

AN ORDINANCE 2012-09-20-0742

AUTHORIZING THE NEGOTIATION AND EXECUTION OF FUNDING AGREEMENTS WITH SAN ANTONIO SPORTS AND SOUTHWEST, NORTHEAST AND SAN ANTONIO INDEPENDENT SCHOOL DISTRICTS IN THE AMOUNT OF UP TO \$500,000.00 FOR THE SPARK SCHOOL PARK PROGRAM, A CITY COUNCIL DISTRICT 8 CERTIFICATES OF OBLIGATION FUNDED PROJECT LOCATED IN COUNCIL DISTRICTS 1, 2, AND 4.

* * * * *

WHEREAS, the SPARK School Park Program (“SPARK”), a non-profit organization founded in 1983, currently operates through the City of Houston’s Mayor’s office and combines the resources of the Department of Housing and Community Development, local school districts, Harris County, private sector neighborhood groups and citizens to develop public school grounds into neighborhood parks; and

WHEREAS, the goal of SPARK is to help public schools develop school playgrounds into neighborhood parks and to empower local communities to make changes and improvements to their neighborhood; and

WHEREAS, there are over 200 SPARK Parks located throughout the Houston/Harris County area; and

WHEREAS, in May 2011, the San Antonio Metropolitan Health District (“Metro Health”), in cooperation with District 8 Councilman Reed Williams, hosted a meeting with local San Antonio school districts, community partners and SPARK Executive Director Kathleen Ownby to learn more about the program and begin seeking a non-profit organization to establish a SPARK program in San Antonio; and

WHEREAS, San Antonio Sports (“SAS”) contacted Councilman Williams and Metro Health to express an interest in collaborating with the City in order to establish a local SPARK program; and

WHEREAS, the SAS, a local non-profit organization, has successfully collaborated with the City to bring sporting events to San Antonio which have resulted in an economic impact of over \$357 million, provided youth sports and fitness programs and advocated for the development and maintenance of quality athletic facilities since 1984; and

WHEREAS, the SAS athletic programs currently serve over 170,000 children annually; and

WHEREAS, the tri-party Funding Agreements with SAS and SWISD, NEISD and SAISD will consist of up to \$500,000.00 in funding available from the FY 2012-2017 Capital Improvement Budget, Council District 8 Capital Improvement Project Funds (CIP); and

WHEREAS, the Funding Agreement will permit the City to collaborate with SAS and the school districts to support development of the three San Antonio SPARK School Parks to be located at San Antonio Independent School District's Neal Elementary School in Council District 1, North East Independent School District's Camelot Elementary School in Council District 2 and Southwest Independent School District's Sky Harbour Elementary School in Council District 4; and

WHEREAS, these locations were selected by SAS in coordination with the Council Districts based upon the school's interest, the need for park development in the area surrounding the school, and the neighborhood's demonstrated willingness to help plan, fund, and sustain the SPARK park; and

WHEREAS, the park will serve the school population during school hours and will be available for community use in the evenings, on weekends, school holidays and during summer months; and

WHEREAS, planned park improvements include playground equipment, art features, an outdoor classroom and pavilion, a community garden, athletic fields and walking trails; and

WHEREAS, completion of construction is anticipated in summer 2013; and

WHEREAS, the Funding Agreements will commence upon City Council approval and will have a term of twenty years; and

WHEREAS, the SAS will provide program oversight and serve as the conduit for the reimbursement of the school district expenses for approved design, construction and material expenses associated with development of the SPARK parks; **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 Department of Capital Improvements Management Services (CIMS) or his designee, is authorized to negotiate and execute Funding Agreements with San Antonio Sports and Southwest,

Northeast and San Antonio Independent School Districts in an amount up to \$500,000.00 for the SPARK School Park Program, a City Council District 8 Certificates of Obligation Funded Project located in Council Districts 1, 2, and 4. Copies of the agreements in substantially final form are attached hereto and incorporated herein for all purposes as **Attachment I- III**.

SECTION 2. Payment in the amount not to exceed \$128,400.67 in SAP Fund 43099000, Certificates Obligation Capital Projects, SAP Project Definition 40-00279, CD 8 Infrastructure Improvements, is authorized to be encumbered and made payable to the Southwest Independent School District for the SPARK School Park Program.

SECTION 3. Payment in the amount not to exceed \$178,299.67 in SAP Fund 43099000, Certificates Obligation Capital Projects, SAP Project Definition 40-00279, CD 8 Infrastructure Improvements, is authorized to be encumbered and made payable to the Northeast Independent School District for the SPARK School Park Program.

SECTION 4. Payment in the amount not to exceed \$178,299.67 in SAP Fund 43099000, Certificates Obligation Capital Projects, SAP Project Definition 40-00279, CD 8 Infrastructure Improvements, is authorized to be encumbered and made payable to the San Antonio Independent School District for the SPARK School Park Program.

SECTION 5. Payment in the amount not to exceed \$14,999.99 in SAP Fund 43099000, Certificates Obligation Capital Projects, SAP Project Definition 40-00279, CD 8 Infrastructure Improvements, is authorized to be encumbered and made payable to San Antonio Sports for construction administration fees.

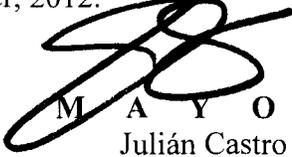
SECTION 6. Payments for services are contingent upon the availability of funds and the sale of future City of San Antonio, General Obligation Bonds in accordance with the adopted capital budget. Payment is limited to the amounts budgeted in the Operating and/or Capital Budget funding sources identified. All expenditures will comply with approved operating and/or capital budgets for current and future fiscal years.

SECTION 7. 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.

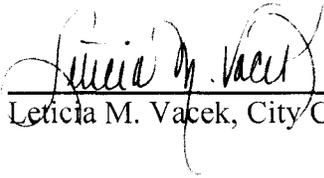
SW/vv
09/20/12
Item #32

SECTION 8. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 20th day of September, 2012.

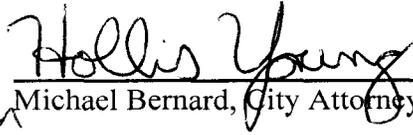

M A Y O R
Julián Castro

ATTEST:

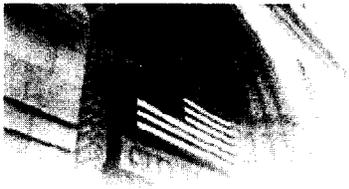


Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

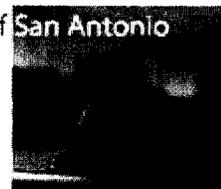


for Michael Bernard, City Attorney



Request for
COUNCIL
 ACTION

City of San Antonio



Agenda Voting Results - 32

Name:	8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 20, 21, 22B, 23, 24, 25, 26, 27, 28A, 28B, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45						
Date:	09/20/2012						
Time:	10:55:21 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the negotiation and execution of Funding Agreements with San Antonio Sports and Southwest, Northeast and San Antonio Independent School Districts in the amount of up to \$500,000.00 for the SPARK School Park Program, a City Council District 8 Certificates of Obligation Funded Project located in Council Districts 1, 2, and 4. [Peter Zanoni, Assistant City Manager; Mike Frisbie, Director, Capital Improvements Management Services]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				x
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x				
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10	x					

SPARK PROGRAM AGREEMENT

This SPARK Program Agreement (“Agreement”) is made and entered into by and between the City of San Antonio, a Texas home rule municipality (“City”), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____ passed and approved by the City Council on _____, 2012, San Antonio Sports, a non-profit organization (“SAS”), and Southwest Independent School District (“District”).

WITNESSETH:

WHEREAS, the City is legally authorized to own, acquire, construct, improve, finance and operate recreational facilities capable of serving municipal park purposes, and

WHEREAS, SAS has been designated as the non-profit organization that will develop and oversee a SPARK program, which develops public school grounds for recreational purposes that benefit both the schools and the public, in San Antonio, and

WHEREAS, the City and SAS desire to increase the availability of recreational facilities within the boundaries of the City; and

WHEREAS, District is willing to improve and operate portions of certain school playgrounds as recreational facilities through participation in the SPARK program; and

WHEREAS, District may own and operate athletic and recreational facilities that can also serve the public; and

WHEREAS, \$500,000 is available for the SPARK program from City Council District 8 FY 2012 District Funds.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises contained herein, City, SAS and District hereinafter collectively referred to as the Parties, agree as follows:

1. DEFINITIONS

- A. “SAS Representative” shall mean the person designated by SAS to act as its representative in connection with this Agreement.
- B. “City Representative” shall mean the person from the Parks and Recreation Department designated by the City to be the City’s representative in connection with this Agreement.

- C. "Eligible Expenses" are design, construction, and purchased construction materials for capital improvements within SPARK School Grounds for approved SPARK program improvements.
- D. "District Representative" shall mean the person designated by the District as its representative in connection with this Agreement.
- E. "Public Use Hours" shall be from sunrise to sunset, excluding those hours when schools are in session or when use of the SPARK School Grounds is necessary for school purposes.
- F. "SAS Construction Administration Fee" shall be 3% of all funds reimbursed to District.
- G. "SPARK Program" shall mean the cooperative program of the City, SAS, District, parent-teacher groups and the community, whereby interested persons may raise cash donations or provide volunteer services or materials for a particular SPARK School.
- H. "SPARK School" shall mean a school which: (1) is owned and operated by the District; (2) has met the eligibility requirements of the SPARK Program; and (3) has been selected by SPARK and the District and approved by the City for participation in the SPARK Program.
- I. "SPARK School Grounds" shall mean the designated recreational area of a SPARK School.

II. DISTRICT AND SAS RESPONSIBILITIES AND GRANT OF LICENSEE RIGHTS TO CITY

- A. The District agrees to review and approve or disapprove, through the District Representative, plans developed and submitted by SPARK School personnel, parents, and members of the neighboring community, all as designated by the SPARK School principal, for improvements to such SPARK School Grounds for recreational uses, including open green space and improvements associated with recreational and fitness activities. District agrees to forward the District approved plans to SAS for its review and approval. Once SAS and District have approved the SPARK School plans, one copy will be forwarded to the City.
- B. The District agrees to make improvements at the SPARK Schools by contracting for those improvements, utilizing District employees to make the improvements, and/or through volunteer contribution of labor or materials. Such improvements shall be completed as expeditiously as possible considering the scope of work involved.
- C. SAS and District agree that all provisions of Exhibit B are applicable to the design and construction of SPARK School improvements.
- D. The Parties agree that any improvements to the SPARK School Grounds specified in the plans approved pursuant to Paragraph A of this Section II will be made only to the extent of available funding for the particular SPARK School, in the discretion of the respective Parties.
- E. During the term of this Agreement, the District grants to City, and City accepts from District, a license for use by general public of the SPARK School Grounds subject to the terms and conditions of this Agreement. District agrees to keep

SPARK School Grounds open to the general public for recreational purposes during Public Use Hours. It is agreed that during non-Public Use Hours or at times when school activities are occurring at a SPARK School that require the exclusive use of the SPARK School Grounds by the District, the general public may be excluded from the SPARK School Grounds. Public Use Hours may be altered by the agreement of the Parties, with the City's approval through the Parks and Recreation Director; however, the minimum Public Use Hours will be one hundred fifty (150) hours each calendar month. The District further agrees to maintain the SPARK School Grounds and SPARK improvements throughout the term of this Agreement, including mowing, edging, trimming and litter removal to the same extent as performed on similar non-SPARK School Grounds.

- F. All improvements made on District Property to develop SPARK School Grounds shall be and remain the property of the District; subject to the City's licensee rights to all SPARK School Grounds during the term of this Agreement.
- G. Neither the City nor SAS shall have any responsibility for the operation or maintenance of SPARK School Grounds nor shall either have any ownership interest in the improvements made by the District pursuant to this Agreement.

III. REIMBURSEMENT

- A. The Proposed Scope of Project/Proposed Budget is attached as Exhibit A and may be modified by SAS and District as the final plans and cost estimates for each SPARK School are finalized. Total funding not to exceed \$500,000, including the SAS Construction Administration Fee, is available from City under the terms of this Agreement.
- B. The District may deliver a request for reimbursement to SAS for Eligible Expenses incurred or committed during the prior month for the cost of making improvements contemplated by this Agreement to SPARK Schools. Each request for reimbursement must be supported by copies of paid invoices, affidavits of bills paid, or evidence of a payment obligation, together with any other documentation reasonably requested by SAS or City. SAS will present all properly documented requests for reimbursement to the City Representative within TEN (10) business days of receipt.
- C. District reimbursement requests shall be subject to the review and approval of SAS and then may be forwarded to City for City's review, approval and reimbursement by City to SAS.
- D. Accompanying each reimbursement request, SAS will submit to City a brief report summarizing the status of each SPARK Program project, along with photographs during periods of construction.
- E. City will provide reimbursement to SAS for Eligible Expenses, and SAS shall provide reimbursement to District within FIVE (5) business days of receipt of payment from City. City will also provide payment of the SAS Construction Administration Fee to SAS along with the funds to be reimbursed to the District.

- F. If City provides reimbursement for expenses that are committed but not paid at the time that reimbursement is requested, District agrees to provide to SAS and City evidence of payment of such committed expenses within sixty (60) days following reimbursement by City.

IV. TERM

- A. The License granted by District to City and all other obligations of the District to operate and maintain the SPARK School Grounds as recreational facilities, all as set out in Article II of this Agreement, shall continue for a period of twenty (20) years after the completion of the SPARK improvements. However, in the event that District determines that the SPARK School is no longer needed for school purposes and is to be sold or leased to another entity, District shall either a) continue to operate the SPARK School Grounds for use by the general public, or b) provide an alternate SPARK site to serve the same community with similar amenities and benefits. In either of these scenarios, District shall be obligated to provide twenty (20) years of SPARK public use.
- B. During the term of this Agreement, the District may reconfigure a SPARK School Ground size or location at a particular school site, or relocate a SPARK School Ground from one location to an alternate location at that same school but first must consult with SAS and City. The costs associated with this reconfiguration or relocation would be borne in full by District.
- C. The obligations of the District to operate and maintain SPARK School Grounds as public recreational facilities shall in no way be construed as a dedication of these SPARK Grounds as public parks.

V. INDEMNIFICATION/THIRD PARTY CLAIMS

- A. District 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 Civil Practices 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. District does not waive its immunities, defenses or limits of liability by entering or performing under this Agreement.
- B. **SAS covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the 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 the City directly or indirectly arising out of, resulting from or related to SAS's activities under this Agreement,**

including any acts or omissions of SAS, any agent, officer, director, representative, employee, consultant or subcontractor of SAS, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this 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 SAS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- C. The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SAS shall advise the City in writing within 24 hours of any claim or demand against the City or SAS known to SAS related to or arising out of SAS's activities under this Agreement and shall see to the investigation and defense of such claim or demand at SAS's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAS of any of its obligations under this paragraph.

VI. INSURANCE

SAS and the District agree that they are responsible for insuring or obtaining necessary and adequate insurance for their respective employees and subcontractors for Worker's Compensation or Alternative Plan. SAS and the District shall be responsible for insuring their respective property, equipment, autos and legal liability. In no event will the City be required to maintain any insurance coverage for SAS.

VII. MISCELLANEOUS PROVISIONS

- A. 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 matter 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
114 W Commerce, 11th Floor
San Antonio TX 78205
Attn: Director

SAS: San Antonio Sports
P O Box 830386
San Antonio TX 78283-0386
Attn: Executive Director

District: SWISD
11914 Dragon Lane
San Antonio TX 78252
Attn: Superintendent

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.

- B. 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.
- C. 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.

- D. 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.
- E. 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.
- F. 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.
- G. Independent Contractor. The District and SAS agree that in performing any service to be rendered hereunder, the District, SPARK and/or any entity acting on their behalf, is acting as an independent contractor and is not an agent or employee of the City. The City and SAS agree that in performing any service to be rendered hereunder, the City, SPARK and/or any entity acting on their behalf, is acting as an independent contractor and is not an agent or employee of the District.
- H. 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.
- I. Parties in Interest. This Agreement shall bind and benefit the Parties hereto and shall not bestow any rights or benefits upon third Parties.
- J. Compliance with Exhibits. The District, City and SAS agree to abide by the provisions and requirements of Exhibits A and B, attached hereto and made a part herein.

Exhibit A – Proposed Scope of Project and Proposed Budget
Exhibit B – Requirements for Eligible Expenses

- K. Inspections, Audits and Enforcement. The City shall have the right to perform, or cause to be performed at City's expense: (1) audits of the books and records of the District and SAS, and (2) inspections of all places where work is undertaken in connection with this Agreement. The District and SAS shall be required to keep such books and records available for such purpose for at least 3 years after termination of this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations. The City

Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization.

- L. Conflict of Interest. The District and SAS acknowledge that the Home Rule Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. A City officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

- M. District hereby acknowledges that a separate \$49,899 will be provided by City to SAS for improvements to Sky Harbour Elementary, as approved by City Ordinance 2012-04-12-0271. SAS will make those funds available to District to be used for the Sky Harbour SPARK project. With regard to these funds, SAS and District will be required to comply with the terms of this Agreement.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the District, SAS and the City in multiple originals which shall be considered of equal force and effect, as of the _____ day of _____, 2012.

City:

City of San Antonio, a Texas
Municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

Approved as to Form: _____
City Attorney

District:

Southwest Independent
School District

By: _____

EXHIBIT A
PROPOSED SCOPE OF PROJECT/PROPOSED BUDGET

School Site: Sky Harbour Elementary
5902 Fishers Bend
San Antonio TX 78242

Proposed Scope: To be developed and approved by Parties

Projected Budget/Funding: Not to exceed \$128,400.67

EXHIBIT B
REQUIREMENTS FOR ELIGIBLE EXPENSES

A. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

District and SAS agrees that compliance with the following, as applicable, is required:

1. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (except with regard to work performed by volunteers and District employees).
2. District shall comply with their mandated competitive contracting processes.
3. Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, as outlined below (except with regard to work performed by volunteers and District employees).
4. Texas Accessibility Standards (TAS) established by the Texas Department of Licensing and Regulation (TDLR) under the Elimination of Architectural Barriers Act, Texas Government Code, Chapter 51.
5. Plans must conform with Texas Accessibility Standards requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

B. District shall be responsible for securing all necessary permits and approvals prior to the start of construction.

C. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS

The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this agreement. District agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, District shall request upon advertisement of construction bids, and the City will provide District with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The District is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the District calls for bids for construction of a given phase. The District is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the District's general contractor and all subcontractors for construction of each Phase.

District is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Agreement.

Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the District shall cause its Construction Contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the District from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

D. SBEDA COMPLIANCE

The City of San Antonio (City), through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy (“SBEDA”) Program. Information regarding the SBEDA Ordinance may be found on the City’s Economic Development Department (EDD) website and is also available in hard copy form upon request to the City. District understands and agrees that for portions of the SPARK Program improvements undertaken by District in the award of contracts, subcontracts and other opportunities for design, construction and operation of the SPARK Program, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. **IMMEDIATELY UPON THE COMPLETION OF THE SCOPE OF WORK FOR CONSTRUCTION AND PRIOR TO ISSUING BIDS OR SOLICITATIONS FOR ANY PRIME OR SUBCONTRACTORS**, District shall submit a copy of the scope of work to EDD’s Small Business Office (the “SBO”). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (API), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (the “Plan”). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.

SPARK PROGRAM AGREEMENT

This SPARK Program Agreement (“Agreement”) is made and entered into by and between the City of San Antonio, a Texas home rule municipality (“City”), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____ passed and approved by the City Council on _____, 2012, San Antonio Sports, a non-profit organization (“SAS”), and Northeast Independent School District (“District”).

WITNESSETH:

WHEREAS, the City and District are each legally authorized to own, acquire, construct, improve, finance and operate recreational facilities capable of serving both public school purposes and municipal park purposes, and

WHEREAS, SAS has been designated as the non-profit organization that will develop and oversee a SPARK program, which develops public school grounds into parks that benefit both the schools and the public, in San Antonio, and

WHEREAS, the City and SAS desire to increase the availability of park facilities within the boundaries of the City; and

WHEREAS, District is willing to improve and operate portions of certain school playgrounds as public parks and recreational facilities through participation in the SPARK program; and

WHEREAS, District may own and operate athletic and recreational facilities that can also serve as City parks and recreational facilities; and

WHEREAS, \$500,000 is available for the SPARK program from City Council District 8 FY 2012 District Funds.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises contained herein, City, SAS and District hereinafter collectively referred to as the Parties, agree as follows:

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- C. "Eligible Expenses" are design, construction, and purchased construction materials for capital improvements within SPARK School Grounds for approved SPARK program improvements.
- D. "District Representative" shall mean the person designated by the District as its representative in connection with this Agreement.
- E. "Park Hours" shall be from sunrise to sunset, excluding those hours when schools are in session or when use of the SPARK School Grounds is necessary for school purposes.
- F. "SAS Construction Administration Fee" shall be 3% of all funds reimbursed to District.
- G. "SPARK Program" shall mean the cooperative program of the City, SAS, District, parent-teacher groups and the community, whereby interested persons may raise cash donations or provide volunteer services or materials for a particular SPARK School.
- H. "SPARK School" shall mean a school which: (1) is owned and operated by the District; (2) has met the eligibility requirements of the SPARK Program; and (3) has been selected by SPARK and the District and approved by the City for participation in the SPARK Program.
- I. "SPARK School Grounds" shall mean the designated park and recreational area of a SPARK School.

II. DISTRICT AND SAS RESPONSIBILITIES AND GRANT OF LICENSEE RIGHTS TO CITY

- A. The District agrees to review and approve or disapprove, through the District Representative, plans developed and submitted by SPARK School personnel, parents, and members of the neighboring community, all as designated by the SPARK School principal, for improvements to such SPARK School Grounds for park and recreational uses, including open green space and improvements associated with recreational and fitness activities. District agrees to forward the District approved plans to SAS for its review and approval. Once SAS and District have approved the SPARK School plans, one copy will be forwarded to the City.
- B. The District agrees to make improvements at the SPARK Schools by contracting for those improvements, utilizing District employees to make the improvements, and/or through volunteer contribution of labor or materials. Such improvements shall be completed as expeditiously as possible considering the scope of work involved.
- C. SAS and District agree that all provisions of Exhibit B are applicable to the design and construction of SPARK School improvements.
- D. The Parties agree that any improvements to the SPARK School Grounds specified in the plans approved pursuant to Paragraph A of this Section II will be made to the extent of available funding for the particular SPARK School, in the discretion of the respective Parties.
- E. During the term of this Agreement, the District grants to City, and City accepts from District, a license for use by general public of the SPARK School Grounds

subject to the terms and conditions of this Agreement. District agrees to keep SPARK School Grounds open to the general public as public parks for park and recreational purposes during Park Hours. It is agreed that during non-Park Hours or at times when school activities are occurring at a SPARK School that require the exclusive use of the SPARK School Grounds by the District, the general public may be excluded from the SPARK School Grounds. Park Hours may be altered by the agreement of the Parties, with the City's approval through the Parks and Recreation Director; however, the minimum Park Hours will be one hundred fifty (150) hours each calendar month. The District further agrees to maintain the SPARK School Grounds and SPARK improvements throughout the term of this Agreement, including mowing, edging, trimming and litter removal to the same extent as performed on similar non-SPARK School Grounds.

- F. All improvements made on District Property to develop SPARK School Grounds as public parks shall be and remain the property of the District; subject to the City's licensee rights to all SPARK School Grounds during the term of this Agreement.
- G. Neither the City nor SAS shall have any responsibility for the operation or maintenance of SPARK School Grounds nor shall either have any ownership interest in the improvements made by the District pursuant to this Agreement.

III. REIMBURSEMENT

- A. The Proposed Scope of Project/Proposed Budget is attached as Exhibit A and may be modified by SAS and District as the final plans and cost estimates for each SPARK School are finalized. Total funding not to exceed \$500,000, including the SAS Construction Administration Fee, is available from City under the terms of this Agreement.
- B. The District may deliver a request for reimbursement to SAS for Eligible Expenses incurred or committed during the prior month for the cost of making improvements contemplated by this Agreement to SPARK Schools. Each request for reimbursement must be supported by copies of paid invoices, affidavits of bills paid, or evidence of a payment obligation, together with any other documentation reasonably requested by SAS or City. SAS will promptly present all properly documented requests for reimbursement to the City Representative.
- C. District reimbursement requests shall be subject to the review and approval of SAS and then may be forwarded to City for City's review, approval and reimbursement by City to SAS.
- D. Accompanying each reimbursement request, SAS will submit to City a brief report summarizing the status of each SPARK Program project, along with photographs during periods of construction.
- E. City will provide reimbursement to SAS for Eligible Expenses, and SAS shall promptly provide reimbursement to District upon receipt of payment from City. City will also provide payment of the SAS Construction Administration Fee to SAS along with the funds to be reimbursed to the District.

- F. If City provides reimbursement for expenses that are committed but not paid at the time that reimbursement is requested, District agrees to provide to SAS and City evidence of payment of such committed expenses within sixty (60) days following reimbursement by City.

IV. TERM

- A. The License granted by District to City and all other obligations of the District to operate and maintain the SPARK School Grounds as public parks and recreational facilities, all as set out in Article II of this Agreement, shall continue for a period of twenty (20) years after the completion of the SPARK improvements. However, in the event that District determines that the SPARK School is no longer needed for school purposes and is to be sold or leased to another entity, District shall either a) continue to operate the SPARK School Grounds for use by the general public, or b) provide an alternate SPARK site to serve the same community with similar amenities and benefits. In either of these scenarios, District shall be obligated to provide twenty (20) years of SPARK public use.
- B. During the term of this Agreement, the District may reconfigure a SPARK Park size or location at a particular school site, or relocate a SPARK Park from one location to an alternate location at that same school but first must consult with SAS and City. The costs associated with this reconfiguration or relocation would be borne in full by District.
- C. The obligations of the District to operate and maintain SPARK School Grounds as public parks and recreational facilities shall in no way be construed as a dedication of these SPARK Grounds as public parks.

V. INDEMNIFICATION/THIRD PARTY CLAIMS

- A. District 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 Civil Practices 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. District does not waive its immunities, defenses or limits of liability by entering or performing under this Agreement.
- B. **SAS covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the 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 the City directly or indirectly arising out of, resulting from or related to SAS's activities under this Agreement,**

including any acts or omissions of SAS, any agent, officer, director, representative, employee, consultant or subcontractor of SAS, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this 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 SAS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

- C. The provisions of this Indemnity are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. SAS shall advise the City in writing within 24 hours of any claim or demand against the City or SAS known to SAS related to or arising out of SAS's activities under this Agreement and shall see to the investigation and defense of such claim or demand at SAS's cost. The City shall have the right, at its option and at its own expense, to participate in such defense without relieving SAS of any of its obligations under this paragraph.

VI. INSURANCE

SAS and the District agree that they are responsible for insuring or cause to be obtained necessary and adequate insurance for its employees and subcontractors for Worker's Compensation or Alternative Plan. SAS and the District shall be responsible for insuring its own property, equipment, autos and legal liability. In no event will the City be required to maintain any insurance coverage for SAS.

VII. MISCELLANEOUS PROVISIONS

- A. 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 matter 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
114 W Commerce, 11th Floor
San Antonio TX 78205
Attn: Director

SAS: San Antonio Sports
P O Box 830386
San Antonio TX 78283-0386
Attn: Executive Director

District: NEISD
8961 Tesoro Drive
San Antonio TX 78217
Attn: Superintendent

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.

- B. 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.
- C. 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.
- D. 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.

- E. 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.
- F. 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.
- G. Independent Contractor. The District and SAS agree that in performing any service to be rendered hereunder, the District, SPARK and/or any entity acting on their behalf, is acting as an independent contractor and is not an agent or employee of the City.
- H. 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.
- I. Parties in Interest. This Agreement shall bind and benefit the Parties hereto and shall not bestow any rights or benefits upon third Parties.
- J. Compliance with Exhibits. The District, City and SAS agree to abide by the provisions and requirements of Exhibits A and B, attached hereto and made a part herein.

Exhibit A – Proposed Scope of Project and Proposed Budget

Exhibit B – Requirements for Eligible Expenses

- K. Inspections, Audits and Enforcement. The City shall have the right to perform, or cause to be performed at City's expense: (1) audits of the books and records of the District and SAS, and (2) inspections of all places where work is undertaken in connection with this Agreement. The District and SAS shall be required to keep such books and records available for such purpose for at least 3 years after termination of this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations. The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization.
- L. Conflict of Interest. The District and SAS acknowledge that the Home Rule Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract

with the City or any City agency such as City-owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the District, SAS and the City in multiple originals which shall be considered of equal force and effect, as of the _____ day of _____, 2012.

City:

City of San Antonio, a Texas
Municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

Approved as to Form: _____
City Attorney

District:

Northeast Independent
School District

By: _____

EXHIBIT A
PROPOSED SCOPE OF PROJECT/PROPOSED BUDGET

School Site: Camelot Elementary
7410 Ray Bon Drive
San Antonio TX 78218

Proposed Scope: To be developed and approved by Parties

Projected Budget/Funding: Not to exceed \$178,299.67

EXHIBIT B
REQUIREMENTS FOR ELIGIBLE EXPENSES

A. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

District and SAS agrees that compliance with the following, as applicable, is required:

1. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (except with regard to work performed by volunteers and District employees).
2. District shall comply with their mandated competitive contracting processes.
3. Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, as outlined below (except with regard to work performed by volunteers and District employees).
4. Texas Accessibility Standards (TAS) established by the Texas Department of Licensing and Regulation (TDLR) under the Elimination of Architectural Barriers Act, Texas Government Code, Chapter 51.
5. Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

B. District shall be responsible for securing all necessary permits and approvals prior to the start of construction.

C. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS

The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this agreement. District agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, District shall request upon advertisement of construction bids, and the City will provide District with the appropriate wage determination which includes the general

prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The District is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the District calls for bids for construction of a given phase. The District is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the District's general contractor and all subcontractors for construction of each Phase. District is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Agreement.

Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the District shall cause its Construction Contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the District from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

D. SBEDA COMPLIANCE

The City of San Antonio (City), through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy ("SBEDA") Program. Information regarding the SBEDA Ordinance may be found on the City's Economic Development Department (EDD) website and is also available in hard copy form upon request to the City. District understands and agrees that for portions of the SPARK Program improvements undertaken by District in the award of contracts, subcontracts and other opportunities for design, construction and operation of the SPARK Program, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. **IMMEDIATELY UPON THE COMPLETION OF THE SCOPE OF WORK FOR CONSTRUCTION AND PRIOR TO ISSUING BIDS OR SOLICITATIONS FOR ANY PRIME OR SUBCONTRACTORS**, District shall submit a copy of the scope of work to EDD's Small Business Office (the "SBO"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (API), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (the "Plan"). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.

SPARK PROGRAM AGREEMENT

This SPARK Program Agreement (“Agreement”) is made and entered into by and between the City of San Antonio, a Texas home rule municipality (“City”), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. _____ passed and approved by the City Council on _____, 2012, San Antonio Sports, a non-profit organization (“SAS”), and San Antonio Independent School District (“District”).

WITNESSETH:

WHEREAS, the City and District are each legally authorized to own, acquire, construct, improve, finance and operate recreational facilities capable of serving both public school purposes and municipal park purposes, and

WHEREAS, SAS has been designated as the non-profit organization that will develop and oversee a SPARK program, which develops public school grounds into parks that benefit both the schools and the public, in San Antonio, and

WHEREAS, the City and SAS desire to increase the availability of park facilities within the boundaries of the City; and

WHEREAS, District is willing to improve and operate portions of certain school playgrounds as public parks and recreational facilities through participation in the SPARK program; and

WHEREAS, District may own and operate athletic and recreational facilities that can also serve as City parks and recreational facilities; and

WHEREAS, \$500,000 is available for the SPARK program from City Council District 8 FY 2012 District Funds.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises contained herein, City, SAS and District hereinafter collectively referred to as the Parties, agree as follows:

1. DEFINITIONS

- A. “SAS Representative” shall mean the person designated by SAS to act as its representative in connection with this Agreement.
- B. “City Representative” shall mean the person from the Parks and Recreation Department designated by the City to be the City’s representative in connection with this Agreement.

- C. "Eligible Expenses" are design, construction, and purchased construction materials for capital improvements within SPARK School Grounds for approved SPARK program improvements.
- D. "District Representative" shall mean the person designated by the District as its representative in connection with this Agreement.
- E. "Park Hours" shall be from sunrise to sunset, excluding those hours when schools are in session or when use of the SPARK School Grounds is necessary for school purposes.
- F. "SAS Construction Administration Fee" shall be 3% of all funds reimbursed to District.
- G. "SPARK Program" shall mean the cooperative program of the City, SAS, District, parent-teacher groups and the community, whereby interested persons may raise cash donations or provide volunteer services or materials for a particular SPARK School.
- H. "SPARK School" shall mean a school which: (1) is owned and operated by the District; (2) has met the eligibility requirements of the SPARK Program; and (3) has been selected by SPARK and the District and approved by the City for participation in the SPARK Program.
- I. "SPARK School Grounds" shall mean the designated park and recreational area of a SPARK School.

II. DISTRICT AND SAS RESPONSIBILITIES AND GRANT OF LICENSEE RIGHTS TO CITY

- A. The District agrees to review and approve or disapprove, through the District Representative, plans developed and submitted by SPARK School personnel, parents, and members of the neighboring community, all as designated by the SPARK School principal, for improvements to such SPARK School Grounds for park and recreational uses, including open green space and improvements associated with recreational and fitness activities. District agrees to forward the District approved plans to SAS for its review and approval. Once SAS and District have approved the SPARK School plans, one copy will be forwarded to the City.
- B. The District agrees to make improvements at the SPARK Schools by contracting for those improvements, utilizing District employees to make the improvements, and/or through volunteer contribution of labor or materials. Such improvements shall be completed as expeditiously as possible considering the scope of work involved.
- C. SAS and District agree that all provisions of Exhibit B are applicable to the design and construction of SPARK School improvements.
- D. The Parties agree that any improvements to the SPARK School Grounds specified in the plans approved pursuant to Paragraph A of this Section II will be made to the extent of available funding for the particular SPARK School, in the discretion of the respective Parties.
- E. During the term of this Agreement, the District grants to City, and City accepts from District, a license for use by general public of the SPARK School Grounds

subject to the terms and conditions of this Agreement. District agrees to keep SPARK School Grounds open to the general public as public parks for park and recreational purposes during Park Hours. It is agreed that during non-Park Hours or at times when school activities are occurring at a SPARK School that require the exclusive use of the SPARK School Grounds by the District, the general public may be excluded from the SPARK School Grounds. Park Hours may be altered by the agreement of the Parties, with the City's approval through the Parks and Recreation Director; however, the minimum Park Hours will be one hundred fifty (150) hours each calendar month. The District further agrees to maintain the SPARK School Grounds and SPARK improvements throughout the term of this Agreement, including mowing, edging, trimming and litter removal to the same extent as performed on similar non-SPARK School Grounds.

- F. All improvements made on District Property to develop SPARK School Grounds as public parks shall be and remain the property of the District; subject to the City's licensee rights to all SPARK School Grounds during the term of this Agreement.
- G. Neither the City nor SAS shall have any responsibility for the operation or maintenance of SPARK School Grounds nor shall either have any ownership interest in the improvements made by the District pursuant to this Agreement.

III. REIMBURSEMENT

- A. The Proposed Scope of Project/Proposed Budget is attached as Exhibit A and may be modified by SAS and District as the final plans and cost estimates for each SPARK School are finalized. Total funding not to exceed \$500,000, including the SAS Construction Administration Fee, is available from City under the terms of this Agreement.
- B. The District may deliver a request for reimbursement to SAS for Eligible Expenses incurred or committed during the prior month for the cost of making improvements contemplated by this Agreement to SPARK Schools. Each request for reimbursement must be supported by copies of paid invoices, affidavits of bills paid, or evidence of a payment obligation, together with any other documentation reasonably requested by SAS or City. SAS will promptly present all properly documented requests for reimbursement to the City Representative.
- C. District reimbursement requests shall be subject to the review and approval of SAS and then may be forwarded to City for City's review, approval and reimbursement by City to SAS.
- D. Accompanying each reimbursement request, SAS will submit to City a brief report summarizing the status of each SPARK Program project, along with photographs during periods of construction.
- E. City will provide reimbursement to SAS for Eligible Expenses, and SAS shall promptly provide reimbursement to District upon receipt of payment from City. City will also provide payment of the SAS Construction Administration Fee to SAS along with the funds to be reimbursed to the District.

- F. If City provides reimbursement for expenses that are committed but not paid at the time that reimbursement is requested, District agrees to provide to SAS and City evidence of payment of such committed expenses within sixty (60) days following reimbursement by City.

IV. TERM

- A. The License granted by District to City and all other obligations of the District to operate and maintain the SPARK School Grounds as public parks and recreational facilities, all as set out in Article II of this Agreement, shall continue for a period of twenty (20) years after the completion of the SPARK improvements. However, in the event that District determines that the SPARK School is no longer needed for school purposes and is to be sold or leased to another entity, District shall either a) continue to operate the SPARK School Grounds for use by the general public, or b) provide an alternate SPARK site to serve the same community with similar amenities and benefits. In either of these scenarios, District shall be obligated to provide twenty (20) years of SPARK public use.
- B. During the term of this Agreement, the District may reconfigure a SPARK Park size or location at a particular school site, or relocate a SPARK Park from one location to an alternate location at that same school but first must consult with SAS and City. The costs associated with this reconfiguration or relocation would be borne in full by District.
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- B. **SAS covenants and agrees to FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the 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 the City directly or indirectly arising out of, resulting from or related to SAS's activities under this Agreement,**

including any acts or omissions of SAS, any agent, officer, director, representative, employee, consultant or subcontractor of SAS, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this 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 SAS AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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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.

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

SAS: San Antonio Sports
P O Box 830386
San Antonio TX 78283-0386
Attn: Executive Director

District: SAISD
141 Lavaca
San Antonio TX 78210
Attn: Superintendent

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.

- B. 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.
- C. 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.
- D. 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.

- E. 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.
- F. 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.
- G. Independent Contractor. The District and SAS agree that in performing any service to be rendered hereunder, the District, SPARK and/or any entity acting on their behalf, is acting as an independent contractor and is not an agent or employee of the City.
- H. 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.
- I. Parties in Interest. This Agreement shall bind and benefit the Parties hereto and shall not bestow any rights or benefits upon third Parties.
- J. Compliance with Exhibits. The District, City and SAS agree to abide by the provisions and requirements of Exhibits A and B, attached hereto and made a part herein.

Exhibit A – Proposed Scope of Project and Proposed Budget
Exhibit B – Requirements for Eligible Expenses

- K. Inspections, Audits and Enforcement. The City shall have the right to perform, or cause to be performed at City's expense: (1) audits of the books and records of the District and SAS, and (2) inspections of all places where work is undertaken in connection with this Agreement. The District and SAS shall be required to keep such books and records available for such purpose for at least 3 years after termination of this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations. The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization.
- L. Conflict of Interest. The District and SAS acknowledge that the Home Rule Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract

with the City or any City agency such as City-owned utilities. A City officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the District, SAS and the City in multiple originals which shall be considered of equal force and effect, as of the _____ day of _____, 2012.

City:

City of San Antonio, a Texas
Municipal corporation

By: _____
City Manager

Attest: _____
City Clerk

Approved as to Form: _____
City Attorney

District:

San Antonio Independent
School District

By: _____

EXHIBIT A
PROPOSED SCOPE OF PROJECT/PROPOSED BUDGET

School Site: Neal Elementary
3407 Capitol Avenue
San Antonio TX 78201

Proposed Scope: To be developed and approved by Parties

Projected Budget/Funding: Not to exceed \$178,299.67

EXHIBIT B
REQUIREMENTS FOR ELIGIBLE EXPENSES

A. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

District and SAS agrees that compliance with the following, as applicable, is required:

1. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (except with regard to work performed by volunteers and District employees).
2. District shall comply with their mandated competitive contracting processes.
3. Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, as outlined below (except with regard to work performed by volunteers and District employees).
4. Texas Accessibility Standards (TAS) established by the Texas Department of Licensing and Regulation (TDLR) under the Elimination of Architectural Barriers Act, Texas Government Code, Chapter 51.
5. Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

B. District shall be responsible for securing all necessary permits and approvals prior to the start of construction.

C. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS

The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this agreement. District agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, District shall request upon advertisement of construction bids, and the City will provide District with the appropriate wage determination which includes the general

prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The District is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the District calls for bids for construction of a given phase. The District is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the District's general contractor and all subcontractors for construction of each Phase. District is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Agreement.

Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the District shall cause its Construction Contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the District from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.

D. SBEDA COMPLIANCE

The City of San Antonio (City), through City Ordinance No. 2010-06-17-0531, and as amended, has adopted and implemented a Small Business Economic Development Advocacy ("SBEDA") Program. Information regarding the SBEDA Ordinance may be found on the City's Economic Development Department (EDD) website and is also available in hard copy form upon request to the City. District understands and agrees that for portions of the SPARK Program improvements undertaken by District in the award of contracts, subcontracts and other opportunities for design, construction and operation of the SPARK Program, this Agreement shall be subject to the SBEDA Affirmative Procurement Initiative and goal as determined by the applicable SBEDA Goal Setting Committee. **IMMEDIATELY UPON THE COMPLETION OF THE SCOPE OF WORK FOR CONSTRUCTION AND PRIOR TO ISSUING BIDS OR SOLICITATIONS FOR ANY PRIME OR SUBCONTRACTORS**, District shall submit a copy of the scope of work to EDD's Small Business Office (the "SBO"). The SBO shall submit information related to the completed scope of work to the Goal Setting Committee for determination regarding the applicability of an Affirmative Procurement Initiative (API), relative goal and required date for return of a Subcontractor/Supplier Utilization Plan (the "Plan"). The applied API, goal and Plan shall be attached to and become a binding part of this Agreement.