



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC Discussion and possible action to enter into a twenty-five (25) year lease agreement with Webb County, Texas for the lease of approximately 8.66 (377,443 Square feet) acres of school district property for use Webb County as a dedicated park ("Trautmann Park") and any matters incident thereto

SUBMITTED BY: Fortunato Paredes **OF:** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: September 21, 2011

RECOMMENDATION:

It is recommended that the United UISD Board of Trustees discuss and take possible action to enter into a twenty-five (25) year lease agreement with Webb County, Texas for the lease of approximately 8.66 (377,443 Square feet) acres of school district property for use Webb County as a dedicated park ("Trautmann Park") and any matters incident thereto.

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

**LEASE AGREEMENT
FOR RECREATIONAL FACILITY
BETWEEN
UNITED INDEPENDENT
SCHOOL DISTRICT
AND
WEBB COUNTY**

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**LEASE AGREEMENT FOR RECREATIONAL FACILITY
BETWEEN UNITED INDEPENDENT SCHOOL DISTRICT
AND WEBB COUNTY**

STATE OF TEXAS §
 § KNOW AL MEN BY THESE PRESENTS:
COUNTY OF WEBB §

This Lease Agreement is made and entered into by and between the United Independent School District (“UISD”), a political subdivision of the State of Texas acting through its Board of Trustees as Lessor and Webb County, Texas (“Webb County”), a political subdivision of the State of Texas acting through its Commissioner Court as Lessee.

WITNESSETH

WHEREAS, UISD is the owner of the Premises Leased hereunder which is also known as “Trautmann Park”; and

WHEREAS, Webb County wishes to lease said premises (Trautmann Park) for the purposes of operating a public recreational facility for the benefit of the community, including residents of Webb County; and

WHEREAS, Webb County, through its Commissioners Court, has determined that the operation of Trautmann Park for recreational purposes serves a legitimate public purpose.

WHEREAS, UISD and Webb County wish to enter into this lease (the "Lease") for that purpose; and

WHEREAS this Lease is intended to establish certain terms, conditions, and restrictions in relation to such purpose; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, including the improvements constructed on said Premises (Trautmann Park), the following are the terms of the Lease:

**ARTICLE I
DEFINITIONS**

Section 1.01 Defined Terms

Unless the context requires otherwise, and in addition to the terms defined above, each of the following terms and phrases used in this Lease has the meaning ascribed thereto below:

- (a) **“County”** shall mean the County of Webb, a Texas County organized under the laws of the State of Texas, acting by and through its County Judge as authorized by its Commissioners Court of the County of Webb and shall also mean Lessee.
- (b) **“County Fiscal Year”** shall mean October 1st to September 30th.
- (c) **“County Fund”** shall mean those funds designated and authorized by the Commissioners Court of the County of Webb for purposes of maintenance and operation of the Premises (Trautmann Park).
- (d) **“County Use”** shall mean use of the Premises (Trautmann Park) designated for use by Webb County as herein signed by the parties.
- (e) **“Concurrent Use”** shall mean simultaneous cooperative use of Premises (Trautmann Park) as agreed by the parties.
- (f) **“Land”** shall mean the property owned by UISD as herein agreed upon by the parties.
- (g) **“Lease Payments”** means the rent payment and/or any other payments of money required to be paid or made available to UISD pursuant to this Lease, including (without limitation) cost of insurance required to be maintained pursuant to this Lease.
- (h) **“Notice”** means any notice, writing, or other communication given under this Lease.
- (i) **“Operating and Maintenance Expenses”** means the non-capital expenses necessary for the operation and maintenance of the Premises (Trautmann Park) including but not limited to all salaries, labor, repairs, utilities, and other customary expenses.
- (j) **“Party” or “Parties”** means, individually or collectively (as applicable), Webb County and UISD, as parties to this lease.
- (k) **“Third Party Use”** shall mean use of the Premises by those (Third Party Users) other than the parties to this Lease and/or their staff as may be agreed upon herein by the parties.
- (l) **“UISD”** shall mean the United Independent School District, governed by its Board of Trustees and shall also mean Lessor.
- (m) **“UISD Fiscal Year”** shall mean September 1st to August 31th.

- (n) **“UISD Funds”** shall mean those funds designated and authorized by UISD’S Board of Trustees for purposes of maintenance and operation of the Premises, including but not limited to:

The appraisal market value of the real property leased under this Agreement contributed by UISD on which the Improvements constructed by Webb County are located.

- (o) **“UISD Use”** shall mean exclusive use of the Premises by UISD.

Section 1.02 Construction of Certain Terms

For all purposes of this Lease, except as otherwise expressly provided or unless the context otherwise requires, the following rules of construction shall apply:

- (a) Words importing a gender include either gender.
- (b) Words importing the singular include the plural and vice versa.
- (c) A reference to a document includes an amendment, supplement, or addition to, or replacement, substitution, or notation of, that document but, if applicable, only if such amendment, supplement, addition, replacement, substitution, or notation is permitted by and in accordance with that applicable document.
- (d) Any term defined herein by reference to another instrument or document shall continue to have the meaning ascribed thereto whether or not such other instrument or document remains in effect.
- (e) A reference to any Party includes such Party's permitted successors and assigns, and reference to any Party in a particular capacity excludes such Party in any other capacity or individually.
- (f) All references in this Lease to designated "Articles," "Sections," and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Lease. All references in this Lease to "Exhibits" are to the designated Exhibits to this Lease.
- (g) The words "herein," "hereof," "hereto," "hereby," "hereunder," and other words of similar import refer to this Lease as a whole and not to the specific Section or provision where such word appears.
- (h) Every "request," "order," "notice," "statement," "consent," "approval," "waiver," or similar action under this Lease by any Party shall, unless the form of such instrument is specifically provided, be in writing duly signed by a duly authorized representative of such Party.
- (i) The Parties hereto acknowledge that each such party and their respective counsel

have participated in the drafting and revision of this Lease. Accordingly, the Parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Lease.

Section 1.03 Table of Contents; Titles and Headings

The table of contents, the titles of the articles, and the headings of the sections of this Lease are solely for convenience of reference, are not a part of this Lease, and shall not be deemed to affect the meaning, construction, or effect of any of its provisions.

Section 1.04 Recitals

The recitals to this Lease and other preliminary language are hereby incorporated in this Lease.

ARTICLE II THE PREMISES Trautmann Park

Section 2.01 General

The Premises (Trautmann Park) will be operated as a public recreational facility that will serve the community and residents of the City and County. The County and its residents shall have equal access to the facilities during normal business hours on the same basis as any other user.

Section 2.02 Covenants with Respect to Improvements of the Premises

(a) During the Lease Term, title to all improvements existing or constructed upon the Land are and shall be vested in the County. Webb County may construct additional improvements or modifications only if approved in writing by the UISD.

(b) At the expiration of the Lease Term, any and all buildings and other improvements on the Land will become the property of UISD free and clear of all liability and expenses as is.

Section 2.03 Leased Area Described

UISD as Lessor shall lease the real property, described by metes and bounds in the attached Exhibit A and the attached survey map Exhibit A-1 each incorporated herein by reference as if set out in full for all intents and purposes including improvement, and known as "Trautmann Park" to Webb County as Lessee.

Section 2.04 Lease Term and Lease Payments

(a) *Lease Term.* The term of this Lease shall be twenty-five (25) years, hereinafter referred to as "Lease Term" commencing on the "Commencement Date," as hereinafter defined and terminating on twenty-fifth (25th) anniversary of the Commencement Date. Since Webb County's investment in the Park will be amortized over a twenty-five year period, if lease is terminated by UISD prior to the twenty-fifth (25th) anniversary term, the District will reimburse Webb County for those years remaining on the lease term at one hundred percent (100%) of Webb County costs in making the improvement multiplied by the ratio of years left remaining on the lease over the twenty-five year lease term less the cost of depreciation of the Project improvements which said depreciation shall be arrived at by a neutral third party consultant, paid equally by both Parties to the lease.

(b) *The Commencement Date.* The Commencement Date shall be the date on which Lessee is given written notice by Lessor that it may take possession of the Premises (Trautmann Park), and a confirmation of the commencement date signed by the parties shall be annexed to this lease document, and become part of it.

(c) *Rent.* Lessee shall pay the following rent: Lessee herein agrees to pay Lessor as rent for each year, the sum of ONE AND NO/100 DOLLARS (\$1.00) which is to be paid in advance of each year during the term of this Lease.

(d) All rent payments shall be due and payable in advance, beginning on the Commencement Date annually without notice from Lessor during the lease term. Lessor, at its discretion, may elect to send invoices as payment notices.

Section 2.05 Use

(a) *Joint Use Provision.* As part of the consideration of Lessor leasing Premises (Trautmann Park) to Lessee, Lessor shall permit Lessee to operate Premises (Trautmann Park) facilities, for Third Party Use, which includes members of the general public, consistent with Lessor's and Lessee's Third Party Use policies. If Lessor and Lessee's Third Party use policies conflict or cannot otherwise be reconciled, the Joint Use Committee shall recommend a resolution to Third Party Use of Premises for consideration by Lessor and Lessee.

(b) *Joint Use Committee.* A Joint Use Committee consisting of two (2) Webb County representatives and two (2) UISD representatives shall be established and convene at least on a quarterly basis upon commencement of this lease to schedule and review use, operational policies and maintenance issues. The use of Premise (Trautmann Park) facilities by third party users shall be pre-approved by the Joint Use Committee. The Joint Use Committee shall recommend fee schedules to Lessee; however, Lessee reserves the right to establish fees, charges, and conditions of use as long as it does not conflict with UISD policies. The Joint Use Committee shall establish and review maintenance standards for Premises (Trautmann Park).

- (c) *UISD Use.* UISD shall have the right of first refusal for UISD'S use of Premises (Trautmann Park) during regular or summer school hours, and for any scheduled special school events or activities sponsored by or related to UISD, including, but not limited to intramural sports, University Interscholastic League activities, or State and or Regional athletic competitions. UISD shall identify for the Joint Use Committee time periods and specific facilities to be utilized by UISD.
- (d) *Webb County Use.* Premises (Trautmann Park) shall be reserved for use by Webb County during any period during which UISD activities are not scheduled and where such Webb County use shall include Third-Party Users.

Section 2.06 Condition, Operation, Maintenance, and Repair of the Leasehold and Improvements

a. Lessee Accepts Premises "As-Is." Lessee acknowledges that it has fully inspected the Premises (Trautmann Park) and hereby accepts the Premises (Trautmann Park) and any buildings, improvements and appurtenances thereto "As Is", that is, in their present state and condition, as suitable for the purpose for which the same are leased. Lessee agrees to allow for changes in such condition, occurring by reasonable deterioration between the Commencement Date and the date such changes shall occur.

b. Maintenance and Operations. Upon the Commencement of the Lease, and unless otherwise addressed below, Lessee shall be solely responsible for: (i) the Operating and Maintenance Expenses of the Premises ("Trautmann Park"), (ii) keeping the Premises in safe condition, and (iii) keeping the Premises in good repair and operating condition, making from time to time, all necessary repairs, renewals, and replacements as it deems necessary.

- (1) *Park Area Space and Lighting.* The cost of operating and maintaining park area space and lighting for this space shall be that of Lessee (Webb County). Usage shall be based on terms approved annually by the Joint Use Committee.
- (2) *Security Lighting.* Lessee (Webb County) shall be responsible to provide security lighting to Premises (Trautmann Park).
- (3) *Specials Events.* The costs of security and traffic control for special events held on the Premises shall be the responsibility of the event's sponsor. Third-Party users sponsoring events shall be responsible for assuming all costs of security and traffic control as part of their use agreement with Webb County for use of Premise facilities. Litter control after any special event shall be assumed and undertaken by the event's sponsor, provided; however, that Webb County may recover the costs of litter control from Third-Party Users as part of a contractual agreement for the use of the Premise facilities. Webb County may also require a deposit from all Third-Party Users entering into a facility use agreement with Webb County.
- (4) *UISD or Webb County Exclusive Use.* During periods sanctioned by the Joint-Use

Committee for the exclusive use by Webb County (Lessee) or UISD (Lessee), the party entitled to such use may authorize the sale of concessions for itself or for any non-profit agency approved by the Joint Use Committee.

- (5) *Parking.* It is generally provided that parking shall be available to Lessor, Lessee, and Third-Party Users at all times, except that parking will be restricted during UISD'S school hours or UISD related events, or parking may be reserved as approved by the Joint Use Committee for other special event. The responsibility for controlling parking shall that of the special event sponsor. Third Party Users sponsoring events shall be responsible for assuming all costs of parking control as part of their contractual agreement with Lessee for use of the Premise facilities.
- (6) *Irrigation and Landscape Maintenance.* Lessee shall responsible for irrigation and landscape maintenance of Premises. Lessee must comply with the Texas Structural Pest Control Board directives and Integrated Pest Management regulations.
- (7) *Fencing.* Lessor and Lessee shall be equally responsible for the maintenance and repair of common fencing located along the eastern, western and southern park boundaries of Premises (Trautmann Park). Lessee shall be solely responsible for Trautmann Park's northern boundary fence lines and gates, which is not a common shared boundary with Lessor but is along the City of Laredo's right of way along International Boulevard, Laredo, Texas. It is mutually agreed that no fence shall be erected by either party to this Lease except as approved by the Joint Use Committee.
- (8) *Security.* Lessee shall be solely responsible for security of leased Premises (Trautmann Park). Security shall include precluding public access to Trautmann Elementary and Trautmann Middle School. Lessor and Lessee agree that any additional security for specified events shall be at the cost of the party using or leasing the facility.
- (9) Lessee shall provide for and place, throughout the leased premises, covered trash receptacles.

c. Signage. Lessee, at its sole cost, shall provide informational signs on Premises as necessary to inform Third-Party Users and the general public of park hours, rules, regulations, governmental codes, and ordinances. Informational signs shall also be posted to inform the public about the prohibition of possessing illegal or illicit drugs on leased premises as well as the prohibition against firearms and weapons on leased premises.

d. Prohibited Uses. The Parties agree that Lessee shall not enter into any exclusive contracts with any entity or individual for the use of the Premises, and Lessee shall prohibit the use of the leased Premises for any political functions, rallies, or any politically related engagements. The Premises shall not be used for the sale, consumptions, distribution, or storage of alcoholic beverages. When requested by Webb County, UISD shall advise the County of the scope of activities and events occurring at the Project.

e. **Repair of Damages.** If the Premises or improvements thereto is partially destroyed or damaged by fire or other casualty, then the Lessee is obligated to repair and restore the Premises and improvements as soon as possible. Such repair shall commence no later than six (6) months after such damage, and be completed within six (6) months thereafter. Such repair or restoration shall restore the Premises and the improvements thereto in substantially the same condition in which the Premises and improvements thereto was before such damage. In the event the Lessee has not commenced repairs within six months from the date of said damage and thereafter not completed such repairs within six months, the Lessor may immediately terminate the lease.

f. **Destruction of the Premises or Improvements.** In the event the Premises or the improvements thereto are either completely destroyed or severely damaged such that repairs cannot commence within six (6) months and completed within six (6) months thereafter, then upon agreement of both Parties, the Lease may be terminated. Such termination shall be effective as of the date of the damage or destruction, and made effective by written agreement of the Parties.

ARTICLE III INSURANCE

The Lessee shall, at all times during the term of this Agreement and at its sole expense, maintain the following insurance coverage by companies authorized and admitted to do business in the State of Texas:

(i) Commercial General Liability insurance rated A- or greater by AM Best Rating with an admitted carrier licensed by the Texas Department of Insurance. The insurance policy shall have an occurrence limit in the minimum amount of \$1,000,000.00 and an annual aggregate of \$2,000,000.00 to be renewed annually. The Lessor shall be named as an additional insured on Lessee's general liability policy with a waiver of subrogation in favor of the Lessor.

(ii) The Lessee shall maintain a commercial property and casualty insurance policy covering the Premise buildings and improvements and the contents thereof. The coverage shall be no less than 90% of the value of the building at replacement cost basis. Further, such insurance shall also be a fire insurance policy with extended coverage endorsement, including vandalism, and malicious mischief and naming Lessor as an additional insured.

(iii) The Lessee shall annually furnish to Lessor on the anniversary date of this Lease, a certificate or other evidence and proof of compliance with the above required insurance requirements. The Lessee shall provide Lessor with notice of any change thereof, and furnish Lessor evidence of the Lessee's acquisition of a substitute therefore, and payment of the premium thereof. If the Lessee shall fail to maintain the insurance coverage specified herein, then the Lessor may obtain the same and add the cost of such insurance premiums to the next Lease Payment due.

(iv) The Lessee must provide the Lessor with not less that sixty (60 days) notice of cancellation or non-renewal of coverage.

All Third Party Users shall enter into a written agreement with Lessee, which shall require users to provide liability and casualty insurance coverage acceptable to Lessee and Lessor.

ARTICLE IV
FINANCIAL AND OPERATIONAL REVIEW

Lessor's Review. Upon request from the Lessor, the Lessee shall promptly provide certain financial and operating data concerning the Premises to the Lessor. In addition, the Lessee will give any authorized representative of the Lessor access during all business hours to, and permit such representative to examine, copy, or make excerpts from any and all books, records, and documents related to the Premises in its possession.

ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 5.01 Representations of Webb County

Webb County hereby makes the following representations, warranties, and covenants to and with UISD as of the date hereof, unless another date is expressly stated to apply:

- (a) Existence. Webb County is a political subdivision of the State of Texas.
- (b) Authorization. Webb County, as Lessee, is duly and legally authorized to execute, deliver, and perform this Lease and has complied with all laws, rules, regulations, charter provisions, and bylaws relating to its corporate existence and authority to act, and the undersigned representative is authorized to act on behalf of and bind Webb County to the terms of this Lease. Webb County has provided to UISD on or prior to the date hereof, a certified copy of a resolution of its commissioners court authorizing Webb County's execution of this Lease. Webb County has all requisite power to perform all of its obligations under this Lease.
- (c) Enforceable Obligations. Assuming due authorization, execution, and delivery by each signatory party hereto and thereto, this Lease, all documents executed by Webb County pursuant hereto, and all obligations of Webb County hereunder are enforceable against Webb County in accordance with their terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditor's rights generally and by general equity principles (regardless of whether such enforcement is considered in a proceeding in equity or at law).
- (d) No Legal Bar. The execution and delivery of this Lease and the performance of its obligations hereunder by Webb County will not conflict with any provision of any law, regulation, or Governmental Rules to which Webb County is subject to or in conflict with, or result in a breach of, or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Webb County is a party or by which it is bound or any order or decree applicable to Webb County.

(e) Litigation. Except for such matters that have been disclosed in writing to UISD, if any, there are no legal actions or proceedings pending or, to the knowledge of Webb County, threatened against Webb County which, if adversely determined, would materially and adversely affect the ability of Webb County to fulfill its obligations under this Lease or the financial condition of Webb County.

(g) Documents. All documents made available by Webb County to UISD, as well as its agents or representatives prior to the date hereof, are true, correct, and complete copies of the instruments which they purport to be and accurately depict the subject matter addressed therein. Webb County has obtained or will obtain prior to placing the Project in service all permits, licenses, authorizations, consents, approvals, material orders, and certificates required by federal, state, and local governments and Governmental Agencies in order to operate the Premises and is otherwise in compliance with all federal, state, and local laws, ordinances, and regulations applicable to the operation of the Premises.

(h) Knowledge. Webb County has no knowledge of any facts or circumstances which presently evidence, or with the passage of time would evidence, that any of the representations made by Webb County or any other Party under this Lease are in any way inaccurate, incomplete, or misleading.

(i) Project Use. Webb County intends to and will cause the Premises to be operated as a recreational facility and has no intention of disposing or abandoning the Premises.

Section 5.02 Representations of UISD

UISD hereby makes the following representations, warranties, and covenants as of the date hereof:

- (a) *Existence.* UISD is a political subdivision of the State.
- (b) *Power and Authority.* UISD has all requisite power and authority to enter into this Lease and perform all of its obligations hereunder. The execution and performance by UISD of this Lease has been duly authorized by its Board of Trustees.
- (c) *No Legal Bar.* The execution and performance by UISD of this Lease does not and will not violate any provisions of any contract, agreement, instrument, or Governmental Rule to which UISD is a party or is subject.
- (d) *Litigation.* Except such matters which have been disclosed in writing to Webb County, there are no pending legal actions or proceedings known to UISD which, if adversely determined, would materially and adversely affect the ability of UISD to fulfill its obligations under this Lease.
- (e) *Enforceable Obligations.* Assuming due authorization, execution, and delivery by each party hereto and thereto each document executed by UISD pursuant hereto, all obligations

of USD hereunder are enforceable against Webb County in accordance with their terms.

Section 5.03 Disclaimer of USD

USD ACKNOWLEDGES THAT, EXCEPT FOR USD'S REPRESENTATIONS CONTAINED WITHIN THIS LEASE, NEITHER USD NOR ANY AFFILIATE OF USD NOR ANY RELATED PARTY OF USD HAS MADE ANY REPRESENTATION OR WARRANTY WHATSOEVER (WHETHER EXPRESS OR IMPLIED) REGARDING THE PREMISES, THE SUBJECT MATTER OF THIS LEASE, OR ANY EXHIBIT HERETO, OTHER THAN THE EXPRESSED OBLIGATIONS CONTAINED IN THIS LEASE. WEBB COUNTY AGREES THAT NEITHER USD NOR ANY OF THE USD'S AFFILIATES AND RELATED PARTIES WILL HAVE ANY RESPONSIBILITY FOR (AND HAVE MADE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER AS TO) ANY OF THE FOLLOWING:

(a) THE ACCURACY OR COMPLETENESS OF ANY INFORMATION SUPPLIED BY ANY PERSON OTHER THAN USD'S REPRESENTATIONS MADE UNDER THIS LEASE;

(b) THE ACCURACY OF ANY FINANCIAL PROJECTIONS, COST ESTIMATES, DEVELOPMENT SCHEDULES OR OTHER MATTERS RELATING TO THE PREMISES OR ANY PUBLIC IMPROVEMENTS REQUIRED TO BE CONSTRUCTED OR FUNDED BY WEBB COUNTY UNDER THE TERMS OF THIS LEASE.

NEITHER USD NOR ANY OF USD'S AFFILIATES AND RELATED PARTIES WILL BE LIABLE AS A RESULT OF ANY FAILURE BY ANY PERSON (OTHER THAN WEBB COUNTY) UNDER THIS LEASE (INCLUDING WITHOUT LIMITATION ANY DOCUMENT APPENDED AS AN EXHIBIT TO THIS LEASE) TO PERFORM THEIR RESPECTIVE OBLIGATIONS THEREUNDER. IT IS UNDERSTOOD AND AGREED BY WEBB COUNTY THAT IT HAS BEEN AND WILL CONTINUE TO BE SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL OR INVESTIGATION INTO THE PREMISES.

NOTWITHSTANDING ANYTHING APPEARING IN THIS LEASE TO THE CONTRARY, UNDER NO CIRCUMSTANCES SHALL USD BE RESPONSIBLE FOR THE OBLIGATIONS OF WEBB COUNTY, FINANCIAL OR OTHERWISE, INCURRED THEREBY IN FURTHERANCE OF THE DEVELOPMENT OF THE PREMISES.

Section 5.04 Reliance

Each Party recognizes and acknowledges that, in entering into this Lease, (a) all Parties are expressly and primarily relying on the truth and accuracy of the foregoing representations, warranties, and covenants of each Party without any obligation to investigate the accuracy of completeness of such representations and covenants, and notwithstanding any investigation

thereof by any Party, that such reliance exists on the part of each Party prior to the date hereof and thereafter until this Lease is or shall be terminated according to its terms; (b) such representations and covenants are a material inducement to each Party in making this Lease and agreeing to undertake and accept its terms; and (c) each Party would not be willing to do so in the absence of any of such representations and covenants.

Section 5.05 WEBB COUNTY COVENANTS

INDEMNIFICATION. WEBB COUNTY COVENANTS AND AGREES, TO THE EXTENT IT MAY BE PERMITTED TO DO BY APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO TEXAS CIVIL PRACTICE & REMEDIES CODE CHAPTER 101 AND 102, WEBB COUNTY DOES HEREBY AGREE TO DEFEND, HOLD HARMLESS, AND INDEMNIFY UISD, ITS ELECTED OFFICIALS, EMPLOYEES, AND REPRESENTATIVES THEREOF, INDIVIDUALLY OR COLLECTIVELY, FROM ANY AND ALL DEMANDS, CLAIMS, SUITS, ACTIONS, JUDGMENTS, EXPENSES AND ATTORNEYS'S FEES INCURRED IN ANY LEGAL PROCEEDING BROUGHT AGAINST UISD ARISING OUT OF, RESULTING FROM, OR RELATED TO WEBB COUNTY'S WILLFUL MISCONDUCT, NEGLIGENCE, OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS LEASE, INCLUDING ANY SUCH ACTS OR OMISSIONS OF WEBB COUNTY, ITS EMPLOYEES AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THEIR RIGHTS OR DUTIES UNDER THIS LEASE, ALL WITHOUT HOWEVER, WAIVING ANY DEFENSES OF THE PARTIES. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES SPECIFIED HEREIN AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY NOT A PARTY THIS AGREEMENT. WEBB COUNTY SHALL PROMPTLY ADVISE UISD IN WRITING OF ANY CLAIM OR DEMAND AGAINST SUCH PARTY RELATED TO OR ARISING OUT OF WEBB COUNTY'S ACTIVITIES UNDER THIS LEASE AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT WEBB COUNTY'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY PROVISIONS SPECIFIED IN THIS PARAGRAPH. UISD SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING WEBB COUNTY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

UISD COVENANTS AND AGREES, TO THE EXTENT IT MAY BE PERMITTED TO DO BY APPLICABLE LAW, INCLUDING, BUT NOT LIMITED TO TEXAS CIVIL PRACTICE & REMEDIES CODE CHAPTER 101 AND 102, UISD DOES HEREBY AGREE TO DEFEND, HOLD HARMLESS, AND INDEMNIFY WEBB COUNTY, AND ITS ELECTED OFFICIALS, THEREOF, INDIVIDUALLY OR COLLECTIVELY, FROM ANY AND ALL DEMANDS, CLAIMS, SUITS, ACTIONS, JUDGMENTS, EXPENSES AND ATTORNEYS'S FEES INCURRED IN ANY LEGAL PROCEEDING BROUGHT AGAINST WEBB COUNTY ARISING OUT OF, RESULTING SOLELY FROM, OR RELATED TO UISD'S USE OF THE PARK WHEN REQUESTED FROM THE JOINT USE COMMITTEE UNDER THIS LEASE. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES SPECIFIED HEREIN AND NOT INTENDED TO

CREATE OR GRANT ANY RIGHTS, CONTRACTURAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY NOT A PARTY TO THIS AGREEMENT. UISD SHALL PROMPTLY ADVISE WEBB COUNTY IN WRITING OF ANY CLAIM OR DEMAND AGAINST SUCH PARTY RELATED TO OR ARISING OUT OF UISD USE OF HE PARK WHEN REQUESTED FROM THE JOINT USE COMMITTEE UNDER THIS LEASE AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT UISD COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY PROVISIONS SPECIFIED IN THIS PARAGRAPH. WEBB COUNTY SHALL HAVE THE RIGHT, AT ITS OPTION AND AT ITS OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING UISD OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

ARTICLE VI TERMINATION AND REMEDIES

Section 6.01 Termination and Amendment by Agreement

This Lease may be terminated or amended at any time by mutual written consent of UISD and Webb County.

Section 6.02 Remedies

(a) *UISD Default.* If UISD defaults under this Lease, Webb County may enforce this Lease by seeking a writ of mandamus from a Webb County District Court, or may give Notice setting forth the event of default to UISD. In addition, if UISD fails to cure any alleged default within forty-five (45) days from the date UISD receives the Notice, Webb County may terminate this Lease, by providing written notice to UISD and Webb County may pursue any remedy available to Webb County at law or in equity.

(b) *Webb County's Default.* If Webb County defaults under this Lease, UISD must give Notice to Webb County. If Webb County fails to commence the cure of an alleged default specified in the Notice within a reasonable period of time, not less than forty-five (45) days after the date Webb County receives Notice, and thereafter to diligently pursue such cure to completion, UISD may seek any remedy available to UISD at law or in equity.

(c) *Recovery of Certain Fees upon Default by a Party.* If a Party defaults under this Lease, the prevailing party or parties in the dispute will be entitled to recover its reasonable attorney's fees, expenses, and court costs from the non-prevailing party or parties.

Section 6.03 Cooperation

(a) The Parties hereto agree to cooperate with each other to carry out the intent of this Lease, including but not limited to the execution of such further documents as may be reasonably necessary.

(b) In the event of any third-party lawsuit or other claim relating to the validity of this Lease or any actions taken hereunder, the parties may agree to cooperate in the defense of such suit or claim, and use their respective best efforts to resolve the suit or claim without diminution in their respective rights and obligations under this Lease.

(c) A Party may initiate mediation on any issues in dispute and the other Parties hereto must participate in good faith. The cost of mediation will be a joint expense, shared equally by each Party.

ARTICLE VII
MISCELLANEOUS PROVISIONS

Section 7.01 Notice

Any Notice must be in writing and may be given: (a) by depositing it in the United States mail, certified, with return receipt requested, addressed to the Party to be notified and with all charges prepaid; or (b) by depositing it with Federal Express or another service guaranteeing "next day delivery", addressed to the Party to be notified and with all charges prepaid; (c) by personally delivering it to the party, or any agent of the party listed in this Lease, or (d) by facsimile during regular office hours with confirming copy sent by one of the other described methods of notice set forth above. Notice by mail will be effective on the earlier of the date of receipt or three days after the date of mailing. Notice given in any other manner will be effective only when received. For purposes of notice, the addresses of the parties will, until changed as provided below, be as follows:

To Webb County: Webb County, Texas
 Office of the County Judge
 1000 Houston Street, 3rd Floor
 Laredo, Texas 78040
 Phone: (956) 523-4600
 Fax: (956) 523-5065

To UISD: United Independent School District
 Attn: Superintendent of Schools
 201 Lindenwood Drive
 Laredo, Texas 78045
 Phone: (956) 473-6201
 Fax: (956) 473-6476

The Parties may change their respective addresses to any other address within the United States of America by giving at least five (5) days' written notice to each other party. Webb County may, by giving at least five days' written notice to UISD, designate additional parties to receive copies of notices under this Lease.

Section 7.02 Severability; Waiver

If any provision of this Lease is illegal, invalid, or unenforceable, under present or future laws, it is the intention of the parties that the remainder of this Lease not be affected and, in lieu of each illegal, invalid, or unenforceable provision, a provision be added to this Lease which is legal, valid, and enforceable and is as similar in terms to the illegal, invalid, or enforceable provision as is possible.

Any failure by a party to insist upon strict performance by the other party of any material provision of this **Lease** will not be deemed a waiver or of any other provision and such party may at any time thereafter insist upon strict performance of any and all of the provisions of this Lease.

Section 7.03 Applicable Law and Venue

The interpretation, performance, enforcement, and validity of this Lease are governed by the laws of the State of Texas. Venue will be in a court of appropriate jurisdiction in Webb County, Texas.

Section 7.04 Entire Agreement

This Lease contains the entire agreement of the parties. There are no other Leases, agreements, or promises, oral or written, between the parties regarding the subject matter of this Lease. This Lease can be amended only by written agreement signed by the parties. This Lease supersedes all other agreements between the parties concerning the subject matter.

Section 7.05 Counterparts

This Lease may be executed in any number of counterparts, each of which will be deemed to be an original, and all of which will together constitute the same instrument.

Section 7.06 Exhibits.

The following Exhibits is attached and made part of this Lease:

- Exhibit "A" Survey
- Exhibit "B" Confirmation of Lease Commencement Date

**UNITED INDPENDENT
SCHOOL DISTRICT**

COUNTY OF WEBB

Mr. Judd Gilpin
UISD President

Hon. Danny Valdez
Webb County Judge

ATTEST:

Ricardo Rodriguez
UISD Secretary

Hon. Margie Ramirez-Ibarra
Webb County Clerk



**LEGAL DESCRIPTION
FOR
NORTH SIDE INTERNATIONAL PARK BOUNDARY
8.66 ACRES**

A tract of land containing 8.66 acres (377,443 S.F.), more or less, situated in Porcion 24, Abstract 268, Toribio Rodriguez, Original Grantee, City of Laredo, Webb County, Texas. Being 0.53 acres out of Lot 1, Block 1 and 8.13 acres out of Lot 2, Block 1, United Independent School District Trautmann Elementary School Plat, as recorded in Volume 15, Page 59, Webb County Plat Records, Texas. This 8.66 acre tract of land being more particularly described as follows:

Commencing at a found concrete monument being the northwest corner of Lot 12, Block 3, Loma Bonita Subdivision, Unit 1, as per plat recorded in Volume 14, Page 51, Webb County Plat Records, Texas, THENCE, N 80°22'14" E, along the north boundary of said Loma Bonita Subdivision, a distance of 495.36 feet to a set ½" iron rod and the **True Point of Beginning**;

Thence, N 11°00'21" W, over and across said Lot 2 and along a chain link fence, a distance of **49.32 FEET**, to a set ½" iron rod for a deflection point left;

Thence, N 22°42'28" W, along chain link fence, a distance of **279.42 FEET**, to a set ½" iron rod for an exterior corner hereof;

Thence, N 67°25'52" E, along said chain link fence, a distance of **163.72 FEET**, to a set ½" iron rod for a deflection point left;

Thence, N 16°08'20" E, along chain link fence, a distance of **116.95 FEET**, to a set ½" iron rod for a deflection point left;

Thence, N 22°57'31" W, along chain link fence, a distance of **80.63 FEET**, to a set ½" iron rod for a deflection point left;

Thence, N 67°49'10" W, along chain link fence, a distance of **43.19 FEET**, to a set ½" iron rod for a deflection point right;

Thence, N 22°40'43" W, along said chain link fence, a distance of **480.13 FEET**, to a set ½" iron rod being on the south right-of-way line of International Boulevard, for an exterior corner hereof;

Thence, N 67°06'49" E, along the south right-of-way line of International Boulevard, a distance of **253.57 FEET**, to a set ½" iron rod being on a tangent curve having a radius of 490.00 feet, a chord of N 56°59'58" E - 172.13 feet, hereof;

Thence, along said curve left an arc length of **173.02 FEET**, to a set ½" iron rod, being a point on the south right-of-way line of International Boulevard for an exterior corner hereof;

Thence, S 62°44'55" E, over and across said Lot 1 and along chain link fence, a distance of **72.34 FEET**, to a set ½" iron rod for an exterior corner hereof;

SHEET 1 OF 2

P.O. Box 451128 (78045) * 7615 N. Bartlett Avenue * Laredo, Texas 78041-6508
Telephone: (956) 722-4411 * Facsimile: (956) 722-5414 * www.howlandengineeringandsurveying.com

"Exhibit A"



Thence, S 35°46'42" E, along chain link fence, a distance of **27.17 FEET**, to a set 1/2" iron rod for an interior corner hereof;

Thence, N 54°30'37" E, along said chain link fence, a distance of **20.54 FEET**, to a set 1/2" iron rod for an exterior corner hereof;

Thence, S 22°40'59" E, along chain link fence, a distance of **268.54 FEET**, to a set 1/2" iron rod for an exterior corner hereof;

Thence, S 67°13'18" W, along chain link fence, a distance of **66.28 FEET**, to a set 1/2" iron rod for an interior corner hereof;

Thence, S 23°19'34" E, over and across said Lot 1 and along chain link fence, a distance of **320.53 FEET**, to a set 1/2" iron rod for an exterior corner hereof;

Thence, S 67°18'26" W, a distance of **405.46 FEET**, to a set 1/2" iron rod for an interior corner hereof;

Thence, S 22°41'34" E, a distance of **431.41 FEET**, to a set 1/2" iron rod on the north boundary of CODSA Inc. Tract, recorded in Volume 1271, Page 101, Webb County Real Property Records, for an exterior corner hereof;

Thence, S 80°22'14" W, along the south boundary of this tract, also being the north boundary of said CODSA Inc. Tract, and the north boundary of said Loma Bonita Subdivision, Unit 1, and distance of **249.98 FEET**, to the **Point of Beginning** of this 8.66 acre tract of land, more or less.


Monuments Held: A found concrete monument at the northwest corner of Loma Bonita Subdivision, Unit 1 and a found concrete monument at the northwest corner of Lot 2, Block 1, The United Independent School District, Trautmann Elementary School.

Called: N 21°41'31" W ~ 895.37'
Measured: N 22°42'15" W ~ 895.58'

Basis of Bearing: GPS Method, Zone Texas South (4205)

STATE OF TEXAS:
COUNTY OF WEBB:

I, Juan Segovia, a Registered Professional Land Surveyor, do hereby certify that the above captioned "Legal Description" and attached "Plat of Survey" represents an actual survey performed on the ground under my supervision.

R.P.L.S. No. 6290 

8/04/11
Date

SHEET 2 OF 2

P.O. Box 451128 (78045) • 7615 N. Bartlett Avenue • Laredo, Texas 78041-6508
Telephone: (956) 722-4411 • Facsimile: (956) 722-5414 • www.howlandengineeringandsurveying.com

"Exhibit A"

Exhibit "B"

THIS CONFIRMATION COMMENCEMENT DATE, dated on the _____ day of _____, 2011, is made by and between the United Independent School District, a political subdivision of the State of Texas, whose address is 201 Lindenwood Drive, Laredo, Texas 78045 (hereinafter "Lessor"), and Webb County, Texas, a political subdivision of the State of Texas, acting through its Commissioner Court, whose address 1000 Houston Street, Laredo, Texas 78040 (hereinafter called "Lessee").

WITNESSETH:

WHEREAS, Lessor and Lessee have entered into a Lease Agreement concerning an area of land located within the corporate limits of the City of Laredo know Trautmann Park (Leased Premises); and

WHEREAS, page 5 of the Lease contains a term for a period of approximately twenty-five (25) years with no specified Commencement Date: and

WHEREAS, said Commencement Date has now been determined, and Lessor and Lessee desire to confirm the same.

NOW THEREFORE, in consideration of the premises, Lessor and Lessee hereby agree that the Commencement Date of said Lease is _____ and that the Termination Date of said Lease is _____.

IN WITNESS WHEREOF, Lessor and Lessee have executed this Confirmation of Commencement Date as of the day and year first above written.

UNITED INDEPENDENT SCHOOL DISTRICT

By: _____
Roberto J. Santos
Superintendent of Schools

WEBB COUNTY, TEXAS

By: _____
Hon. Danny Valdez
Webb County Judge

Exhibit "B"