

STATE OF TEXAS §
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COUNTY OF DALLAS §

**INTERLOCAL COOPERATION AGREEMENT
FOR NORTHERICH ELEMENTARY PARK**

This Interlocal Cooperation Agreement (“Agreement”) is entered into by and between the City of Richardson Texas (the “City”) and the Richardson Independent School District (“RISD”) (each a “Party” or collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the neighborhood in which the Northrich Elementary School (hereinafter defined as the “School”) is underserved by public parks according to the City Parks, Recreation, and Open Space Master Plan; and

WHEREAS, the City desires to provide for a park to serve the neighborhood and the School; and

WHEREAS, the City has agreed to cause the design, construction, installation and maintenance of certain public park improvements (hereinafter defined as the “Park Improvements”) for the neighborhood on a portion of the School campus; and

WHEREAS, RISD has agreed to grant the City a license for the City to construct, install and maintain the Park Improvements within the School campus; and

WHEREAS, the governing bodies of the City and RISD have authorized this Interlocal Cooperation Agreement; and

WHEREAS, the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code, authorizes units of local government to contract with one or more units of local government to perform governmental functions and services; and

WHEREAS, any payments that either Party is required to make hereunder, if any, shall be made from current, available revenue;

NOW, THEREFORE, in consideration of the terms and conditions contained herein and other valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**Article I
Term**

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until terminated as provided herein.

Article II Purpose

The purpose of this Agreement is to set forth the obligations and responsibilities regarding the design, construction and maintenance of the Park Improvements to be located on the campus of the Northrich Elementary School, subject to the provisions herein, and to be accessed and used by the public in the same manner as the Park Improvements would be used as if located in a public park. The City, at its cost, will design, construct and install, and maintain the Park Improvements (to be owned by the City) on the portion of the campus of Northrich Elementary School designated in Exhibit "A".

Article III Definitions

For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly requires otherwise:

"Approved Plans" means the plans and specifications for the Park Improvements prepared by the City or caused to be prepared by the City, that have been approved by the City and RISD.

"City" shall mean the City of Richardson, Texas, acting by and through its City Manager, or designee.

"Commencement of Construction" means: (i) issuance by all applicable governmental authorities of the necessary permits for the installation and construction of the Park Improvements; and (ii) commencement of the installation and construction of the Park Improvements pursuant to the Approved Plans.

"Completion of Construction" means that (i) the Park Improvements have been substantially completed in accordance with the Approved Plans; (ii) the City and RISD have accepted the Park Improvements; and (iii) the Park Improvements are fully operational and open for use by the public.

"Construction Easement" means a temporary construction easement located on the property described in Exhibit "A", to be used by the City and its contractors in the construction and installation of the Park Improvements.

"Effective Date" means the last date of execution of this Agreement by all of the Parties.

"Force Majeure" shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action (unless caused by

acts or omissions of such Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Licensed Premises” shall mean the western portion of the School campus as depicted in Exhibit “A”.

“Park Improvements” shall include, but is not limited to, walking paths, outdoor class room, park pavilion, playground equipment for preschool and school age children, irrigation improvements on a separate meter for the park area, trash receptacles, benches, baseball/softball backstop, turf establishment, signage, and fence/gateway improvements in accordance with the Approved Plans.

“RISD” means the Richardson Independent School District, acting by and through its Superintendent or other authorized representative.

“School” shall mean Northrich Elementary School, located at 1301 Custer Road, Richardson, Texas, which is owned and operated by RISD.

Article IV School Park Improvements

4.1 Design and Construction. The City shall, at its own cost, cause the design, construction and installation of the Park Improvements on the Licensed Premises in accordance with the Approved Plans. The City shall prepare, or cause to be prepared, the design and construction bid documents for the Park Improvements (“Plans and Specifications”) for the review and approval of RISD. Following RISD approval of the Plans and Specifications, the City shall award the contracts for the design, installation and construction of the Park Improvements in accordance with the Approved Plans and applicable law. Prior to advertising for bids for installation and construction of the Park Improvements, the City shall provide RISD an opportunity to review and approve the Plans and Specifications, which approval shall not be unreasonably withheld or delayed. The City agrees that the Plans and Specifications shall be such that the Park Improvements shall be at least the same quality of construction and materials as would be achieved by using the specifications generally used by RISD for similar projects on other school campuses. The City and RISD each agree to participate in public meetings and stakeholder meetings regarding the design, installation and construction of the Park Improvements and in conjunction with the park naming.

4.2 Construction of the Park Improvements. The City and RISD agree to reasonably cooperate in coordinating the schedule for construction of the Park Improvements in such a manner as to not unreasonably interfere with the operations at the School and to strive to accomplish the same during the summer of 2014. The City shall, subject to events of Force Majeure, use reasonable efforts to cause Commencement of Construction of the Park Improvements to occur during the summer of 2014 following the approval of the Approved Plans and, subject to events of Force Majeure, cause Completion of Construction thereof to occur within ten (10) months thereafter. In the event the City is unable to cause the Commencement

and Completion of Construction of the Park Improvements during the summer of 2014, the Parties shall mutually agree to a construction schedule (the "Construction Schedule") which completes the project no later than December 31, 2014. The City shall manage the construction, installation, and inspection of the Park Improvements.

4.3 Parking. Parking for the public use of the Park Improvements shall be provided on the street adjacent to the Park Improvements. The City shall cause appropriate signage to be erected.

4.4 Ownership and Maintenance. Subject to such rights as may be granted by this Agreement to RISD to use the Park Improvements, upon Completion of Construction of the Park Improvements and acceptance of the Park Improvements by the City and RISD, the Park Improvements shall not constitute a fixture attached to RISD's real property. Ownership and title to the Park Improvements shall remain and belong to the City. Following Completion of Construction of the Park Improvements the City shall repair and maintain the Park Improvements in a good state of repair, reasonable wear and tear excepted, replace such portions of the Park Improvements, as necessary, to provide safe equipment and facilities for normal school and public park purposes. Unless RISD, by separate agreement with the City, elects to perform routine mowing of the Licensed Premises, the City shall provide all grounds maintenance, including mowing of the Licensed Premises. Upon notification by RISD of needed repair or maintenance at the Park, the City agrees to respond and promptly perform such repair or maintenance as is reasonably required to maintain safe, attractive park facilities.

4.5 Entry into School Buildings; Compliance with RISD Regulations. The City's contractors, subcontractors, and employees of the City performing the construction work shall at no time be permitted to enter into any building located on the School campus. Furthermore, the City shall require its contractors and subcontractors at all times to comply with all rules and regulations relating to personal conduct while performing work on RISD property that RISD applies to the conduct of its own contractors and subcontractors, including without limitation the prohibition of use of tobacco on RISD premises. RISD shall provide to the City copies of any applicable rules and regulations with which the contractors and subcontractors of the City shall be required to comply pursuant to this Section.

4.6 License and Termination. RISD does, by execution of this Agreement, hereby grant the City a perpetual license to construct, operate, repair, use, and maintain the Park Improvements on the Licensed Premises (the "License"). RISD may terminate the License upon twelve (12) months prior written notice to the City. In the event of such termination the City shall remove the Park Improvements and repair any damages to the Licensed Premises and restore the Licensed Premises to the same condition prior to the grant of the License, reasonable wear and tear excepted.

4.7 Insurance and Indemnification. The City agrees to require its contractors to obtain prior to the Commencement of Construction and maintain in full force and effect, until Completion of Construction, commercial general liability and other types and amounts of insurance that the City normally requires of contractors engaged by the City for other City public

works projects of the type contemplated in this Agreement. The City shall further require that such insurance be endorsed to include RISD as an additional insured and waivers of subrogation in favor of RISD to the same extent as the City requires such endorsements for the City's projects. Furthermore, the City agrees to require its contractors to indemnify, defend, and hold RISD, its trustees, officers, and employees harmless to the same extent that the City requires its contractors to indemnify, defend, and hold the City, its officers and employees harmless with respect to the negligent acts or omissions of the contractors, its officers, employees, agents, and subcontractors related to the construction of the Park Improvements or while otherwise on the School campus.

4.8 Park Name. Although the City does not own, and will not dedicate the Licensed Premises as a City park, the City shall nonetheless assign a name for Licensed Premises as a City park after consultation with RISD. The Parties shall mutually agree on a name to be assigned to the Licensed Premises, provided however RISD shall have the final approval thereof. The Parties agrees to participate in public meetings and stakeholder meetings regarding the assignment of a name for the Licensed Premises as a City park.

4.9 Governmental Immunity. It is expressly understood and agreed that, in the execution of this Agreement, no Party waives, nor shall be deemed hereby to waive, any immunity or defense that would otherwise be available to or against claims arising in the exercise of governmental functions relating hereto or otherwise. By entering into this Agreement, the Parties do not create any obligations, expressed or implied, other than those set forth herein, and this Agreement shall not create any rights in any parties not signatory hereto. Each Party agrees to and accepts full responsibility for the acts, negligence and/or omissions of such Party's officers, agents and employees in the execution and performance of this Agreement.

4.10 Use by the Public. RISD acknowledges and agrees that the license granted to the City by this Agreement expressly includes the right for any person to enter the Licensed Premises to use the Park Improvements and the Licensed Premises in the same manner as they would as if the Park Improvements were located in a public park; provided, however, nothing herein shall be construed as limiting the right and authority of RISD to enforce all laws and regulations regarding the presence and conduct of any person on RISD property, including, but not limited to, any law or regulation that prohibits, or authorizes RISD to prohibit, a person from being present on, or within a certain distance of, the School or RISD property.

4.11 Temporary Exclusive Use by RISD. The Parties agree that RISD has a superior right to use the Licensed Premises during the school day during normal school hours, and at such time or times as RISD may reasonably determine that temporary exclusive use is necessary to serve the educational interests of the RISD and its students. If RISD determines such temporary exclusive use is necessary, RISD shall provide prompt prior written notification to the City Parks and Recreation Director prior to such time(s) of temporary exclusive use. RISD shall be responsible for providing and posting temporary signs on the Licensed Premises to notify the public of the days and times of such temporary exclusive use.

Article V
Miscellaneous

5.1 Notice. All notices required or permitted by this Agreement shall be in writing and be deemed received when deposited in the United States mail, postage prepaid, addressed to the following or such other person or address as the Parties may designate in writing or by hand delivery or facsimile transmission to the address set forth below:

If intended for the City, to:

Dan Johnson
City Manager
City of Richardson, Texas
411 West Arapaho Road
P.O. Box 830309
Richardson, Texas 75083-0309

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Ross Tower
500 N. Akard
Dallas, Texas 75201

With a copy to:

Parks & Recreation Director
City of Richardson, Texas
411 West Arapaho Road
P.O. Box 830309
Richardson, Texas 75083-0309

If intended for RISD, to:

Superintendent of Schools
Richardson Independent School District
400 S. Greenville Avenue
Richardson, Texas 75081

With a copy to:

Mia M. Martin
General Counsel
400 S. Greenville Avenue
Richardson, Texas 75081

5.2 Amendment. This Agreement may be amended by the mutual written agreement of the Parties to this agreement.

5.3 Laws Governing. This Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

5.4 Severability. In the event that one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal, or unenforceable, in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

5.5 Entire Agreement. This Agreement embodies the complete understanding of the Parties hereto, superseding all oral or written previous and contemporaneous agreements between the Parties and relating to the matters in this Agreement.

5.6 Authorization. By executing this Agreement, each Party represents that it has full capacity and authority to grant all rights and assume all obligations that it has granted and assumed under this Agreement, and that this Agreement has been authorized by the governing body of the respective Party.

5.7 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitutes one and the same instrument.

5.8 Exhibits. The exhibits to this Agreement are incorporated herein.

5.9 Recitals. The recitals to this Agreement are incorporated herein.

5.10 No Conveyance of Real Property Interest. Nothing in this Agreement is intended to convey, nor shall it be construed as conveying, any interest in real property by RISD to the City, it being the intent that this Agreement solely constitutes a license and contractual relationship to use the School property for the purposes stated herein.

[Signature Page to Follow]

EXECUTED this 18 day of April, 2014.

CITY OF RICHARDSON, TEXAS

By: [Signature]
Dan Johnson, City Manager

ATTEST:

By: [Signature]
Aimee Nemer, City Secretary

APPROVED AS TO FORM:

By: [Signature]
Peter G. Smith, City Attorney

EXECUTED this 23rd day of May, 2014.

RICHARDSON INDEPENDENT SCHOOL DISTRICT

By: [Signature]
Name: Dr. Kay Waggoner
Title: Superintendent

ATTEST:

By: [Signature]
Name: Kristin Kuhne
Secretary, RISD Board of Trustees

EXHIBIT "A"
Licensed Premises

