

**COLLABORATIVE AGREEMENT FOR THE JOINT USE OF FACILITIES  
BETWEEN THE RIVERSIDE UNIFIED SCHOOL DISTRICT  
AND  
CITY OF RIVERSIDE  
FOR THE EASTSIDE COMMUNITY GARDEN AT  
EMERSON ELEMENTARY SCHOOL**

This Joint Use Agreement ("Agreement") is dated as of December 13, 2011, by and between the Riverside Unified School District ("District"), a public school district duly organized and existing under the laws of the State of California, and the City of Riverside ("City"), a California charter city and municipal corporation, (collectively the "Parties").

**RECITALS**

WHEREAS, District is the owner of real property and improvements thereon known as Emerson Elementary School located at 4660 Ottawa Avenue, Riverside, California ("School"), which is available to be used by City for community recreational and educational purposes; and

WHEREAS, City desires to continue to operate a community garden program for the benefit and enjoyment of the community; and

WHEREAS, the City and District desire to establish this Agreement as a collaborative effort to create community within the District's geopolitical boundaries and to promote neighborhood pride and opportunities.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the collaborative agreements herein contained, the sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Term and Termination. The term of this Agreement shall be for a period beginning on July 1, 2011 and ending June 30, 2016.

District or City may terminate this Agreement by giving written notice of termination in the manner set forth in paragraph 14 of this Agreement no later than one hundred and twenty (120) days prior to desired termination date, or if the District takes formal action to determine that the Facilities must be used for District operations, the District may terminate this Agreement by giving thirty (30) days written notice in advance of the desired termination date.

2. Facilities Covered. The term "Facilities" will be used for the purposes of this Agreement to mean a plot of land on the School campus generally described as an area of approximately 40,800 square feet in the southeast corner of the School campus and depicted on Exhibit "A" - Plot Plan, which is attached hereto and made a part hereof.

In addition to the specific area of School designated above, the Facilities shall be inclusive of non-exclusive use of the parking facilities and the appropriate ingress and egress path of travel. City may utilize other facilities at the School by following the District's established Use of Facilities program regulations and paying the then current use fees.

3. Obligation of City. During the term of this Agreement, City hereby covenants and agrees to the following:

A. Upon the expiration of the term of this Agreement, or upon the sooner termination thereof, and when surrendered, City will leave Facilities in as good order and condition as Facilities were at the beginning of their term of this Agreement.

B. Any obligation for the custodial or grounds service necessary to keep Facilities in a neat, orderly, and sanitary condition, including picking up trash and debris and clearing of weeds, at all times during its use thereof under this Agreement will be the City's responsibility.

C. City will not allow any vehicles to enter upon School except as may be necessary and authorized for the limited purposes of maintenance, operation, and delivery of goods and services or in designated public parking lots.

D. City may provide and maintain additional toilet facilities at the Facilities, if necessary, in conjunction with City activities. District will approve and locate the type of toilet facilities being portable, mobile, temporary, or fixed.

E. City will appoint an employee with whom District, or any other authorized agent of District, may confer regarding the terms of this Agreement.

F. City will enforce all District rules, regulations, and policies provided by the District while directing community recreational and educational activities at the Facilities.

G. City will provide personnel necessary for the direction or supervision of activities sponsored by the City at the Facilities.

4. Obligation of District. During the term of this Agreement, District hereby covenants and agrees to the following:

A. District shall appoint an employee with whom City, or any other authorized agent of the City, may confer regarding the terms of this Agreement.

B. District shall perform normal maintenance on District Facilities as required under normal working conditions and fair wear and tear.

C. District will have the right, but not the obligation, to make repairs to Facilities and improvements.

D. District shall pay for domestic water and electrical utilities to serve the water and electrical improvements noted in Paragraph 5 below.

E. District shall provide access to existing outdoor storage, which use may be shared by both City and District.

5. Additional Improvements.

A. City will obtain prior written consent of District to make any alterations, additions, or improvements to Facilities. City understands that any such alterations, additions, or improvements must comply with all state and local standards.

B. Any such alterations, additions, or improvements will be at the expense of City, unless otherwise agreed upon.

C. Each party may, for good cause, require the demolition or removal of any alterations, additions, or improvements at the expiration or termination of this Agreement. "Good cause" includes reasons of health, safety, or the District's need for the Facility for educational purposes.

D. If any alterations, additions, or improvements are destroyed by fire, war, earthquake, flood, storm, or other casualty beyond the control of the Parties hereto, to such an extent which they cannot be restored to their previous condition within one hundred-twenty (120) days after the casualty, City will have the option to restore the improvements to their condition as of the date of the casualty. In the event City does not elect to perform such restoration, City will remove all improvements and personal property from the site and return the site to its original condition, insofar as practical, unless otherwise mutually agreed. If site and improvements are destroyed by any of the causes enumerated above, and in the event they can be restored within one hundred-twenty (120) days after the casualty, City will restore them as soon as feasible.

6. Limitations on Use. City agrees that no business shall be carried on or conducted on the Facilities in violation of any regulations, order of law, statute, bylaw, ordinance or policy of any governmental agency having jurisdiction. City shall not commit or suffer to be committed on said Facilities any nuisance or other act which may disturb the quiet of District's operations or of adjoining property owners or occupants.

City agrees that the Facilities will be used for educational and recreational purposes and related services.

City agrees that the grounds will not be used for warehousing of materials or maintenance and repair of vehicles.

7. Insurance.

A. City, at its sole cost and expense, shall insure its activities in connection with this Agreement by maintaining programs of self insurance as follows:

1. General Liability Self-Insurance Program with a limited of not less than \$1,000,000 per occurrence.
2. Business Automobile Liability Self-Insurance Program for Owned, Scheduled, Non-owned or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
3. Workers' Compensation as required under California State law.
4. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of City and District against other insurable risks relating to performance of this Agreement.

It should be expressly understood, however, that the coverage and limits required under Section 7 (A) shall not in any way limit the liability of City.

City shall furnish District with a Certificate of Self-Insurance endorsed to District evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to District of any material modifications, change or cancellation of the above insurance coverage.

B. District, at its sole cost and expense, shall insure its activities in connection with this Agreement by maintaining programs of self insurance as follows:

1. General Liability Self-Insurance Program with a limited of not less than \$1,000,000 per occurrence.
2. Business Automobile Liability Self-Insurance Program for Owned, Scheduled, Non-owned or Hired Automobiles with a combined single limit of not less than \$1,000,000 per occurrence.
3. Workers' Compensation as required under California State law.
4. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of City and District against other insurable risks relating to performance of this Agreement.

It should be expressly understood, however, that the coverage and limits required under Section 7 (B) shall not in any way limit the liability of District.

District shall furnish City with a Certificate of Self-Insurance endorsed to City evidencing compliance with all requirements. Certificates shall provide for thirty (30)

days advance written notice to City of any material modifications, change or cancellation of the above insurance coverage.

8. Indemnification.

A. City is financially responsible for damages caused by City's use of the Facilities.

B. City agrees to defend, indemnify and hold District, its officers, employees, agents and volunteers harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts, omissions or misconduct of City its officers, employees, agents or volunteers.

District agrees to defend, indemnify and hold City, its officers, employees, agents and volunteers harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent or intentional acts, omissions or misconduct of District its officers, employees, agents or volunteers.

9. Hazardous Materials. District warrants that to the best of its knowledge, the Facilities are free of hazardous materials, as defined hereinafter. In the event that it is discovered that the Facilities are not free of hazardous materials, District, at its sole cost and expense, shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions necessary to clean up and remove all hazardous materials on, from, or affecting any portion of the Facilities. District agrees to defend, indemnify, and hold harmless City, its employees and agents from and against all claims, demands, penalties, fines, liabilities, settlement, damages, costs or expenses (including reasonable attorneys' fees), of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to the presence, disposal release, or threatened release of any hazardous materials on or about the Facilities resulting from the District or omissions.

City shall keep the Facilities completely free of hazardous materials, as defined hereinafter. In the event that it is discovered that the Facilities have become contaminated with hazardous materials, due to the action of City, City, at its sole cost and expense, shall conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal and other actions necessary to clean up and remove all hazardous materials on, from, or affecting any portion of the Facilities. City agrees to defend, indemnify, and hold harmless District, its employees, agents, and volunteers from and against all claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses, including attorney's fees, of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way related to the presence, disposal

release, or threatened release of any hazardous materials on or about the Facilities resulting from City's actions or omissions.

For purposes of this section, "hazardous materials" includes, without limitation, any flammable explosives, radioactive materials, hazardous materials, hazardous waste, hazardous or toxic substances, petrochemicals or derivatives, asbestos or related materials and pesticides.

10. Emergency Compliance. City shall at all times follow the instructions and directions of District staff during a School emergency or during a School emergency practice drill, as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the School.

11. Inspection. District, or their designee, shall have the right at all reasonable times to inspect the Facilities to determine if the provisions of this Agreement are being complied with.

City has inspected the Facilities which are the subject of this Agreement and agrees that, as of the date of execution of this Agreement, said Facilities are acceptable.

12. Tobacco Free Facilities. Smoking of cigarettes or other tobacco products is prohibited in all buildings and all grounds owned or leased by the District at any time, including the Facilities subject to this Agreement. The consumption of alcoholic beverages is strictly prohibited anywhere on the School.

13. Non-Discrimination. During the term of this Agreement, the Parties shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex or sexual orientation, in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, the Parties agree to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

14. Notices. All notices, statements, demands, requests, consents, approvals, authorizations, appointments, or designations hereunder by either party to the other will be in writing and will 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 to:

If to City:  
City of Riverside  
3900 Main Street  
Riverside, CA 92522  
Attn: Parks, Recreation, and Community  
Services Director

If to District:  
Riverside Unified School  
3380 14th Street  
Riverside, CA 92501  
Attn: Deputy Superintendent  
Business Services

15. Assignment. City shall not assign this Agreement, or any interest therein, and shall not sublet said Facilities or any part thereof or any right or privilege appurtenant thereto, or suffer any other person to occupy or use said Facilities or a portion thereof, without the prior written consent of District. Any such assignment without the District's consent shall be void and shall, at the option of the District, terminate this Agreement.

16. Non-Waiver. The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this Agreement shall not be deemed a waiver of any right or remedy that either party may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

17. Venue. Any action at law or in equity brought by either of the Parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county. In the event either party hereto shall bring suit to enforce any term of this Agreement or to recover any damages for and on account of the breach of any term or condition of this Agreement, it is mutually agreed that the prevailing party in such action shall recover all costs thereof, including reasonable attorneys' fees, to be set by the court in such action.

18. Severability. Each paragraph and provision of this Agreement is severable from each other provision. If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

19. Authority. The Parties each warrant and represent to the other that they have the full legal authority to enter into this Agreement. District further warrants and represents to City that District has complied with all applicable federal, state, and local statutes, ordinances and regulations with respect to the offering of Facility to City under this Agreement.

20. Entire Agreement. This Agreement sets forth the entire agreement between City and District, and any modifications or extensions must be in the form of a written amendment duly noticed and approved at a public meeting.


**[signatures on following page]**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.


CITY OF RIVERSIDE, a California  
charter city and municipal corporation

RIVERSIDE UNIFIED SCHOOL  
DISTRICT, a public school district

By:   
City Manager

By:   
Michael H. Fine, Deputy  
Superintendent Business  
Services and Governmental  
Relations

ATTEST:

By:   
City Clerk

APPROVED AS TO FORM:

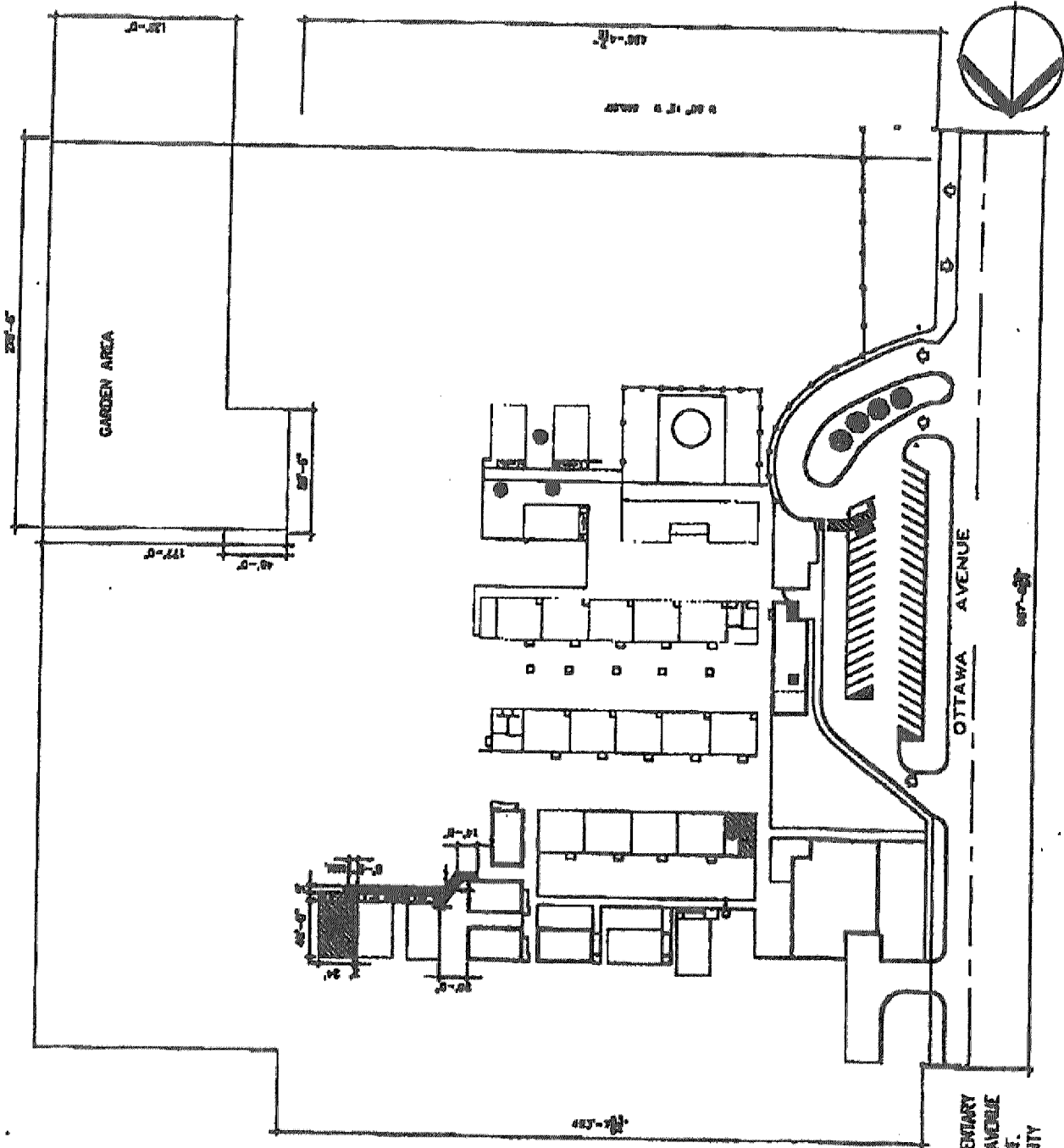
By:   
Deputy City Attorney



EXHIBIT "A"

PLOT PLAN

# EXHIBIT "A"



SITE PLAN: EMERSON ELEMENTARY

SCALE: 1"=50'-0"

EMERSON ELEMENTARY  
4500 OTTAWA AVENUE  
RIVERSIDE, CALIF.  
RIVERSIDE COUNTY