



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC Final Approval of the MOU between the City of Laredo and United ISD for the Natatorium Project

SUBMITTED BY: Juan J. Cruz **OF:** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: _____ May 20, 2015

RECOMMENDATION:

It is recommended that the United ISD Board of Trustees take action to approve MOU between the City of Laredo and United ISD for the Natatorium Project.

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

**UNITED INDEPENDENT SCHOOL DISTRICT AND
CITY OF LAREDO INTERGOVERNMENTAL AGREEMENT
TO DESIGN, CONSTRUCT, MAINTAIN, AND OPERATE
A JOINT USE NATATORIUM**

THE STATE OF TEXAS §
 §
COUNTY OF WEBB §

This Agreement ("Agreement") is made this the ____ day of _____, 2015, by and between the City of Laredo (hereinafter called "City"), a Texas municipal corporation and political subdivision, pursuant to action of its City Council of _____, 2015, and United Independent School District, a Texas political subdivision of elementary and secondary education (hereinafter called "District"), acting by and through its Board of Trustees pursuant to its actions of _____, 2015.

**I.
Preamble**

WHEREAS, the mission of the City is to promote the health, safety, and welfare of its citizens, and said mission is served by the development of recreational areas; and

WHEREAS, the availability of quality sports complexes on District property serves the mission of the District to provide educational, emotional, and physical development of the students; and

WHEREAS, City and District wish to maximize land and facility use to provide such City and District Services; and

WHEREAS, the District desires to construct a natatorium; and

WHEREAS, the City, pursuant to the provisions of Chapter 334 of the Local Government Code (the "Chapter 334"), held an election on August 12, 2000 wherein a majority of the citizens of the City voting at said election authorized the City to levy a sales and use tax on the receipts at retail of taxable items within the City at a rate of one-fourth of one percent ("Venue Sales Tax"); and

WHEREAS, the City, pursuant to Chapter 334, held an election on November 4, 2014 wherein a majority of the citizens of the City voting at said election authorized the City to finance, with proceeds of the Venue Sales Tax, a natatorium venue project to be located at the District's Student Activity Complex on Highway 359 and Concord Hills and the related infrastructure and the maintenance and operation thereof ("Natatorium Venue Project"); and

WHEREAS, in the spirit of cooperation and increasing the value of the natatorium, and reducing taxpayer costs, the District and City desire to combine resources and jointly construct a natatorium (constituting the City's Natatorium Venue Project) and also referred to herein as the "Joint Use Improvement", as shown on Exhibit "A" attached hereto and which exhibit is made a part hereof for all purposes, on property owned by the District and more specifically the District's Student Activity Complex located off Texas Highway 359 and near the Concord Hills Subdivision; and

WHEREAS, Chapter 791 of the Texas Government Code authorizes political subdivisions to enter into intergovernmental agreements and Section 334.041(d) of Chapter 334 provides that the City may contract with or enter into an interlocal agreement with the District for the purpose of planning, acquiring, establishing, developing, constructing, or renovating the Natatorium Venue Project, as an approved City venue project, and that such contract or interlocal agreement may provide for joint use of the Natatorium Venue Project; and

WHEREAS, in order to facilitate the Joint Use Improvement, the City and District desire to cooperatively design, develop and construct the Joint Use Improvement, subject to: review and approval of all plans and specifications by the City, and limiting City's capital contribution to the Joint Use Improvement to not less than Three Million Dollars (\$3,000,000.00) but not more than Four Million Dollars (\$4,000,000.00; and

WHEREAS, the District has committed no less than Seven Million Dollars (\$7,000,000.00) and any balance remaining to complete the Joint Use Improvement's Cost, subject to the terms of this agreement; and

WHEREAS, the Joint Use Improvement is to be constructed on the above-described property owned by the District and the above described property will be subject to a joint use lease agreement with City contemporaneous to the entry of the parties into this Agreement; and

WHEREAS, in consideration of City's and District's participation in the cost of design and construction, the cost of operation, and the cost of maintenance and repair of the Joint Use Improvement, both City and District have the rights to shared use of the Joint Use Improvement for the public use of each, as set out herein; and

WHEREAS, it is the express intent of the City and the District that, notwithstanding that the Joint Use Improvement will be located on land owned by the District, all of the citizens of the City will have full use and benefit of the Joint Use Improvement, as further described herein, during such time that the Venue Sales Tax is being utilized to pay maintenance and operation of the Joint Use Improvement and/or during such time that bonds issued to finance the Joint Use Improvement and secured by the Venue Sales Tax are outstanding and unpaid;

NOW, THEREFORE, in consideration of the covenants, conditions, and provisions set forth herein, the parties agree as follows:

II. Definitions

2.1 When used in this Agreement, the following terms shall have the following meanings:

(a) **City** shall mean the City of Laredo, a Texas municipal corporation and a home-rule city organized under the laws of the State of Texas acting by and through its City Manager as authorized by its home rule charter and the City Council of the City of Laredo.

(b) **City Fiscal Year** shall mean October 1 to September 30.

(c) **City Funds** shall mean those funds designated and authorized by the City Council of the City, as approved by its voters, for purposes of design, construction, repair, maintenance, and operation of the Joint Use Improvement, including but not limited to:

(1) Design and Construction funds for the Joint Use Improvement are to be in an amount of not less than Three Million Dollars (\$3,000,000.00) and not less than Four Million Dollars (\$4,000,000.00).

(d) **City Use** shall mean use of the Joint Use Improvement designated for use by City, as herein agreed by the parties.

(e) **Concurrent Use** shall mean simultaneous cooperative use, as agreed by the parties.

(f) **Construction Phase** shall mean that phase of the Joint Use Improvement commencing with the construction of the Joint Use Improvement by Design Builder.

(g) **Design Phase** shall mean that phase of the Joint Use Improvement commencing with the submittal of the preliminary plans and specifications for the Joint Use Improvement by Design Builder to the District and terminating with the approval of the final plans and specifications of the Joint Use Improvement by the District.

(h) **District** shall mean United Independent School District governed by its Board of Trustees.

(i) **District Area** shall mean that area of the Joint Use Improvement agreed by the parties and so designated in the plans and specifications.

(j) **District Fiscal Year** shall mean September 1 to August 31.

(k) **District Fund** shall mean those funds designated and authorized by the District's Board of Trustees for purposes of design, construction, repair, maintenance, and operation of the Joint Use Improvement, including but not limited to:

(1) Design and Construction funds for the Joint Use Improvement are to be in

an amount of not less than Seven Million Dollars (\$7,000,000.00) and any remaining balance to complete the Joint Use Improvement's Costs and to be appropriated from the District's General Funds.

(2) The appraised market value of the real property contributed to the Joint Use Improvement by the District, on which the Joint Use Improvement will be constructed.

(l) **District Use** shall mean exclusive use of the Joint Use Improvement by District, as herein agreed upon by the parties.

(m) **Milestone Inspections** shall mean interim inspections of the Joint Use Improvement construction by the Design/Builder's Architects and District's Project Manager(s), inspections which shall also determine the dates of Substantial Completion and final completion of the Joint Use Improvement.

(n) **Joint Use Improvement Costs** shall mean the cost of all elements of design, constructing and equipping the Joint Use Improvement. Joint Use Improvement Costs do not include cost of land or land use funded by the parties, or equipment or supplies for the operation, repair, or maintenance of the Joint Use Improvement, once construction is substantially completed and the Joint Use Improvement is operational.

(o) **Substantial Completion** shall mean the issuance of the Certificate of Substantial Completion by the Design/Builder of the Joint Use Improvement.

(p) **Third-Party Use** shall mean use of the Joint Use Improvement facility by those other than the parties to this Agreement and/or their staff, as may be agreed by herein by the parties.

III.

Statement of General Purpose and Intent

3.1 The purpose and intent of this Agreement is to provide for the funding, design, construction, maintenance, operation, management, and use of the Joint Use Improvement by District's students, by other District invitees, and by the general public.

3.2 The Joint Use Improvement shall be the area and the facility described in Exhibit "____." (insert survey)

IV.

Ownership and Terms of Use

4.1 The parties hereto understand that the land and Joint Use Improvement are to be dedicated and utilized as a natatorium in accordance with this Agreement and that the Joint Use Improvement constitutes the City's Natatorium Venue Project.

4.2 In consideration of the parties' contribution to the design, construction, operation, and

maintenance of the Joint Use Improvement as set out herein, any further modifications may be made by mutually agreement via the Joint Use Committee.

**V.
Construction Deliver Method
Design/Build Construction**

5.1 Construction Delivery Method

5.12 The Design and Construction of the Joint Use Improvement shall be provided pursuant to Chapter 2269, Texas Government Code using the Design Build Construction Delivery Method for the construction of Public Work Projects.

**VI.
Design of Joint Use Improvement
and
City and District's Share of Design Phase Costs**

6.1 Design of Joint Use Improvement

6.12 District will enter into a contract with a Design Builder to properly design the Joint Use Improvement. The plans and specifications for the Joint Use Improvement must be approved by both the City and the District.

6.2 **Design Cost Apportionment.** For and in consideration of the use of the Joint Use Improvement by City and District, City and District agree to provide its pro-rata share of the costs for the design of the Joint Use Improvement. City and District will each pay upon the final approval of the design documents for the Joint Use Improvement by the District, each of their respective pro-rata share, subject to cap limitations, of design costs based on the Joint Use Improvement Cost contribution by each party under this Agreement.

**VII.
Joint Use Improvement Construction
and
City's and District's Share of Construction Costs**

7.1 Construction.

7.12 District shall have final authority to approve the Guaranteed Maximum Price ("GMP") for the Construction Phase of the Joint Use Improvement by the Design/Builder which said GMP shall be not less than Ten Million Dollars (\$10,000,000.00).

7.13 District shall supervise construction phase of the Joint Use Improvement; however, City may inspect the Joint Use Improvement as it wishes periodically during the construction phase and shall coordinate inspection issues through the District.

7.2 Joint Use Improvement Costs Apportionment. For and in consideration of the use of the Joint Use Improvement by City and District, City and District agree to provide an amount for the construction phase of the Joint Use Improvement as provided under Section 7.3 of this Agreement.

7.3 Deposit of Funds. District will place, on or before the date of the "Notice to Proceed" is issued to the Design Builder for the construction of the Joint Use Improvement, their respective share of GMP funds of which shall not be less than Seven Million Dollars (\$7,000,000.00) in an appropriate District depository account. City's share shall not be less than Three Million Dollars (\$3,000,000.00) and not more than Four Million Dollars (\$4,000,000.00).. City will advance District One Million Dollars (\$1,000,000.00) for Joint Use Improvement Costs subject to a pro-rata cost reduction as Design-Builder fee application for both design and construction services are submitted to the District for payment. Upon exhaustion of the One Million Dollars of Joint Use Improvement Costs advanced by the City, City will pay its pro-rata share of Joint Use Improvement costs on a reimbursement basis as Design Builders submits is fee applications to District and District bills City for its pro-rate share of costs.

7.4 Accounts and Records. District shall account for all District's funds (including all receipts, expenditures, and investments thereof) placed in District's depository on its book of account, separately and apart from all other funds (and receipts, expenditures, and investments thereof), and shall retain all records of such accounting for six years or the length of time required for the retention of public records, whichever is longer. District shall, upon reasonable written request of City provide copies of said records, or reasonable inspection, by City, its employees or agents.

7.5 Reports. District will prepare and provide to City within fifteen (15) days after the end of a month during which payments for Joint Use Improvement Cost were made, a monthly report of Joint Use Improvement Costs that includes the following:

(a) A copy of the monthly statement(s) submitted by Design/Builder, or other evidence of Joint Use Improvement Costs incurred during the month that is covered by the report.

(b) The amount of payment(s) of Joint Use Improvement Costs during the month that is covered by the report and the sum of Joint Use Improvement Costs paid through the period that is covered by the Report; and

(c) Other financial or Joint Use Improvement information reasonably requested by City.

VIII. Coordination and Consultation

8.1 Joint Use Improvement Review Committee. District shall keep the City Manager and/or designee(s) informed of progress of the Joint Use Improvement throughout the design,

planning, plans and specification, and construction phase of the Joint Use Improvement. District and City, shall for such purposes appoint a minimum three (3) staff members or designees each to a Joint Use Improvement Review Committee, of which Design/Builder's Architect and City Engineer shall also be a member. The Committee shall meet to review project design and plans and specifications. Such meeting shall be called by either the District or the City at times and places mutually convenient to both. The Joint Use Improvement Review Committee will establish a timeline with milestones for Joint Use Improvement Design Completion and Construction Completion. Such timeline will be memorialized in writing and added as an addendum to this Agreement by contract amendment.

8.2 Review of Request for Qualifications for Design/Builder. City shall have the opportunity to fully review and study all qualification proposals submitted to the District for the qualification of the Design Builder of the Joint Use Improvement. During the review and study process, District shall advise the City of its recommendation regarding the firm(s) to which it proposes to award the Design/Build contract. The decision as to whom the Design/Build contract is awarded shall be a consensus between the District and the City.

8.3 Construction Supervision. Supervision of construction and completion of the Joint Use Improvement in accordance with the Scope of the Joint Use Improvement is the sole responsibility of District. All contracts with the Design/Builder are the District's responsibility, as is the administration of the design/build contract and payments to Design/Builder, subject to City's obligation to pay its share of such costs. District agrees to keep the City Manager and/or designee fully informed of construction progress and of any problems or delays encountered during construction. District further agrees to require Design/Builder to provide City and District a full set of construction plans and drawings and further agrees to permit the City to observe and inspect construction work at Milestone Inspections; provided, however, that such City representative shall not communicate independently with the Design/Builder, or in any fashion represent himself to hold inspection or supervisory authority other than building code compliance.

Should the City Manager or designee observe any deficiencies or other problems in construction work, the same may be immediately reported in writing to District's Project Manager. District agrees to promptly review the report and, where appropriate, cause corrective action to be taken.

8.4 Corrective Action. Except where District has elected to perform the work, it shall be District's sole responsibility to determine appropriate action required in Paragraph 8.3 above. Only District shall have the authority to issue a stop work order to the Design/Builder. This paragraph, however, in no way restricts the City from enforcing code violations, building services requirements, or any other City functions.

8.5 Default by Design Builder. Should Design Builder default in its performance under its Design Build Agreement with District, District will look towards Design Builder's performance bond for performance by Design Builder's surety to complete the Joint Use Improvement. Should Design Builder default in its contract with the District to complete the Design and Construction of the Joint Use Improvement, City will not incur any additional costs for the Joint Use Improvement to be completed by District. However, any legal and administrative costs

incurred by District in order for Design/Builder's surety to perform and complete the Joint Use Improvement will be shared by District and City on a pro rata basis based on the amount of contribution to the Joint Use Improvement Costs.

IX.

Final Joint Use Improvement Inspection and Acceptance

9.1 **Inspections.** Except where District has elected to perform the work, official acceptance of the completed project and certification of prior completion phases shall be District's sole responsibility. District agrees to notify the City Manager or his designee of the date and time of final project inspection. District agrees to permit City representatives to participate in such final inspection and to include such deficiencies, if any, as may be noted by City's representatives, in the punch list for correction.

9.2 **Plans and Reports.** District shall provide City with a copy of the final project acceptance document and shall also provide City with a set of as-built plans, within a reasonable period of time following project acceptance.

X.

Rental and Use Fees

10.1 **Joint Use Committee.** A Joint Use Committee consisting of the City Manager or designee, the City's Parks and Leisure's Director, the District Superintendent of Schools or designee, and the District's Athletic Director, shall communicate at least once per quarter to schedule and review use, operational policies, and maintenance issues with the Joint Use Improvement. The Joint Use Committee shall establish and review maintenance standards for the Joint Use Improvement

10.2 **Rental and Use Fees.** It is contemplated that the Joint Use Improvement will be utilized by third parties, to include members of the general public, and such use shall be consistent with District's and City's policies for third-party facility use. The Joint Use Committee shall recommend fee schedules to the City. City and District reserves the right to establish fees, charges, and conditions of use as City and District deems necessary and proper, provided that such third-party use does not adversely affect the rights of use or maintenance of either party. Any revenue generated by Third Party Use of the Joint Use Improvement will be offset against the cost sharing of maintenance and operation of the Joint Use Improvement.

10.3 **Insurance.** All third-party users shall enter into a written agreement with City and the District, which shall require users to provide liability and casualty insurance coverage acceptable to City and District.

10.4 **Mutual Cooperation in Use of Joint Use Improvement.** City and District will mutually cooperate in the Use of the Joint Use Improvement. City will recognize District's use of the Joint Use Improvement for District sponsored Activities when City is scheduled to use the Joint Use Improvement and District will recognize City's use of the Joint Use Improvement for City Sponsored Activities when District is scheduled to use the Joint Use Improvement.

XI.

Shared Use and Times of Operation

11.1 District Right of First Refusal. The District shall have the right of first refusal, upon thirty (30) days written notice unless there are extenuating circumstances where such notice cannot be timely provided, for any use of the Joint Use Improvement occurring during regular school hours, and for any scheduled special school events sponsored by the District, including, but not limited to, intramural sports, University Interscholastic League activities, or State or regional athletic competitions. District shall identify for the Joint Use Committee time periods for Joint Use Improvement use to be utilized by District.

11.2 City Use. The Joint Use Improvement shall be reserved for use by the City during any period during which District activities are not scheduled, such use to include use by the general public and third parties subject to District's Right of First Refusal to Use of the Joint Use Improvement and City organized sponsored activities.

11.3 Hours of Operations. The Joint Use Committee shall establish the hours of operations of the Joint Use Improvement.

11.4 Prohibition. The Joint Use Improvement is located in a Drug Free Zone. The possession or use of alcoholic beverages and the possession of firearms shall be prohibited within the boundaries of the Joint Use Improvement as well as the use of use of nicotine tobacco products including chewing tobacco, and electronic ("e") cigarettes.

XII.

Cost sharing for operation and maintenance

12.1 Operation and Maintenance of Joint Use Improvement. Operation and maintenance, subject to the provisions of Section XI, shall apply to the Joint Use Improvement required by the District and the City.

(a) District shall operate and maintain the Joint Use Improvement and City shall reimburse District as set out herein.

(b) District will provide property for construction of and access to the Joint Use Improvement together with parking, landscaping, and utility infrastructure for the Joint Use Improvement.

(c) City will provide, subject its pro-rata share of cost reimbursement based on the parties cost contribution as provided under section 12.1(j), electricity, water, wastewater and gas services to the Joint Use Improvement.

(d) City and District shall enter into an annually approved schedule and budget for the joint use of the Joint Use Improvement. The schedule and budget shall be approved on or before August 1 of each fiscal year after the year in which the Joint Use Improvement is completed and accepted.

(1) The annual budget will estimate the cost of operations, maintenance and supplies for the Joint Use Improvement for each upcoming fiscal year and provide for District and City to share in said costs as provided herein. If actual expenses vary in excess of ten (10) percent annually that amount shall be added or subtracted at the end of the fiscal year and true-up payments shall be made to the party entitled thereto on or before September 1 of each year during the term of this Agreement.

(2) If capital improvements or repairs are necessary for Joint Use Improvement, District will notify City of the needed repairs and estimated costs thereof and City will have sixty (60) days to review. If the repairs are of an emergency nature, the review period shall be shortened to such time as the City Manager and District's Superintendent of Schools may agree upon. If the repairs are not an emergency or in the event of needed capital improvements, City has the option of deferring same to its next budget year, if sufficient funds are not available in its current budget. Performance of such work shall be scheduled in a manner acceptable to both parties.

(e) District will pay for all staffing costs associated with the use of the Joint Use Improvement subject, as appropriate, to said costs being reimbursed by City as provided under section 12.1(h). Staffing provided by District will be from 8:00 a.m. until 5:00 p.m., when in use during the week. District will provide (1) a pool manager, (2) two custodians. Each party will provide, at its own cost, life guards to oversee their respective use of the project, including when contracted for use by third parties, and liability insurance as provided under Article XV.

(f) Expenses of Operation, Maintenance and Supplies shall be defined to include the following:

(1) Operation: Reasonable expenses incurred daily, weekly or monthly, including but not limited to items such as cleaning, disinfecting, electricity and similar items which are regularly incurred, plus the salaries for custodians and other employees to perform the work.

(2) Maintenance: Reasonable expenses incurred for routine repairs to structures and equipment including but not limited to contracted maintenance costs, heating, cooling, ventilation and filtering plants, plumbing fixtures, electrical fixtures, and include reconditioning and repainting floors and walls.

Expenses incurred for non-routine repairs and/or replacement and capital improvements shall be presented to City and District for review and recommendation pursuant to 12.1(d)(2) above.

(3) Supplies: Reasonable expenses incurred in connection with the use of the facilities such as brooms, mops, toilet supplies, soap, lights, lubricating oil, swimming pool chlorine and similar custodial supplies or items.

(4) No Capital Improvements, Debt Service, Insurance or General Administrative Costs are to be included as reasonable expenses within the definitions of Operation, Maintenance and Supplies set out above.

(g) District shall pay the costs of Operation, Maintenance and Supplies of the Joint Use Improvement subject to reasonable cost reimbursement by City based on the cost contribution provided under 12.1(h).

(h) District and City's contribution for the costs of staffing, operation, maintenance and supplies of the Joint Use Improvement is as follows:

- (1) District 65%
- (2) City 35%

(i) District shall submit to City, on a quarterly basis, actual costs for staffing, operation, maintenance, and supplies of the Joint-Improvement subject to reimbursement by City of their pro-rata share cost contribution as provided under 12.1(h). If there is a dispute between City and District to the amount of cost reimbursement by City said dispute shall be submitted to a third party mediator as provided under Article XXIV. City is entitled to audit District's costs for the staffing, maintenance, operations, and supplies of the Joint Use Improvement upon written reasonable notice to the District.

(j) Both District and City shall have a duty to maintain Joint Use Improvement during their control in a good and usable condition.

(k) Any operating agreement for the Joint Use Improvement entered into with a third party operator shall be approved by an amendment to this Agreement. Prior to execution, such operating agreement (and any subsequent operating agreement) shall be subject to comment by the City's bond counsel should the City have tax-exempt bonds that were issued to finance the Joint Use Improvement (and secured by the Venue Sales Tax) outstanding and unpaid.

XIII.

Signs and Acknowledgment of Participation

13.1 District agrees that signs shall be located on the Joint Use Improvement site during construction which acknowledge the participation of City and District in the Joint Use Improvement Development.

13.2. District agrees to include in the design plans a permanently-installed plaque or other suitable permanent sign within the Joint Use Improvement which acknowledges the participation of the City and in the Joint Use Improvement Development. The size, form, material, verbiage and location of such sign shall be mutually agreed upon by the parties.

13.3 District further agrees to provide in the design phase, and include in the Joint Use Improvement's construction, locations for sign(s) which announce public use hours for City users and such other information as may be necessary to inform the public of available programs provided by the City. The size, form, material, verbiage, and location of such signs are subject to mutual agreement.

13.4 District shall erect signs informing Joint Use Improvement Users of an alcohol and firearm ban, as described in Section 14.1 below.

13.5 Throughout the term of this Agreement, in all press releases, flyers, brochures, and other informational material prepared and distributed by District and City, District and City agree to include acknowledgment and recognition of the joint nature of the Joint Use Improvement.

XIV. Safety

14.1 District and City hereby agree and pledge that each shall fully comply with all established safety standards applicable to operation and use of the Joint Use Improvement. District shall post such informational signs as necessary to inform users of rules, regulations, governmental codes, and ordinances.

XV. Insurance and Non-Indemnification

15.1 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, which shall cover liability for property damage and personal injury pursuant to City's use of the Joint Use Improvement.

15.2 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, which shall cover liability for property damage and personal injury pursuant to District's use of the Joint Use Improvement.

15.3 District and City shall each be liable for their own acts of negligence, to the extent provided in law.

XVI. Term

16.1 **Term.** This Agreement shall begin upon approval by City Council and District Board of Trustees and shall continue for the useful life of the Joint Use Improvement and as long as said Joint Use Improvement continues to be used. **Notwithstanding the foregoing, it is the express intent of the City and the District that even though the Joint Use Improvement will be located on land owned by the District, all of the citizens of the City will have the irrevocable right to the full use and benefit of the Joint Use Improvement, as further described herein, during such time that the Venue Sales Tax is being utilized to pay maintenance and operation of the Joint Use Improvement and/or during such time that bonds issued to finance the Joint Use Improvement and secured by the Venue Sales Tax are outstanding and unpaid.**

XVII.
Public Education and Recreation Facility

17.1 **Public Education and Recreation facility.** The Joint Use Improvement will be operated as a public education and recreation facility in accordance with program guidelines and authorized public purposes. There shall be no discrimination based upon race, sex, age, religion, national origin, or disability in the use of the Joint Use Improvement.

XVIII.
Default

18.1 The parties hereto shall be entitled to written notice of default. Absent a cure of default satisfactory to the notifying party, that party may, at the conclusion of ninety (90) days from the receipt of notice, declare default, and both parties shall be entitled to their respective rights and remedies under contract and law.

XIX.
Assignment

19.1 This Agreement shall not be assignable by either party, unless written authorization is first obtained from the other party.

XX.
Severability

20.1 If any clause or provision of this Agreement is illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, including any renewals, then and in that event, it is the intent of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intent of the parties to this Agreement that, in lieu of each clause or provision of this Agreement that is 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.

XXI.
Entire Agreement

21.1 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, or representation not herein written.

XXII.
Amendment

22.1 This Agreement may be amended in writing by duly authorized officials of City and

District. Modifications which do not change the essential scope and purpose of this Agreement may be approved by the City Manager on behalf of the City, and by the Superintendent of Schools on behalf of District.

XXIII. Notice

23.1 In the event of scheduled maintenance, special events, or any other event or use which would impact the scheduling or use of the Joint Use Improvement the party conducting the maintenance or event will provide ninety (90) days written notice to the other party.

23.2 Both District and City will have a person on-site at all times the Joint Use Improvement is open for operation for their respective activities.

23.3 Written notice shall be provided, as follows:

If to City:
City Secretary
P. O. Box 579
Laredo, Texas 78041

If to District:
United Independent School District
201 Lindenwood Road
Laredo, Texas 78045
Attention: Superintendent of Schools

XXIV. Dispute Resolution

24.1 If the event of a dispute arising under this agreement, the District and City must participate in mediation before proceeding to litigation as provided herein to resolve any dispute arising under this agreement. The mediator shall be agreed to by District and City; however, if District and City cannot agree on a mediator, Raul Vasquez, a certified mediator, shall be appointed by default.

XXV. Remedies

25.1 **Remedies.** If there is a breach of this Agreement by either Party, the Party not in breach will have against the other Party all lawful remedies for breach of contract. The prevailing Party shall be entitled to recover reasonable attorneys fees. This Agreement is for the exclusive benefit of the City and the District and in no way may be construed to be for the benefit of any third party.

XXVI. Term of Lease

26.1 **Lease.** District hereby leases to City the land upon which the Joint Use Improvement is constructed for a period coextensive with the term of this Agreement, including the subsidiary rights of access to, and ingress and egress to, through and across the land described in Exhibit

“__.” attached hereto. (insert survey)

**XXVII.
Texas Law To Apply**

27.1 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 Webb County, Texas.

**XXVIII.
Force Majeure**

28.1 Neither party to this Agreement shall be required to perform any term, condition, or covenant in this Agreement 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, and any other cause not reasonably within the control of either party to this Agreement and which, by the exercise of due diligence, such party is unable, wholly or in part, to prevent or overcome. If, by reason of force majeure, either party is prevented from full performance of its obligations under this Agreement, written notice shall be provided to the other party within three (3) days.

**XXVIX.
Gender**

29.1 Words of any gender 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 otherwise requires.

**XXX.
Captions**

30.1 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.

**XXXI.
Authority**

31.1 The signers of this Agreement hereby represent and warrant that they have authority to execute this Agreement on behalf of each of their governing bodies.

4/28

WITNESS the signatures of the parties hereto in duplicate originals this the ____ day of

_____, 2015.

ATTEST:

Secretary

UNITED INDEPENDENT
SCHOOL DISTRICT

Javier Montemayor, Jr.
President, Board of Trustees

ATTEST:

Secretary

CITY OF LAREDO

Jesus M. Olivares
City Manager

APPROVED:

THIS THE 28th DAY OF APRIL, 2015.

By:

City Attorney