

STATE OF TEXAS §

COUNTY OF DENTON §

**FIRST AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
FOR OPEN ACCESS FOR PUBLIC SCHOOL YARDS AS PARKS**

THIS INTERLOCAL COOPERATION AGREEMENT, by and between the **LEWISVILLE INDEPENDENT SCHOOL DISTRICT** in Denton County, Texas (the “District”), acting by and through its Board of Trustees, and the **CITY OF LEWISVILLE, TEXAS** (the “City”), acting by and through its City Council (collectively the “Parties”).

RECITALS

WHEREAS, the Texas State Legislature has authorized the use of interlocal cooperation agreements between and among governmental entities; and

WHEREAS, on October 29, 2019, the Parties entered into an Interlocal Cooperation Agreement for Open Access for Public School Yards as Parks (“Original Agreement”); and

WHEREAS, the Original Agreement provides for the Parties to review the Original Agreement prior to the end of the fifth year of its Initial Term (as defined in the Original Agreement), and if amendments are needed, take such amended Original Agreement to the Parties’ respective governing bodies for consideration; and

WHEREAS, City and District staff have reviewed the Original Agreement and recommend certain amendments thereto as set forth in this First Amended and Restated Interlocal Cooperation Agreement for Open Access for Public School Yards as Parks (“Agreement”) and provided to the Parties’ respective governing bodies for their consideration, in accordance with Article I, Section A of the Original Agreement; and

WHEREAS, this Agreement is made under the authority granted by and pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791, as amended and as otherwise provided herein, relative to the joint authorization by the Parties to use various school yards as public parks; and

WHEREAS, the City, through its Healthy Infrastructure Plan, has adopted a goal to ensure every resident lives within a ten-minute walk to a quality park and open space; and the District, through the location of various elementary and middle schools, has an equitable distribution of school yards through areas in Lewisville where residents do not have access to a quality park or open space within a safe ten minute walk of their home; and

WHEREAS, the Parties agree that certain District school yards shall be used as public parks for the purpose of providing recreational, cultural, and/or athletic opportunities for the residents of the City of Lewisville, as well as school events, activities, and/or programs for the students of the District, for joint use by the Parties as set out herein; and

WHEREAS, the Parties agree that certain playground improvements are necessary; and

WHEREAS, the Parties desire to amend and restate the Original Agreement as set forth herein.

NOW, THEREFORE, and in consideration of the mutual agreements contained herein, the Parties do hereby agree as follows:

ARTICLE I
TERM AND TERMINATION OF AGREEMENT

- A. The Effective Date of this Agreement shall be the date upon which this Agreement is executed by both Parties. The term of this Agreement shall begin on the Effective Date and shall continue until August 22, 2041 (the “Term”).
- B. This Agreement shall automatically extend and renew for additional five-year periods (“Renewal Terms”) beginning at the end of the Term, unless written notice of intent to terminate the Agreement is given by either the District or the City at least sixty (60) days in advance of termination, except that both Parties may mutually agree to terminate this Agreement at any time with any or no notice period if approved by the governing bodies of both Parties.
- C. Prior to the end of every fifth year of the Term or the end of any Renewal Term, the District and City staff shall meet to determine if any changes need to be made to this Agreement and shall present such proposed changes to the Parties’ respective governing bodies for consideration. This provision shall not restrict the Parties from mutually agreeing to amend this Agreement at any time if approved by the governing bodies of both Parties.

ARTICLE II
SCHOOL YARDS AS PUBLIC PARKS

- A. The District and the City agree that the school yards listed below shall be available to the public as public parks for open play after school hours, on weekends, and during school and summer breaks:

| School | Address | Phone Number |
|----------------|---------------------------|--------------|
| Rockbrook ES | 2751 Rockbrook Drive | 469-713-5968 |
| Lakeland ES | 800 Fox Avenue | 469-713-5992 |
| Lewisville ES | 285 W. Country Ridge Road | 469-713-5995 |
| Parkway ES | 2100 S. Valley Parkway | 469-713-5979 |
| Degan ES | 1680 College Parkway | 469-713-5967 |
| Central ES | 400 High School Drive | 469-713-5976 |
| Hedrick MS | 1526 Bellaire Boulevard | 469-713-5188 |
| Mill Street ES | 601 S. Mill Street | 469-713-5965 |
| Southridge ES | 495 W. Corporate Drive | 469-713-5187 |
| Memorial ES | 1001 Josey Lane | 469-713-5208 |

This list may be modified by mutual written agreement of the Parties. Notwithstanding any other written agreement between the Parties, the use of the above listed school yards as public parks is free of charge to the City and the public.

- B. The City may not schedule use of school yards for league play or practice. Each entity shall inform students and residents that the school yards are limited to use for open play only when the District is not using them for school purposes and activities. The school yards shown as parks on the City of Lewisville GIS maps and the Parks & Recreation Department inventory shall note these limitations.
- C. The Superintendent and the City Manager may establish a schedule of minor improvements to be made at each school yard listed in Article II, Section A above during this Agreement. If the Parties decide that a major improvement is necessary, the terms and conditions of said major improvement shall be set forth in a separate agreement, except for those playground improvements set forth in Article III below.
- D. The District shall continue the current schedule for keeping each school yard in a clean condition and free of the accumulation of dirt, trash, debris, high grass and obstructions that may prohibit or impede the use of the school yard for the purposes set forth in this Agreement. The City shall complement the District's maintenance efforts at each school yard listed in Article II, Section A above by providing weekend trash and debris removal throughout the year. The City shall mow and maintain each school yard listed in Article II, Section A above during the summer break.
- E. The District shall have the sole duty and responsibility for repair of any permanent improvements owned by the District, including, but not limited to, fencing, net posts, or other permanent structures, to the extent that such repair is part of the normal wear and tear of the structure. If the City is responsible for damaging such structures during its use of the facilities, the City shall be solely responsible for such repairs. The District shall also have the sole responsibility to replace any other items, including, but not limited to, nets, wind screens, or other equipment, when such replacements are needed as part of normal wear and tear. If the City is responsible for damaging such items during its use of the facilities, the City shall be solely responsible for such replacement.
- F. The City shall promptly report to the District any defects or dangerous conditions it discovers at the school yards listed in Article II, Section A above. The City shall cease any such use until the defect or condition is repaired or cured pursuant to Article II, Section E above.

ARTICLE III PLAYGROUND IMPROVEMENTS

- A. On or before December 31, 2025, the District shall install playground improvements, including but not limited to playground equipment, fencing, net posts, or other permanent recreation structures designed with input from representatives of the City and the District, in the school yard at Hedrick Middle School located at 1526 Bellaire Boulevard. The playground improvements installed pursuant to this section shall be suitable for District and general use.

- B. On or before December 31, 2025, the City shall replace the existing playground improvements including but not limited to playground equipment, fencing, net posts, or other permanent recreation structures, designed by the City with input from representatives of the District, at Queen Margaret Park, located at 2596 Queen Margaret Drive. The playground improvements installed pursuant to this section shall be maintained and repaired as set forth in Document No. 2001-107219 of the Denton County property records.

ARTICLE IV FACILITATION OF THIS AGREEMENT

- A. Representatives from each party shall meet no later than April 30 of each year of this Agreement to report and discuss the benefit and challenges of facilitating the Agreement, plan future improvements to school yards and public parks and review site safety and accessibility concerns.
- B. When funds are available for site development or improvement which will facilitate maximum community use of the school yards listed in Article II above, the Parties shall participate in the design, development and operation of the improvement.
- C. The City Manager and Superintendent shall assign members of their respective organizations to attend this meeting and implement plans.

ARTICLE V INDEMNITY AND IMMUNITY

- A. **TO THE EXTENT PERMITTED BY LAW, EACH PARTY AGREES TO WAIVE ALL CLAIMS AGAINST, TO RELEASE, AND TO HOLD HARMLESS THE OTHER PARTY AND ITS RESPECTIVE OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM ANY AND ALL LIABILITY, CLAIMS, SUITS, DEMANDS, LOSSES, DAMAGES, ATTORNEYS FEES, INCLUDING ALL EXPENSES OF LITIGATION OR SETTLEMENT, OR CAUSES OF ACTION WHICH MAY ARISE BY REASON OR INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT. IN THE EVENT THAT A CLAIM IS FILED, EACH PARTY SHALL BE RESPONSIBLE FOR ITS PROPORTIONATE SHARE OF LIABILITY.**
- B. The obligations provided in this article shall survive termination or completion of the term of this Agreement, or any extensions hereof.
- C. Nothing in this Agreement, or in any exhibit or attachment hereto, shall be construed to affect, alter, or modify the immunity of either the District or the City under the Texas Civil Practice and Remedies Code. It is expressly understood and agreed that in the execution of this Agreement, neither the City nor the District waives, nor shall be deemed to waive, any immunity or defense that would otherwise be available to each against claims arising in the exercise of governmental powers or functions.

- D. **FORCE MAJEURE:** Neither party shall be liable for its failure to fulfill or perform any term or condition of this agreement if such fulfillment or performance is made illegal, impossible, or impracticable due to reasons of fire, strike, war, insurrection, riot, labor disputes, government restrictions, order of court, judge, or civil authority, national, state, or local emergency, acts of God, epidemic, pandemic, quarantine, restriction of social gatherings, extreme weather, flood, storm, terrorism, invasion, or other similar or dissimilar cause beyond a party's reasonable control (collectively, "force majeure event"), provided that the non-performing party shall provide notification of such inability to fulfill or perform any agreement term or condition to the other party as soon as reasonably possible after the occurrence of such force majeure event. In the event of such an occurrence, the time for performance of any contractual term or condition shall be (1) suspended, upon mutual agreement of both parties, until such time as the force majeure event is removed or (2) terminated at either party's election.

ARTICLE VI NOTICE

Unless notified otherwise in writing, all notices are required to be given to either party in writing and delivered in person or send via certified mail return receipt requested to the other party at the following addresses:

The City:
City Manager
City of Lewisville
P.O. Box 299002
Lewisville, Texas 75029-9022

The District:
Superintendent of Schools
Lewisville Independent School District
P.O. Box 217
Lewisville, Texas 75067

ARTICLE VII GENERAL PROVISIONS

- A. This Agreement contains the entire agreement of the Parties and supersedes any prior agreements and negotiations between the Parties regarding use of school yards as public parks.
- B. This Agreement is performable in Denton County, Texas, and exclusive venue for any dispute between the Parties shall be a court of competent jurisdiction in Denton County. This Agreement is governed by and construed according to the laws of the State of Texas.
- C. The provisions of this Agreement are severable. If a court of competent jurisdiction determines that any portion of this Agreement is invalid or unenforceable, the court's ruling will not affect the validity and enforceability of the other provisions of this Agreement.
- D. This Agreement does not create any third-party beneficiaries. Nothing in this Agreement, or in any exhibit or attachment hereto, shall be construed to create, expand, or form a basis for liability

to any third party under any theory of law against either the District or the City unless such a basis exists independent of this Agreement under federal or state law.

- E. This Agreement is not assignable by either the City or the District, and shall be binding on the Parties, their officers and employees, and any successors in interest.
- F. This Agreement is effective only when signed and approved by both Parties. By their signatures below, the undersigned officers and/or agents affirm that they are authorized to execute this Agreement on behalf of the District or the City, as applicable, and that any necessary Board of Trustees or City Council action has been duly taken.

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement by their duly authorized agents signatures below.

CITY OF LEWISVILLE, TEXAS

LEWISVILLE INDEPENDENT SCHOOL DISTRICT

Claire Powell, City Manager



Dr. Lori Rapp, Superintendent

Date: _____

Date: 11.11.2024

Attest:

Thomas Harris III, City Secretary

APPROVED AS TO FORM:

Lizbeth Plaster, City Attorney