

AN ORDINANCE

2013 - 02 - 21 - 0129

AUTHORIZING AMENDMENT NO. 1 TO AN AGREEMENT WITH EDGEWOOD INDEPENDENT SCHOOL DISTRICT IN ORDER TO PERMIT DEVELOPMENT, MAINTENANCE AND EXCLUSIVE USE OF A FIELD HOUSE AND RELATED IMPROVEMENTS WITHIN KENNEDY PARK IN ORDER TO ENHANCE THE MATA STADIUM ATHLETIC FACILITIES AT KENNEDY HIGH SCHOOL LOCATED IN COUNCIL DISTRICT 5.

* * * * *

WHEREAS, in October 1984, City Council Ordinance 59542 authorized a perpetual agreement (Original Agreement) between the City of San Antonio (City) and Edgewood Independent School District (EISD) permitting the City to develop and maintain recreational improvements at Kennedy Park (Park) in consideration of EISD's conveyance of approximately 6.4 acres of land to the City for expansion of the Park; and

WHEREAS, under the terms of the Original Agreement, the City and EISD share joint use of the Park and the City's Parks and Recreation Department maintains the Park and associated improvements at the City's expense; and

WHEREAS, EISD currently operates and maintains Kennedy High School which is located adjacent to the Park; and

WHEREAS, due to the limited availability of space for expansion and enhancement of Mata Stadium's athletic facilities at Kennedy High School, EISD has requested to amend the Original Agreement in order to permit construction, maintenance and exclusive use of the following improvements (Improvements) within the Park: 1) a 5,300 square foot field house containing restrooms and dressing rooms for home and visitor teams; and 2) a sidewalk connecting the Park's parking lot to a new ticket booth to be constructed at Mata Stadium on EISD property; and

WHEREAS, these improvements will in no way negatively impact the park or the current or future public use of the park; and

WHEREAS, under the terms of the proposed Amendment No. 1, EISD will have the right to construct the Improvements with prior review and approval from the City and EISD will be responsible for all costs associated with design, construction, maintenance, staffing and utilities associated with the Improvements; and

WHEREAS, additionally, the Original Agreement, which requires a bi-annual review by the City and EISD, will be amended to permit the parties to conduct formal reviews of the terms and conditions when mutually deemed necessary; and

WHEREAS, Amendment No. 1 was approved by EISD's Board of Trustees on January 15, 2013;
NOW THEREFORE:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is authorized to execute Amendment No. 1 to an Agreement with Edgewood Independent School District in order to permit development, maintenance and exclusive use of a field house and related improvements within Kennedy Park in order to enhance the Mata Stadium athletic facilities at Kennedy High School located in Council District 5. A copy of said amendment, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

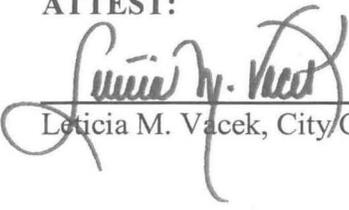
SECTION 2. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 21st day of February, 2013.

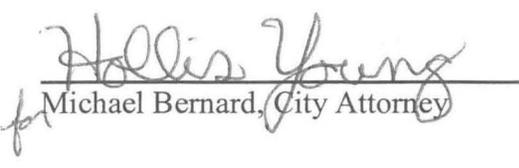

M A Y O R
Julián Castro

ATTEST:

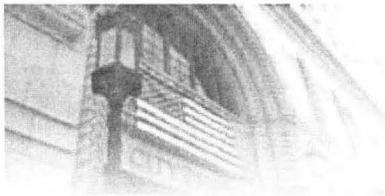


Leticia M. Vacek, City Clerk

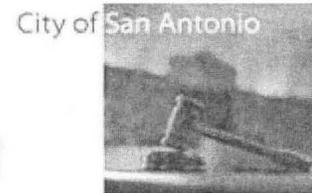
APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 14

Name:	14						
Date:	02/21/2013						
Time:	10:40:13 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing Amendment No. 1 to an Agreement with Edgewood Independent School District in order to permit development, maintenance and exclusive use a field house and related improvements within Kennedy Park in order to enhance the Mata Stadium athletic facilities at Kennedy High School located in Council District 5 and to provide for an administrative modification to the Agreement. [Gloria Hurtado , Assistant City Manager; Xavier Urrutia , Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor	x					
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				x
David Medina Jr.	District 5		x			x	
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

AMENDMENT #1 TO AGREEMENT
EDGEWOOD INDEPENDENT SCHOOL DISTRICT AT KENNEDY PARK

This Amendment #1 ("Amendment") is entered into by and between the City of San Antonio, a Texas municipal corporation (herein referred to as "City"), acting by and through its City Manager or her designee, pursuant to City Ordinance No. _____, passed and approved on _____ ("Effective Date"), and Edgewood Independent School District (hereinafter referred to as "District") through its board of trustees ("EISD Governing Authority").

WHEREAS, For valuable consideration and pursuant to City Ordinance 50461 and City Ordinance 59542, and pursuant to approval by the EISD Governing Authority, District respectively conveyed 2.67 acres and 3.735 acres to the City for a perpetual public park and recreation use as part of Kennedy Park; and

WHEREAS, Pursuant to City Ordinance No. 59542, City and District entered into an agreement ("Original Agreement") to permit District's joint use of all property and improvements at Kennedy Park and to permit City to construct, operate and maintain permanent public recreation facilities at City's expense on the Kennedy Park property; and

WHEREAS, District desires to construct, operate and maintain a field house and related improvements within Kennedy Park at its sole expense and exclusive use in order to enhance District's Mata Stadium athletic facilities at Kennedy High School which is located on District's property located adjacent to Kennedy Park and City agrees to amend the Original Agreement in order to grant to District an option to construct ("Option"), which Option, if and when exercised by the District in writing to City, shall ipso facto permit District to construct, operate and maintain such improvements; and

WHEREAS, City desires to amend the Original Agreement, a copy of which Original Agreement is marked Attachment "1" hereof, in order to modify the "Agreement Review" portion of the Original Agreement, and District agrees to such modification;

NOW THEREFORE, in consideration of the mutual covenants and conditions expressed herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, City and District hereby amend the Original Agreement as follows:

Section 4 – Agreement Review: The original section 4 is hereby replaced with the following:

As often as mutually considered necessary, the chief administrative officers (or their designated representatives) of the parties shall formally review this agreement with a view to determining its current appropriateness and/or the need for modifications.

Section 12 – District's Improvements: The following section is hereby added to the original agreement:

- A. *District is hereby granted the Option, which, if and when exercised by the EISD Governing Authority and communicated to City in writing, thereby*

grants to District, ipso facto, the right to construct a field house, perimeter fencing and associated improvements ("District's Improvements") on the Field House Area at Kennedy Park, which area is shown on Exhibit "C" to this Amendment. District shall additionally have the right to construct a sidewalk within Kennedy Park in order to link the existing parking area to District's proposed ticket booth which will be constructed on District's property. District shall have the right to utilize a portion of Kennedy Park for construction staging purposes, subject to City's approval of a proposed staging location. Prior to any construction activity, District shall be required to submit construction plans to City's Parks and Recreation Department for review and written approval. District shall obtain all required local, state and federal permits and approvals at District's expense. Upon completion of construction of District's Improvements, District shall restore the Field House Area, construction staging area(s) and any other damaged property or improvements within Kennedy Park that was directly caused by the construction of District's Improvements, to the same or better condition as existed prior to commencement of construction.

- B. District is also granted the right, prior to its exercise of the Option, to conduct an Environmental Study, acceptable to District, of Kennedy Park or any portion of Kennedy Park for the purpose of determining whether the District shall exercise the Option.
- C. Subject to District's exercise of the Option, District accepts the Field House Area in its existing "AS IS, WHERE IS WITH ALL FAULTS" condition and City makes no warranty, express or implied, as to the suitability of the Field House Area for use by District.

Said Field House Area is shown on Exhibit "C" as being an approximate 0.12 acre parcel ("Approximate Field House Area") out of 39.307 acres of land, New City Block 12308, Block 10, Lot 2, San Antonio, Bexar County, Texas, as described in Plat recorded in Volume 9517, Page 70, Official Public Records of Real Property, Bexar County, Texas.

The final description of the Field House Area ("Final Field House Area") shall be mutually agreed upon by the parties following completion of construction plans for District's Improvements. The Final Field House Area shall be attached at a later date as a replacement to Exhibit "C" and shall be marked "Exhibit 'C' – FINAL".

- D. District shall bear sole responsibility for all expenses associated with District's Improvements which shall include costs for design, construction, operation, maintenance, staffing and utilities. District additionally agrees to maintain District's proposed sidewalk that links the Kennedy Park parking lot to District's ticket booth.
- E. District shall have exclusive use of District's Improvements and shall have sole responsibility for the programming and scheduled use.

F. District shall ensure that District's building contractor(s) shall maintain a Builder's Risk policy during construction of District's Improvements for 100 percent of the value of the construction cost and City shall be listed as an additional insured.

All terms, conditions, and restrictions of the Original Agreement shall remain in full force and effect, except as otherwise modified and/or added under this Amendment, are hereby included in this Amendment and made a part hereof as if written out in haec verba.

Executed in duplicate originals to be effective on the passage of the City Ordinance referenced on Page 1 of this Amendment ("EFFECTIVE DATE").

CITY OF SAN ANTONIO, a
Texas municipal corporation

By: _____
CITY MANAGER

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

By: _____
CITY ATTORNEY

EDGEWOOD INDEPENDENT SCHOOL
DISTRICT

By: Dr. Jose A. Cervantes
Dr. Jose A. Cervantes, Superintendent

DATE OF APPROVAL BY EISD
GOVERNING AUTHORITY: January 15, 2013

ATTACHMENT "1"
(Copy of Original Agreement)

AGREEMENT BETWEEN
THE EDGEWOOD INDEPENDENT SCHOOL DISTRICT
AND THE CITY OF SAN ANTONIO, TEXAS,
RELATED TO PUBLIC RECREATION FACILITIES LOCATED,
AND TO BE LOCATED, NEAR JOHN F. KENNEDY HIGH SCHOOL
AND COMMONLY REFERRED TO AS "KENNEDY PARK"

WHEREAS, EDGEWOOD INDEPENDENT SCHOOL DISTRICT (hereinafter referred to as "District") has conveyed to the CITY OF SAN ANTONIO, TEXAS (hereinafter referred to as "City") the ownership of a 2.67 acre tract of real property pursuant to Ordinance No. 50461 shown on Exhibit "A" (attached hereto and made a part hereof for all purposes) which property was conveyed as part of an agreement between the District and the City wherein the City agreed pursuant to Ordinance No. 50128 that said property and recreational facilities to be constructed thereon in the future will be used as a public recreational facility, and providing the District with certain rights regarding the District's use of such facilities; and

WHEREAS, the City has requested that the District provide to the City an additional 3.735 acres of District property (shown on Exhibit "B" attached hereto and made a part hereof) for use as part of the Kennedy Park project; and

WHEREAS, as part of the consideration for the District in conveying said 3.735 acres to the City, the City and the District do hereby agree to the following conditions, which supersede and take the place of all prior agreements between the parties concerning the use by the District of such public recreational facilities at Kennedy Park;

NOW, THEREFORE:

W I T N E S S E T H

The District and the City hereby agree to the following conditions:

- (1) Scope: This agreement covers the facilities now existing at Kennedy Park, and also covers the facilities to be constructed thereon in the future, whether on property now owned or leased by the City, or which may be owned or leased by the City in the future, which forms or will form any part of that property commonly known as "Kennedy Park".
- (2) Term: The term of this agreement shall be for so long as said property is used for parks and recreation purposes and shall commence with formal ratification by the governing bodies of the parties hereto.

(3) Purpose: The City and the District hereby agree that said property and recreational facilities to be constructed thereon in the future will be used as a public recreational facility.

(4) Agreement Review: As often as mutually considered necessary, but no less than once every two years, during the anniversary month of this agreement, the chief administrative officers (or their designated representatives) of the parties hereto shall formally review this agreement with a view to determining its current appropriateness and/or the need for modifications.

Any change to the basic philosophy and/or policy set forth herein must be ratified by the governing bodies of the parties hereto after consultation with the Department of Housing and Urban Development.

(5) Administration of Agreement: The City Manager through the City Director of Parks and Recreation, and the Superintendent of EDGEWOOD INDEPENDENT SCHOOL DISTRICT, or his designated representative, will establish liaison and closely coordinate activities within the framework of this agreement.

(6) Permanent Improvements: By conveyance to the City of the property described on Exhibits "A" and "B" hereto, as well as any other property which the District may convey to the City in the future under this agreement, the District has consented to construction by and at the City's sole cost, permanent public recreation facilities on said property. Construction of such improvements will be carried out as City funds become available. No timetable is established hereby.

(7) Maintenance and Use of Recreation Facilities:

(a) Maintenance:

(1) The City will maintain and keep in repair at its sole expense the recreation facilities at a level comparable to similar structures and facilities operated and maintained by the City;

(2) The District agrees to bear the cost of repair for any damages incurred as a direct result of facilities use by the District.

(b) Use: All use of these public recreation facilities shall be programmed and scheduled through the Director, Department of Parks and Recreation. The District shall be permitted use of the facilities within the framework of this program, and shall be permitted exclusive use of said facilities for a period of four hours per day during school hours.

(8) Facilities' Availability to the General Public: Before or after the above mentioned four hours per day during school hours and on weekends, Kennedy Park shall be available for use by the general public to the same extent as similar facilities operated by the City of San Antonio.

(9) Staffing:

(a) The City will provide, at its sole expense, the necessary staff to manage and supervise those programs and activities participated in by the general public;

- (b) The District is responsible, at its sole expense, for any staff costs incidental to its use of said facilities.
- (10) Utilities: The City will provide, at its sole expense, all utilities related to the recreation facilities constructed by it on the property described in Exhibit "A" and Exhibit "B", and any other property which the District may convey or lease to the City under this agreement.
- (11) Liability:
- (a) The City assumes, accepts and recognizes responsibility for any damages which may be properly claimed by the members of the public that may occur during the use of the recreation facilities constructed by the City on the property herein described, or which result from, grow out of or are incident to the construction, maintenance, or operation of the facilities; provided however that the City shall not be liable for any such injuries or damages which result solely from the negligence of District or District's servants, agents, employees, or independent contractors.
- (b) It is expressly understood and agreed that the purpose of this provision is to fix and define the liabilities as between the respective parties hereto, and that such provision is not to be construed or interpreted as a waiver by City or District of any defenses it may have either at law or in equity to claims or causes of action which may be asserted by third parties.

EXECUTED in duplicate originals this 8th day of September

1984.

ATTEST:

[Signature]
City Clerk

CITY OF SAN ANTONIO

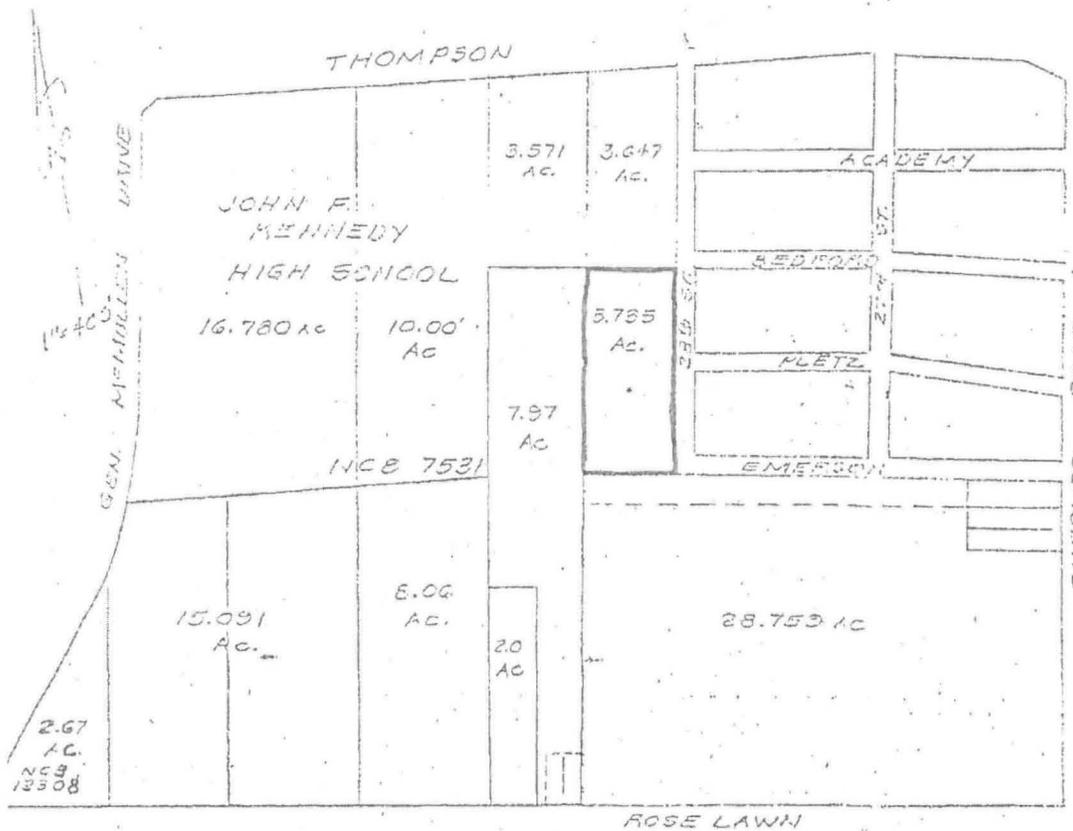
By: William T. Lauer
City Manager

ATTEST:

Ruben Solis
Secretary, Board of Trustees

EDGEWOOD INDEPENDENT SCHOOL DISTRICT

By: Sam Williams Jr
Acting-President, Board of Trustees



PLAT SHOWING:

A 33.526 ACRE TRACT
 BEING A 2.67 ACRE TRACT
 NCE 12308 AND 5 TRACTS
 TOTALING 36.856 ACRES,
 NCE 1531 SAN ANTONIO,
 BEXAR COUNTY, TEXAS

Reference

STATE OF TEXAS
 COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT
 ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER
 MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR
 ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT
 ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS
 SHOWN ABOVE.

This _____ day of _____, 19____ A. D.

Field Book _____ Page _____ Job No. _____

EXHIBIT "A"
(To Original Agreement)

An Ordinance 50461

Authorizing acceptance of 2.67 acre tract of land and a 0.717 acre tract of land from the Edgewood Independent School District for Public Parks and Recreation Use

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO.

SECTION 1. The City Manager or his duly authorized representative is hereby authorized to execute such documents as necessary to effect the conveyance and recordation of the following tracts of property from the Edgewood Independent School District; said property to be used in perpetuity for public parks and recreation purposes.

a. A 2.67 acre tract described in Exhibit 1 hereto and incorporated herein for all purposes; said property to be a part of a public recreation facility currently identified as Kennedy Park.

b. A 0.717 acre tract described in Exhibit 2 hereto and incorporated herein for all purposes; said property currently identified as Joslyn Park.

SECTION 2. Attached hereto and incorporated herein as Exhibits 3 and 4 are letters from the President, Edgewood Independent School District Board of Trustees acknowledging said Board's understanding of entitlements under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 and said Board's intention to dedicate said District properties to the City of San Antonio for a token sole price of \$10.00 each.

PASSED AND APPROVED this 1st day of March 1979.

ATTEST Norm J. Rodriguez
Asst. City Clerk

LILA COCKRELL
Mayor

Approved as to form: Mr. Finley
City Attorney

EXHIBIT "B"
(To Original Agreement)

WARRANTY DEED

COPY

STATE OF TEXAS
COUNTY OF BEXAR

KNOW ALL MEN BY THESE PRESENTS

THAT, EDGEWOOD INDEPENDENT SCHOOL DISTRICT of the County of Bexar, State of Texas, for and in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS and other good and valuable consideration to it in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, have, GRANTED, SOLD and CONVEYED, and by these presents do GRANT, SELL and CONVEY, unto the CITY OF SAN ANTONIO, TEXAS, a Municipal Corporation, all of the following described real property in Bexar County, Texas, to wit:

A 3.735 ACRE TRACT, NCB 7531 AS RECORDED
IN VOLUME 6351, PAGE 409 OF THE DEED
RECORDS OF BEXAR COUNTY, TEXAS

BEGINNING at the south line of Emerson Street and the west line of 28th Street for the southeast corner of this tract;

THENCE: along the south line of this tract, N 84 18'W - 277.81' to the southwest corner of this tract;

THENCE: along the east line of a 7.97 acre tract, N 05 54'E - 585.22' to the northwest corner of this tract;

THENCE: along the south line of a 3.647 acre tract, S 84 20'E - 278.10' to a point on the west line of 28th Street for the northeast corner of this tract;

THENCE: along the west line of 28th Street, S 05 55'W - 585.47' to the point of beginning and containing 3.735 acres of land, more or less.

TO HAVE AND TO HOLD, the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, CITY OF SAN ANTONIO, TEXAS, its successors and assigns forever; and the undersigned does hereby bind itself, its successors and assigns to

WARRANT AND FOREVER DEPEND all and singular the said premises unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof.

This instrument is executed by the undersigned President and attested by the undersigned Secretary of the Grantor pursuant to a resolution passed and adopted by the Board of Trustees of Grantor on the 16th day of October, 1984, authorizing this conveyance.

This conveyance is made and accepted SUBJECT TO THE FOLLOWING COVENANTS, CONDITIONS AND RESTRICTIONS, which shall in all things be observed, followed and complied with:

- a) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which discriminates against any person because of his race, color or national origin, regardless of whether such discrimination be effected by design or otherwise.
- b) The above described realty, or any part thereof, shall not be used in the operation of, or in conjunction with, any school or other institution of learning, study or instruction which creates, maintains, reinforces, renews, or encourages, or which intends to create, maintain, reinforce, renew, or encourage, a dual school system.
- c) The above described realty, or any part thereof, shall be used as a public recreational facility only.

These COVENANTS, CONDITIONS AND RESTRICTIONS shall be binding upon Grantee, CITY OF SAN ANTONIO, TEXAS, its successors and assigns; and in case of any violation of any or all of the above COVENANTS, CONDITIONS AND RESTRICTIONS, the title to said premises shall, without entry or suit, immediately revert to and vest in the Grantor herein, its successors and assigns, and the conveyance hereunder shall be null and void, and Grantor, its successors and assigns, shall be entitled to immediate possession of such premises and the improvements thereon; and no act or omission upon the part of Grantor herein, its successors and assigns, shall be a waiver of the operation of enforcement of such condition.

COPY

The COVENANTS, CONDITIONS AND RESTRICTIONS set out in subparagraph (a) above shall be construed to be for the benefit of any person prejudiced by its violation. The COVENANTS, CONDITIONS AND RESTRICTIONS specified in subparagraphs (b) and (c) above shall be construed to be for the benefit of any public school district or any person prejudiced by its violation.

EXECUTED this 16th day of October, A.D. 1984.

EDGEWOOD INDEPENDENT SCHOOL DISTRICT
OF BEXAR COUNTY, TEXAS

BY: David D. Garza
DAVID D. GARZA, President
Board of Trustees

ATTEST:

Ruben Solis
RUBEN SOLIS, Secretary
Board of Trustees

(ACKNOWLEDGEMENT)

COPY

THE STATE OF TEXAS

COUNTY OF BEXAR

This instrument was acknowledged before me on October 16, 1984,
by Sam Williams, Jr., as ^{Acting-}President of the EDGEWOOD INDEPENDENT SCHOOL
DISTRICT of Bexar County, Texas.

Notary Public in and for the
State of Texas
My Commission Expires 4-13-85

RETURN TO:

Real Estate Division
City of San Antonio
P.O. Box 9066
San Antonio, Texas 78285

EXHIBIT "C"
 (To Original Agreement
 by virtue of Amendment # 1)

MI FIELD HOUSE SITE PLAN SCHEME "A" at 5,300 gross square feet



NO. TX 79226

*0.10' of area
 0.00' of area
 0.00' of area*

Waste Bank

NUMBERED NOTES
 BY 1 - ORIGINAL CREATORS

PREPARED BY
 PREPARED BY

CADCO

PROJECTS MANAGED BY
 NEW FIELD HOUSE
 EDGEWOOD ISD
 10000
 C1000A

