

THE STATE OF TEXAS

COUNTY OF DALLAS

**AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT
BETWEEN COPPELL INDEPENDENT SCHOOL DISTRICT AND CITY OF COPPELL, TEXAS**

THIS AMENDED AND RESTATED INTERLOCAL COOPERATION AGREEMENT is made and entered into on this _____ day of _____, 2019, by and between the COPPELL INDEPENDENT SCHOOL DISTRICT ("CISD") acting by and through its Board of Trustees, Superintendent or designee, and the CITY OF COPPELL ("CITY"), acting by and through its City Council, Mayor or designee.

WITNESSETH:

- WHEREAS,** the Texas State Legislature has authorized the use of interlocal cooperation agreements between and among governmental entities; and
- WHEREAS,** CISD and CITY previously entered into that certain Interlocal Cooperation Agreement dated March 22, 2011 (the "Original ILA"); and
- WHEREAS,** this Amended and Restated Interlocal Cooperation Agreement (this "Agreement"), which terminates and replaces the Original ILA in all respects, is made under the authority granted by and pursuant to the Interlocal Cooperation Act, Texas Government Code, Chapter 791, and as otherwise provided herein, relative to CISD installing artificial turf on the stadium athletic field, hereinafter the improvements; and, subject to approval of a construction contract by the CISD Board of Trustees, constructing a building containing restrooms and concession stand located on CISD Property and in exchange for joint use of the CISD Property, in exchange for the City to partially fund the installation and construction cost of the improvements, plus sharing in the utility and other actual operational costs of operating the facility located on CISD Property ("CISD Property"); and
- WHEREAS,** CISD and CITY find that the performance of this Agreement is in the common public interest of both parties, and that the payment to be provided by CITY fairly compensates CISD for the use of CISD Property; and
- WHEREAS,** CISD and CITY, in expending funds in the performance of governmental functions or in performing such governmental functions under this Agreement, shall make payments therefore only from current revenues legally available to each party; and
- WHEREAS,** CISD and CITY agree that CISD Property shall be used by CITY for the purpose of providing public recreational and athletic opportunities for its citizens as set out herein.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements contained herein, the parties hereto agree as follows:

I.

AGREEMENT

- 1.01. In consideration of the mutual covenants of this Agreement, and other good and valuable consideration, CISD shall permit CITY to use of a portion of CISD Property as set forth herein, subject to approval and notice as provided herein, a copy of which is attached hereto and incorporated herein for all purposes. The portions of CISD Property that will be available for CITY use under this Agreement are the following: the athletic field, bleachers, press box, adjacent parking, sidewalks, and concession stand and restrooms located on real property owned by CISD (Hereinafter "CISD Property") (See Exhibit A). The purposes for which CITY may use CISD Property are City-licensed athletic league practices and games.
- 1.02 CITY shall have the right of access to and use of CISD Property at all times outside of normal school hours, except that the parties expressly agree that CISD shall, at all times, have priority of use on CISD Property, when such use is necessary for educational purposes, including but not limited to, all extracurricular and co-curricular activities, practices, and games. Furthermore, CITY's right of access to and use of CISD Property shall be subject to any and all easements now existing or subsequently granted by CISD regarding CISD Property. CITY's right of access and use of CISD Property shall be used solely for licensed recreational athletic purposes or events and for no other purpose under this agreement, without the express written consent of the Board of Trustees of the Coppell Independent School District,
- 1.03 The use of the concession stand shall be coordinated in advance with the Coppell High School Ninth Grade Campus including Lesley Field and Coppell Middle School West administration. The Coppell High School Ninth Grade Campus, Coppell Middle School West, or a respective designated campus booster club has priority of use of the concession stand and has the right to sell concessions at any CITY-licensed event. If the Coppell High School Ninth Grade Campus, Coppell Middle School West, and all applicable designated campus booster clubs decide not to sell concessions at any CITY-licensed event, then the CITY or its licensees may sell concessions at the concession stand upon satisfaction of all of the following: written approval by the City of the concessionaire, written notice to the CISD facilities department of intent to have such concession usage, written approval by CISD in its sole discretion of such concessionaire and usage, and contact and coordination with CISD facilities department as to scheduling and use. Any such City-approved concessionaire shall be fully responsible and liable for its own products for sale, labor, materials, utilities, maintenance, security, custodial services and all other matters related to the use of the concessions area.
- 1.04. CITY shall provide the CISD facilities department with dates and times of planned use at least thirty (30) days in advance of regularly scheduled events, and all other scheduled events as soon as known. CISD shall provide CITY with dates and times of planned use at least thirty (30) days in advance of regularly scheduled events, and all other scheduled events as soon as known. CITY and CISD shall work cooperatively in the scheduling of the facility and in avoiding scheduling conflicts; however, CISD shall have first priority of use as described above. In general, CISD will utilize the field for educational, extra-curricular, and co-curricular purposes as follows, based on its traditional use of the CISD facilities, the superintendent and the City Manager or their designee shall enter into an annual facilities use schedule in compliance with the duties and obligations set forth herein.

- 1.05 In exchange for the license to use of CISD Property for City as provided in Paragraph 1.02, CITY shall fund one half of the actual costs to replace the artificial turf and track, replace existing bleachers and press box, replace fencing with wrought iron security fencing, and construct a building containing a concession stand/restrooms (the Improvements) located on CISD property more commonly known as Lesley Field as more specifically defined in Exhibit A, within such CITY in an amount not to exceed eight hundred thousand dollars (\$800,000.00). Payment of CITY costs for the Improvements shall be due within thirty (30) days after substantial completion as follows:
1. Payment for one-half of the actual construction cost of the installation of the artificial turf; and
 2. Payment for one-half of the actual construction cost of the installation of the concession stands/restrooms, bleachers, fencing (if required by CITY), and press box.
- 1.06 CISD Property shall be maintained solely at the cost of CISD. CITY shall reimburse CISD for the actual cost of electricity used for stadium lighting for CITY licensed league events. CITY shall be responsible for providing supervision of the facility as described below in Section 1.08. CISD will invoice CITY for actual electricity costs on a quarterly or annual basis for City use. While using CISD Property, CITY shall maintain CISD Property in full compliance with CISD's acceptable maintenance standard. CITY shall maintain CISD Property free of litter, trash, and other natural or manmade conditions which would diminish the quality of CISD Property.
- 1.07 CITY acknowledges that CISD Property is useful to CITY in its current condition, "as is" without any modification or maintenance required on the part of CISD.
- CITY must obtain prior written approval from CISD before installing any equipment on or making any improvements to CISD Property except as otherwise provided herein.
- 1.08 Security of CISD Property shall be the responsibility of CITY during any City league licensed events. During the term of this Agreement, and any extensions thereof, CITY agrees to use its best efforts to guard CISD Property from abuse or loss through vandalism, wanton destruction, or theft during any City licensed events. A CITY employee or designee shall supervise at all times during the event during any CITY -licensed event where (1) spectators are present; (2) and/or where the press box is in use; (3) and/or where the concession stand is in use; (4) and/or where the field lighting is in use. CITY shall perform and exercise all rights, duties, functions and services in compliance with all valid and applicable laws, statutes, codes, regulations, policies and ordinances of the United States, the State of Texas, the County of Dallas, CITY, CISD, or other lawful authority with jurisdiction over the premises.
- 1.09 To the extent permitted by law, CITY shall be responsible for any and all claims, damages, and/or causes acts of negligence or action arising from, caused by, or in any way related to its use of CISD Property, except that CITY shall not be liable for normal wear and tear. All determinations regarding wear and tear and damage to the property shall be made by CISD, in its sole discretion, and such determinations shall be final.
- 1.10 CITY shall not apply any pesticides or herbicides or make any material alterations to CISD Property.

- 1.11 TO THE EXTENT ALLOWED BY LAW, CITY SHALL INDEMNIFY AND HOLD HARMLESS CISD AND ITS BOARD OF TRUSTEES, EMPLOYEES, AGENTS OR VISITORS, FROM AND AGAINST ANY AND ALL CLAIMS, LOSS, COST, DAMAGES, EXPENSE OR LIABILITY OF ANY KIND, INCLUDING ATTORNEY'S FEES, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE USE OF CISD PROPERTY BY CITY. NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT, ALTER, OR MODIFY IMMUNITY UNDER TEXAS CIVIL PRACTICE AND REMEDIES CODE

II.

TERM

- 2.01 The term of this Agreement shall be for a period of one year, beginning on October 1, 2019, but shall automatically renew from year to year unless terminated by either party in accordance with the terms herein on or before August 1st of each year during this Agreement.

III.

TERMINATION

- 3.01 Either party may terminate this Agreement, for any reason, or no reason, upon ninety (90) days prior written notice of the date of termination to the other party. This Agreement may be terminated in whole or in part and will apply only to the property so identified in the notice of termination. CISD agrees that CITY may use CISD Property as outlined in this Agreement for a minimum of ten (10) years from the date of this Agreement as long as CITY pays CITY's portion of the costs and CITY does not substantially default under the terms and obligations of this Agreement. CISD may terminate this Agreement for cause upon thirty (30) days prior written notice, including but not limited to, if CITY does not pay for the installation and maintenance of CITY Property in accordance with Section I of this Agreement, upon thirty (30) days prior written notice. All determinations regarding proper maintenance of CISD Property shall be made by CISD, in its sole discretion, and such determinations shall be final.
- 3.02 If either party terminates this Agreement pursuant to the terms herein, CISD shall reimburse CITY for the remaining prorated share of the initial cost of any improvements made to CISD Property by CITY prorated over a ten-year amortization period.
- 3.03 Upon termination, CITY may remove all personal property or removable structures owned by CITY, provided that CITY thereafter returns CISD Property to its original condition. CITY shall remove any improvements or alterations upon termination of this Agreement if requested in writing by CISD. Upon termination, CITY, at its sole expense, shall bear the cost of any alterations or improvements owned by CITY to CISD property. Any addition or improvement to CISD Property if not removed shall, upon termination of this Agreement and a reasonable time to remove said improvements or alterations, belong to and become the property of CISD without cost to CISD. Nothing shall be removed which may affect the structural integrity of any building or structure.

IV.

GENERAL REQUIREMENTS APPLICABLE TO CISD AND CITY

The following subsections shall apply to CITY's use of CISD Property,

- 4.01 A. IMMUNITY: Nothing in this Agreement, or in any exhibit or attachment hereto, shall be construed to affect, alter, or modify the immunity of either party under the Texas Civil Practice and Remedies Code § 101,001 et seq. It is expressly understood and agreed that in the execution of this Agreement, neither CITY nor CISD 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 and functions.
- B. INSURANCE: During the term of this Agreement, and any extensions thereof, CITY agrees to obtain and maintain, at its sole expense, insurance to protect against potential claims for which it would otherwise be liable under State law, and arising out of CITY's use of CISD Property and facilities designated on the Exhibit "A" attached hereto. CITY shall furnish CISD proof of insurance in accordance with this Section within thirty (30) days from the date of execution of this Agreement. Nothing contained herein shall be construed to grant any third-party rights or waive the governmental and/or public purpose of the operation or use of any of CISD Property.
- 4.02 THIRD PARTIES: 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 CITY or CISD unless such a basis exists independent of this Agreement under State or federal law.
- 4.03 NOTICE: Each notice or other communication which may be or is required to be given under this Agreement shall be in writing and shall be deemed to have been properly given when delivered personally during the normal business hours of the party to whom such communication is directed, or upon receipt when sent by United States registered or certified mail, return receipt requested, postage prepaid, to the appropriate one of the following addresses as may be designated by the appropriate party; however, each party has a right to designate a different address by giving the other party fifteen (15) days prior written notice of such designation:

If to CISD:

Mr. Sid Grant
Associate Superintendent
Coppell Independent School District
200 S. Denton Tap Road Coppell, Texas 75019

If to CITY:

Mike Land
City Manager
City of Coppell
255 Parkway Boulevard
P.O. Box 9478
Coppell, Texas 75019

- 4.04 MANAGEMENT AUTHORITY: During the term of this Agreement, and any extensions thereof, CITY agrees to provide adequate police and fire protection and other necessary emergency services for

CISD Property at all times and shall especially guard the property from abuse through vandalism or wanton destruction. Each party shall have the right to remove and/or control occupancy of CISD Property as to third parties or the general public. CITY shall perform and exercise all rights, duties and functions and services in compliance with all applicable Federal, State and local laws and regulations. CITY in joint cooperation with CISD may establish necessary rules and regulations as may be required to ensure the safe and orderly operation of recreational programs and the subject facilities, provided that any such rules and regulations do not conflict with CITY or CISD policy or State and federal law.

- 4.05 CLAIMS AGAINST PARTIES: Subject to the provisions of Article 1 of this Agreement, each party shall be responsible for defending and/or disposing of all causes arising against the respective party as a result of its use or occupation of CISD Property, It is expressly understood and agreed that in the execution of this Agreement, neither CITY nor CISD 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 and functions.
- 4.06 ENTIRE AGREEMENT: This Agreement contains the entire agreement of the parties hereto, and no other oral or written commitments shall have any force or effect if not contained herein. No amendment, modification, or alteration of this Agreement is binding unless in writing and duly executed by the parties subsequent to this Agreement.
- 4.07 SEVERABILITY: If any one or more of the provisions contained herein 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 of the Agreement, and this Agreement shall be construed as if such invalidity, illegality, or unenforceable provision had never been contained herein.
- 4.08 AUTHORITY: The undersigned officers and/or agents are authorized to execute this Agreement on behalf of the parties hereto, and each party hereto certifies to the other that any necessary resolutions extending such authority have been duly passed and are now in full force and effect.
- 4.09 DEFECT: Each party shall promptly report to the other party any defects or dangerous conditions it discovers on or concerning CISD Property, and shall cease any such use until such defect or condition is repaired or cured.

V. REMEDIES

- 5.01 No right or remedy granted or reserved to the parties is exclusive of any other right or remedy herein by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder. No covenant or condition of this Agreement may be waived without written consent of the parties. Forbearance or indulgence by either party shall not constitute a waiver of any covenant or condition to be performed pursuant to this Agreement.

VI. APPLICABLE LAW

- 6.01 This Agreement is to be construed under Texas law, and all obligations of the parties created in this Agreement are performable in Dallas County, Texas. Venue for any disputes arising out of this Agreement shall be in Dallas County, Texas.

VII.

SUCCESSORS AND ASSIGNS

- 7.01 This Agreement is binding on and inures to the benefit of the successors, executors, administrators and assigns of the parties to this Agreement and affects the use of land and shall run with the land. Neither CITY nor CISD shall assign, sublet, subcontract, or transfer this Agreement without the written consent of the other party, but nothing contained herein shall preclude the City from licensing use of CISD Property in compliance with this Agreement. No assignment, delegation of duties, or subcontract under this Agreement shall be effective without the prior written consent of the other party.

VIII.

RECITALS AND ATTACHMENTS

- 8.01 The recitals and attachments to this Agreement are incorporated herein for all purposes as if set out herein verbatim,

IX.

EXECUTION

- 9.01 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

EXECUTED between the parties on the date first written above.

WITNESS:

COPPELL ISD:

By: _____
Nichole Bentley
Secretary, Board of Trustees

By: _____
Thom Hulme
President, Board of Trustees

WITNESS:

CITY OF COPPELL, TEXAS:

By: _____
Christel Pettinos
City Secretary

By: _____
Karen Selbo Hunt
Mayor

THE STATE OF TEXAS §

CISD ACKNOWLEDGEMENT COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared THOM HULME, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed same for and as the act and deed of COPPELL INDEPENDENT SCHOOL DISTRICT, a political subdivision of the State of Texas, with its administration building located in Dallas County, Texas, and as the President of the Board of Trustees thereof, and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this, the _____ day of _____, 2019.

Notary Public In and For the State of Texas

THE STATE OF TEXAS §

CITY ACKNOWLEDGEMENT COUNTY OF DALLAS §

BEFORE ME, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared KAREN SELBO HUNT, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed same for and as the act and deed of CITY OF COPPELL, TEXAS, a municipal corporation of Dallas County, Texas, and as the Mayor thereof and for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this, the _____ day of _____, 2019.

Notary Public In and For the State of Texas

EXHIBIT "A"

CISD PROPERTY

The CISD Property receiving the Improvements is located at Coppell High School Ninth Grade Campus, 1301 Wrangler Drive, Coppell, Texas 75019, and includes the athletic field, bleachers, running track, press box, adjacent parking, and concession stand and restrooms all commonly known as “Lesley Field”.

The CISD Property not receiving Improvements under the Agreement is located at Coppell Middle School West, 2701 Ranch Trail, Dallas, Texas 75019, and includes the athletic field, bleachers, running track, press box, adjacent parking, and concession stand and restrooms.