

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

THIS JOINT USE AGREEMENT ("Agreement") is dated as of June 6 2013, 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 Madison Elementary School which is located at 1124 E. Hobart Street, Santa Ana, California ("School").
- B. Madison Park, located at 1528 South Standard Avenue, Santa Ana, California, is owned and maintained by the City of Santa Ana, and is adjacent to the School.
- C. 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.
- D. The District and City desire to undertake a coordinated use of the Madison Park community garden and one-half basketball court, and the School playfield and teaching area. The partnership between the District and City is intended to benefit, allow maximum use by, and improve the general health and wellness of Madison Elementary School, community residents and families, and youth sports organizations.
- E. The parties previously entered into an agreement on December 12, 1977, in furtherance of promoting and conducting programs for community recreation whereby they maximized the use of their contiguous properties (four park/school locations, including Madison Park) for school, sports and community recreation purposes. The City administered the installation of automatic irrigation systems and sod at these four locations and in return the District has allowed the City to use its ball field.
- F. The City is receiving Community Development Block Grant (CDBG) funds from the U.S. government to facilitate construction of the Joint Use Facility.
- G. The City has determined that the renovation of the basketball courts, installation of a community garden, tool shed, decomposed granite walks, raised garden beds and compost bins, and installation of fencing to secure the School site while providing community access to the garden, teaching area and sports courts is an approved use of Community Development Block Grant funds.
- H. City and District desire to enter into this Agreement to provide for the joint use and maintenance of the community garden, one-half basketball court, playfield, and teaching area.

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

C: 2013 J. Phan (RT) JUN 06 2013

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, including the fenced in "Teaching Area" on School property, described in **Exhibit "A"** attached hereto.

B. "Joint Use Facilities" shall mean

- (i) community garden including the raised beds, walkways, compost bins and tool shed,
- (ii) one-half basketball court,
- (iii) the asphalt area at the southwest corner of the School site which will be utilized for the community garden teaching area, and
- (iv) sports lighting for the courts and security lighting for the premises, and
- (v) playfield.

all as identified in **Exhibit "A"** attached hereto and incorporated herein.

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.

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 June 1, 2013, and shall run for a term of thirty (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 thirty day notice to the City and in compliance with the provisions herein ("District Use"). However, if City has already scheduled a program for the Joint Use Facilities, then District shall use its reasonable efforts to provide City with an acceptable alternate location on the School Site.
- B. City Use. City shall be responsible for and have the authority 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. Administrative Oversight of Community Garden. In the event of a conflict regarding the planting of the Community Garden, the City shall have the right to determine the plantings, nutrients, watering facilities and other administrative details regarding the Community Garden.
- D. Priority for Youth Sports. The City will utilize the Joint Use Facilities during City Time, including the use of the basketball courts for youth sport organizations with priority given to youth sport organizations that have the greatest number of youth that live within a half (1/2) mile radius of the School. If the Joint Use Facilities are not being utilized by youth sports organization, they will be available on a first come first served basis during City Time.
- E. District Priority. 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 shall use its reasonable efforts to provide a suitable relocation site for the preempted organization.
- F. 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.
- G. 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 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. The City shall not charge the District and the District shall not charge the City for any use of the Joint Use Facilities. District acknowledges that the funds being provided by City for the Community Garden renovations are received by City pursuant to the CDBG Program and its requirements (24 CFR 570.503 and 24 CFR 570.504).
- H. Insurance. The City will ensure that each entity that 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 insurance policies.

- I. Supervision of Joint Use Facilities. Each party shall be responsible for appropriate supervision of all participants while that party is utilizing the Joint Use Facilities.
- J. Maintenance.
- i. The District shall be responsible for the maintenance of the security fencing, playfield, and the asphalt teaching area on District property.
 - ii. City shall be responsible for the maintenance of the basketball courts, security and sports lighting, and the community garden area.
 - iii. Each party shall be responsible for the maintenance of all planters assigned to that party pursuant to a programming agreement between the parties.
- K. Repairs.
- i. The City shall be responsible for repair of the basketball courts, lighting, and community garden. The District shall be responsible for the repair of the security fencing, playfield, and teaching area. However, the Parties agree that the cost of significant repairs to the Joint Use Facilities will be shared by the Parties in equal parts. As used in this section, "significant repairs" will include the 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 sports court is \$24,000 and the estimated repair cost is over \$6,000, that will be considered a significant repair subject to this subsection.
- Each party shall be responsible for damage occurring during its use of the Joint Use Property and/or the Joint Use Facilities.
- L. Utilities. City shall pay for all utility services furnished to the Joint Use Facilities on City owned property and District shall pay for all utility services furnished to the Joint Use Facilities on District owned property for the use, operation and maintenance of the Joint Use Facilities during the Term of this Agreement, or any extension thereof.
- M. 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. **CHANGE IN USE OF JOINT USE FACILITIES.** 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.

5. **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.

6. **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.

7. **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

8. **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 held to be invalid, void or unenforceable by a court of competent jurisdiction or an arbitrator chosen by both parties, 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.

9. **ENTIRE AGREEMENT.** This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the subject matter of this Agreement, and contains all of the covenants and agreements between the parties with respect to this matter. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made with regard to this matter by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise regarding this matter not contained in this Agreement shall be valid or binding. Any modification or amendment of this Agreement will be effective only if it is in writing and signed by both parties to this Agreement.

10. **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.

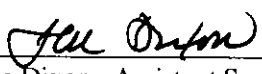
11. **BINDING EFFECT AND NONASSIGNABILITY.** This Agreement and all the terms, covenants, conditions, and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and their respective successors. This Agreement shall not be assignable by either Party.

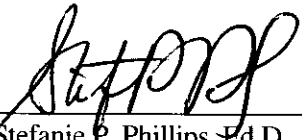
12. **TERMINATION.** Either party may terminate this Agreement, at will, with sixty (60) days prior written notice to the other party.

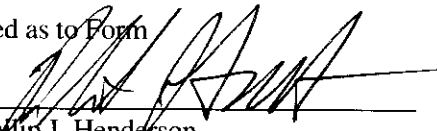
IN WITNESS WHEREOF, this Agreement has been duly approved by both District and City.

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

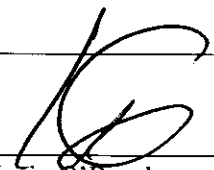
Dated: 4-24-13

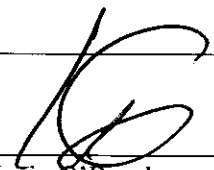
By: 
Joe Dixon, Assistant Superintendent
Facilities & Governmental Relations

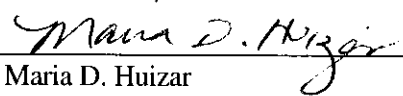
By: 
Stefanie P. Phillips, Ed.D., CBO
Deputy Superintendent, Operations

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

The "City"
City of Santa Ana
A Charter City

Dated:  JUN 06 2013

By: 
Kevin O'Rourke
Interim City Manager

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

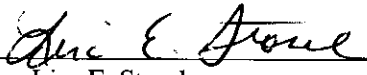
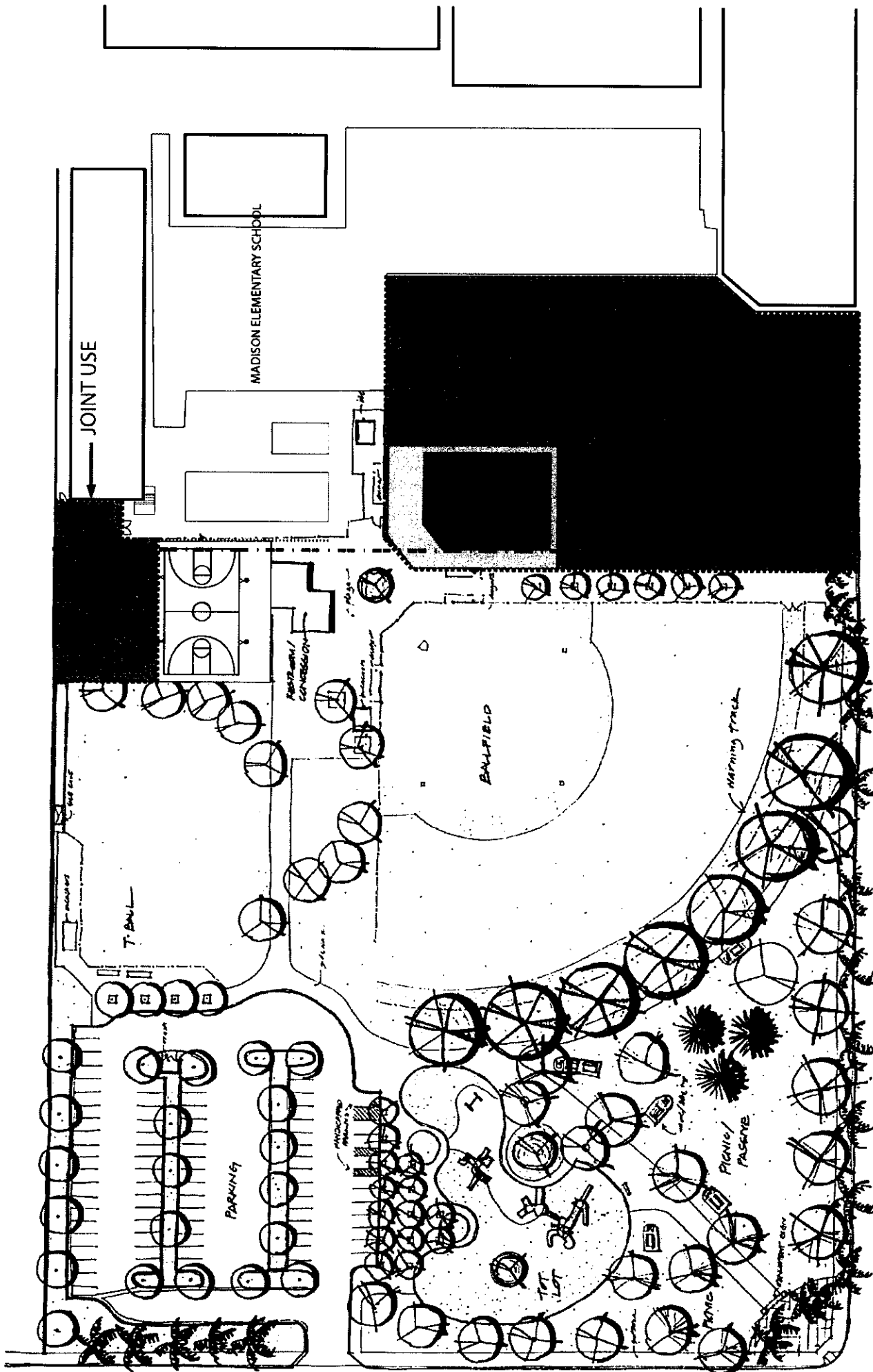
Approved as to Form
Sonia R. Carvalho, City Attorney
By: 
Lisa E. Storck
Assistant City Attorney

Exhibit "A"
Joint Use Property



S T A N D A R D A V E.

MADISON PARK
1528 S. Standard Ave.

E D I N G E R A V E.

Mary F.

EVIDENCE OF COVERAGE

DATE (MM/DD/YYYY)
5/30/2013

This Evidence of Coverage is used as a matter of information only and confers no rights upon the Certificate Holder. This Evidence of Coverage does not amend, extend, or alter the coverage afforded by the memoranda listed below.

MEMORANDUM NUMBER: 144

JOINT POWERS AUTHORITY (JPA)
Alliance of Schools for Cooperative Insurance Programs
16550 Bloomfield Avenue
Cerritos, CA 90703

www.ASCIP.org

CONTACT NAME: Mr. Fritz Heirich, Chief Executive Officer
PHONE: (562) 404-8029

JPA MEMBER
Santa Ana Unified School District
1601 E. Chestnut Avenue
Santa Ana CA 92701-6322

This is to certify that the Alliance of Schools for Cooperative Insurance Programs (ASCIP) Memorandum of Coverages on insurance listed below have been issued to the Covered Party named above for the period indicated. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this Evidence of Coverage may be used or may pertain, the coverages afforded by the Memorandum of Coverages described herein are subject to all the terms, exclusions, and conditions of such Memorandum of Coverages.

TYPE OF COVERAGE	ADDL INSR	MEMORANDUM NUMBER (MOC)	POLICY EFF (MM/DD/YYYY)	POLICY EXP 12:01a.m.	LIMIT OF LIABILITY / COVERAGE
GENERAL LIABILITY					
<input checked="" type="checkbox"/> OCCURRENCE	<input checked="" type="checkbox"/>	MOC #144	7/1/2013	7/1/2014	COMBINED SINGLE LIMIT PER OCCURRENCE \$ \$5,000,000
<input checked="" type="checkbox"/> Personal Injury					AGGREGATE \$ N/A
<input checked="" type="checkbox"/> Errors & Omission					\$
<input checked="" type="checkbox"/> Employment Practices					\$
AUTOMOBILE LIABILITY					
<input checked="" type="checkbox"/> AUTOMOTIVE PHYSICAL DAMAGE		MOC #144	7/1/2013	7/1/2014	COMBINED SINGLE LIMIT PER OCCURRENCE \$ \$5,000,000
<input checked="" type="checkbox"/> COMPREHENSIVE / COLLISION					ACTUAL CASH VALUE \$
<input type="checkbox"/> ANY AUTO					\$
<input checked="" type="checkbox"/> Owned Auto					\$
<input checked="" type="checkbox"/> Hired Auto					\$
PROPERTY					REPLACEMENT COST SUBJECT TO POLICY LIMITS, TERMS, AND CONDITIONS
<input type="checkbox"/> BUILDING / CONTENTS					\$
<input type="checkbox"/> FIRE, THEFT, RENTAL INTERRUPTION					\$
<input type="checkbox"/>					\$
<input type="checkbox"/>					\$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	N/A				EACH ACCIDENT \$
<input type="checkbox"/> WC STATUTORY LIMITS					PER EMPLOYEE \$
<input type="checkbox"/>					POLICY LIMIT \$
OTHER					SUBJECT TO POLICY LIMITS, TERMS, AND CONDITIONS
<input type="checkbox"/> EMPLOYEE DISHONESTY (CRIME)					\$
<input type="checkbox"/>					\$
<input type="checkbox"/>					\$
<input type="checkbox"/>					\$

APPROVED AS TO FORM

ADDITIONAL REMARKS:

As respects to agreement

Lisa E. Storck
LISA E. STORCK
Assistant City Attorney 1/2

CERTIFICATE HOLDER

City of Santa Ana
Parks, Recreation & Community Services Agency
20 Civic Center Plaza
Santa Ana CA 92701

CANCELLATION

Should any of the above coverages for the Covered Party be changed or withdrawn prior to the expiration date issued above, ASCIP will mail 30 days written notice to the Certificate Holder, but failure to mail such notice shall impose no obligation or liability of any kind upon ASCIP, its agents, or representatives.

Fritz Heirich

AUTHORIZED REPRESENTATIVE: Fritz Heirich

*ASCIP is a joint powers authority pursuant to Article 1 (commencing with Section 6500) Chapter 5 of Division 7 of Title 1 of the Government Code and Sections 39603 and 81603 of the Education Code. Rev 5-97

rec'd
9-11-13
mg

Additional Covered Party Endorsement

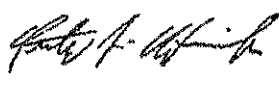
District: Santa Ana Unified School District		Endorsement No. 16511860
Additional Covered Party:	Description of Operations, Vehicle, or Property:	
City of Santa Ana its officers, agents and employees	As respects to agreement	
Coverage Period: Effective: 7/1/2013 Expires 12:01 a.m.: 7/1/2014		

The coverage provided to the Covered Party is hereby extended by this endorsement to the Additional Covered Party named above in accordance with the provisions contained in the Memorandum of Coverage (MOC). The coverage extended hereby applies only with respect to liability arising out of activities in the Description of Operations, Vehicle, or Property noted above. It is intended by ASCIP in issuing this endorsement to defend and/or indemnify the Additional Covered Party only if the District is solely negligent. In issuing this endorsement, ASCIP intends and agrees to extend coverage pursuant to the terms and conditions of the MOC to the Additional Covered Party named above only to the extent that the Additional Covered Party faces liability arising out of claims, demands, or lawsuits claiming money damages on account of bodily injury or property damage as defined and limited in the ASCIP MOC. The limits of liability extended to the Additional Covered Party listed above is \$5,000,000 per occurrence for liability.

APPROVED AS TO FORM



 LISA E. STORCK
 Assistant City Attorney



Authorized Representative: _____
Date Issued: 5/30/2013

ASCIP is a joint powers authority pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code and Sections 39603 and 81603 of the Education Code.

Rev 5/97