

STATE OF TEXAS § JOINT USE AGREEMENT
 § SAN ANTONIO INDEPENDENT SCHOOL DISTRICT
COUNTY OF BEXAR §

This Shared Use Agreement ("Agreement") is hereby made and entered into by and between the City of San Antonio, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. _____, dated _____ (herein called "CITY"), and San Antonio Independent School District, a public school district and political subdivision of the State of Texas (hereinafter referred to as "SAISD"). SAISD and CITY shall collectively be referred to as "the Parties."

PREAMBLE

WHEREAS, SAISD owns Cooper Learning Center at 1700 Tampico, City of San Antonio, Bexar County, Texas, which is located across the street from Amistad Park; and

WHEREAS, CITY continues the development of the Westside Creeks Trail System via the voter approved 2015 Proposition 1 sales tax; and

WHEREAS, CITY owns Amistad Park located at 1600 Tampico, which is directly across the street from Cooper Learning Center and has limited parking capacity; and

WHEREAS, the Parties have identified available real estate at Cooper Learning Center suitable for developing additional parking (herein called "Premises"), which shall be used as parking for the Amistad Park and a trailhead parking lot when not in use by SAISD; and

NOW THEREFORE, in consideration of the mutual covenants, benefits and premises contained herein, the Parties, jointly and severally acknowledge and agree to the following terms and conditions:

I. LICENSE

1.1 SAISD hereby grants to CITY a license to enter onto the Premises for the construction of a shared use public parking lot, to be made available for parking by park users subject to the terms outlined in section III. below.

1.2 The Premises is hereby defined as the SAISD owned property located at the Cooper Learning Center at 1700 Tampico and identified as "Shared Parking" on the attached **Exhibit A**.

II. TERM

2.1 The term of this Agreement shall be for twenty (20) years, beginning on the date of execution by the Parties, subject to sooner termination pursuant to the terms of this Agreement. The Parties may work cooperatively to extend the term of this Agreement at any time during the term of the Agreement prior to its end date.

2.2 Either Party may terminate this Agreement at any time in the event of a change in operational need by either SAISD or CITY, in their respective sole discretion, and upon a minimum of 180 calendar days advance notice to the other Party. In the event SAISD terminates the Agreement prior to five (5) years after completion of construction of the parking improvements, SAISD shall pay to CITY a prorated share of CITY's cost of construction of the parking improvements.

2.3 Either Party may terminate this Agreement if the other Party breaches Agreement, such as failure to perform its duties, obligations, or responsibilities herein. To effectuate termination, the non-breaching Party shall give the breaching Party notice specifying the breach and sixty (60) days to cure the breach. If the breach is not cured during the cure period this Agreement will terminate. If the breach is of such a

nature that curing will take longer than 60 days, the Agreement will not terminate so long as the breaching party is working diligently towards a cure.

III. GENERAL RESPONSIBILITIES AND USE

3.1 SAISD:

- 3.1.1 Shall grant access to the existing Cooper Learning Center parking lot on the corner of S. Navidad and Tampico St. for the purpose of construction activities for the construction of the shared parking area and trailhead (“Premises”) as shown in **Exhibit A**.
- 3.1.2 Shall keep the Premises open to visitors of Amistad Park and Apache Creek trail during regular park hours, when not in use by SAISD.
- 3.1.3 Shall provide year round maintenance of the Premises throughout the term of this Agreement. Such maintenance shall include, but not limited to: regular mowing and removal of trash, repairs necessary to keep the Premises operable and in good working order.
- 3.1.4 Shall provide and pay for all associated utilities.

3.2 CITY

- 3.2.1 Shall construct a parking lot and trailhead (“Premises”) as shown in Exhibit A.
- 3.2.2 Shall provide procurement, construction management and oversight of the Premises development so that the number of built parking spaces is maximized which will include, but not limited to:
 - a. Approximately 87 parking spaces
 - b. Two access driveways off Navidad St.
 - c. Other related improvements as required by City Ordinance of associated improvements
- 3.2.3 Shall present for review and approval all design, plans and specifications to SAISD prior to commencing the construction of the Premises.
- 3.2.4 Shall conduct the procurement process and obtain any and all plan approvals, necessary permits, clearances, and/or approvals relative to any and all improvements from appropriate local, state, and federal agencies. A copy of all permits, clearances, and/or approvals shall be shared with SAISD prior to the start of construction.
- 3.2.5 Shall not bind, or attempt to bind, SAISD for payment of any money in connection with any improvements and that it shall be responsible for any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to CITY during the performance of the construction of any improvements and against any claim for injury to person or property.

IV. INDEMNIFICATION/THIRD PARTY CLAIMS

4.1 SAISD and CITY acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death. SAISD does not waive its immunities, defenses or limits of liability by entering or performing under this Agreement.

V. INSURANCE

5.1 SAISD agrees that it is responsible for insuring or cause to be obtained necessary and adequate insurance for its employees and subcontractors for Worker's Compensation or Alternative Plan. SAISD shall be responsible for its own property, equipment, autos and legal liability, to the extent require by law.

5.2 CITY shall require its construction contractor to add SAISD as an additional insured to all insurance coverages required by CITY.

VI. MISCELLANEOUS PROVISIONS

6.1 Address and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein severally and collectively, for convenience, called "notice") provided or permitted to be given, made or accepted by any party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postage paid and registered or certified, and addressed to the party to be notified, with return receipt requested, or by hand delivering the same to any responsible officer of such party. Notice deposited in the United States mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is so deposited and notice given in any other manner shall be effective only if and when received by the party to be notified. For the purpose of notice, the addresses of the Parties are as specified below.

CITY:

City of San Antonio
Parks and Recreation Department
Attn: Director
114 W Commerce, 11th Floor
San Antonio, TX 78205

SAISD:

San Antonio Independent School District
Attn: Superintendent of Schools
141 Lavaca St.
San Antonio, TX 78210

Each party shall have the right, from time to time and at any time, to change its respective address and each party shall have the right to specify as its address any other address, provided that at least fifteen (15) days' written notice is given of such new address to the other Parties.

6.2 Remedies Cumulative. The rights and remedies contained in this Agreement shall not be exclusive, but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided, however, that none of the Parties shall terminate the Agreement except in accordance with the provisions hereof.

6.3 Non-Waiver. The failure of any party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other Parties hereto; the obligation of such party with respect to such future performance shall continue in full force and effect.

6.4 Non-Discrimination. As a party to this contract, SAISD understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

6.5 Entire Agreement. This Agreement comprises the entire understanding between the Parties. This Agreement may not be altered or amended except in writing executed on behalf of all the Parties.

6.6 Captions. The captions at the beginning of each Section of this Agreement are guides and labels to assist in location and reading such Sections and, therefore, will be given no effect in construing this

Agreement and shall not be restrictive of or be used to interpret the subject matter of any section or part of this Agreement.

6.7 Applicable Law. This Agreement is made subject to and shall be construed in accordance with the United States and Texas Constitutions and all applicable federal, state and local law or regulation whether or not expressly set out herein or appended. All obligations hereunder shall be performable in San Antonio, Bexar County, Texas. Any suit filed hereunder shall be filed in Bexar County, Texas.

6.8 Assignment. This Agreement shall bind and benefit the respective Parties hereto and their legal successors and shall not be assignable in whole or in part without the approval of all Parties hereto.

6.9 Parties in Interest. This Agreement shall bind and benefit the Parties hereto and shall not bestow any rights or benefits upon third Parties.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of SAISD and the CITY in multiple originals which shall be considered of equal force and effect, as of the _____ day of _____, 20____.

**CITY OF SAN ANTONIO
PARKS AND RECREATION**

**SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT**

By: _____
Xavier D. Urrutia, Director

By: _____
Pedro Martinez, Superintendent

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Parking Lot and Trailhead

EXHIBIT A



LEGEND

Parking Lot and Trailhead