

INSURANCE NOT REQUIRED  
WORK MAY PROCEED  
CLERK OF COUNCIL

A-2010-059

RT

DATE: OCT 12 2010

SI

Recorded is Requested by, and when recorded, please mail to:

Clerk of the Council  
City of Santa Ana  
P.O. Box 1988 (M- 30)  
Santa Ana, California 92702

\_\_\_\_\_Space Above This Line for Recorder's Office\_\_\_\_\_

NO FEE: GOVERNMENT CODE  
SECTION 6103

**FIRST AMENDMENT TO JOINT USE AGREEMENT AND COVENANT  
BY AND BETWEEN SANTA ANA UNIFIED SCHOOL DISTRICT AND  
THE CITY OF SANTA ANA**

THIS First Amendment to Joint Use Covenant and Agreement ("AMENDMENT") is dated this 11 day of May, 2010, 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:**

WHEREAS, the City owns and operates Centennial Park; and,

WHEREAS, the City acquired Centennial Park from the U.S. Government subject to the condition that it forever be dedicated and set aside for recreational purposes (the "Federal Use Restrictions"); and,

WHEREAS, District and City entered into that certain Ground Lease and Option Agreement dated June 2002 (the "Lease") by which the City leased approximately 18.84 acres of Centennial Park to the District on which the District constructed and operates a performing arts center and athletic facilities (the "Joint Use Property") as part of Hector Godinez High School; and,

WHEREAS, concurrent with approval of the Lease, the City and the District entered into that certain Joint Use and Covenant dated June 2, 2002 (the "Joint Use Agreement") to make use of the Joint Use Facilities to maximize the beneficial use of the land and facilities for the entire community and in furtherance of the Federal Use Restrictions.

WHEREAS, the District has sought the consent of the City to make certain physical modifications to the Joint Use Facilities which requires amendment to provisions of the Joint Use Agreement.

WHEREAS, the City is willing to approve those amendments in exchange for changes to fiscal

provisions of Joint Use Agreement to enhance City scheduling of Joint Use Facilities.

WHEREFORE, in consideration of the covenants contained in the Lease Agreement and the Joint Use Agreement, and subject to all the terms and conditions of said Joint Use Agreement, the parties agree as follows:

1. SECTION 8. is hereby amended to read as follows:

**“8. CITY CONTRIBUTION FOR CUSTODIAL, UTILITY AND MAINTENANCE**

The District and the City understand and agree that a material aspect of the City’s consideration for agreeing to convey the land for the High School is obtaining the perpetual right to use the Joint Use Facilities for City programming purposes. The District and the City also understand and agree that it is impracticable to accurately calculate the incremental costs (if any) to the District to permit the City usages contemplated herein, particularly taking into consideration the potential for other community uses (without contribution to costs) if the City rights were not exercised. Therefore, the parties hereby agree that the City’s obligation to contribute to the District’s costs for custodial, utility and maintenance expense will be limited to the following, recognizing that such contribution may or may not fully compensate the District for its actual incremental costs attributable to the City’s exercise of its rights hereunder.

A. The City shall reimburse the District on a monthly basis (or as otherwise agreed by the Technical Advisory Committee) for a pro rata share of actual electrical utility costs incurred by the District attributable to the times that the City uses the Joint Use Facilities. Where feasible, the District shall install separate metering technology to measure City use vs. District use. Otherwise, the pro rata share shall be established from time to time by the Technical Advisory Committee based upon actual usage by the City and actual electrical utility costs incurred by the District.

B. The City shall reimburse the District annually for its pro rata share of cost of reseeding and repair of the Athletic Fields. The City’s contribution to these costs shall be based on a calculated estimate of the percentage of active use of the fields by the City compared to active use by the District, multiplied by the actual cost incurred by the District.

C. As its contribution to regular custodial services expense for use of all Joint Use Facilities, the City shall pay to the District, for each third-party-operated fee based program scheduled through the City’s reservation system, \$1.00 for each registered participant plus a payment of \$10.00 per day per facility used (e.g. \$10 .00 each for use of the auditorium, the band room, athletic field, gymnasium, and/or a classroom.)”

2. SECTION 11. is hereby amended to read as follows:

“11. **RESTRICTIONS ON FENCING.**

A. Except as provided in B, below, the Athletic Fields and hard courts shall not be fenced off from the remainder of Centennial Park so as to maximize the joint use potential of the facilities. The design of the other Joint Use Facilities shall ensure reasonable access from the City’s facilities in Centennial Park without access through the school campus.”

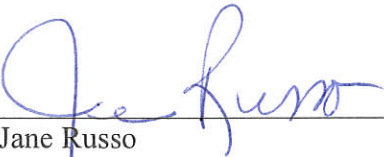
B. The restrictions in A, above, shall not prohibit the District from constructing and maintaining fencing necessary to establish an outfield barrier for each of the two baseball fields to be used only during the high school baseball season. The fences shall be composed of chain link, shall not exceed six (6) feet in height, shall be limited to extending only from one foul line to the other, and shall be designed to be removed when not in use. The fences shall be removed within one week of the end of the baseball season, and if not so removed, the City is hereby authorized to enter upon the fields and remove the fence. There shall be no fences along the foul lines except for foul ball protective fences from home plate to the outer edge of the infield. The exact location and design of the fences permitted by this paragraph shall be subject to the approval of the City’s Executive Director of Parks and Recreation.


3. Except as hereinabove amended, all terms and conditions of said Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, this AGREEMENT has been duly approved by both DISTRICT and CITY.

Santa Ana Unified School District,


City of Santa Ana

  
\_\_\_\_\_  
Jane Russo  
Superintendent


  
\_\_\_\_\_  
David N. Ream  
City Manager

  
\_\_\_\_\_  
Audrey Yamagata-Noji, Ph.D  
President of the Board

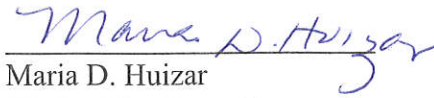
Attest:

  
\_\_\_\_\_  
Jose Alfredo Hernandez, J.D.  
Clerk of the Board

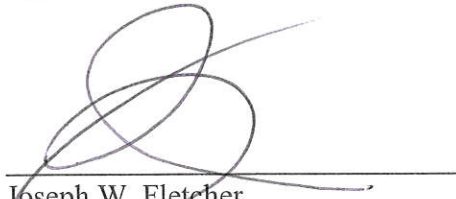
Approved as to Form:

  
\_\_\_\_\_  
Name: TERRY LEO  
District Counsel AKLR

Attest:

  
\_\_\_\_\_  
Maria D. Huizar  
Clerk of the Council

Approved as to Form:

  
\_\_\_\_\_  
Joseph W. Fletcher  
City Attorney