successors and assigns of the parties to this Agreement.

ACCEPTED AND AGREED as of the last date written below:

City of Santa Ana

Dated: 9/20, 2012
By: Maria D. Huizar
Print Name: Maria D. Huizar
Print Title: Clerk of the City Council

Dated: 9/20, 2012
By: Francisco Gutierrez
Print Name: Paul Walters
Print Title: City Manager

Approved as to Form

Dated: Sept. 18, 2012
By: Lisa E. Storck
Print Name: Sonia R. Carvalho, City Attorney
Print Title: By Lisa E. Storck, Assistant City Attorney

Santa Ana Unified School District

Dated: 10-9, 2012
By: Joe Dixon
Print Name: Joe Dixon
Print Title: Assistant Superintendent, Facilities & Governmental Relations

Dated: 10/11, 2012
By: Michael P. Bishop, Sr.
Print Name: Michael P. Bishop, Sr.
Print Title: Deputy Superintendent, Operations

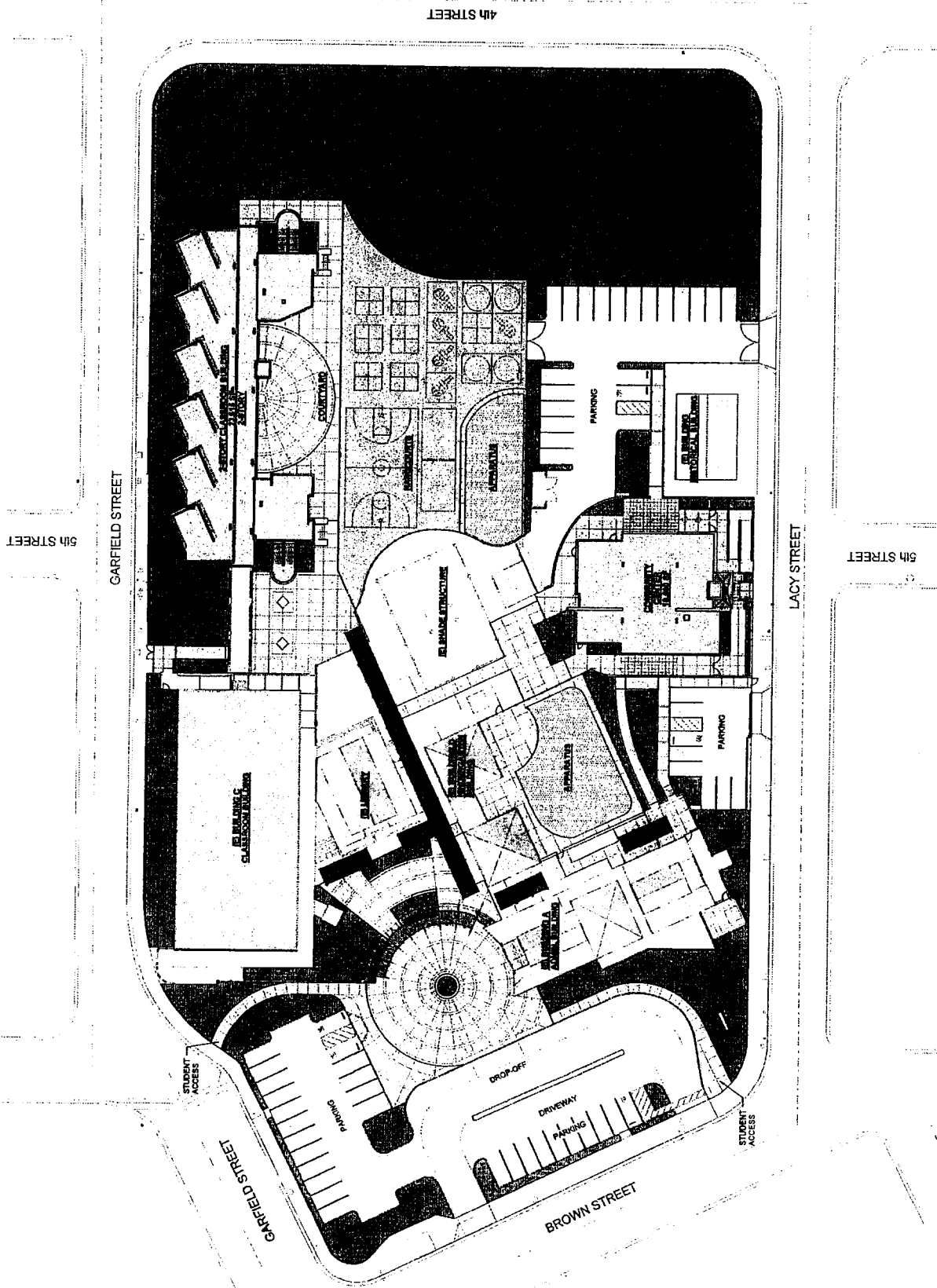
Approved as to Form

Dated: 10/24, 2012
By: Philip J. Henderson
Print Name: Philip J. Henderson
Print Title: Attorney, Orbach Huff & Suarez

GARFIELD ELEMENTARY SCHOOL
SANTA ANA UNIFIED SCHOOL DISTRICT



Scale: 3/64" = 1'-0"
June 15, 2012



SITE PLAN