

**FACILITIES USE AGREEMENT WITH RANCHO SANTIAGO COMMUNITY
COLLEGE DISTRICT FOR CORBIN CENTER, SOUTHWEST SENIOR CENTER AND
SANTA ANA SENIOR CENTER**

THIS FACILITIES USE AGREEMENT (“Agreement”) is dated October 5, 2021 and is entered into between the CITY OF SANTA ANA, a charter city and municipal corporation (“City”) and Rancho Santiago Community College District (“RSCCD”). City and RSCCD are also collectively referred to herein as “the Parties” or singularly as a “Party.”

RECITALS

- A. The City is the owner of Corbin Center located at 2215 West McFadden Avenue, the Southwest Senior Center located at 2201 West McFadden Avenue, and the Santa Ana Senior Center located at 424 West Third Street, all in the City of Santa Ana;
- B. RSCCD is a community college district that operates Santa Ana College, the Digital Media Center, and a continuing education center in the City of Santa Ana;
- C. RSCCD would like to provide classes and programs, free of charge, to the community at Corbin Center, Santa Ana Senior Center and the Southwest Senior Center;
- D. Some of the classes currently contemplated include: English, computer classes, Music, Choir, Guitar, Healthy Living, Cultural Appreciation, and Healthy Aging.
- E. City acknowledges the community need for classes and programs, such as those offered by RSCCD, at locations that are more accessible and comfortable for City residents, in particular the City’s senior residents.

NOW THEREFORE, in consideration of mutual covenants herein contained, the Parties do hereby promise and agree as follows:

- 1. The City hereby grants to RSCCD the limited right to use certain classrooms and computer labs as designated and determined by the City and located at the City’s Corbin Center, the Southwest Senior Center, and the Santa Ana Senior Center (“the Facilities”) to provide classes pursuant to the terms of this Agreement. RSCCD’s use of the Facilities is subject to the City’s own programming and events, which take priority.
- 2. Term. The term of this Agreement shall begin on the date set forth above and end on September 1, 2022 unless terminated pursuant to Sections 13 or 15 of this Agreement.
- 3. Consideration. The City acknowledges the public benefit provided by RSCCD providing classes on various subjects at the Facilities and free of charge. The Facilities are known to City’s residents and closer in proximity for some residents than other RSCCD facilities. Given the acknowledged public benefit and the fact

that, the Facilities would otherwise be open and operating during the times that classes will be provided, the City is not requiring RSCCD to pay a facility use fee.

4. Class Scheduling. RSCCD and City, through its Executive Director of Parks, Recreation and Community Services Agency or the Director's designee, shall mutually agree in writing which classrooms and/or computer labs will be utilized for classes at the Facilities and on what dates and times. The Parties will meet and determine the class schedule (class locations, dates and times) a reasonable amount of time before the classes begin. City reserves the right to change the location of any scheduled class as needed due to City programming or unforeseen matters that may arise, including but not limited to, maintenance issues.
5. Operational Rules and Regulations. RSCCD shall comply with all operational rules and regulations promulgated by the Executive Director of Parks, Recreation and Community Services, City Manager or City Council regarding the operation of City's Corbin Center, Southwest Senior Center, and Santa Ana Senior Center including but not limited to hours of operation.
6. Maintenance. RSCCD shall at all times maintain Facilities in good condition and repair, and in a clean and safe condition reasonably satisfactory to the City Manager.
7. Damage to Facilities. RSCCD shall be liable for any damages to the Facilities caused by any act of negligence of RSCCD, its partners, agents, servants, contractors, representatives, guests, employees, invites or customers. City may at its option, repair such damage, and RSCCD agrees to reimburse City for the total cost of repair.
8. Compliance with Laws and Licensing. RSCCD shall comply with all applicable federal, state and local laws. RSCCD shall at all times during the term of this Agreement have and maintain in force any and all licenses, permits or approvals required by law for the conduct of RSCCD's activities under this Agreement.
9. Indemnification. RSCCD shall defend, indemnify, and hold harmless the City and its officers, officials, employees, and volunteers from and against any claims, liabilities, damages, losses, costs, expenses incurred or suffered by City on account of any personal injuries or property damage caused by the use of Facilities pursuant to this Agreement or any activity or negligent omission of RSCCD or its employees, agents, volunteers or contractors. In the event that City is named as a codefendant, RSCCD shall notify City of such fact and shall represent City in such legal action unless City undertakes to represent itself in such legal action. RSCCD further agrees to indemnify, hold harmless, and pay all costs of defense of the City, including fees and cost for special counsel to be

selected by the City, regarding any action challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms, or effects of this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceedings.

10. Insurance. RSCCD shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with the use allowed hereunder and the results of that use by RSCCD, its agents, representatives, employees and subcontractors pursuant to the scope and coverage noted below:

- A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- B. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if RSCCD has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- C. Workers’ Compensation: as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- D. Sexual Abuse or Molestation (SAM) Liability: If the CGL policy referenced above is not endorsed to include affirmative coverage for sexual abuse or molestation, RSCCD shall obtain and maintain a policy covering Sexual Abuse and Molestation with a limit no less than \$1,000,000 per occurrence or claim.
- E. Other Provisions Applicable to Insurance Requirements:
 - i. If the RSCCD maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.
 - ii. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - iii. Additional Insured Status- the City, its officers, officials, employees, and volunteers are to be covered as additional insureds

on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of RSCCD.

- iv. Primary Coverage- For any claims related to this contract, RSCCD's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the RSCCD's insurance and shall not contribute with it.
- v. Notice of Cancellation- Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
- vi. Waiver of Subrogation- RSCCD hereby grants to City a waiver of any right to subrogation, which any insurer of RSCCD may acquire against the City by virtue of the payment of any loss under such insurance. RSCCD agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
- vii. Self-Insured Retentions- Self-insured retentions must be declared to and approved by the City. The City may require RSCCD to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.
- viii. Acceptability of Insurers- Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- ix. Verification of Coverage- RSCCD shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive RSCCD's obligation to provide them.
- x. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

- xi. Special Risks or Circumstances- The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. The City's Risk Manager has the authority to waive or reduce any coverages provided for in this Agreement.
- 11. Assignment. RSCCD shall not assign all or any portion of this Agreement, nor shall RSCCD, without the written consent of the City Council, enter into any agreement allowing the operation by another person of the use of the Facilities granted by this Agreement.
- 12. Relationship of the Parties. Nothing in this Agreement shall effect or create a partnership between the Parties. Any persons retained by RSCCD shall at all times be its employees or independent contractors and not employees or independent contractors of the City. RSCCD shall have no power to incur debt, obligation or liability on behalf of the City. The City shall not have control over the conduct of RSCCD, except as set forth in this Agreement. RSCCD shall not, at any time, or in any manner, represent that it or any of its officers, agents, employees, contractors or volunteers are in any manner employees or contractors of the City.
- 13. Termination for Cause. Should RSCCD be dissolved or if a petition in bankruptcy or insolvency be filed by or against RSCCD, whether voluntarily or involuntarily, or if use of Facilities is abandoned for a period of forty-five (45) days; or if the uses conducted so as to constitute a public nuisance, or if any of the provisions of this Agreement are breached and the breach if not corrected within ten (10) days after written notice from the City to RSCCD, then the City may immediately terminate this Agreement by written notice to RSCCD and recover and resume possession of Facilities.
- 14. Remedies for Termination for Cause. In the event of RSCCD's breach, default, abandonment or insolvency, City may:
 - A. Terminate the Agreement and recover from RSCCD any amount necessary to compensate City for all detriment proximately caused by RSCCD's failure to perform its obligations under this Agreement.
 - B. Should RSCCD default in the performance of any of the terms, conditions, or obligations contained in this Agreement, City may, in addition to the remedies available pursuant to the law and this Agreement, re-enter and regain possession of the Facilities in the manner provided by the laws of the State of California.

15. Termination without cause. The Parties each may terminate this Agreement with ninety (90) days' notice in writing to the other Party.
16. Fingerprinting, Background Checks and Identification Badges. RSCCD shall provide proof to City that all RSCCD officials, employees and any volunteers are fingerprinted and background checked prior to conducting any work at Facilities. RSCCD employees and volunteers shall prominently display badges or identification cards, in a form mutually agreed upon by the Parties, at all times while at Facilities. RSCCD badges or identification cards shall state that official, employee or volunteer works for or is affiliated with RSCCD. Badges or identification cards shall not display City name or logo.
17. Taxes. The Parties agree that if the Facilities are assessed any taxes or similar fees or charges due to the activities of RSCCD or RSCCD's permitted users, then RSCCD shall bear the entire cost of said taxes, assessment, fees or charges.
18. Liens. RSCCD will not permit any mechanics' liens or materialmen's' liens or any other type of lien to stand against the Facilities by any use, occupancy or improvement by RSCCD or any agent, employee, or contractor of RSCCD.
19. Nondiscrimination: RSCCD shall not discriminate in the course of its activities in or about the Facilities on the basis of race, color, disability, religion, sex, marital status, sexual orientation, gender identity, age, national origin, ancestry, military or veteran's status, disability, or any other basis prohibited by law. RSCCD affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.
20. Jurisdiction and Venue: This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both Parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.
21. Surrender of Premises. Upon termination or expiration of this Agreement, RSCCD shall immediately surrender and deliver the premises to the City in good condition and repair, and any and all furniture, furnishings, equipment, and other personal property then located on the premises.
22. Attorney's fees and costs. The prevailing Party shall pay all costs and reasonable attorney's fees that the other Party incurs in enforcing any of the rights or remedies provided for pursuant to this Agreement.

23. Exclusivity and Amendment. This Agreement represents the complete and exclusive statement between the City and RSCCD regarding the subject matter herein, and supersedes any and all other agreements, oral or written, between the Parties regarding the use of the Facilities. In the event of conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail. This Agreement may not be modified except by written instrument signed by the City and an authorized representative of RSCCD. The Parties acknowledge that no representatives, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.
24. Assignment. RSCCD may not assign, transfer, delegate or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract without the City's prior written consent shall be considered null and void. RSCCD shall not allow any other person or entity to use the Facilities without the prior written consent of City.
25. Construction. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement.
26. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable term or provision had never been contained herein.
27. Conflict of Interest. RSCCD covenants that it presently has no interests and shall have no interests direct or indirect, which would conflict in any manner with the use authorized pursuant to this Agreement.
28. Non-Recording. Unless required by law, neither Party shall record this Agreement.
29. No Waiver. Any waiver, consent or approval by either Party of any breach, default or event of default of any provision, condition or covenant of this Agreement must be in writing and shall be effective only to the extent set forth in writing. No waiver of any breach, default or event of default shall be deemed a waiver of any later breach, default or event of default of the same or any other provision of this Agreement. Any failure or delay on the part of either Party in exercising any power, right or privilege under this Agreement shall not operate as

a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude any further exercise thereof.

30. Notice. Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and directed to the addresses below or such addresses as either party may later specify in writing. Notice is deemed effective on the date it is given if hand-delivered or received by facsimile that day. Notice given by U.S. mail shall be deemed to have been given three (3) business days after it is deposited in the U.S. mail, postage prepaid and addressed as follows:

To City: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988

With copies to: Executive Director of Parks, Recreation and Community
Services
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988
Santa Ana, California 92702

To RSCCD: Attention: Nancy Parent
Rancho Santiago Community College District
8045 East Chapman Avenue
Orange, California 92869

31. Authority: Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective Parties to each of the terms of this Agreement.
32. Counterparts and Electronic Signature. The Parties agree that this Agreement may be signed in counter parts and compiled to make one original Agreement. The Parties further agree that this Agreement may be signed electronically by any means that reasonably ensures authenticity.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures this ____ day of _____, 2021.

CITY

ATTEST:

Kristine Ridge
City Manager

Daisy Gomez
Clerk of Council

APPROVED AS TO FORM:
Sonia R. Carvalho
City Attorney

RANCHO SANTIAGO COMMUNITY
COLLEGE DISTRICT

By: Laura A. Rossini
Laura A. Rossini
Chief Assistant City Attorney

James Kennedy
By: _____
Its: James Kennedy, Vice President SAC

RECOMMENDED FOR APPROVAL:

Lisa Rudloff
Executive Director of Parks, Recreation,
And Community Services Agency