



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
September 21, 2021

TOPIC: Approve a Substantive Change to the Facilities Use Agreement with Training and Research Foundation

AGENDA TITLE:

Approve a Substantive Change to the Facilities Use Agreement with Training and Research Foundation to Modify Indemnification Language in the Agreement

RECOMMENDED ACTION

Approve a substantive change to the facilities use agreement with Training and Research Foundation that was approved on August 17, 2021 to modify indemnification language in the agreement in order to operate childcare centers at Corbin Community Center and El Salvador Community Center.

DISCUSSION

On August 17, the Santa Ana City Council approved an agreement of a facilities use agreement with Training and Research Foundation to operate childcare centers at Corbin Community Center and El Salvador Community Center, for a term beginning August 17, 2021 and ending August 31, 2021, subject to non-substantive changes approved by the City Manager and City Attorney.

Since approval of the facilities use agreement, the Training and Research Foundation (TRF) has requested a substantive change. Based on a recommendation by TRF's insurance provider, the requested modification to the indemnification language would be to remove Paragraph 10. Indemnification, Section B., which states:

TRF agrees to indemnify the City from and against any contamination of the Facilities with hazardous materials by TRF occurring after the commencement of this Agreement. TRF further agrees to defend and hold harmless the City from and against all actions, agreements, attorney's fees, causes of action, claims, contracts, costs, covenants, damages, debts, demands, expenses, judgments, lawsuits, liabilities, liens, losses, obligations, and orders which arise during or after the term of this Agreement related to the existence of hazardous materials at the Facilities or in the groundwater under the Facilities except for: (1) the cost of any remediation of Hazardous Materials deposited in

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the soil by City or its employees, agents or contractors; and (2) any third party personal injury actions which allege exposure to such undiscovered Hazardous Materials as a result of use of the Facilities. "Hazardous Materials" as used herein shall be interpreted broadly to mean any hazardous or toxic substance, material or waste that now is or hereafter becomes regulated by any local government authority, the State of California, or the United States Government.

The facilities use agreement will still contain the following language related to indemnification:

TRF 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 TRF or its employees, agents, volunteers or contractors. In the event that City is named as a codefendant, TRF shall notify City of such fact and shall represent City in such legal action unless City undertakes to represent itself in such legal action. TRF 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.

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S)

1. Revised Agreement

Submitted By: Lisa Rudloff, Executive Dir. of Parks, Recreation and Community Services

Approved By: Kristine Ridge, City Manager