

## **MEMORANDUM OF UNDERSTANDING FOR FACILITIES USE**

This Memorandum of Understanding ("MOU") is entered into by and between the CITY OF SANTA BARBARA, a municipal corporation ("City") and the SANTA BARBARA UNIFIED SCHOOL DISTRICT, a public agency created and authorized under the Education Code of the State of California ("District"), with reference to the following facts:

### **RECITALS**

A. City is the owner of certain improved real property located at 423 West Victoria Street in the City of Santa Barbara, commonly known as the Westside Community Center (the "Facilities").

B. District desires to use the Facilities, and City has agreed to permit use of the Facilities, to conduct classes for District students, under the terms and conditions herein stated.

NOW THEREFORE, the parties agree as follows:

1. The term of this MOU shall be for one year, commencing August 1, 2013, and ending July 31, 2014. The MOU may be renewed for subsequent one year periods upon mutual agreement of the parties.

2. During the term of the MOU, District will be entitled to use the large conference room inside the Westside Neighborhood Center auditorium in order to conduct classes for District students. This exact portion of the Facility to be used shall be mutually determined and agreed upon by the parties. District will have access to restrooms and other common areas appurtenant to and reasonably necessary for District's use. District accepts the condition of the Facilities as is.

3. District's use will occur between 7:00AM to 5:00PM, Monday thru Friday and during such other times as District may reasonably require to fulfill its function of educating those students attending classes at the Facilities.

4. District will be entitled to use the Facilities without payment of rent. City acknowledges that the educational services provided by District benefit the City and members of the community served by the Facilities, and that these benefits constitute valuable consideration for this MOU.

5. City will provide, at its sole expense, all utilities and janitorial services at the Facilities. City will maintain the exterior and interior of the building in proper working condition and repair defects in heating, plumbing, electrical circuits, roofing, and appliances in a timely manner.

6. District will provide all equipment, furnishings, and other materials needed to conduct classes at the Facilities. The City will use all of the District's provided equipment, furnishings, and other materials needed to conduct immigration and literacy classes at the Facilities after 5:00PM Monday thru Friday and weekends in exchange for the District's use of the facility at no charge.

7. District will not use the Facilities for any purposes other than those stated in this MOU.

8. During the term of the MOU, District shall keep and maintain the Facilities in good order, condition and repair, and in compliance with all applicable laws. City shall have the right to enter into the portion of the Facilities being used by District at any time, in the case of an emergency, and otherwise at reasonable times, for the purpose of inspecting the condition of the Facilities. Upon conclusion of the term of this MOU, District will leave the Facilities in the same condition it found them in, reasonable and ordinary wear and tear excepted.

9. District agrees to defend, indemnify and hold harmless the City, its officers, employees and agents, from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges and expense (including attorneys' fees) and causes of action of whatsoever character ("Losses") which the City may incur, sustain or be subjected to on account of loss or damage to property and loss of use thereof and for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with District's use of the Facilities under this MOU.

10. District shall maintain and keep in force during the term of this Lease, for the mutual benefit of City and District, at District's sole cost and expense, the following insurance:

(a) Property Insurance insuring against loss of or damage to all improvements, fixtures and equipment on the Facilities resulting from fire, lightning, vandalism, malicious mischief and those risks ordinarily insured by special form property coverage. Such property insurance shall be in an amount equal to the full replacement cost of said improvements, fixtures and equipment, including all required code upgrades.

(b) Comprehensive General Liability Insurance with limits of not less than \$2,000,000 in any combination of primary or excess coverage for each occurrence combined single limit for bodily injury and property damage. Coverage thereunder shall include endorsements for contractual liability, personal injury, owners' and contractors' protection, and fire legal liability.

(c) Automobile Liability Insurance with limits of not less than \$2,000,000 in any combination of primary or excess coverage each occurrence combined single limit for bodily injury and property damage for all vehicles owned or operated by District.

(d) Workers' Compensation Insurance in compliance with statutory limits.

10.1 All insurance provided for in this section shall be enacted under valid and enforceable policies in form and substance satisfactory to City issued by insurers satisfactory to City and authorized to do business in the State of California. Such insurance shall apply as primary and not in excess of or contributing with any insurance that City may carry. The policies required shall name City, its officers, employees and agents as additional insured. District's policies had been issued to each. District's insurance, as required by this MOU, shall not be subject to cancellation or material reduction without at least thirty (30) days prior written notice to the City. District shall furnish to City a Certificate of Insurance evidencing that the above requirements have been met on or before the commencement of this Lease and upon the renewal of each policy.

10.2 District hereby expressly waives on behalf of its insurers hereunder any right of subrogation against City by reason of any claim, liability, loss or expense arising under this agreement. This provision applies regardless of whether or not the District obtains a waiver of subrogation endorsement from its insurer.

10.3 City shall retain the right to review at any time the coverage, form and amount of insurance required hereby. If, in the opinion of City, the insurance provisions in this MOU do not provide adequate protection for City and for members of the public using the Facilities, City may require District to obtain insurance sufficient in coverage, form and amount to provide adequate protection. City's requirements shall be reasonable but shall be designed to assure protection from and against the kind and extent of the risks that exist at the time a change in insurance is required. District may substitute self-insurance for any or all of the above-stated required commercial insurance requirements subject to the approval by the City.

11. The procuring of insurance shall not be construed to limit District's liability hereunder or to fulfill the indemnification provisions and requirements of this MOU. Notwithstanding any policies of insurance, District shall be obligated for the full and total amount of any damage, injury or loss caused by negligence or neglect connected with this MOU or with use or occupancy of the Facilities.

12. Upon the occurrence of property damage for which District is legally responsible, the proceeds of any insurance shall be paid to a financial institution or trust company with an office in Santa Barbara County designated by District and approved by City (the "Insurance Trustee"). In the event of such loss, to the extent of available insurance proceeds received by District, District shall be obligated to rebuild or replace the destroyed or damaged improvements, equipment or fixtures in the same or better condition as they existed prior to such loss. All sums deposited with the Insurance Trustee shall be held in trust by the Insurance Trustee with the following powers and duties:

(a) The Insurance Trustee shall pay the contractor retained by District for the restoration in installments as the construction progresses. A retention fund of ten percent (10%) of the total contract price shall be established. The contractor shall be paid the retained amount upon the completion of the restoration, acceptance of the work by the District and City, payment of all costs, expiration of all applicable lien periods and proof that the Facilities is free of all mechanics' liens and lienable claims.

(b) Payments to the contractor shall be made on presentation of certificates or vouchers from the architect or engineer retained by District showing the amount due. If the Insurance Trustee, in the Insurance Trustee's reasonable discretion, determines that the certificates or vouchers are being improperly approved by the architect or engineer retained by District, the Insurance Trustee shall have the right to appoint an architect or engineer to supervise the construction and to make payments to the contractor on certificates or vouchers approved by the architect or engineer retained by the Insurance Trustee. The reasonable expenses and charges of the architect or engineer retained by the Insurance Trustee shall be paid by the Insurance Trustee out of the trust fund.

(c) If the sums held by the Insurance Trustee are insufficient to pay the actual cost of the repair, restoration or replacement, District shall have the right but not the obligation to deposit the amount of the deficiency with the Insurance Trustee within thirty (30) days after request by the Insurance Trustee indicating the amount of the deficiency.

(d) Any undistributed funds following compliance with the provisions of this section shall be delivered to District.

(e) All actual costs of the Insurance Trustee shall first be paid from the insurance proceeds, then by District. If the Insurance Trustee resigns or for any reason is unable or unwilling to act or continue to act in accordance with these provisions, District shall substitute a new trustee for the designated trustee. The new trustee must be a financial institution or trust company with an office in Santa Barbara County approved by City.

(f) Both Parties shall promptly execute all documents and perform all acts reasonably required by the Insurance Trustee in order for the Insurance Trustee to perform its obligations under this section.

13. District shall not assign this MOU or any right to use the Facilities without City's prior written consent.

14. No waiver of any default under this MOU shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege or option under this MOU shall constitute a waiver, abandonment, or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege or option hereunder. No waiver of any provision hereof shall be deemed to have been made unless and until such waiver shall have been reduced to writing and signed by District or City, as the case may be.

15. If any provision of this MOU is deemed illegal, invalid unenforceable or void by any court of competent jurisdiction, such provision shall be deemed stricken and deleted herefrom, but all remaining provisions will remain and continue in full force and effect.

16. This MOU constitutes the entire agreement and understanding between the parties concerning the subject matter hereof, replacing and superseding all prior agreements or negotiations, whether written or verbal.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of August 1, 2013.

Santa Barbara Unified School District

By: \_\_\_\_\_

Title: \_\_\_\_\_

City of Santa Barbara

By: \_\_\_\_\_

Title: \_\_\_\_\_