

AN ORDINANCE

2006 - 0 2 - 0 2 - 0 1 6 0

APPROVING AN INTERLOCAL AGREEMENT WITH THE SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT FOR THE CITY'S TWENTY-FIVE (25) YEAR RENT-FREE NON-EXCLUSIVE USE OF 7.65 ACRES OF LAND ADJACENT TO ROYALGATE ELEMENTARY SCHOOL IN DISTRICT 4 FOR PUBLIC PARK PURPOSES.

* * * * *

WHEREAS, on July 25, 1974, the City Council approved a ten (10) year agreement with the South San Antonio Independent School District for the City's non-exclusive use of District-owned land located at 5801 Windy Hill in City Council District 4; and

WHEREAS, the property is adjacent to Royalgate School and is known as Royalgate Park; and

WHEREAS, the original agreement has been renewed on two (2) occasions for ten (10) years each; and

WHEREAS, the park, which is jointly used by the City and the school district, has a multi-use playing field (football/soccer), running track, several picnic units, and two tennis courts; **NOW THEREFORE:**

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

Section 1. The interlocal agreement with the South San Antonio Independent School District for the City of San Antonio's twenty-five (25) year, rent-free, non-exclusive use of 7.65 acres of land adjacent to Royalgate Elementary School in District 4 for public park purposes is approved. A copy of said Interlocal agreement, in substantially final form, is affixed hereto and incorporated herein for all purposes as Attachment I. The City Manager, or her designee, is hereby authorized to execute said interlocal agreement with the South San Antonio Independent School District in connection therewith.

Section 2. This ordinance shall become effective on and after February 12, 2006.

PASSED AND APPROVED this 2nd day of February, 2006.



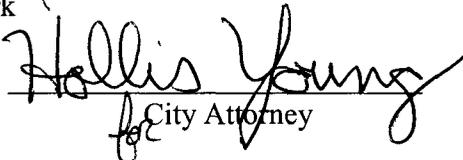
M A Y O R

PHIL HARBERGER

ATTEST:


City Clerk

APPROVED AS TO FORM:


City Attorney

**INTERLOCAL AGREEMENT BETWEEN
THE CITY OF SAN ANTONIO AND
SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT**

This INTERLOCAL AGREEMENT (the "**Agreement**") is entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereinafter referred to as "**CITY**"), acting by and through its City Manager pursuant to Ordinance No. _____, dated _____, 2005, and the SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT, a political subdivision of the State of Texas, acting by and through its Superintendent, heretofore duly authorized by its Board of Trustees, (hereinafter referred to as "**DISTRICT**").

1. WITNESSETH

- 1.1 WHEREAS, by Ordinance No. 44133, passed and approved on July 25, 1974 City Council authorized a ten-year agreement with **DISTRICT** for **CITY'S** non-exclusive use of 8.204 acres of land adjacent to Royalgate School for public park purposes; and
- 1.2 WHEREAS, said agreement was subsequently extended for 2 ten-year periods by mutual consent of **DISTRICT** and **CITY** as evidenced by Ordinances Numbers 59005 and 80586, passed and approved on July 12, 1984 and August 11, 1994 respectively; and
- 1.3 WHEREAS, the mutual benefits of said agreement to the constituents of both **DISTRICT** and **CITY** have been significant; and
- 1.4 WHEREAS, **DISTRICT** and **CITY** now desire to enter into a new agreement for an additional twenty-five (25) year period; and
- 1.5 WHEREAS, statutory authority exists pursuant to Chapter 791 of the Texas Government Code and/or other Texas statutes for **CITY** and **DISTRICT** to enter into an interlocal agreement within the scope and purview of this Agreement, such statute, among other things, authorizing two political subdivisions to jointly establish, provide, maintain, construct and operate playgrounds, recreational centers, athletic fields and/or other park and recreational facilities on land owned by either political subdivision; and
- 1.6 **WHEREAS**, **CITY** has received certain funds from the U.S. Department of Housing and Urban Development (HUD) under Title I of the Housing and Community Development Act of 1974, as amended (hereinafter referred to as "Community Development Act") for utilization in connection with its Community Development Block Grant (CDBG) Program; and
- 1.7 **WHEREAS**, the City Council has adopted a budget for such funds and has included therein, pursuant to Ordinance No. 99253, passed and approved May 27, 2004, the allocation of One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) for a project entitled, "Royal Gate Park Improvement" (hereinafter referred to as "Project"); and

NOW, THEREFORE, for and in consideration of the premises **DISTRICT** and **CITY** do hereby enter into this Agreement.

2. TERM

- 2.1 For and in consideration of the observance of the terms and conditions set forth below, the term of this agreement shall be for twenty-five (25) years beginning on December 1, 2005 through November 30, 2030, unless terminated at the option of **CITY** or **DISTRICT** pursuant to the terms herein.
- 2.2 RENEWAL OPTION: **CITY** has the right to extend this Agreement for one (1) additional term of ten (10) years under all the terms and conditions of this Agreement, provided however, that **CITY** shall notify **DISTRICT** in writing at least one hundred eighty (180) days before the date of expiration of the original term, hereof, of its intent to extend the term as herein provided. After agreement to the exercise of the option to extend, all references in this to the term hereof shall mean the term as extended.

3. USE

- 3.1 This Agreement is granted by **DISTRICT** and herein restricted to the non-exclusive use by **CITY** of 7.65 acres of **DISTRICT**-owned land adjacent to Royalgate School as further evidenced by Attachment A hereto and which is located at: 5801 Windyhill, San Antonio, Bexar County, Texas (hereinafter referred to as the "Property") for public park purposes.
- 3.2 Any and all development plans and recreational programs and activities as the **CITY** may propose to conduct thereon shall be subject to the review and prior approval of **DISTRICT** to insure that proposed **CITY** improvements and/or programs and activities do not interfere with or limit the usefulness of the Property for any of **DISTRICT'S** plans, programs or activities.
- 3.3 All facilities now or hereafter situated on the Property during the term hereof shall be open to the public and available for their use. Organized athletics, programmed recreational activities, and similar activities conducted by **CITY** shall be scheduled so as not to interfere or conflict with **DISTRICT'S** programs. In any event, **DISTRICT** may, upon two (2) days prior notice, have exclusive use of the Property for designated **DISTRICT** programs.
- 3.4 Use, possession, sale or consumption of alcoholic beverages on the Property is prohibited.
- 3.5 **CITY** agrees that there shall not be any fees or charges imposed for any programs or activities conducted on the Property.
- 3.6 No rent fees or lease payments for the Property or use thereof may be assessed by **DISTRICT** hereunder.

4. IMPROVEMENTS

- 4.1 Any and all improvements that may be proposed to the Property during the term of this agreement shall be mutually agreed upon between **DISTRICT** and **CITY** and no development shall be initiated until such mutual agreement is established in writing between **DISTRICT** and **CITY**.
- 4.2 **CITY** shall not undertake any capital improvement on the Property without **DISTRICT'S** prior written approval of plans and specifications.
- 4.3 **CITY** agrees that any and all improvements constructed or placed on the Licensed Property shall be considered fixtures to the Property, part of the Property and shall immediately become the property of the **DISTRICT** upon their construction.
- 4.4 **DISTRICT** and **CITY** hereby acknowledge that improvements planned on, or for the Property, as per Exhibit B (attached hereto), with the use of public funds in connection with the Project, have been previously agreed to and approved by duly authorized representatives of both entities.
- 4.5 Notwithstanding the foregoing agreements with regard to the improvements planned on, or for, the Property, **DISTRICT** understands that the funds to be expended in connection with the Project are funds which have been made available to **CITY** by the federal government under the Community Development Act and in accordance with **CITY'S** HUD-approved Grant Application and with other specific assurances made and executed by **CITY**, and that, accordingly, the population to benefit from the use of the Project funds are low and moderate income level persons. **DISTRICT**, therefore, understands that it must, and agrees to, comply with the requirements of the Community Development Act, with all regulations promulgated thereunder as codified at Title 24 of the Code of Federal Regulations, and with any and all applicable amendments or revisions to said Community Development Act or regulations, in connection with the use of the funds and the implementation of the improvement Project.
- 4.6 **DISTRICT** understands that summaries of certain compliance requirements mandated by applicable laws or regulations are contained in **CITY'S** Federal Compliance Manual, CDBG and HOME Housing Program Policies, and that **CITY** and **DISTRICT** must at all times remain in compliance therewith; **DISTRICT** further understands that said summaries are intended only as such and in no way are meant to constitute a complete compilation of all duties imposed upon **CITY** and **DISTRICT** by law or administrative ruling, or to narrow the standards which **CITY** and **DEPARTMENT** must follow.
- 4.7 **DISTRICT** assures that all contractors and subcontractors receiving funds in connection with the Project are familiar with, and shall comply with, any and all applicable rules and regulations as contained in **CITY'S** Federal Compliance Manual and that a copy of said Federal Compliance Manual will be included as part of every contract awarded in connection with the Project.
- 4.8 **DISTRICT** agrees that **CITY'S** Department of Housing and Community Development shall bear the responsibility for fiscal oversight, control and monitoring of Project funds. Modifications or alterations to the Project budget may be made only pursuant to the prior written approval of **CITY'S** Department of Housing and Community Development.

5. TERMINATION

- 5.1 In no event shall this agreement or **CITY'S** use of the premises be terminated prior to November 30, 2015, so as to assure the long-term use of the Property for the purpose of benefiting low to moderate income persons, as defined by HUD guidelines. On or before November 30, 2015, the **CITY'S** failure to perform any required actions under this Agreement shall give rise to **DISTRICT'S** right, upon 60 days written notice to **CITY**, to undertake and perform any such actions and to receive reimbursement from **CITY** for the cost of performing such actions. After November 30, 2015, any breach or violation by either party to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of the non-violating party, at its option, upon thirty (30) days' written notice to violating party, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Lease or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

6. MAINTENANCE

- 6.1 **CITY** agrees, at its own cost, to maintain the Property and all facilities now or hereafter situated thereon and to protect or cause to be protected the Property and its facilities and members of the public using the same at a level comparable to maintenance and protection of other similar facilities within **CITY'S** parks and recreation system.
- 6.2 **CITY** agrees to bear the expense of all utility services to the Property.

7. THIRD PARTY CLAIMS

- 7.1 **CITY** and **DISTRICT** acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

8. INSURANCE REQUIREMENTS

- 8.1 **CITY**, at its own expense, shall provide and maintain, during the term of this Agreement, either insurance, with or without retention, or a self-insurance program, allowed and provided by law, to Texas municipalities. This insurance or self-insurance shall cover liability for property damage and personal injury of **CITY'S** use of the premises during only those periods it is entitled to use the premises pursuant to the provisions hereof.
- 8.2 **DISTRICT**, at its own expense, shall provide and maintain, during the term of this Agreement, either insurance, with or without retention, or a self-insurance program, allowed and provided by law, to Texas independent school districts. This insurance or self-insurance shall cover liability for property damage and personal injury of **DISTRICT'S** use and ownership of the premises during only those periods it is entitled to use the premises pursuant to the provisions hereof.

- 8.3 **CITY'S** or **DISTRICT'S** obligations to share in costs of operation, maintenance and repairs as set out in this Agreement or in a future Articulation Agreement, do not create any additional duties, express or implied, not otherwise specifically set out within this Agreement. **DISTRICT** shall be liable for its own acts of negligence, to the extent provided in law. **CITY** shall be liable for its own acts of negligence, to the extent provided in law.

9. ASSIGNMENT/SUBLETTING

- 9.1 This Agreement is personal and is not assignable.

10. DEDICATION

- 10.1 Nothing contained herein shall be deemed to have dedicated the Property to use as a public park or to have created any obligations or burdens on the use of the Property beyond the termination date of this agreement. Further, **CITY** shall not acquire any right, title or interest in the Property extending beyond such termination date.

11. CONDEMNATION

- 11.1 It is understood and agreed that in the event that the Property is taken, in whole or in part, by any governmental authority other than **DISTRICT** or **CITY**, this Agreement and all rights or permission to use hereunder shall, at the option of **DISTRICT** cease on the date title to such land is so taken or transferred vests in the condemning authority. **DISTRICT** shall give **CITY** written notice as soon as **DISTRICT** receives notice from any condemning entity that it intends to condemn the Property. **CITY** hereby waives all rights to any proceeds of such condemnation, but **CITY** shall have the right to seek a separate condemnation award.

12. ATTORNEY'S FEES

- 12.1 In the event any action is brought under this Agreement, the prevailing party shall be entitled to recover from the other Party its reasonable costs and attorney's fees.

13. SEVERABILITY

- 13.1 The Parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, under any present or future federal or state laws, effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is held to be illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

14. AMENDMENT

- 14.1 No amendment, modification, or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed and agreed to by both of the parties hereto.

15. NOTICES

- 15.1 Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **DISTRICT** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **DISTRICT** at:

South San Antonio Independent School District
Mr. Ronald Durbon, Superintendent
2515 Bobcat Lane
San Antonio, Texas 78224

or at such other address on file with the City Clerk as **DISTRICT** may provide from time to time in writing to **CITY**.

16. APPROVAL OF THE CITY

- 16.1 Whenever this Agreement calls for approval by **CITY**, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director, Department of Parks and Recreation of the CITY OF SAN ANTONIO or his designee, unless City Council approval is required.

17. RELATIONSHIP OF PARTIES

- 17.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of licensor and licensee.

18. TEXAS LAW TO APPLY

- 18.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Bexar County, Texas.

19. GENDER

- 19.1 Words of any gender that are used in this Agreement 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 requires otherwise.

20. CAPTIONS

- 20.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and conditions of this Agreement.

21. COVENANTS

- 21.1 Covenants and obligations of **CITY** and **DISTRICT** contained herein shall be covenants running with the land, binding upon their respective legal representatives, and permitted successors and assigns.

22. ENTIRE AGREEMENT

- 22.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parol agreement with **CITY** being expressly waived by **DISTRICT**.
- 22.2 This Agreement contains the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon to date, and no other agreements of prior date, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto. It is the intent of the Parties that neither Party shall be bound by any term, condition, requirement, nor representation not herein written or otherwise referred to.
- 22.3 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 22.4 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

23. AUTHORITY

23.1 Each of the signers of this Agreement hereby represents and warrants that they have authority to execute this Agreement on behalf of each of their governing entities. This Agreement shall be signed in duplicate originals so that each Party hereto shall have an original.

EXECUTED as of the _____ day of January, 2006.

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

SOUTH SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT

By: _____
Sheryl Sculley
City Manager

By: 
Ronald Durbon
Superintendent

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

City Attorney

ROYAL GATE DR.

LINE	BEARING	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE	TANGENT	DEGREE OF CURVE
C1	S 34°26'04" W	347.89'	347.89'				
C2	N 18°42'24" E	90.09'	90.09'				
C3	S 67°12'31" E	97.43'	97.43'				
C4	N 87°12'11" E	111.84'	111.84'				
C5	S 70°00'00" E	70.00'	70.00'				
C6	S 71°38'12" E	78.16'	78.16'				
C7	N 16°53'27" E	55.00'	55.00'				
C8	S 16°52'54" W	52.85'	52.85'				
C9	S 72°21'01" E	138.22'	138.22'				
C10	S 22°43'16" W	130.98'	130.98'				
C11	S 68°22'35" E	48.62'	48.62'				
C12	S 23°16'35" W	169.20'	169.20'				
C13	S 68°41'31" E	49.35'	49.35'				
C14	N 31°54'02" W	111.80'	111.80'				
C15	N 06°47'32" E	234.69'	234.69'				
C16	N 58°20'27" W	319.38'	319.38'				
C17	N 55°41'50" E	907.83'	907.83'				

NEW LEASE AREA
SCALE: 1"=80'



WINDY HILL DR.
(55' R.O.W.)

333372.2 SQ. FT.
7.65 ACRES

ROYAL GATE PARK
5801 WINDY HILL
SAN ANTONIO, TEXAS
NEW LEASE AREA

CITY OF SAN ANTONIO
PARKS AND RECREATION DEPARTMENT
PARK PROJECT SERVICES
DIVISION

506 DOLOROSA ST. SAN ANTONIO, TX 78204
P.O. BOX 839966 78283-3966
TEL: (210) 207-2879 FAX: (210) 207-2720



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