

## **JOINT USE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND SPORTS, OUTDOOR AND RECREATION (SOAR) PARK**

This Joint Use Agreement (hereinafter called “Joint Use Agreement,” “Agreement” or “JUA”) is made and entered into by the City of San Antonio, a Texas Municipal Corporation, hereinafter referred to as City, acting by and through its \_\_\_\_\_, and Sports, Outdoor And Recreation (Soar) Park, hereinafter referred to as “SOAR”, a Texas non-profit corporation. City and SOAR are sometimes referred to herein collectively as the “Parties”, and singularly as a “Party”.

### **Recitals**

**Whereas**, SOAR has agreed to construct an approximate 2,000 square foot structure and other amenities such as a bathroom and covered meeting space (“Safe House”) for the benefit of City at the location depicted on Exhibit “A” (hereinafter referred to as the “Joint Use Area”); and

**Whereas**, City has agreed to (i) name the Safe House and allow signage on the Safe House to honor Morgan Hartman, (ii) allow SOAR to paint and decorate the Safe House to match the colors and motif of Morgan’s Wonderland and (iii) allow SOAR to advertise the special needs park called “Morgan’s Wonderland;”

**Now Therefore**, the Parties severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

#### **1. Term**

1.1. The term of this Joint Use Agreement shall commence on the Effective Date and terminate on last date of the term set forth in the Lease but not earlier than January 1, 2035 (“Term”). SOAR may unilaterally terminate this Joint Use Agreement in its sole discretion by sending written notice to City on or before 120 days after the Effective Date.

#### **2. Authorization Of Joint Use**

2.1. SOAR shall construct the Safe House on the Joint Use Area. SOAR may request money and material donations and contributions from third-party vendors (including vendors of City) to pay for the cost of the Safe House.

- 2.2. City will extend a water line and sewer line to the Safe House at its sole expense. After completion of the Safe House, City, at its sole expense, shall use the Safe House as a place for fire safety education. City will be responsible for the payment or waiver of all permit and utility connection fees associated with the construction of the Safe House.
- 2.3. The plans for the Safe House will be submitted to City for City's approval prior to the commencement of construction. The construction of the Safe House will commence thirty (30) days after the approval by City of the Safe House plans and the Safe House shall be substantially completed within two hundred (200) days after commencement (hereinafter referred to as the "Construction Period").
- 2.4. SOAR has had full opportunity to examine the Joint Use Area and agrees that no representations respecting the conditions of the Joint Use Area and no promises to alter, repair or improve the Joint Use Area, either before or after the execution hereof, have been made by City to SOAR except for the extension of a water line and sewer line to the Safe House.

### 3. **Naming Rights and Signage**

- 3.1. City will allow the Safe House to be decorated in the same colors and motif as Morgan's Wonderland. No change may be made in the colors or motif without the express written permission of SOAR.
- 3.2. City will refer to the Safe House as "Morgan's Safe House" in all media releases, brochures, pressers and announcements.
- 3.3. SOAR will place signage on the Safe House and in the Joint Use Area in the same colors and motif as Morgan's Wonderland using the name "Morgan's Safe House". No change may be made in the colors or motif without the express written permission of SOAR.
- 3.4. Whenever SOAR's signage is repaired, removed or replaced, SOAR agrees to restore the area(s) where signage existed to its original condition or better.
- 3.5. City will allow SOAR to advertise Morgan's Wonderland at the Safe House (i.e. brochures, signage, posters, live action figures and still action figures).

4. **Repair And Maintenance**

- 4.1. After the Construction Period, City shall maintain and keep the Safe House and Joint Use Area in good working order and repair and in good, clean, safe and sanitary condition (usual wear and tear, acts of God, casualty, or unavoidable accident, only excepted).
- 4.2. City will maintain the signage, décor and motif improvements of the Safe House and Joint Use Area.

5. **Utilities**

- 5.1. City shall provide for and pay directly to the utility companies, all utility company connection charges, including, but not limited to, the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, used in or on the Joint Use Area. City shall not be liable to SOAR in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of City.

6. **Liens**

- 6.1. If, because of any act or omission of SOAR or anyone claiming through or under SOAR, any valid mechanic's or other involuntary lien for the payment of money shall be filed against the Joint Use Area during the Construction Period, SOAR shall, at its expense, cause the same to be canceled and discharged of record or bonded against, within one hundred (100) days after the date of filing and receipt by SOAR and in any event remove such lien within six (6) months from the date of filing and receipt by SOAR. City shall have the right, at its own cost and expense, to initiate and prosecute any proceeding permitted by law for the purpose of obtaining an abatement or otherwise contesting the validity or amount of account relating to the non-payment or dispute of labor or material costs furnished in connection with the construction or subsequent repairs, modifications or judgments thereto.

7. **Insurance**

7.1. During the Construction Period, SOAR shall furnish copies of all required endorsements and an original completed certificate(s) of insurance to City's \_\_\_\_\_ Department, which shall be clearly labeled "Sports, Outdoor And Recreation (Soar) Park" in the description of operations block of the certificate. The original certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf.

8. **Indemnity**

8.1. SOAR covenants and agrees to INDEMNIFY, DEFEND, and HOLD HARMLESS, City and the elected officials, employees, officers, directors, and representatives of City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon City directly or indirectly arising out of resulting from or related to SOAR's activities under this Joint Use Agreement, including any acts or omissions of SOAR, any agent, officer, director, representative, employee, consultant or subcontractor of SOAR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Joint Use Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT SOAR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

8.2. The provisions of this INDEMNITY are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SOAR shall notify City in writing within 72 hours of any claim or demand against City or SOAR known to SOAR

related to or arising out of SOAR's activities under this Joint Use Agreement and shall see to the investigation and defense of such claim or demand at SOAR's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving SOAR of any of its obligations under this paragraph.

9. **Default**

9.1. No default by either Party hereto shall result in a termination or limitation of any rights of such Party hereunder unless and until the other Party shall have notified the defaulting Party in writing of said default, and (i) the defaulting Party shall have failed to cure said default within sixty (60) days after the receipt of said written notice and (ii) if the default is such that it cannot be cured within sixty (60) days after the receipt of said written notice then the defaulting Party shall have failed to commence to cure said default within sixty (60) days after the receipt of said written notice and thereafter diligently proceed to cure such default.

10. **Access to the Joint Use Area**

10.1. SOAR and City acknowledge that City will have primary use of the Joint Use Area for education uses. SOAR will have access to the Joint Use Area, during the Term for the purpose of inspecting the same and refurbishing the signage and décor of the Joint Use Area. When entering the Joint Use Area, SOAR shall not unreasonably interfere with City's use and enjoyment of the Joint Use Area.

11. **Miscellaneous**

11.1. If any clause or provision of this Joint Use Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term of this Joint Use Agreement, then and in that event, it is the intention of the Parties that the remainder of this Joint Use Agreement shall not be affected thereby, and it is also the intention of the Parties to this Joint Use Agreement that in lieu of each clause or provision of this Joint Use Agreement that is illegal, invalid or unenforceable, there be added as a part of this Joint Use Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

11.2. This Joint Use Agreement, together with the authorizing ordinance, constitutes the entire agreement between the Parties. No amendment, modification, or alteration of the terms of this Joint Use Agreement shall be binding unless the same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

11.3. Any discrimination by SOAR or its agents or employees on account of race, color, sex, age, religion, handicap, or national origin, in employment practices or in the use of the Joint Use Area, is prohibited.

12. **Notices**

12.1. For purposes of this Joint Use Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and either delivered by (i) mailed, registered or certified mail, postage prepaid, (ii) hand delivery with proof of delivery or (iii) by overnight courier to the addresses set forth below:

City: City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio TX 78283-3966

With Copies to:

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City of San Antonio  
P.O. Box 839966  
San Antonio TX 78283-3966

SOAR: Mr. Gordon V. Hartman  
Sports, Outdoor and Recreation (Soar) Park  
1202 W. Bitters, Bldg. 1, Suite 1200,  
San Antonio TX 78216

With Copies to:

Mr. Ronald W. Hagauer  
Attorney at Law  
1602 N. Loop 1604 W., Suite LL-102

**Either Party may change the foregoing addresses by notice given pursuant to this paragraph.**

13. **Parties Bound**

13.1. This Joint Use Agreement shall be binding upon and inure to the benefit of the Parties, their respective legal representatives, successors and assigns.

14. **Approval Of City**

14.1. Whenever this Joint Use Agreement calls for approval by City, unless otherwise explained herein, such approval shall be evidenced by the written approval of the \_\_\_\_\_ or his/her designee, unless City Council approval by charter, code or ordinance is required herein.

15. **Relationship Of Parties**

15.1. Nothing contained herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships, between the Parties.

16. **Texas Law To Apply**

16.1. This Joint Use Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

17. **Gender**

17.1. Words of any gender used in this Joint Use Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

18. **Captions**

18.1. The captions contained in this Joint Use Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this Joint Use Agreement.

19. **Authority**

19.1. If SOAR is a corporation, the persons executing this Joint Use Agreement on behalf of SOAR hereby covenants and warrants that: SOAR is a duly constituted non-profit corporation qualified to do business in Texas and such person is duly authorized by the board of directors of such corporation to execute and deliver this Joint Use Agreement on behalf of the corporation.

20. **Force Majeure**

20.1. In the event SOAR shall be delayed or hindered or prevented from the performance of any obligation required under this Joint Use Agreement by reason of strikes, lockouts, inability to procure labor or materials, power failure, fire or other casualty, acts of God, weather-related delays impairing construction activities, restrictive governmental laws or regulations, riots, insurrection, war or any other reason not within the reasonable control of SOAR, then the performance of such obligation shall be excused for the period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

Executed In Duplicate Originals, each of which shall have the full force and effect of an original this the \_\_\_ day of February, 2015 (“Effective Date”).

CITY OF SAN ANTONIO

SPORTS, OUTDOOR AND RECREATION  
(SOAR) PARK

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

By:   
Name: Gordon V. Hartman  
Title: President

Attest: \_\_\_\_\_  
City Clerk

Approved As To Form:

\_\_\_\_\_  
City Attorney



**EXHIBIT “A”**

**TO**

**JOINT USE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND  
SPORTS, OUTDOOR AND RECREATION (SOAR) PARK**

Depiction of the Joint Use Area