

**INTERLOCAL AGREEMENT BETWEEN
THE NORTHSIDE INDEPENDENT SCHOOL DISTRICT
AND THE CITY OF SAN ANTONIO**

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF BEXAR §

This Interlocal Cooperation Contract (hereinafter referred to as "Contract") is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY") a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2020, and the Northside Independent School District, a political subdivision of the State of Texas (hereinafter referred to as "DISTRICT"), acting by and through its Superintendent or his designee pursuant to a Resolution adopted by its Board of Trustees dated _____, 2020; by authority granted under the Interlocal Cooperation Act, Vernon's Texas Code Annotated, Government Code Section 791.011.

WHEREAS, the DISTRICT wishes to acquire the property on which Meadowcliff Community Center is built in order to expand the Anson Jones Middle School public school facility; and

WHEREAS, Chapter 253 of the Texas Local Government Code protects parks from being sold without a vote of the public unless the sale is to a governmental entity with eminent domain authority, such as school districts; and

WHEREAS, Chapter 26 of the Texas Parks and Wildlife Code requires that anytime a public park is put to a use other than public park use, the governing body must make a finding, after notice and a hearing, that there is no feasible and prudent alternative to the proposed change in use; and

WHEREAS, the DISTRICT is willing to give CITY fair market value for the Meadowcliff Community Center property which will be converted to public school purposes; and

WHEREAS, the fair market value payment to CITY will be in the form of equally valuable real estate owned by DISTRICT as well as a commitment to continue to provide appropriate after school recreational or other services to the public, some of which are currently being provided by CITY; and

WHEREAS, notice of the proposed change in use of the park property consistent with the requirements of Chapter 26 of the Texas Parks and Wildlife Code was printed in _____ on _____ 2020, _____, 2020, and _____, 2020 on this issue and its consideration by City Council at the City Council meeting on _____, 2020 with passage of Ordinance No. _____; and

NOW THEREFORE, in consideration of the covenants, conditions and provisions set forth

herein, the CITY and DISTRICT (hereinafter collectively referred to as “Parties”) hereto agree as follows:

I. PURPOSE

1.1 The purpose of this Contract is to set forth the terms and conditions by which the DISTRICT and CITY shall exchange parcels of land.

II. SALE AND PURCHASE/CONSIDERATION

2.1 CITY, for the consideration described herein and upon the terms and conditions hereof, hereby contracts to GRANT, SELL and CONVEY by Special Warranty Deed to DISTRICT good and indefeasible fee simple title, free and clear of all liens and encumbrances of every kind (except as to Permitted Exceptions) to the following described property (the “City Property”) situated within the corporate limits of the City of San Antonio, Bexar County, Texas, to wit:

All that property defined and depicted on **Exhibit A**.

2.2 DISTRICT, for the consideration described herein and upon the terms and conditions hereof, hereby contracts to GRANT, SELL and CONVEY by Special Warranty Deed to CITY good and indefeasible fee simple title, free and clear of all liens and encumbrances of every kind (except as to Permitted Exceptions) to the following described property (the “School Property”) situated within the corporate limits of the City of San Antonio, Bexar County, Texas, to wit:

All that property defined and depicted on **Exhibit B**.

III. ADDITIONAL CONSIDERATION: DISTRICT COMMITMENTS TO SURVIVE CLOSING

3.1 CITY has an active program of recreational activities and services at the Meadowcliff Community Center for the community in the area. DISTRICT hereby commits that it shall continue to offer recreational and/or other services to the community at or near this location to include the following:

- DISTRICT will continue to provide Anson Jones Middle School (or equivalent as mutually agreed to by the CITY and DISTRICT) as a Summer Youth Program Site for the Parks and Recreation Department;
- DISTRICT will provide after school programming for students at Anson Jones Middle School (or equivalent as mutually agreed to by the CITY and DISTRICT); and
- DISTRICT will continue to provide Anson Jones Middle School (or equivalent as mutually agreed to by the CITY and DISTRICT) as the site for the District City

Council office for the annual Backpack Giveaway.

3.2 DISTRICT'S commitments in this Article III will survive closing for a minimum period of fifty years, unless terminated earlier by mutual written agreement of the Parties

IV. CONSENT TO ENTRY/INSPECTION

4.1 CITY hereby consents and agrees to allow the DISTRICT and/or its contractors to enter upon the City Property, at all times, upon prior oral notice to CITY or its legal representatives, on and after the date that this Contract is executed by both Parties hereto as shown on the signature page (hereinafter referred to as "the Effective Date of this Contract"), so that DISTRICT may inspect the Property and, at DISTRICT's expense, conduct such tests and studies of the Property as DISTRICT deems necessary. DISTRICT agrees that it will not damage or impair the Property in any way as a result of its activities thereon.

4.2 DISTRICT hereby consents and agrees to allow the CITY and/or its contractors to enter upon the DISTRICT Property, at all times, upon prior oral notice to DISTRICT or its legal representatives, on the date that this Contract is executed by both Parties hereto as shown on the signature page (hereinafter referred to as "the Effective Date of this Contract"), so that CITY may inspect the Property and, at CITY expense, conduct such tests and studies of the Property as CITY deems necessary. CITY agrees that it will not damage or impair the Property in any way as a result of its activities thereon.

V. SURVEY AND COMMITMENT

5.1 CITY shall obtain and pay for any survey of the District Property necessary for the completion of this transaction

5.2 DISTRICT shall obtain and pay for any survey of the CITY Property necessary for the completion of this transaction.

5.3 CITY shall cause Alamo Title Company/Chris Varley (the "Title Company") to deliver a title commitment for the CITY property to DISTRICT. In the event such title commitment reflects any defects or encumbrances on title DISTRICT shall have the right to either complete the purchase with the defects or to terminate this agreement.

5.4 DISTRICT shall cause the Title Company to deliver a title commitment for the DISTRICT property to CITY. In the event such title commitment reflects any defects or encumbrances on title CITY shall have the right to either complete the purchase with the defects or to terminate this agreement.

VI. CLOSING

6.1 Closing of the purchases shall occur simultaneously on a day selected by mutual agreement of the Parties (“Closing”), the Closing date (“Closing Date”) may be extended from business day to business day as necessary.

6.2 At Closing, each party shall deliver to the other:

- a. Special Warranty Deed duly executed; and
- b. An Owner's Title Insurance Policy (or as soon after Closing as shall be practicable).

6.3 All closing costs shall be shared equally between the Parties.

6.4 The Special Warranty Deed executed by the DISTRICT and delivered to the CITY at Closing shall provide that (i) the School Property described in the Special Warranty Deed shall be used by the CITY (and no other person, entity, or governmental body), for the fifty year period immediately following Closing, only as a portion of the Howard W. Peak Greenway Trails System, and for no other purpose, unless otherwise expressly authorized by Resolution passed by the then duly elected Board of Trustees of the DISTRICT; and (ii) any violation of the foregoing provision, if not cured within sixty days after the CITY’s receipt of written notice of such violation, shall cause a reverter of the title to the School Property back to the DISTRICT, at the option of the DISTRICT – and no delay on the part of the DISTRICT to exercise such option shall constitute a waiver of the right of the DISTRICT to reclaim title to the School Property in accordance with the provisions set out in the Special Warranty Deed.

6.5 Similarly, the Special Warranty Deed executed by the CITY and delivered to the DISTRICT at Closing shall provide that any violation of the DISTRICT’s obligations set out in Article III, above, if not cured within sixty days after the DISTRICT’s receipt of written notice of such violation, shall cause a reverter of the title to the City Property back to the CITY, at the option of the CITY – and no delay on the part of the CITY to exercise such option shall constitute a waiver of the right of the CITY to reclaim title to the City Property in accordance with the provisions set out in the Special Warranty Deed.

VII. REPRESENTATIONS, WARRANTIES, AND COVENANTS

7.1 **AS IS, WHERE IS:**

7.1.1 **General.** Each party hereby expressly acknowledges that it has or will have, prior to Closing, thoroughly inspected and examined the subject properties to the extent deemed necessary. Each party represents that it is a knowledgeable purchaser of property and that it is relying solely on its own expertise and that of its consultants, and that it will conduct such inspections and investigations of the subject properties, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, and, upon closing, shall assume the risk of any adverse matters,

including, but not limited to, adverse physical and environmental conditions that may not have been revealed by inspections and investigations. Each party further acknowledges and agrees that it is acquiring its property on an "as is, where is" and "with all faults" basis without representations, warranties or covenants, express or implied, of any kind or nature, except the warranty of title. Each party hereby waives and relinquishes all rights and privileges, arising out of or with respect or in relation to, any representations, warranties or covenants, whether express or implied, which may have been made or given, or which may have been deemed to have been made or given, by the other party, except for the warranty of title.

7.12 SPECIFIC DISCLOSURE. WITHOUT LIMITING THE GENERAL PROVISIONS OF PARAGRAPH 7.1.1 ABOVE, IT IS UNDERSTOOD AND AGREED THAT BOTH PARTIES SPECIFICALLY DISCLAIM ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, AS TO (a) ZONING, (b) TAX CONSEQUENCES, (c) PHYSICAL OR ENVIRONMENTAL CONDITIONS, (d) AVAILABLE GOVERNMENTAL APPROVALS, (e) GOVERNMENTAL REGULATIONS, OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY, INCLUDING, WITHOUT LIMITATION THE VALUE, CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE OF THE PROPERTY. BOTH PARTIES FURTHER ACKNOWLEDGE THAT THE OTHER HAS NOT WARRANTED, AND DOES NOT HEREBY WARRANT, THAT THE PROPERTY IN THE FUTURE WILL MEET OR COMPLY WITH THE REQUIREMENTS OF ANY SAFETY CODE, ENVIRONMENTAL LAW OR REGULATION OF THE STATE OF TEXAS OR ANY OTHER GOVERNMENTAL OR MUNICIPAL AUTHORITIES, BOARDS, ENTITIES, OR JURISDICTIONS.

7.13 INCORPORATION INTO DEED. It is agreed and understood that the terms and provisions of these "as is, where is" provisions shall expressly survive closing and not merge therein and shall be incorporated into the Special Warranty Deeds to be delivered at closing.

7.2 Each party in good faith believes it has good and indefeasible title in fee simple to its properties, free and clear of all liens (except those liens that will be released at or before closing), and no party, except as herein set forth, has or shall have on the Closing Date any rights in, or to acquire, the subject property, there being no other contracts outstanding for acquisition or lease of the subject Property.

7.3 There are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of each party, threatened that could materially adversely affect the ownership, operation, or maintenance of the properties or each party's ability to perform hereunder.

7.4 All bills and other payments due with respect to the ownership, operation, and maintenance of the each property have been paid or will be paid (i) in the ordinary course of business and (ii) prior to the Closing Date.

7.5 From the date hereof until the Closing Date, each party shall: (i) maintain and operate their property in a good and businesslike manner in accordance with good and prudent business practices; (ii) continue all insurance policies or contracts in full force and effect and neither cancel, amend, nor non-renew any of the same, (iii) not commit or permit to be committed any waste or introduce any environmental hazards thereto; and (iv) not enter into any agreement or instrument or take any action that would encumber the property after Closing, that would bind the other party or the property after Closing, or that would be outside the normal scope of maintaining and operating the property.

VIII. BROKERAGE COMMISSIONS

8.1 DISTRICT and CITY each represent to the other that no real estate broker or salesman has been involved in the negotiation of this Contract.

IX. DEFAULT AND REMEDIES

9.1 If EITHER PARTY refuses or fails to consummate the Contract or breaches, defaults, or otherwise fails to perform hereunder, for any reason other than termination hereof pursuant to a right granted to EITHER PARTY hereunder to do so, then the non-defaulting party, as its sole and exclusive remedy, shall have the right to terminate this Contract by giving the defaulting party and the Title Company written notice thereof, in which event neither party hereto shall have any further rights, duties or obligations hereunder. Such notice shall a) state, with particularity, the alleged breach, default or non-performance and the action required to cure such breach, etc., and b) contain a statement of intent to terminate this Contract if the breach, default, or non-performance is not cured. The defaulting party, upon receipt of such notice of intent to terminate, stating the alleged breach, default, or nonperformance, and action required in order to cure such default, breach, etc., shall have thirty (30) days after receipt of such notice in which to cure the alleged default, breach or nonperformance and to thereby prevent termination of this Contract.

9.2 If either party terminates this Contract pursuant to a right granted hereunder to do so, then neither party hereto shall have any further rights, duties or obligations hereunder.

9.3 If either party wrongfully fails to close the transaction contemplated by this Contract, or otherwise wrongfully fails to perform any of its obligations or agreements hereunder, either prior to or at Closing, the non-defaulting party may (subject to the giving of notice and the expiration of the opportunity to cure period, as provided below) terminate this Contract, as its sole and exclusive remedy.

9.4 Either Party, at its sole option, may extend to the other Party the time period to cure the alleged defaults referenced above, if satisfactory evidence is provided of said other Party's good faith efforts to commence cure within the aforementioned thirty (30) day period.

X. NONWAIVER

10.1 Unless otherwise expressly provided herein, no waiver by DISTRICT or CITY of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to DISTRICT or CITY upon any breach under this Contract shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by DISTRICT or CITY of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other breach, or of a subsequent breach of the same or any other term, covenant or condition herein contained. All rights, powers, options or remedies afforded to DISTRICT or CITY either hereunder or by law shall be cumulative and not alternative, and the exercise of one right, power, option or remedy shall not bar other rights, powers, options or remedies allowed herein or by law, unless expressly provided to the contrary herein.

XI. FURTHER ACTS, DEEDS AND ASSURANCE

11.1 In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by CITY, either party shall perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Closing or after the Closing, any and all further acts, deeds and assurances as DISTRICT or CITY or the Title Company may reasonably require to consummate the transaction contemplated hereunder.

XII. RULES OF CONSTRUCTION

12.1 The Parties acknowledge that each party and its counsel have reviewed and revised this Contract, and the Parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any addenda or exhibits hereto.

XIII. SEVERABILITY

13.1 In case any one or more of the provisions contained in this Contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein; it is also the intention of the parties hereto that in lieu of each clause or, provision of this Contract that is invalid, illegal, or unenforceable, there be added as a part of the Contract a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XIV. NOTICE

14.1 For the purposes of this Contract, all official communications, including, but not

limited to, notification, designation approval, consent, request or submittal (collectively "Notice") among the parties to this Contract shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, or hand-delivered to the addresses set forth below.

14.2 Notice will be deemed given on the date it is mailed or on the date it is hand-delivered.

Notices mailed or delivered to DISTRICT shall be addressed:

Assistant Superintendent for Facilities & Operations
Northside Independent School District
5900 Evers Road
San Antonio, Texas 78238

Notices mailed or delivered to CITY shall be addressed:

City Clerk
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283~9966

with copies to Director, Parks and Recreation Department at the same mailing address.

14.3 Notice of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of such change.

XV. DUPLICATE ORIGINALS

15.1 This Contract may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

XVI. CAPTIONS

16.1 The headings used throughout this instrument have been used for convenience only and do not constitute a matter to be considered in interpreting this Contract.

XVII. TIME OF THE ESSENCE

17.1 Time is of the essence in the performance of each party's obligations hereunder.

XVIII. AMENDMENT

18.1 Except where (1) otherwise authorized, permitted or required by the express terms of this

Contract and except where (2) notice to, consent or approval of, or joinder by any party has been expressly waived by the provisions hereof, no amendment, modification, deletion, release, termination or extension of, alteration, variance or change in, or supplement to, the provisions of the Contract shall be valid and effective or otherwise binding on the Parties hereto, unless, and until, such amendment, etc. shall have been reduced to writing and executed by the Parties hereto with the same formality as this Contract, including the passage of a future CITY ordinance approving such amendment.

XIX. CONDITIONED UPON APPROVAL

19.1 Notwithstanding any provision to the contrary herein, this Contract, and CITY's and DISTRICT's obligations hereunder, are expressly subject to and conditioned upon the acceptance and approval hereof by (1) passage of a CITY OF SAN ANTONIO Ordinance by the City Council, as evidenced by the execution authority set forth below, (2) passage of a resolution by the Board of Trustees of the Northside Independent School District authorizing the execution of the deed for District Property to the CITY, and (3) the contingencies as to the title, environmental assessment, and determination of remediation costs referenced herein.

XX. APPLICABLE LAW/VENUE

20.1 Venue of any court action brought directly or indirectly by reason of this Contract shall be in Bexar County, Texas. This Contract is made and is to be performed in Bexar County, Texas, and is governed by and will be interpreted according to the laws of the State of Texas.

XXI. AUTHORITY

21.1 The undersigned signatories for DISTRICT and CITY each represent that each is empowered and authorized to sign this Contract on behalf of DISTRICT and CITY in accordance with the terms and conditions stated herein.

XXII. ASSIGNMENT

22.1 No party hereto shall make in whole or in part any assignment of this Contract or any obligation hereunder without the prior written consent of the other party.

XXIII. GENDER

23.1 Words of any gender used in this Contract 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.

XXIV. ENTIRE AGREEMENT

24.1 The Parties hereto expressly acknowledge and agree that, with regard to the subject matter of this Contract and the transactions contemplated herein (1) there are no oral agreements between the parties hereto; and (2) this Contract, including the defined terms and

all exhibits and addenda, if any, attached hereto, (a) embodies the final and complete agreement between the parties; (b) supersedes all prior and contemporaneous negotiations, offers, proposals, agreements, commitments, promises, acts, conduct, courses of dealings, representations, statements, assurances and understandings, whether oral or written, and (c) may not be varied or contradicted by evidence of any such prior or contemporaneous matter or by evidence of any subsequent oral agreement of the parties hereto.

[Signature Page Follows.]

DRAFT

EXECUTED IN DUPLICATE ORIGINALS as of the ____ day of _____, 2020.
(Effective Date of this Contract).

CITY OF SAN ANTONIO

**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT**

BY: _____

City Manager

BY: _____

Superintendent

ATTEST:

ATTEST:

CITY CLERK

ASSISTANT SUPERINTENDENT

RECOMMENDED:

CITY ATTORNEY