

MEMORANDUM OF UNDERSTANDING

Section 1. PARTIES AND DATE.

This Memorandum of Understanding (the "MOU") is dated for identification purposes as of the 12 day of March, 2013, and is entered into by and between the City of Costa Mesa, California, a municipal corporation and general law city organized under the law of the State of California, hereinafter referred to as "City," and the Newport-Mesa Unified School District, a school district organized and existing under the laws of the State of California, hereinafter referred to as "District," (sometimes together hereinafter referred to as "Parties"), with respect to the following:

Section 2. RECITALS.

2.1 District owns and operates Costa Mesa High School located at 2650 Fairview Road, Costa Mesa, CA, 92626.

2.2 District and City are authorized to jointly exercise any common powers pursuant to Title 1, Division 7, Chapter 5 of the Government Code of the State of California (section 6500 et seq.);

2.3 Education Code section 10900 et seq. authorizes the governing bodies of District and City to enter into agreements for the construction and maintenance of recreational facilities and the operation of programs of community recreation; and

2.4 It is in the best interest of the residents of the City of Costa Mesa that District and City study the joint construction and use of a Stadium and/or Athletic Facility at Costa Mesa High School for school and community recreational purposes (the "Project").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District and City hereby agree as follows:

Section 3. TERMS.

3.1 Effective Date. The "Effective Date" shall be the date in which the latter of City's Council and District's Board, by official action, approve and execute this MOU.

3.2 Funding. Within 30 days from the effective date of this MOU, City shall tender to District the sum of Fifteen Thousand Dollars (\$15,000.00) to be used by District in its sole discretion to fund the Design Feasibility Study, in whole or in part for the Project.

3.3 Design Professional. Within 60 days of receipt of the City's funding, District's Board of Education shall retain a qualified design professional experienced in the design of sports facilities on public school sites, for the purpose of providing a Design Feasibility Study for the Project. The Design Professional shall deliver the Design Feasibility Study (Section 3.4) within 90 days of retention by the Board of Education.

3.4 Design Feasibility Study. The Design Feasibility Study shall include, but not necessarily be limited to, options and recommendations as to the following factors:

- a. Siting for a Stadium and/or Athletic Facility
- b. Capacity of a Stadium and/or Athletic Facility
- c. Design Concepts for a Stadium and/or Athletic Facility
- d. Parking, Driveway, Street Access and Traffic Control Arrangements
- e. Lighting Arrangements
- f. Sound Amplification Arrangements
- g. Consideration of the requirements of the California Environmental Quality Act ("CEQA") with respect to the above factors and any other CEQA factors, including the need for an Initial Study and the potential need for a Mitigated Negative Declaration, Environmental Impact Report, or other CEQA compliance.
- h. Determine what approvals may be required from non-Party agencies, including but not limited to: California Department of Education ("CDE"), Division of State Architect ("DSA"), County of Orange, State Fire Marshal, etc.
- i. Cost estimates for the full project, including both "hard" and "soft" costs.
- j. Cost estimates for routine maintenance of the completed project.
- k. Cost estimates for capital facilities replacement over the life of the project.
- l. Other issues to be identified by the design professional and/or subconsultants.
- m. Other issues that may be mutually agreed to by District and City.

Upon completion, the Design Feasibility Study shall be delivered to District's Superintendent and City's City Manager.

3.5 Community Input. Within 15 days of retaining the Design Professional, the District shall provide notice to Costa Mesa interested parties so that community members can provide input to the Design Professional. The community meeting will be held at Costa Mesa High School.

3.6 Subsequent Actions. Within 6 months of receipt of the Design Feasibility Study, City's Council and District's Board shall consider the input of stakeholders, including but not limited to: District's Board, staff, parents and students; City's Council, staff and residents; and bona fide organizations sponsoring recreational activities in the City that might use the proposed Stadium and/or Athletic Facility.

Upon mutual approval of the Design Feasibility Study by City's Council and District's Board, City and District shall commence meeting and conferring with respect to negotiation of a Joint Use Agreement regarding the terms on which to fund, design, construct, operate and maintain the designed Stadium and/or Athletic Facility at Costa Mesa High School.

This MOU shall no longer be of any force or effect, and as a result this MOU will be deemed to be terminated, in the event there has not been mutual approval of the Design Feasibility Study by both City Council and Board of Education within one (1) year of delivery of the Design Feasibility Study by the Design Professional. In such case, it is agreed and understood that no monetary damages, or any judicial relief shall be either due or owing to the other party.

3.7 Indemnification. City and District each agree to mutually indemnify and hold each other harmless from and against all claims, causes of action, demands, losses and liability for injury to any person or damage to any property to which the other may be subjected to the extent that the same are the result of an error, omission or negligent act of the other, its officers or employees, or any other agent acting pursuant to its control and performing under this MOU.

Each party agrees to defend, indemnify and hold harmless the other party, their elected officials, agents, officers and employees, from all costs, damages, liability and claims caused by or arising out of or related to that party's negligence or willful misconduct. To the extent that more than one party is determined to have been negligent, the parties agree that each party shall bear its own portion or percentage of liability and to indemnify and hold harmless the other party from that share.

3.8 Assignment. This MOU or any interest of City herein shall not at any time after the date hereof, without the prior written consent of District, be assigned or transferred by City. City shall at all times remain liable for the performance of the covenants and conditions to be performed pursuant to this MOU, notwithstanding any assignment or transfer which may be made.

3.9 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 sufficiently given and served upon the other party, if sent by

United States registered mail, return receipt requested, postage prepaid and addressed as follows:

City: City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626
Attn: City Manager

District: Newport-Mesa Unified School District
2985 Bear Street, Building A
Costa Mesa, CA 92626
Attn: Superintendent

Either party may change its address or contact person by giving written notice to the other party.

3.10 Default and Termination. Should either party default in the performance of or breach any covenant, condition, or restriction of this MOU herein provided to be kept or performed by such party, and should such default or breach continue uncured for a period of thirty days from and after written notice thereof, either party may, at its option, terminate this MOU by giving the other party written notice thereof.

In such case, it is agreed and understood that no monetary damages, or any judicial relief shall be either due or owing to the other party.

3.11 Validity. If any one or more of the terms, provisions, promises, covenants or conditions of this MOU shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this MOU shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

3.12 Non-Discrimination. Both City and District covenant by and for itself, its administrators and assigns, and all persons claiming under or through it, including the Design Professional and its consultants, that this MOU is made subject to the following requirements:

There shall be no discrimination because of race, color, religion, national origin, ancestry, sex, age, sexual orientation, marital status or disability in accordance with the requirements of applicable State law.

3.13 Amendment. This MOU sets forth the entire understanding between City and District, and any modifications must be in the form of a written amendment agreed to by the Parties.

3.14 Waiver. The failure of either party to insist upon strict performance of any of the terms, conditions or covenants in this MOU 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.

3.15 Counterparts. This MOU may be executed in two (2) counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same MOU.

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date(s) indicated below.

ATTEST:



[Redacted signature]

City Clerk of the City
of Costa Mesa, California

Date: 3-12-13

CITY:
CITY OF

[Redacted signature]

By: _____

Title: MAYOR

Date: 3-12-13

DISTRICT:
NEWPORT-MESA UNIFIED
SCHOOL DISTRICT

By [Redacted signature]

Title: Superintendent

Date: 03/12/13