FIRST AMENDED AND RESTATED JOINT USE AGREEMENT BY AND BETWEEN
SANTA ANA UNIFIED SCHOOL DISTRICT AND THE CITY OF SANTA ANA
(ROOSEVELT-WALKER SCHOOL)

THIS FIRST AMENDED AND RESTATED JOINT USE AGREEMENT
(“Agreement”) is dated as of February 14, 2016, 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 both Roosevelt Elementary School, which is located at
501 S. Halladay Street, Santa Ana, California, and Walker Elementary School, which is
located at 811 E. Bishop Street, Santa Ana, California.

B. The Roosevelt and Walker Elementary School sites share the property located at the
southwest corner of Standard Ave and Chestnut Street, which is suitable for a
community center and park site.

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 City has received a grant through the Statewide Park Development and
Community Revitalization Program of 2008, and a grant through the United States
Department of Housing and Urban Development’s (“HUD”) Community
Development Block Grant (“CDBG”) program, providing funding to construct
improvements to the running track, install sports lighting at the basketball court, install
a park site, construct a 10,000 square foot community center, install a parking lot for
access to the park site and install fencing and landscaping around the park site.

E. The City and District desire to undertake a coordinated use of the improved sports
facilities and community center in order to allow maximum use by the schools,
community residents and sports organizations.

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 Roosevelt and
Walker Schools community.

G. City and District entered into the original Joint Use Agreement, dated March 13, 2013
(“Original Joint Use Agreement”), to provide for the joint use and maintenance of the
community center, parking lot and sports and recreation facilities.

H. The Parties now desire to replace the Original Joint Use Agreement, and make other
changes thereto, with this Agreement which hereby replaces all terms and conditions of
the Original Joint Use Agreement with the new terms and conditions set forth
herein, and the Original Joint Use Agreement shall henceforth be of no further force or
effect.
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 (1) the athletic field and track, and (2) one-half of the Community Center building as identified by the parties at final design of the building, all as identified in Exhibit “B” attached hereto.

C. “Public Facilities” shall mean the one-half of the Community Center building as identified by the parties at final design of the building, basketball/volleyball court, tot lot, restroom and parking lot at the northeast corner of Roosevelt/Walker School site, as identified in Exhibit “C”, attached hereto. Said 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 and reviewing allocations of funds for repairs to the Joint Use Facilities at Roosevelt/Walker Elementary Schools, as further set forth herein this Agreement.

E. “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.

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 District Time, when the City shall have the right to schedule use of the Joint Use Facilities.

2. TERM AND COMMENCEMENT. This Agreement shall commence on [Date], 2016, 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 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 District Time and, on a 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

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already scheduled a program for the Joint Use Facilities, then District shall provide City with an acceptable alternate location on the Roosevelt-Walker School Site.

i. District Use shall not include any priority use of the Public Facilities of the Community Center, but the District may request use of the Public Facilities of the Community Center.

ii. A separate point of access or agreed upon control system will be provided for the City’s use of the Public Facilities of the Community Center.

B. City Use.

i. City shall have the right at its discretion to schedule activities in the Joint Use Facilities during City time.

ii. City shall have the exclusive right to schedule activities in the Public Facilities during Regular School Hours and City Time.

iii. City shall have exclusive use of the Public Facilities during Regular School Hours. During non-Regular School Hours, City shall have access and use of all Public Facilities on the Roosevelt-Walker site.

iv. The City shall be responsible for and have the authority to schedule use of the Joint Use Facilities during City Time.

v. The City shall establish a system to provide for the coordination and scheduling of its use of the Joint Use Facilities during City Time, including a procedure for reserving the use of the Joint Use Facilities during City Time.

C. Priority for Youth Sports. The City will utilize the athletic field and track portions of 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 Joint Use Property.

D. 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 District Time, 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 use, District shall use its reasonable efforts to provide City with an acceptable alternate location for the preempted organization.

E. 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 and school-site safety standards such as prohibition of alcoholic beverages and tobacco. Reservation fees collected by City for City use of the Joint Use Facilities shall be retained by City. The City shall also comply with all requirements and restrictions on the collection of admission fees or other charges, per the Civic Center Act (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

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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 Public Facilities of the Community Center.

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. Facilities Users’ General Liability 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 policies.

H. Supervision of Joint Use Facilities.

i. District shall be responsible for appropriate supervision while using the Joint Use Facilities during District Time.

ii. The City shall be responsible for appropriate supervision while using the Joint Use Facilities during City Time.

I. Custodial. Normal custodial services of the Joint Use Facilities will be the responsibility of the District during District Time. For third-party programs’ use of the Joint Use Facilities scheduled through the City’s reservation system during City Time, the City shall reimburse the District monthly for the cost to have a custodian on-site ($40 per hour, for a minimum of 2 hours and will change year-to-year based on the District’s staff costs, subject to Technical Advisory Committee approval). In the event that the third-party program leaves the Joint Use Facilities in a disorderly manner beyond normal use, as determined by the Technical Advisory Committee, the City shall reimburse the District for an additional two (2) hours of custodial time.

The City shall be responsible to provide custodial services for the Public Facilities.

J. Maintenance. Normal maintenance of the Joint Use Facilities will be the responsibility of the District. District shall be responsible to maintain its portion of the interior of the Community Center building, outdoor lighting, painting, re-roofing, and acts of vandalism in the Community Center footprint.

The City shall be responsible to maintain its portion of the interior of the Community Center building, the Public Facilities, and the sports lighting at the Joint Use Facilities.

K. Repairs.

i. Damages. Each party shall be responsible for damage occurring during its use of the Joint Use Property, Joint Use Facilities and/or Public Facilities.

ii. Repairs. District shall be responsible for repair of the Joint Use Facilities. City shall be responsible for repair of the Public Facilities. Provided, however, District and City shall submit to the Technical Advisory Committee for review any plans for repairs required on the Joint Use Facilities or Public Facilities,
respectively. Upon review of any submitted plans, the Technical Advisory Committee shall determine whether and to what extent the other Party will share in the cost of the repairs to either the Joint Use Facilities or Public Facilities, as applicable.

iii. **Repair Fund Escrow.** The Parties desire to establish an escrow account of funds added on an annual basis specifically to be expended on repairs for the Joint Use Property, hereafter referred to as “Repair Fund.” Each party shall deposit Fifty Thousand Dollars ($50,000) by August 1 of each year for the term of this Agreement, unless otherwise agreed upon in writing by the Parties, for the purpose of funding necessary repairs and replacement of the facilities of the Joint Use Property. The Technical Advisory Committee shall review any necessary repairs and determine the amount of Repair Fund dollars to be allocated for the performance and completion of said necessary repairs. The Technical Advisory Committee shall further monitor the Repair Fund to assess and determine whether the Parties’ annual deposit therein should be adjusted pursuant to the repairs previously performed on and/or anticipated to be required for the Joint Use Property.

L. **Utilities.** City shall pay for all utility services furnished to the Public Facilities and sports and security lighting on the athletic field. District shall pay for all utility services furnished to the Joint Use Facilities except the sports and security lighting mentioned above.

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 Roosevelt and Walker Elementary Schools 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. However, the City represents and warrants that no tax increment revenue from its redevelopment areas will be provided.

N. **Materials and Equipment.** District shall furnish all materials and equipment in District’s sole discretion necessary for the Joint Use portion of the Community Center. City shall furnish materials and equipment in City’s discretion necessary for the Public Use portion of the Community Center.

4. **CHARGES FOR USE OF JOINT USE FACILITIES.** The City may charge and may be required to charge persons and organizations that use the Joint Use Facilities during City Time, in compliance with the provisions of Education Code section 10900 et seq., a user fee or charge as set by resolution of the City Council. The purpose of this fee is for the City to recover costs it incurs in scheduling the use of the Joint Use Facilities. District shall not charge the City for the use of the Joint Use Facilities during non-school hours.

5. **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, expenses, 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, expenses, 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
Parks, Recreation and Community Services
26 Civic Center Plaza
P.O. Box 1988
Santa Ana, CA 92702
Attn: Gerardo Mouet

If to DISTRICT:

Santa Ana Unified School District
1601 E. Chesnut
Santa Ana, CA 92701

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8. 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.

9. APPLICABLE LAW. This Agreement has been made and entered into in the State of California and the laws of said State shall govern the validity and interpretation hereof and the parties' performance hereunder.

10. SEVERABILITY. 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 by a court of competent jurisdiction to be invalid, void or unenforceable 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.

11. REMEDIES FOR BREACH. Any material 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 conditions or any other term or condition of this Agreement.

12. 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 and their respective successors. This Agreement shall not be assignable by either Party.

[SIGNATURES ON FOLLOWING PAGE]
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: 12/13/16

By: [Signature]
Orin Williams
Assistant Superintendent
Facilities & Governmental Relations

By: [Signature]
Tina Douglas
Assistant Superintendent

Approved as to Form:
By: [Signature]
Philip L. Henderson
Attorney, Orbach Hult Suarez & Henderson

RECOMMENDED FOR APPROVAL:
By: [Signature]
Hernando Moust
Executive Director of Parks,
Recreation and Community Services Agency

The “City”
City of Santa Ana
A Charter City

Dated: 1-24-17

By: [Signature]
David Cavazos
City Manager

Attest:
By: [Signature]
Maria D. Huizar
Clerk of the Council

Approved as to Form:
By: [Signature]
Sonia R. Carrillo
City Attorney

By: [Signature]
Ryan O. Hodge
Assistant City Attorney

Exhibit 1
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: 12/12/16

By:  
Orin Williams  
Assistant Superintendent  
Facilities & Governmental Relations

By:  
Tina Douglas  
Assistant Superintendent

Approved as to Form:  
By:  
Phillip Henderson  
Attorney, Orbach Huff Suarez & Henderson

RECOMMENDED FOR APPROVAL:

Gerardo Navas  
Executive Director of Parks  
Recreation and Community Services Agency

The “City”  
City of Santa Ana  
A Charter City

Dated: 1-31-17

By:  
David Cavazos  
City Manager

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

Approved as to Form:  
By:  
Ryan O. Fojas  
Assistant City Attorney

Exhibit 1
ROOSEVELT JOINT USE SITE CONCEPT PLAN
JOINT USE PROPERTY

Exhibit “A”
Exhibit “B”

JOINT USE FACILITIES
ROOSEVELT JOINT USE SITE CONCEPT PLAN
PUBLIC FACILITIES

Exhibit “C”