JOINT USE AGREEMENT BETWEEN THE CITY OF RIVERSIDE AND RIVERSIDE UNIFIED SCHOOL DISTRICT

Former Riverside Golf Course

THIS JOINT USE AGREEMENT ("AGREEMENT") is made and entered into this 10th day of September, 2014, by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, ("CITY"), and RIVERSIDE UNIFIED SCHOOL DISTRICT ("DISTRICT") a public school district duly organized and existing under the laws of the State of California, with respect to the following facts:

RECITALS

- A. WHEREAS, CITY is the owner of real property and improvements thereon known as Former Riverside Golf Course (1077 North Orange, Street) Riverside, California, which is available to be used by DISTRICT for community recreational, educational and athletic purposes: and
- B. WHEREAS, DISTRICT maintains facilities at various locations within the DISTRICT at which various programs and classes are provided; and
- C. WHEREAS, DISTRICT provides classes, programs, and recreational activities for its residents; and
- D. WHEREAS, due to the public's demand on existing sports playing fields and the lack of available sports playing fields, the CITY desires to enter into a Joint Use Agreement with DISTRICT: and
- E. WHEREAS, CITY desires to provide DISTRICT and the citizens of the CITY of Riverside with use of its Facilities to enhance the DISTRICT athletic and recreation programs, pursuant to the terms and conditions in this Agreement; and
- F. WHEREAS, this Agreement is being entered into pursuant to the California Education Code sections 10900 et seq., ("Community Recreation Programs Law") which authorize and empower school districts and municipalities to enter into agreements for the purpose of organizing, promoting and conducting programs of community recreation; and
- G. WHEREAS, the Community Recreation Programs Law defines "recreation" to mean the following:

"[A]ny activity, voluntarily engaged in, which contributes to the physical, mental, or moral development of the individual or group participating therein, and includes any activity in the fields of visual and performing arts, handicraft, science, literature, nature study, nature contacting, aquatic sports, and athletics, or any of them, and any informal play incorporating any such activity." (Education Code section 10901(c)); and

- H. WHEREAS, CITY and DISTRICT are authorized under California law to operate and maintain recreation centers, as defined in Education Code Section 10901(f), and incudes community recreation; and
- I WHEREAS, CITY and DISTRICT desire to enter into an agreement pursuant to the aforesaid provisions of the Education Code of the State of California, providing for the joint use of Facilities as defined herein at Paragraph 4(c).

AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

- 1. <u>USE</u>. CITY hereby authorizes the DISTRICT to use the Facilities for athletic programs for the term and subject to the conditions hereinafter set forth.
- 2. <u>TERM.</u> This agreement shall be effective on the date first written above and shall remain in effect for three (3) years, unless otherwise terminated pursuant to provisions herein.
- 3. <u>TERMINATION</u>. Notwithstanding anything to the contrary herein, this Agreement may be terminated by any party, without cause, upon 90 days written notice. Termination of this Agreement can be requested even in the absence of a substantial breach by any party.

4. **DEFINITIONS.**

- (a) <u>DISTRICT Usage.</u> The term "DISTRICT Usage" shall mean the usage by and for the DISTRICT or a DISTRICT guest. A DISTRICT guest shall be documented through the DISTRICT'S standard Use of Facility Permit process and shall be limited to use by other schools and school districts.
- (b) Exclusive right/exclusive use. The terms "exclusive right" or "exclusive use" are defined as not sharing the Facilities with others when scheduled by the DISTRICT; DISTRICT shall have the exclusive right to all access and use of the Facilities at those times. When not scheduled by the DISTRICT, the Facilities shall be open for use by all other parties.
- (c) <u>Facilities</u>. The term "Facilities" shall mean the Former Riverside Golf Course consisting of Assessor Parcel Nos. 206-070-002, 206-070-003, 246-06-003, located at 1077 N. Orange St., Riverside, CA 92501 and as depicted on Exhibit "A", attached hereto and incorporated herein by this reference. No other CITY facility shall be subject to this

Agreement.

(d) <u>Outside Usage</u>. The term "Outside Usage" shall mean the usage by any other individual or group not included as District Usage.

5. <u>CITY OBLIGATIONS</u>.

- (a) CITY shall provide DISTRICT access to and use of the Facilities so that the DISTRICT may provide Recreational Programs during the Term of this Agreement. Specifically, DISTRICT will use the Facilities during any time not previously scheduled for CITY activities.
- (b) CITY will maintain a master use schedule of the Facilities. A meeting between CITY and DISTRICT representatives will be held semi-annually to mutually develop a written schedule, including the DISTRICT usage. CITY will not allow access to the Facilities by outside groups during times previously reserved by the DISTRICT. An initial master use schedule of the Facilities is attached to this Agreement as Exhibit "B."
- (c) DISTRICT shall maintain the Facilities in a safe and sanitary condition during their scheduled use. DISTRICT shall provide all routine and necessary maintenance and janitorial services, including but not be limited to the portable restrooms, trash dumpsters, and designated storage areas as required under normal working conditions and allowing for fair wear and tear.
- (d) DISTRICT shall be solely responsible for the purchase, necessary repairs, maintenance, and upkeep of improvements required for DISTRICT use of the Facilities. Nothing in this Agreement shall be construed as requiring CITY to fund capital improvements for the Facilities. Once improvements are made, DISTRICT shall be responsible for any and all repairs made necessary by damages caused by DISTRICT in accordance with Section 6(e) of this Agreement.
- (c) CITY shall install, repair, maintain, and be responsible for all CITY-owned equipment located at the Facilities and shall bear the risk of loss for any such equipment. DISTRICT shall not be responsible for any damage or loss of CITY-owned equipment that is not secured when DISTRICT or an Outside Group uses the Facilities. If DISTRICT is using CITY owned equipment and it is damaged or lost while in DISTRICT's use, the DISTRICT shall incur the cost for replacement.
- (f) CITY shall require all Facilities construction to conform to the requirements of the Americans with Disabilities Act, if applicable.

6. <u>DISTRICT"S OBLIGATIONS.</u>

- (a) Registration and collection of enrollment fees for DISTRICT's Recreation Programs shall be conducted at DISTRICT facilities. On-site registration and collection of fees may be conducted by DISTRICT at the Facilities when necessary, so long as such activities are coordinated with CITY.
- (b) DISTRICT shall provide DISTRICT staff, at its own expense, for the implementation and handling of any recreational programs and DISTRICT activities. DISTRICT staff shall be responsible for the supervision of all DISTRICT staff and shall be solely responsible for staff misconduct. DISTRICT shall ensure that all staff complies with the requirements of this Agreement including the fingerprinting and background requirements of Section 29.
- (c) DISTRICT has the right, but not the obligation, to make repairs and improvements to Facilities, subject to the prior written approval of CITY. This provision shall create no requirement or obligation for the DISTRICT to provide maintenance staff at the Facilities at any time whatsoever.
- (d) DISTRICT may provide and maintain additional portable toilet facilities, if necessary, in conjunction with DISTRICT programs or activities. CITY must approve in writing and may provide direction or establish requirements regarding the location/placement of the type of toilet facilities being portable, mobile, temporary, or fixed, and the security of these facilities.
- (c) DISTRICT shall install, repair, maintain, and be responsible for all DISTRICT-owned equipment located on the Facilities and shall bear the risk of loss for any such equipment. CITY shall not be responsible for any damage or loss of DISTRICT-owned equipment that is not secured when CITY uses the Facilities. CITY may request that DISTRICT-owned equipment be removed or secured during CITY's use of the Facilities.
- (f) DISTRICT shall be responsible for the costs of any repair or maintenance made necessary by any damage or improper usage, which occurs during the DISTRICT's use of the Facilities.
- (g) DISTRICT shall not be responsible for the purchase, necessary repairs, maintenance or upkeep of future capital improvements for the Facilities unless repairs are made necessary by damage caused by DISTRICT beyond normal wear and tear.

7. USE OF FACILITIES.

- (a) Priority. Usage of the Facilities will be permitted in the following order of
- CITY programs or activities,
- DISTRICT sponsored programs or activities, and

- Other youth programs or activities usage by any other individual or group not included as DISTRICT or CITY programs or activities.
- (b) CITY shall have first priority for use of all Facilities. To the maximum extent possible, CITY shall provide DISTRICT with ninety (90) days written notice in the event CITY event requires use of the fields not included in the Master Schedule. However, CITY's failure to provide written notice does not limit CITY's right to first priority.
- (c) DISTRICT shall have next priority to conduct Recreational Programs at the Facilities.
- (d) Non-DISTRICT Guests. DISTRICT does not have the right to unilaterally authorize use of the Facilities by non-DISTRICT sponsored, cosponsored or guest of the DISTRICT, individuals or groups.
- (e) Trash. DISTRICT shall ensure that the Facilities shall be left free and clear of any and all litter, waste, and/or refuse left by any of the participants involved in activities on the Facilities.
- (f) Parking. The Facilities shall include the use of the parking within the area depicted on the attached Exhibit "A."

8. SCHEDULING.

To avoid conflicts in usage of the Facilities, immediately upon execution of the agreement and semi-annually thereafter, CITY and the DISTRICT agree to mutually develop and to abide by a Master Schedule ("Master Schedule"), to be maintained by CITY, setting forth dates and times each party shall be entitled to use the Facilities for the immediate fiscal year. The Master Schedule may be modified at any time by written mutual agreement between CITY and the DISTRICT.

CITY and DISTRICT agree that they shall, at all times, keep each other appraised of all Outside Groups, including but not limited to community or school groups, utilizing the Facilities. CITY and DISTRICT shall provide this information on the Master Schedule, as developed and maintained by CITY. The DISTRICT agrees to secure prior written approval from CITY for any use of Facilities.

CITY reserves the right to reasonably refuse any Outside Group use of the Facilities. CITY shall be responsible to notify and require any Outside Group utilizing the Facilities to provide its own supervision for activities conducted on the Facilities.

All Outside Groups utilizing the Facilities shall be responsible for obtaining all necessary city, county or state of California permits, licenses, insurances or other approvals required with respect to the activities to be conducted on the Facilities.

9. <u>REPRESENTATIVES.</u>

- (a) <u>CITY's Representative.</u> CITY hereby designates the Parks, Recreation and Community Services Director, or his or her designee, to act as its representative for the performance of this Agreement ("CITY's Representative"). CITY's Representative shall have the power to act on behalf of CITY for all purposes under this Agreement. DISTRICT shall not accept direction or orders from any person other than City's Representative or his or her designee.
- (b) <u>DISTRICT's Representative.</u> DISTRICT hereby designates the Deputy Superintendent, Business Services and Governmental Relations, or their designee, to act as its representative for the performance of this Agreement ("DISTRICT's Representative"). DISTRICT's Representative shall have full authority to represent and act on behalf of the DISTRICT for all purposes under this Agreement. The DISTRICT's Representative shall supervise and direct the Services, using his/her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.
- 10. <u>CITY POLICIES</u>. All groups, organizations or participants using the Facilities must abide by all rules, regulations, policies and procedures for the use of the Facilities. CITY shall provide the DISTRICT with copies of such rules, regulations, policies and procedures.
- 11. <u>RIGIT OF ACCESS</u>. CITY shall permit access by DISTRICT and the invitees of DISTRICT to its Facilities for all purposes contemplated by this Agreement. No vehicles shall enter upon the Facilities unless 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.
- 12. <u>SECURITY</u>. CITY shall be responsible for security at its Facilities. DISTRICT shall be responsible for providing security for all DISTRICT activities for purposes of crowd, participants and traffic control but is not required to hire a private security company. DISTRICT will not be responsible for theft, vandalism, or property damage unless the same arises out of the sole negligence or willful misconduct of DISTRICT. If so, then the DISTRICT shall pay the actual cost of replacement or repair pursuant to the indemnification obligation herein. CITY's security responsibilities shall not be construed to expand or alter its indemnity requirements in Section 13 of this Agreement.

13. <u>MUTUAL INDEMNIFICATION.</u>

(a) DISTRICT shall defend, indemnify and hold CITY, its officers, employees and agents 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, intentional acts, omissions or misconduct of DISTRICT its officers, agents, or students unless damages arises out of the sole and active negligence of CITY.

- (b) CITY shall defend, indemnify and hold DISTRICT, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's 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 or omissions of CITY, its officers, agents, or employees unless damages arises out of the sole and active negligence of DISTRICT.
- (c) The parties expressly agree that any payment, attorney's fees, costs or expense they incur or make to or on behalf of an injured employee under their self-administered workers' compensation are included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.
- HAZARDOUS MATERIALS. CITY 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 DISTRICT, its employees and agents from and against all claims, demands, penalties, fines, liabilities, settlement, damages, costs or expenses (including reasonable 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 the DISTRICT or omissions.

DISTRICT 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 DISTRICT, 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, 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 DISTRICT'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.

15. INSURANCE.

(a) The parties, at their sole cost and expense, shall insure their activities

in connection with this Agreement by maintaining programs of self-insurance as follows:

- i. General Liability (including broad form property damage and contractual liability) insurance on a per occurrence basis with a single limit of not less than One Million Dollars (\$1,000,000);
 - ii. Workers' Compensation as required under California State law.
- iii. Employer's Liability insurance on a per occurrence basis with a single limit of not less than One Million Dollars (\$1,000,000);
- iv. Professional Liability insurance on a per occurrence basis with a single limit of not less than One Million Dollars (\$1,000.000);
- v. Automobile liability insurance for owned, hired and non-owned vehicles on a per occurrence basis with a combined single limit of not less than One Million Dollars (\$1,000,000).
- vi. Such other insurance in such amounts which from time to time may be reasonably required by the mutual written consent of the parties against other insurable risks relating to performance of this Agreement.
- (b) Prior to DISTRICT's execution of this Agreement, self-insurance policies or certificates evidencing the coverage required by this Agreement shall be filed by DISTRICT with CITY and shall be endorsed to include its officers and employees as additional insureds.
- (c) The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to the other party by certified or registered mail. The parties shall also add each other as additional insured on the insurance policies required by this Agreement.
- (d) It should be expressly understood, however, that the coverages and limits required under this Section shall not in any way limit the liability of either Party.
- (e) Additional insured endorsements are required for general, property damage, sexual abuse and automobile liability policy coverage. Such a provision, however, shall only apply in proportion to and to the extent of the negligent acts or omissions of the other Party, its officers, agents, or employees. Each Party, upon the execution of this Agreement, shall furnish the other Party with Certificates of Insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to the other party of any material modifications, change or cancellation of the above insurance coverages. Each Party shall provide Certificates of Insurance to the other Party on an annual basis.

- 16. <u>EMERGENCY COMPLIANCE.</u> DISTRICT shall at all times follow the instructions and directions of CITY staff during an CITY emergency or during an CITY emergency practice drill. as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the School. However, CITY shall not be responsible or liable for any harm or damage arising as the result of an emergency.
- 17. <u>INSPECTION</u>. CITY, 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.

DISTRICT 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.

- 18. <u>TOBACCO FREE FACILITIES.</u> Smoking of cigarcttes 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 Facilities.
- 19. <u>NOTICE</u>. Service of any notices, bills, invoices or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows:

CITY

DISTRICT

City of Riverside Parks, Recreation & Community Svc. Dir. 3900 Main Street Riverside, CA 92522

Riverside Unified School District Deputy Superintendent, Business and Governmental Relations 3380 14th Street Riverside, CA 92501

- 20. <u>NONDISCRIMINATION</u>. During the performance of this Agreement, the parties agree they will 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, genetic information, gender, gender identity, gender expression, sex or sexual orientation, in the selection and retention of employees 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.
- 21. <u>AUTHORITY</u>. The individual(s) executing this Agreement and the instruments referenced herein on behalf of the respective parties represent that they have the legal power, right and actual authority to bind their respective parties to the terms and conditions hereof and thereof.

- 22. <u>ASSIGNMENT</u>. Neither party shall transfer any right, interest, or obligation in or under this Agreement to any other entity without prior written consent of the other party.
- 23. <u>INDEPENDENT CONTRACTOR.</u> In the performance of this Agreement, the parties, and their respective employees, subcontractors and agents, shall act in an independent capacity as independent contractors, and not as officers or employees of the other party
- 24. <u>AMENDMENTS</u>. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in a writing signed by the parties hereto.
- 25. <u>SUCCESSORS.</u> This Agreement shall be binding upon the respective parties, and their successors in interest.
- 26. <u>SEVERABILITY</u>. Each provision, term, condition, covenant and/or restriction, in whole and in part, of this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, of this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement, and the remainder of the Agreement shall continue in full force and effect.
- 27. ENTIRE AGREEMENT. This Agreement constitutes the final, complete, and exclusive statement of the terms of the agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. Neither party has been induced to enter into this Agreement, and neither party is relying on, any representation or warranty outside those expressly set forth in this Agreement.
- 28. <u>VENUE</u>. 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.
- 29. <u>FINGERPRINTING</u>. DISTRICT hereby acknowledges that, if applicable, it is required to comply with the requirements of Education Code Section 45125.1 with respect to fingerprinting of employees who may have contact with the youth 17 years and under. The DISTRICT shall also ensure that any employee who may have contact with youth while on the Facilities, comply with the requirements of Section 45125.1. If required by Education Code Section 45125.1, the DISTRICT must provide for the completion of a Fingerprint Certification form, in the CITY's required format, prior to any of the DISTRICT's employees, or those of any other consultants, coming into contact with youth 17 years and under.
- 30. <u>DISPUTE RESOLUTION</u>. In the event a dispute arises regarding the terms and conditions or performance under the Agreement, the parties shall provide written notice of any

such dispute and/or claim to the other party within ten (10) days. The parties shall then meet and confer within ten (10) days of the written notice in order to attempt to mutually agree on a resolution to the dispute.

IN WITNESS WHEREOF, CITY, and DISTRICT have caused this Agreement to be duly executed on the day and year first above written.

CITY OF RIVERSIDE, a California charter city and municipal corporation

RIVERSIDE UNIFIED SCHOOL DISTRICT. a public school district duly organized and existing under the laws of the State of California

Deputy Superintendent, Business Services and Governmental Relations

Attest:

APPROVED AS TO FORM

ity Attorney

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Exhibit "A"

Former Riverside Golf Course at 1077 N. Orange St., Riverside, CA 92501.

EXHIBIT "A"

Exhibit "B" Master Use Schedule

Attachment "B"

Monthly Calendar For September 2014

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Monthly Calendar For November 2014

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