



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

**I.  
AGREEMENT**

- A. In consideration of the mutual covenants of this Agreement, and other good and valuable consideration, CISD shall permit CITY to use CISD Property. CISD Property is identified in Exhibit "A," 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 commonly known as Lesley Field, parking lot, restrooms, concession stand, and sidewalks located on CISD Property. The purposes for which CITY may use CISD Property are City-sanctioned league practices and games. The use of the concession stand shall be coordinated in advance with the Coppell Middle School West band department. The contact information for the band department is as follows: Joe Mehling, Coppell Middle School West, (214) 496-8666 (such contact information is subject to change with notice from CISD). The Coppell Middle School West band department has priority of use of the concession stand and has the right to sell concessions at any CITY-sanctioned event. If the Coppell Middle School West band departments decides not to sell concessions at any CITY-sanctioned event, then the CITY 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.
- B. 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 all easements now existing or subsequently granted by CISD regarding CISD Property. CITY right of access and use of CISD Property shall be for recreational purposes, and for no other purpose, without the express written consent of the Board of Trustees of the Coppell Independent School District.

- C. 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:
- Coppell Middle School West will utilize the field during normal school hours Monday through Friday.
  - During football season (August through November), middle school games are played typically on Monday and Tuesday evenings. Private schools occasionally rent the field on Friday evenings (during football season only). Middle school football practices on the field during football season on only weekdays until approximately 5:30pm.
  - During soccer season (January through March), there may be an occasional high school tournament game to accommodate overflow from the high school on Saturdays. This is only once or twice per soccer season, if at all.
  - There is a potential to host one middle school track meet at the location between March and April on a Monday or a Thursday evening.
  - CISD seldom, if ever, uses the facility on weekends or during the summer.
- D. In exchange for the use of CISD Property for City-sanctioned league practices and games, CITY shall fund one half of any costs to install artificial turf at Lesley Field located at Coppell Middle School West. Such total costs are estimated to be between \$800,000 and \$1,000,000. City's estimated cost is between \$400,000 and \$500,000 due within thirty (30) days after substantial completion of project. This provision shall survive any termination of this Agreement.
- E. CISD Property shall be maintained by CISD. CITY shall reimburse CISD for the actual cost of electricity used for stadium lighting for CITY league sanctioned events. CITY shall be responsible for providing their own supervision of the facility as described below in Section I,G. CISD will invoice CITY for actual electricity costs on a monthly basis. 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.

- F. 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.

- G. Security of CISD Property shall be the responsibility of CITY during any City league sanctioned events. During the term of this Agreement, and any extensions thereof, CITY agrees to guard CISD Property from abuse or loss through vandalism, wanton destruction, or theft during any City sanctioned events. A CITY employee or designee shall supervise at all times during the event during any CITY-sanctioned 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 and 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.

- H. CITY shall be responsible for any and all claims, damages, and/or causes of 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.

- I. CITY shall not apply any pesticides or herbicides or make any material alterations to CISD Property.

- J. 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 §101.051.

## **II. TERM**

The term of this Agreement shall be for a period of one year, but shall automatically renew from year to year unless terminated by either party in accordance with the terms herein.

## **III. TERMINATION**

- A. 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. However, CITY is responsible for one half of the costs for the installation of the artificial turf as outlined in this Agreement even if the Agreement is terminated. 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.
- B. 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.
- B. 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 subparagraphs shall apply to CITY's use of CISD Property.

- A. (1) **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.
- (2) **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 attached hereto. CITY shall furnish CISD proof of insurance in accordance with this Paragraph 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.
- B. **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.
- C. **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  
Assistant Superintendent for Business and Support Services  
Coppell Independent School District  
200 S. Denton Tap Road  
Coppell, Texas 75019

If to CITY:

\_\_\_\_\_  
\_\_\_\_\_  
City of Coppell  
\_\_\_\_\_  
\_\_\_\_\_

- D. **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.
- E. **CLAIMS AGAINST PARTIES:** Subject to the provisions of Section I 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.
- F. **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.

- G. **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.
- H. **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.
- I. **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**

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**

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**

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. 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**

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

**IX.  
EXECUTION**

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:**

By: \_\_\_\_\_  
David Apple  
Secretary, Board of Trustees

**COPPELL I.S.D.:**

By: \_\_\_\_\_  
Cindy Warner  
President, Board of Trustees

**WITNESS:**

By: \_\_\_\_\_  
\_\_\_\_\_  
Secretary

**CITY OF COPPELL, TEXAS:**

By: \_\_\_\_\_  
\_\_\_\_\_  
Mayor

**THE STATE OF TEXAS §  
§  
COUNTY OF DALLAS §**

**CISD ACKNOWLEDGEMENT**

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared CINDY WARNER, 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 **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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public In and For The State of Texas

**THE STATE OF TEXAS §**  
§  
**COUNTY OF DALLAS §**

**CITY ACKNOWLEDGEMENT**

**BEFORE ME**, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared \_\_\_\_\_, 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 **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 \_\_\_\_\_, 2011.

\_\_\_\_\_  
Notary Public In and For The State of Texas

**EXHIBIT “A”**  
**CISD PROPERTY**

[to be attached]