

MEMORANDUM OF UNDERSTANDING
BETWEEN
ROBSTOWN INDEPENDENT SCHOOL DISTRICT
AND
CITY OF ROBSTOWN, TEXAS
CONCERNING THE USE OF BEATRIZ TAGLE PARK A/K/A "TURTLE PARK"

This Memorandum of Understanding ("MOU") is entered into between the **Robstown Independent School District** ("RISD"), a political subdivision of the State of Texas, acting through its Superintendent of Schools, and the **City of Robstown, Texas** ("City"), a home rule municipality under the laws of the State of Texas, acting through its designated representative, for the lease of RISD's property by City and City's patrons. RISD and City are individually called a "Party" or collectively "Parties" herein.

WHEREAS, RISD, a political subdivision of the State of Texas, is located at 801 North First Street, Robstown, Texas 78380; and

WHEREAS, City, a political subdivision of the State of Texas, is located at 101 East Main, Robstown Texas 78380; and

WHEREAS, RISD owns real property located in City and legally described as CASA BLANCA-RBST 1.2 ACS OUT OF E POR BLK 2A (PARK) and GRIFFEN W R - RBST BLK 6 LOT 9 ETAL., and otherwise known as Beatriz Tagle Park or Turtle Park ("Park"); and

WHEREAS, RISD and City desire to enter into an agreement to allow City to lease Park and to allow City's patrons the use of Park; and

WHEREAS, RISD shall determine the terms of the agreement so as to promote and maintain the public purpose of Park, which is to provide environmental, aesthetic, and recreational benefits such as the public use and enjoyment of Park to RISD students, staff, and taxpayers, and City and City's patrons; and

WHEREAS, RISD may provide for the lease of Park at less than fair market value if a public purpose will be accomplished with the City's use of the Park; and

WHEREAS, RISD is not required to comply with any competitive purchasing procedure or any notice and publication requirement imposed by law;

WHEREAS, the use of Park by City's patrons is beneficial for the entire Robstown community.

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and benefits hereunder, RISD and City do hereby agree as follows:

TERMS AND CONDITIONS

1. **Facility Use/Governmental Function.** It is agreed the primary function of Park will be solely for the public use and enjoyment of City's patrons during operating hours as determined by City. If City wishes to use Park outside of normal operating hours as set by City, then use of Park will be authorized upon request by City subject to RISD's approval, as determined in RISD's sole discretion. Notwithstanding any provision to the contrary, this Agreement is a contract for, and with respect to, the performance of governmental functions by the City. The services provided for and functions performed herein are governmental functions, and the City shall be engaged in the conduct of a governmental function while providing and/or performing recreational service pursuant to this Agreement
2. **Standard of Care/Security.** City and their employees, representatives and patrons will exercise reasonable care in the conduct of its activities while on Park property. City hereby agrees and pledges that it shall fully comply with all RISD board policies and regulations and established safety standards applicable to operation and use of RISD facilities. RISD shall post such information signs as deemed necessary by RISD to inform users of rules, regulations, governmental codes, board policies, and ordinances.
3. **Liaisons:** The parties will designate and identify liaisons for RISD and City to coordinate all obligations hereunder. The name, address, telephone number and other contract information for each respective liaison will be distributed to the other party.
4. **Maintenance and Responsibility.** City agrees that it shall have full responsibility of Park upkeep, maintenance, repair, improvements, and replacement during the term of this MOU. This includes all existing structures located on Park property and any future improvements made to Park as allowed by Section 5 of this MOU. Further, City agrees to pick up any trash and/or debris at Park on a weekly schedule or more frequently as determined by District. In addition, City agrees to pay all operating expenses related to any Park operations and/or activities.
5. **Construction and Improvements.** City shall be allowed to make improvements to Park property, including new construction and renovations to existing Park property, upon sixty (60) days ~~of~~ prior written notice of construction or renovation to RISD's Board of Trustees.
6. **Reimbursement Costs.** Within fourteen (14) calendar days of written notice from RISD, City agrees to repair/replacement of minor damages or minor loss to RISD property, facilities, fixtures, and/or equipment on the Park as a result of City's or City's patron's use of Park. If damages or loss repair/replacement are valued at three thousand dollars (\$3,000) or more, City shall comply with local and state laws regarding procurement to accomplish the repairs/replacement.
7. **Safety.** City hereby agrees and pledges that it shall fully comply with all established safety standards applicable to operation and use of District facilities.
8. **Insurance.** City, at its own expense shall provide and maintain, during the term of this MOU, either insurance, with or without retention, or a self-insurance program, allowed and

provided by law, which shall cover liability for property damage and personal injury arising from the use of Park. Prior to initiation of services under this MOU, City shall submit to RISD a Certificate of Insurance issued by its insurance carrier to certify the existence of required insurance coverage in conformity with this clause. The Certificate of Insurance shall show a period of coverage to be at least for the length of this MOU. The Certificate of Insurance shall also include a waiver of subrogation, thirty (30) days' notice to RISD prior to cancellation, and shall list RISD as an "additional insured." City shall provide RISD thirty (30) days written notice prior to cancellation.

9. **Term of MOU and Termination.** Unless sooner terminated as hereinafter provided, the terms of this MOU shall commence on August 1, 2021 and end on August 31, 2071. Unless either Party provides written notice of intent to terminate this MOU on or before August 31, 2071, this MOU shall be automatically extended for successive one-year terms upon completion of the initial 50-year term.

9a. Notwithstanding the foregoing language of Section 9 above, either party may terminate this MOU for any reason or no reason at any time upon one (1) year written notice to the non-terminating party.

9b. Further, in the event of any default or breach by City regarding any of the obligations imposed under this MOU, RISD may terminate this MOU after providing thirty (30) days written notice to City of its intent to terminate if the breach or default is not cured. If the breach or default is not cured by City, RISD's termination based on said breach or default shall be effective on the 31st day after delivery of said notice to City and RISD shall not be required to comply with the one (1) year at-will termination clause discussed in Section 9a of this MOU.

10. **Public Purpose.** City agrees to use Park as intended and for the public purpose(s) as stated in the Preamble of this MOU and not for any other purpose. Further, City agrees not to create a nuisance or interfere with RISD's normal business operations through City's use of the Park, or to use the Park in any way that would increase insurance premiums or void insurance on the Park. In the event City ceases to use Park for the public purpose(s) as stated in the Preamble of this MOU, RISD shall be entitled to terminate this MOU in accordance with Section 9b above.

11. **Liability; No Waiver of Immunities.** ~~TO THE FULLEST EXTENT PERMITTED BY LAW, CITY AGREES TO FULLY INDEMNIFY, DEFEND, AND HOLD HARMLESS RISD AND EACH BOARD OF TRUSTEE, OFFICER, EMPLOYEE, OR AGENT THEREOF, FOR AND FROM AGAINST ANY ALL LIABILITY, CLAIMS, CAUSES OF ACTION, LOSSES, DAMAGES, INCLUDING BUT NOT LIMITED TO BODILY INJURY, DEATH, AND/OR PROPERTY DAMAGE (INCLUDING PROPERTY DAMAGE TO CITY PATRON'S PROPERTY), COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, COURT COSTS, AND THE COSTS OF APPELLATE PROCEEDINGS) ARISING FROM OR RELATED TO OBLIGATIONS CONTEMPLATED HEREUNDER. THE AMOUNT AND TYPE OF INSURANCE COVERAGE REQUIREMENTS SET FORTH ABOVE WILL IN NO~~

~~WAY BE CONSTRUED AS LIMITING THE SCOPE OF THE INDEMNITY IN THIS SECTION~~It is specifically agreed that the City shall be solely responsible for responding to, dealing with, insuring against, defending, and otherwise handling and managing its liability and potential liability pursuant to this Agreement. City and RISD hereto reserves and does not waive any defense available to it at law or in equity as to any claim or cause of action whatsoever that may arise or result from any claims arising under this Agreement.

This provision will survive termination of this MOU.

~~It is expressly understood and agreed that under this MOU RISD does not waive, nor shall be deemed to waive, any immunity or defense that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. No Party hereto waives or relinquishes any immunity or defense on behalf of itself, its trustees, councilmembers, officers, employees, and agents as a result of the execution of this Agreement and the performance of the covenants and agreements contained herein.~~

12. **Entire Agreement.** This MOU sets forth the entire between RISD and City with respect to the subject matter hereof, and all prior discussions, representations, proposals, offers, and oral or written communications of any nature are entirely superseded hereby and extinguished by the execution of this MOU. No modification or, or waiver, of any right under this MOU will be effective unless it is evidenced in a writing executed by an authorized representative of RISD and City.
13. **Severability.** The phrases, clauses, sentences, paragraphs or section of this MOU are severable and, if any phrase, clause, sentence, paragraph, or section of this MOU should be declared invalid by the final decree or judgment of any court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this MOU.
14. **Paragraph Readings.** The captions, numbering, sequences, titles, paragraphs, headings, punctuations, and organization used in this MOU are for convenience only and shall in no way define, limit, or describe the scope or intent of this MOU or any part of it.
15. **Understanding, Fair Construction.** By execution of this MOU, RISD and City acknowledge that they have read and understand each provision, term, and obligation contained in this MOU. This MOU, although, drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the non-drafting party.
16. **Governing Law.** This MOU 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 Nueces County, Texas.
17. **Force Majeure.** Neither party to this MOU shall be required to perform any term, condition, or covenant in this MOU so long as performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, material or labor restrictions

by a governmental authority, civil riots, floods, pandemics, and any other cause not reasonably within the control of either party to this MOU and which by the exercise of due diligence such party is unable, wholly or in part, to prevent or overcome.

18. **Mediation.** The parties agree that any dispute regarding the enforceability or construction of any of the terms of this MOU shall be submitted to mediation prior to the filing of any civil action in state or federal court regarding same. The parties agree that neither party shall be allowed to waive this required mediation prior to suit.
19. **Notice.** Any notice required to be given hereunder shall be in writing and delivered to the address and titles set forth below by email, certified mail (return receipt requested), a recorded delivery service, or by other means of delivery requiring a signed receipt. All notices shall be effective upon receipt. The addresses provided hereunder may be changed at any time on prior written notice.

City: (INSERT NAME/TITLE)City Secretary
101 E Main Street
Robstown, Texas 78380

RISD: Superintendent of Schools
801 North First Street
Robstown, Texas 78380

Notice of change of address or designated representative by any Party must be made in writing and delivered to all Parties' last known address within five (5) business days of such change.

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- ~~20.~~ **Assignment and Sale.** Neither RISD or City may assign this MOU or sell Park without the prior written consent of the other parties.

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- ~~20.~~~~21.~~ **Legal Authority.** RISD and the City represent that they possess the legal authority to enter into this Agreement and perform the responsibilities set out in this Agreement. Both Parties represent that there respective governing bodies have passed Resolutions authorizing this Agreement.

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IN WITNESS THEREOF, the governing board of the Robstown Independent School District has duly authorized the RISD Superintendent of Schools to execute this MOU, and City has duly authorized its representative to execute this MOU, and said MOU is to become effective and operative upon the fixing of the last signature hereto.

CITY OF ROBSTOWN

~~(INSERT NAME)~~ Gilbert Gomez
~~Designated Representative~~ Mayor

_____ Date

ROBSTOWN INDPENDENT SCHOOL DISTRICT

Dr. Jose Moreno,
Superintendent of Schools

_____ Date