

AN ORDINANCE      101653

**MAKING A FINDING, PURSUANT TO THE REQUIREMENTS OF TEXAS PARKS AND WILDLIFE CODE CHAPTER 26, THAT THERE IS NO FEASIBLE AND PRUDENT ALTERNATIVE TO THE CHANGE IN USE FROM PUBLIC PARK USE TO PUBLIC SCHOOL USE OF APPROXIMATELY 8 ACRES LOCATED IN SPICEWOOD PARK IN CITY COUNCIL DISTRICT 4 AND AUTHORIZING THE TRANSFER OF OWNERSHIP TO SOUTHWEST INDEPENDENT SCHOOL DISTRICT, IN EXCHANGE FOR APPROXIMATELY 8 ACRES OF ADJACENT PROPERTY TO BE DESIGNATED AS PARK LAND.**

\* \* \* \* \*

**WHEREAS**, Southwest Independent School District (SWISD) is scheduled to build an elementary school in the vicinity of Spicewood Park located at 3139 Fidelia in City Council District 4; and

**WHEREAS**, the school service area is relatively isolated and elementary school students currently must be transported north of Loop 410 to Bob Hope Elementary School; and

**WHEREAS**, SWISD does not own property in this area and has not been successful in locating vacant land in the area to acquire for a school; and

**WHEREAS**, no suitable alternate property with appropriate access and dimensions for school development exists in the area except within the 31-acre Spicewood Park; and

**WHEREAS**, SWISD is requesting to utilize an undeveloped 8 acre portion of Spicewood Park to build the new school with recreational amenities; and

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

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

**WHEREAS**, the City's goal is to not lose any park acreage, and at the same time construct and utilize park amenities that can be shared by the City and SWISD; and

**WHEREAS**, SWISD will construct ball fields, playgrounds, gym, and parking areas that can be jointly used by the school and by park patrons; and

**WHEREAS**, the project has been discussed with the private landowner, citizens and neighbors of the park and affected families in the neighborhood. The public has indicated its support of the project, as has the SWISD School Board and City Councilman Richard Perez (District 4). The project concept was approved by the Planning

Commission on September 28, 2005 and by the Parks and Recreation Board on September 28, 2005; and

**WHEREAS**, notice was printed in the San Antonio Express-News on October 16, 2005, October 23, 2005, and October 30, 2005 on this issue and its proposed consideration by City Council; **NOW THEREFORE**

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

**SECTION 1.** In accordance with chapter 26, Texas Parks & Wildlife Code, the City Council finds that there is no feasible and prudent alternative to the change in use of approximately 8 acres located in Spicewood Park in City Council District 4 from public park use to public school use; and that the proposed land exchange with Southwest Independent School District includes all reasonable planning to minimize harm to the land, as a park, resulting from the public school use.

**SECTION 2.** The City Manager, or her designee, is hereby authorized to negotiate an agreement with Southwest Independent School District to exchange approximately 8 acres located in the Spicewood Park for approximately 8 acres of property to be acquired by Southwest Independent School District adjacent to Spicewood Park to be designated as park land, subject to the condition that the 8 acres of land to be transferred to the city shall meet approval of the Director of Parks and Recreation of the City of San Antonio.

**SECTION 3.** If an agreement, as first reviewed and approved by the City Attorney, is not signed by both parties within one hundred twenty (120) days from the effective date of this ordinance, it becomes null and void, and any further signed documents must be considered by the City Council.

**SECTION 4.** This ordinance shall be effective on and after November 20, 2005.

PASSED AND APPROVED this 10<sup>th</sup> day of November, 2005.

  
M A Y O R

ATTEST: Lucia M. Vaca  
City Clerk

PHIL HARDBERGER

APPROVED AS TO FORM: Hollis Young  
for City Attorney



# Agenda Voting Results

**Name:** 6.

**Date:** 11/10/05

**Time:** 09:52:41 AM

**Vote Type:** Multiple selection

**Description:** Public hearing and consideration of an Ordinance making a finding, pursuant to the requirements of Texas Parks and Wildlife Code Chapter 26, that there is no feasible and prudent alternative to the change in use from public park use to public school use of approximately 8 acres located in Spicewood Park in City Council District 4 and authorizing the transfer of ownership to Southwest Independent School District, in exchange for approximately 8 acres of adjacent property to be designated as park land. [Presented by Malcolm Matthews, Director, Parks and Recreation; Christopher J. Brady, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2	Not present			
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7	Not present			
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		



**INTERLOCAL AGREEMENT BETWEEN  
THE SOUTHWEST INDEPENDENT SCHOOL DISTRICT  
AND THE CITY OF SAN ANTONIO  
FOR EXCHANGE OF REAL PROPERTY**

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

This Interlocal Cooperation Contract (hereinafter referred to as "Contract") is made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY") a Texas Municipal Corporation acting by and through its City Manager pursuant to Ordinance No. 101303 dated September 4, 2005 and the Southwest Independent School District, a political subdivision of the State of Texas, (hereinafter referred to as "DISTRICT") acting by and through its Board of Trustees by authority granted under the Interlocal Cooperation Act, Vernon's Texas Code Annotated, Government Code Section 791.011.

**WHEREAS**, the DISTRICT is scheduled to build an elementary school in the vicinity of Spicewood Park located at 3139 Fidelia in Council District 4; and

**WHEREAS**, the school service is relatively isolated and elementary school students currently must be transported north of Loop 410 to Bob Hope Elementary School; and

**WHEREAS**, the DISTRICT does not own property in this area and has not been successful in locating vacant land in the area to acquire for a school; and

**WHEREAS**, no suitable alternative property with appropriate access and dimensions for school development exists in the area except within the 31 acre Spicewood Park; and

**WHEREAS**, the DISTRICT is requesting to utilize an undeveloped 4.94 acre portion of Spicewood Park to build the new school with recreational amenities; and

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

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

**WHEREAS**, the CITY'S goal is to not lose any park acreage, and at the same time construct and utilize park amenities that can be shared by the CITY and the DISTRICT; and

**WHEREAS**, the DISTRICT will construct ball fields, playgrounds, and parking areas that can be jointly used by the school and by park patrons; and

**WHEREAS**, the project has been discussed with the private landowner, citizens and neighbors of the park, and affected families in the neighborhood. The public has indicated its support of the project, as has the SWISD School Board and City Councilman Richard Perez (District 4).

The project concept was approved by the Planning Commission on September 28, 2005 and by the Parks and Recreation Board on September 28, 2005; and

**WHEREAS**, notice was printed in the San Antonio Express News on October 16, 2005, October 23, 2005, and October 30, 2005 on this issue and its consideration by City Council at the City Council meeting on November 10, 2005 with passage of Ordinance No. 101653; and

**NOW THEREFORE**, in consideration of the covenants, conditions and provisions set forth herein, the parties hereto agree as follows:

**I. PURPOSE**

1.1 The purpose of this Contract is to set forth the terms and conditions by which the DISTRICT shall transfer ownership of two tracts totaling approximately 4.944 acres of land adjacent to Spicewood Park, to be designated as park land, to the CITY in exchange for a transfer of ownership of two tracts totaling approximately 5.137 acres of land located in Spicewood Park to the DISTRICT with the DISTRICT constructing ball fields, playgrounds, and parking areas that can be jointly used by the DISTRICT and by park patrons.

**II. SALE AND PURCHASE/CONSIDERATION/LICENSE AND JOINT USE**

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

Total of 4.944 acres of land being from 4.714 acres out of a 30.872 Tract, New City Block 15069 and by metes and bounds shown in Attachment A and recorded in Volume 3278 page 1028 of the real property records of the City of San Antonio, Bexar County, Texas and 0.230 acres, New City Block 14558, Lots 6 & 7 as shown in Attachment B and recorded in Volume 6500 page 18 D.P.R. together with all rights and interests appurtenant thereto (the "Land"), including all improvements, structures and fixtures located on the Land (the "Improvements") and all rights, titles and interests appurtenant to the Land and Improvements.

The above listed items are herein collectively called the "District Property."

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

Total of 5.137 acres of land being from 4.903 acres out of a 31.762 acre

Tract, New City Block 15069 and by metes and bounds shown in Attachment B and recorded in Volume 4667 page 536 of the real property records of the City of San Antonio, Bexar County, Texas also being out of the Angel Navarro Survey No. 5, Abstract 12, County Block 4295, Bexar County Texas and 0.234 of one acre out of a 31.762 acre tract of land in New County Block 15069 and by the meets and bounds shown in Attachment B and recorded in Volume 4667, page 536, of the real property records of the City of San Antonio, Bexar County, Texas also being out of the Angel Navarro Survey No. 5, Abstract 12, County Block 4295, Bexar County, Texas and together with all rights and interests appurtenant thereto (the "Land"), including all improvements, structures and fixtures located on the Land (the "Improvements") and all rights, titles and interests appurtenant to the Land and Improvements.

The above listed items are herein collectively called the "City Property."

2.3 LICENSE AND JOINT USE. CITY and DISTRICT agree to share use of certain facilities to be constructed by DISTRICT and CITY on the following terms and conditions ("Joint Use"): (a) CITY grants a license to DISTRICT on the property described by metes and bounds in Attachment C attached hereto and incorporated herein for all purposes (the "Licensed Property") for the term of the Joint Use for the purpose of constructing and using the improvements described below; (b) DISTRICT shall construct on the Licensed Property a softball field and a soccer field, without lighting, at DISTRICT'S sole cost; (c) DISTRICT will construct parking lots on the Licensed Property at DISTRICT'S sole cost; (d) DISTRICT shall construct on the Licensed Property a playground at DISTRICT'S sole cost above \$52,871 that the CITY will reimburse the DISTRICT; (e) the softball field, soccer field, parking lots, and playground shall be reserved for the exclusive use of the DISTRICT during regular school hours and other such times as CITY and DISTRICT may agree; (f) when not reserved for exclusive use of DISTRICT, the softball field, soccer field, parking lots, and playground shall be available for public use in accordance with CITY ordinance and policy; (g) DISTRICT may install a school marquee on City Property subject to approval by the Director of Parks and Recreation, and (h) the term of Joint Use shall be by mutual agreement of CITY and DISTRICT, provided such term shall be not less than 50 years or the life of the school, and shall be renewable by mutual agreement of the parties;

2.4 The District Property shall be delivered to CITY in a state as specified by CITY, acting by and through the Director of Parks and Recreation.

2.5 No cash will be collected at the time of closing.

2.6 CITY and DISTRICT agree that the value of both the City Property and the District Property is approximately EIGHTEEN THOUSAND SEVEN HUNDREN FIFTY and NO/100 DOLLARS (\$18,750.00).

### **III. CONSENT TO ENTRY/INSPECTION**

3.1 DISTRICT, its legal representatives, successors and/or assigns, hereby consent and agree to allow the CITY and/or its contractors to enter upon the District Property, at all times, upon prior oral notice to DISTRICT or its legal representatives, on the date that this Contract is

executed by both parties hereto as shown on the signature page (hereinafter referred to as "the Effective Date of this Contract"), so that CITY may inspect the District Property and, at CITY'S expense, conduct such tests and studies of the District Property as CITY deems necessary. CITY agrees that it will not damage or impair the District Property in any way as a result of its activities thereon.

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

#### **IV. ENVIRONMENTAL SURVEY**

4.1 a. DISTRICT understands and agrees that the proposed acquisition of the District Property by the CITY is contingent upon the results of various tests and studies to be performed by the CITY, in the CITY'S sole discretion, and/or its duly authorized contractors, such tests and studies to include, but not be limited to; a soil test, Phase I Environmental Assessment, and, as necessary, a Phase II Environmental Assessment, at DISTRICT'S cost, and any other tests and studies, together with reports in connection therewith, in order to (1) determine the presence of any "hazardous substances", "hazardous materials", or "toxic substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980; ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1988 ("SARA"); the Hazardous Materials Transportation Act; the Resources Conservation and Recovery Act, as amended, as well as, State, and local laws, or (2) raise any other environmental or other concerns which would affect CITY'S decision to proceed with the purchase of the District Property. CITY shall have a period of sixty (60) days following the Effective Date of this Contract, with contingencies set forth herein, in order to inspect the District Property and conduct such tests and studies ("Inspection Period"). DISTRICT'S consent to entry above shall provide access to the CITY for such activities.

b. CITY understands and agrees that the proposed acquisition of the City Property by the DISTRICT is contingent upon the results of various tests and studies to be performed by the DISTRICT, in the DISTRICT'S sole discretion, and/or its duly authorized contractors, such tests and studies to include, but not be limited to; a soil test, Phase I Environmental Assessment, and, as necessary, a Phase II Environmental Assessment, at DISTRICT'S cost, and any other tests and studies, together with reports in connection therewith, in order to (1) determine the presence of any "hazardous substances", "hazardous materials", or "toxic substances" as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980; ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1988 ("SARA"); the Hazardous Materials Transportation Act; the Resources Conservation and Recovery Act, as amended, as well as, State, and local laws, or (2) raise any other environmental or other concerns which would affect DISTRICT'S decision to proceed with the purchase of the City Property. DISTRICT shall have a period of sixty (60) days following the Effective Date of this Contract, with contingencies set forth herein, in order to inspect the City Property and conduct such tests and studies ("Inspection Period"). CITY'S consent to entry above shall provide access to the DISTRICT for such activities.

4.2 a. DISTRICT agrees to provide any and all tests, studies, and reports of the District Property, including any environmental tests, studies and reports of such property in DISTRICT'S possession to CITY, prior to such entry.

b. CITY agrees to provide any and all tests, studies, and reports of the City Property, including any environmental tests, studies and reports of such property in CITY'S possession to DISTRICT, prior to such entry.

4.3 a. If CITY, in CITY'S sole discretion, is not satisfied with (a) the tests or studies it conducts or (b) environmental remediation work which may be tendered by DISTRICT, to cure any environmental defects or, alternatively, the excessive costs necessary for CITY to perform said remediation work or (c) the results of any title cure efforts, by DISTRICT or (e) any other matter relating to the District Property for any reason whatsoever, CITY may terminate this Contract by giving written notice of termination to DISTRICT within ten (10) days after the end of said Inspection Period. Upon DISTRICT'S receipt of such notice neither Party shall have any further rights or obligations one to the other.

b. If DISTRICT, in DISTRICT'S sole discretion, is not satisfied with (a) the tests or studies it conducts or (b) environmental remediation work which may be tendered by CITY, to cure any environmental defects or, alternatively, the excessive costs necessary for DISTRICT to perform said remediation work or (c) the results of any title cure efforts, by CITY or (e) any other matter relating to the City Property for any reason whatsoever, DISTRICT may terminate this Contract by giving written notice of termination to CITY within ten (10) days after the end of said Inspection Period. Upon CITY'S receipt of such notice neither Party shall have any further rights or obligations one to the other.

## **V. SURVEY AND TITLE COMMITMENT**

5.1 DISTRICT, shall provide to CITY, within ten (10) days after the Effective Date of this Contract updated Category 1A - Land Title Surveys of both the District Property and the City Property, satisfactory to the Title Company named hereafter in Paragraph 6.1 of this Contract, in order to delete the survey exception to title, if requested by CITY, such survey to also include field notes, and show the boundary lines of both properties, all buildings, other improvements, easements, rights of way, utilities, and subsurface, surface, and above air encroachments, and if the District Property has been designated by the Federal Insurance Administration, the United States Army Corp. of Engineers, or any other governmental agency or body as being subject to special flooding hazards.

5.2 Title Commitment. Title Commitment means a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, stating the condition of title to the Land. The effective date stated in the Title Commitment must be after the Effective Date of this contract. Title Policy means an Owner Policy of Title Insurance issued by Title Company, as agent for Underwriter, in conformity with the last Title Commitment delivered to and approved by CITY and DISTRICT, respectively.

5.3 Title Objections. CITY and DISTRICT have until thirty (30) days after receipt of the Title Commitment, Survey, and legible copies of the title instruments referenced in them and notify the other party of objections to any of them. Each Party will be deemed to have approved all matters reflected by the Survey and Title Commitment to which that Party has made no Title

Objection by the Title Objection Deadline. The matters that each Party either approves or is deemed to have approved are Permitted Exceptions. If either Party notifies the other party of any Title Objections, the notified Party has five days from receipt of notice to notify the objecting Party whether the notified Party agrees to cure the Title Objections before closing (Cure Notice). If the notified Party does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, the objecting Party may, within five days after the deadline for the giving of the Cure Notice, notify the notified Party that either this contract is terminated or the objecting Party will proceed to close, subject to the notified Party's obligations to resolve the items listed in Schedule C of the Title Commitment, remove the liquidated liens, remove all exceptions that arise by, through, or under the notified Party after the Effective Date, and cure only the Title Objections that the notified Party has agreed to cure in the Cure Notice. At or before closing, each Party must resolve the items that are listed on Schedule C of the Title Commitment, remove all liquidated liens, remove all exceptions that arise by, through, or under that Party after the Effective Date of this contract, and cure the Title Objections that the Party has agreed to cure.

## VI. CLOSING

6.1 Closing of the purchase shall take place at Alamo Title Company, 112 East Pecan, Street, San Antonio, Texas 78205, attn: Chris Varley (hereinafter referred to as "Title Company"). The closing of the Properties shall occur within ten (10) days after CITY receives written notice that the DISTRICT wishes to proceed to Closing, and seeking from CITY a date to close mutually agreeable to the Parties, but being on or before May 31, 2006. However, by mutual agreement of the Parties, the Closing Date may be extended from business day to business day as necessary, so as to permit (i) the giving of any notice which is required or permitted to be given by any Party at or prior to Closing, (ii) the opportunity for any Party to respond to any such notice in the manner and within the time provided herein; (iii) the further study by either Party of the Property to determine its suitability for that Party's intended purchase and use; (iv) either Party curing any title defects agreed to be cured by that Party; and (v) DISTRICT closing on the District Property.

6.2 At Closing, DISTRICT and CITY shall deliver or cause each of the following to be delivered to each other:

a. Special Warranty Deed duly executed by DISTRICT and CITY on their specific properties subject to the Permitted Exceptions (hereinafter defined).

b. An Owner's Title Insurance Policy, both at DISTRICT'S expense, issued by the Title Company on a form promulgated by the Texas Insurance Commission effective on the date of the issuance of said policy, insuring good and indefeasible fee simple title to the District Property and City Property in CITY in a face amount equal to the fair market value allocable to the District and City Properties, and containing no exceptions other than (i) the standard printed exceptions; subsequent assessments for prior years due to change in land usage or ownership attributable to each party which subsequent assessments each party agrees to pay; and (ii) as to the District Property, the restrictions required by *United States v. Texas*, Civil Action No. 5281, (E. D. Tex., August 9 and 15, 1973); and (iii) other exceptions, if any, which CITY and DISTRICT may approve (collectively, the "Permitted Exceptions"). The exception for restrictive covenants shall be endorsed "None of Record" or "None of Record except those disclosed in the Title Commitment." CITY may cause the Title Company to modify the survey exception to read "Shortages in Area" only, or CITY may cause the Title Company to issue any other endorsements its Owner's Policy of Title Insurance, and DISTRICT shall incur no expense in

connection therewith.

c. Any Release of Lien, and other instruments reasonably required to provide title to the parties free and clear.

### **6.3 CLOSING COSTS**

a. DISTRICT shall pay at Closing, the premiums for an Owners Title Insurance Policy, all other costs, fees, and other expenses incurred by CITY, with respect to the exchange of the District and City Property, as set forth herein.

b. DISTRICT shall pay at Closing, DISTRICT'S attorney's fees, all other fees and expenses incurred by DISTRICT with respect to the exchange of the District Property, including, but not limited to, perorations set forth hereafter, all current assessments and fines due, any and all delinquent taxes, assessments, and fines, including interest thereon and penalties, accrued to the Closing Date, the cost of the above-referred survey, costs for any subsequent assessment for prior years due to change in land usage or ownership attributable to DISTRICT. If, prior to Closing, any fines, including penalties and interest, due and owing to the CITY OF SAN ANTONIO and any other state or federal agencies for any violations of environmental or other ordinances or laws are incurred, DISTRICT agrees to pay same prior to Closing. Also DISTRICT will provide evidence of payment for any environmental remediation work done by DISTRICT up to and including the Closing Date.

c. CITY shall pay at Closing, CITY'S attorney's fees, all other fees and expenses incurred by CITY with respect to the exchange of the City Property. If, prior to Closing, any fines, including penalties and interest, due and owing to any state or federal agencies for any violations of environmental or other ordinances or laws are incurred, CITY agrees to pay same prior to Closing. Also CITY will provide evidence of payment for any environmental remediation work done by CITY up to and including the Closing Date.

6.4 CITY and DISTRICT agree that closing is expressly contingent upon (i) DISTRICT closing on the District Property from a third party, and (ii) approval by the Texas Education Commission of the deed conveying the District Property to the CITY.

## **VII. EACH PARTIES REPRESENTATIONS, WARRANTIES, AND COVENANTS**

As the sole and exclusive warranties of each party represents to, and covenants that:

7.1 a. DISTRICT has full right, power, and authority to execute and deliver this Contract and to consummate the exchange transactions provided for herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to, third parties, except purchase of the District Property by DISTRICT from a third party. This Contract, when executed and delivered by DISTRICT to CITY, will constitute the valid and binding agreement of DISTRICT, enforceable against DISTRICT in accordance with its terms.

b. CITY has full right, power, and authority to execute and deliver this Contract and to consummate the exchange transactions provided for herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to, third parties. This Contract, when executed and delivered by CITY to DISTRICT, will constitute the valid and binding agreement of CITY, enforceable against CITY in accordance with its terms.

7.2 Each party in good faith believes it has or, prior to closing will obtain, good and indefeasible title in fee simple to their Properties, free and clear of all liens (except those liens that will be released at or before closing), and no Party, except as herein set forth, has or shall have on the Closing Date any rights in, or to acquire, the Properties, there being no other contracts outstanding for acquisition or lease of the Properties, except DISTRICT'S contract for purchase of the District's Property.

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

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

7.5 From the date hereof until the Closing Date, DISTRICT shall: (i) maintain and operate the District Property in a good and businesslike manner in accordance with good and prudent business practices; (ii) continue all insurance policies or contracts relative to the District Property in full force and effect and neither cancel, amend, nor renew any of the same without CITY'S prior written consent, (iii) not commit or permit to be committed any waste to the District Property or introduce any environmental hazards thereto; and (iv) not, without the prior written consent of CITY, enter into any agreement or instrument or take any action that would encumber the District Property after Closing, that would bind CITY or the District Property after Closing, or that would be outside the normal scope of maintaining and operating the District Property.

7.6 From the date hereof until the Closing Date, CITY shall: (i) maintain and operate the City Property in a good and businesslike manner in accordance with good and prudent business practices; (ii) continue all insurance policies or contracts relative to the City Property in full force and effect and neither cancel, amend, nor renew any of the same without DISTRICT'S prior written consent, (iii) not commit or permit to be committed any waste to the City Property or introduce any environmental hazards thereto; and (iv) not, without the prior written consent of DISTRICT, enter into any agreement or instrument or take any action that would encumber the City Property after Closing, that would bind DISTRICT or the City Property after Closing, or that would be outside the normal scope of maintaining and operating the City Property.

7.7 There are no labor disputes, organizational campaigns, or union contracts existing or under negotiation with respect to the District Property and City Property or the operation thereof.

7.8 There are no employees engaged in the operation or maintenance of the District Property for whom CITY will be responsible after Closing. There are no employees engaged in the operation or maintenance of the City Property for whom DISTRICT will be responsible after Closing.

7.9 CITY agrees that no provision of this Contract or the deed conveying the City Property to DISTRICT prohibits DISTRICT, after closing, from conveying all or a portion of the property to a third party, provided that the DISTRICT complies with the terms and conditions of the Joint Use Agreement.

## **VIII. BROKERAGE COMMISSIONS**

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

## **IX. DEFAULT AND REMEDIES**

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

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

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

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

## **X. NONWAIVER**

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

## **XI. FURTHER ACTS, DEEDS AND ASSURANCE**

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

## **XII. RULES OF CONSTRUCTION**

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

## **XIII. SEVERABILITY**

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

## **XIV. NOTICE**

14.1 For the purposes of this Contract, all official communications, including, but not limited to, notification, designation approval, consent, request or submittal (collectively "Notice") among the parties to this Contract shall be deemed sufficient if in writing and mailed, registered or certified mail, return receipt requested, postage prepaid, or hand-delivered to the addresses set forth below.

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

Notices mailed or delivered to DISTRICT shall be addressed:

Dr. Velma Villegas  
Superintendent Southwest Independent School District  
11914 Dragon Lane  
San Antonio, Texas 78252

Notices mailed or delivered to CITY shall be addressed:

City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 7828~3966  
(or Hand-delivered) to 2nd Floor, City Hall, Military Plaza, San Antonio, Texas

with copies to Director, Parks and Recreation Department at the same mailing address, but physically located on the eleventh floor of the Municipal Plaza Building.

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

#### **XV. DUPLICATE ORIGINALS**

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

#### **XVI. CAPTIONS**

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

#### **XVII. TIME OF THE ESSENCE**

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

#### **XVIII. AMENDMENT**

18.1 Except where (1) otherwise authorized, permitted or required by the express terms of this Contract and except where (2) notice to, consent or approval of, or joinder by any party has been expressly waived by the provisions hereof, no amendment, modification, deletion, release, termination or extension of, alteration, variance or change in, or supplement to, the provisions of the Contract shall be valid and effective or otherwise binding on the Parties hereto, unless, and until, such amendment, etc. shall have been reduced to writing and executed by the Parties hereto with the same formality as this Contract, including the passage of a future CITY ordinance approving such amendment.

#### **XIX. CONDITIONED UPON APPROVAL**

19.1 Notwithstanding any provision to the contrary herein, this Contract, and the Parties' obligations hereunder, are expressly subject to and conditioned upon the acceptance and approval hereof by (1) passage of a CITY OF SAN ANTONIO Ordinance by the City Council, as evidenced by the execution authority set forth below, (2) passage of a resolution by the Board of Trustees of the Southwest Independent School District authorizing the execution of the deed for District Property to the CITY (3) execution of the Joint Use Agreement as described in Paragraph 2.3 of this Contract, (4) the contingencies as to the title, environmental assessment, and determination of remediation costs referenced herein, and (5) the DISTRICT closing on purchase of the District Property on or before closing.

#### **XX. APPLICABLE LAW/VENUE**

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

**XXI. AUTHORITY**

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

**XXII. ASSIGNMENT**

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

**XXIII. GENDER**

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

**XXIV. ENTIRE AGREEMENT**

24.1 The parties hereto expressly acknowledge and agree that, with regard to the subject matter of this Contract and the transactions contemplated herein (1) there are no oral agreements between the parties hereto; and (2) this Contract, including the defined terms and all exhibits and addenda, if any, attached hereto, (a) embodies the final and complete agreement between the parties; (b) supersedes all prior and contemporaneous negotiations, offers, proposals, agreements, commitments, promises, acts, conduct, courses of dealings, representations, statements, assurances and understandings, whether oral or written, and (c) may not be varied or contradicted by evidence of any such prior or contemporaneous matter or by evidence of any subsequent oral agreement of the parties hereto.

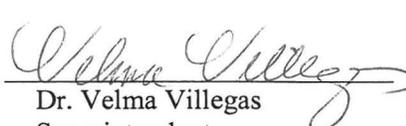
24.2 The provisions of this Contract shall survive the closing.

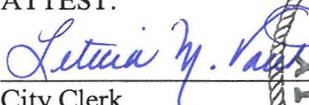
EXECUTED IN TRIPPLICATE ORIGINALS this the 7<sup>th</sup> day of June, 2006.  
(Effective date of this Contract).

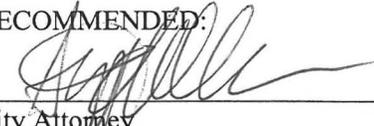
**CITY OF SAN ANTONIO**

**SOUTHWEST INDEPENDENT  
SCHOOL DISTRICT**

BY:   
Malcolm Matthews  
Director  
Parks and Recreation Department

BY:   
Dr. Velma Villegas  
Superintendent

ATTEST:  
  
City Clerk

RECOMMENDED:  
  
City Attorney

