

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
BELLVILLE INDEPENDENT SCHOOL DISTRICT AND THE BELLVILLE
PICKLEBALL CLUB**

This Memorandum of Understanding (“MOU”) is entered into and executed by and between the **BELLVILLE INDEPENDENT SCHOOL DISTRICT**, a public school district (“District”) and the **BELLVILLE PICKLEBALL**, a non-profit corporation (“BP”), (each individually referred to herein as a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the District owns tennis courts located at 518 S. Mathews Street, Bellville, Texas 77418 (“Facility”) and desires to make general improvements to the Facility; and

WHEREAS, the BP maintains and operates a pickleball program; and

WHEREAS, the BP desires to utilize the Facility for providing a venue for the pickleball program and desires to make general improvements to the Facility (the “Project”); and

WHEREAS, the BP, upon satisfying certain requirements, including execution of this MOU, shall receive a grant from the Bellville Economic Development Corporation, and agrees to contribute such funds toward the general improvements of the facility, in exchange for the right to utilize the Facility for the provision of its pickleball program consistent with the terms of this MOU; and

WHEREAS, enactment of this MOU will allow for the continued operation of the Facility in the mutually agreed upon location; and

WHEREAS, the District and the BP are authorized to enter in this MOU; and

WHEREAS, the Facility is to be maintained by the Parties as set forth in this MOU; and

WHEREAS, the District recognizes that its public purpose will be served by the general improvements to the Facility, as it will provide recreational opportunities for its students.

NOW, THEREFORE, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the Parties to this MOU, the Parties, desiring to cooperate in function agree as follows:

1. **Term**. The Term of this MOU shall commence on the effective date and shall continue in effect for five (5) years unless terminated sooner in accordance with this MOU. Upon mutual written agreement of the Parties, the Term may be extended for a maximum of two (2) additional periods of five (5) years.
2. **Condition of Use**. This MOU provides the BP and its officers, directors, equity holders, partners, employees, independent contractors, volunteers, agents, and guests (Collectively “Guests”) only with the right and privilege to enter and use the Facility for the purpose

and manner set forth in this MOU. Nothing herein is intended to grant to the BP the exclusive right to occupy or use the Facility.

The BP and its Guests shall comply with all applicable federal, state, and local laws and regulations and shall not carry on any activities which may be deemed a nuisance or of an unlawful nature. During use of the facility, BP and its Guests will keep the Facility in as good condition as the Facility was in when the use began, subject to normal wear and tear, and will not use or permit any use thereof which will otherwise damage the Facility.

The District maintains sole ownership of the Facility and shall have the right to exclude individuals from the facility for failure to follow District policies and rules or persons who the District reasonably determines pose a risk to the safety and well being of the District's employees, students or guests.

The District has the right to hold classes and events at the Facility, provided the District will work with BP to coordinate such activities to allow BP to have reasonable access to the Facility consistent with the purpose of this MOU.

The use of the Facility under this MOU shall not in any way interfere with the operations of the District or any programs or activities of the District. Upon a determination by the District's Board at a duly called meeting that the Facility is required for District's educational purposes, the BP understands that the District reserves the right to withdraw, rescind, or terminate this MOU at any time upon ninety-days written notice.

3. Consideration for Non-Exclusive Use. In consideration for the non-exclusive right to use the Facility as provided herein, second only to the District's right as previously noted, the BP agrees to contribute to Facility improvement projects as further described in this MOU.
4. Facility Improvements. The BP will arrange for the improvements of the Facility which must be brought to the attention of the District. The BP will provide the District with construction drawings and specifications prior to any improvements being made. The BP is not to make any changes to the Facility without District approval, which shall not be unreasonably withheld. The District will cooperate with BP during the improvement process, including allowing BP and its contractors reasonable access to temporary and permanent utilities necessary for the improvements and eventual use of the Facility for its intended purpose. Notwithstanding the forgoing or any other provision contained in this MOU, the BP accepts the Facility in its current condition and the District shall have no liability to make the Facility suitable for improvement projects, including without limitation, that the District makes no warranties of any kind regarding the availability or suitability of any temporary or permanent utilities or other site conditions for the contemplated improvement or intended use. Prior to making any improvements or using the Facility, BP and its contractors shall be responsible for inspecting the site and all related conditions to ensure suitability for the BP's purpose. The BP will provide the District with a minimum of fifteen (15) days prior notice before construction commences. The District shall have sole discretion to determine whether any planned construction poses a conflict

with the District's educational use of the Facility. All construction, improvements, upkeep and use must comply with any applicable laws, codes and building standards.

5. Maintenance and Damages. In cooperation with the District, the BP shall be responsible for the shared maintenance and upkeep of the Facility made necessary by the use under this MOU by BP and its Guests and the general purposes of this MOU, which may include, but is not limited to general appearance, upkeep and the cleanliness of the Facility. The District will upkeep the area surrounding and adjacent to the Facility. Without limitation, the BP shall be solely responsible for (1) cleaning the Facility and returning same to its prior condition after each use by BP and any of its Guests according to the District's standards and policies related to same and (2) for repairing any damage caused to the Facility by BP or any of its Guests. Further, if the District determines in its discretion that any other general repairs or maintenance of the Facility are necessary as a result of normal wear and tear or as otherwise necessary to be in good repair or to achieve the purpose of this MOU and provides written notice of same to BP, the Parties shall negotiate in good faith to share the costs associated with repairs and maintenance determined necessary by the District. Without limitation to the District's other rights and remedies under this MOU, any failure by the Parties to reach a mutually satisfactory agreement as to the shared costs and responsibilities of ongoing maintenance shall constitute a basis under Section 2(e) for a determination by the District's Board to terminate this MOU.
6. Placement of Containers and Equipment. The BP may place containers for storage of necessary equipment for its activities upon the Facility provided the BP obtains the prior written consent from the District to a mutually agreed location. The BP acknowledges that the right to place containers upon the Facility is permissive and the District reserves the right to revoke the permission to place containers upon the Facility upon 30 days written notice to BP.
7. Use of Parking Lot. The BP may have use of the parking area adjacent to the Facility so long as such use does not conflict with the District's use of the parking area.
8. Security/Safety. In coordination with the District, the BP, will coordinate with law enforcement regarding any security and safety issues at the Facility. The BP shall be responsible for all costs associated with any security required by the BP's use under this agreement, including without limitation any additional security presence provided by the District necessitated by the BP's use under this MOU.
9. Insurance. Without limiting the BP's indemnification under Section 10, the BP shall maintain in force, at all times during the term of this MOU:
 - a. Comprehensive or commercial general liability insurance, with limits not less than \$1,000,000 per each occurrence, combined single limit, and \$2,000,000 general aggregate limit, for bodily injury, including coverage for contractual liability.

- b. The coverage afforded thereby shall be primary and non-contributory to any other existing valid and collectable insurance to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one (1) insured shall not operate to increase the insurer's limits of liability.
 - c. Insurance companies shall be legally licensed and admitted through the Texas Department of Insurance to engage in the business of furnishing insurance in the State of Texas. All insurance companies shall have an "A-VIII" in Bests Rating Guide and shall be satisfactory to Bellville Independent School District.
 - d. Before commencement of the work under this MOU, certificates of insurance and copies of endorsements shall be furnished to the District, with complete copies of policies to be furnished to District promptly upon request.
 - e. If the BP fails to maintain any required insurance, the District, at its sole option and without incurring any further obligation to provide insurance, may take out insurance in such type and amount and may collect the same the BP.
10. Indemnification. The BP, to the extent permitted by Texas law, agrees to defend, indemnify and hold the District, its respective regents, officers, employees, agents, successors, or assigns harmless for all claims for compensation for any loss, damage, personal injury, or death occurring as a consequence of the performance by BP of this MOU.
11. Disclaimer of Liability. Neither the District nor any of its respective regents, officers, employees, agents, successors, or assigns shall be liable or responsible for any claims, losses, demands, suits, costs and expenses, and other forms of liability including, but not limited to, attorneys' fees and litigation expenses or any injury to any person or to any property of the BP, its officers, employees, agents, members, guests, invitees, or any third party, in or upon the Facility, resulting from any cause whatsoever including, but not limited to personal injury, theft, or vandalism related to the BP's use under this MOU.
12. Amendment. This MOU shall not be amended without prior written consent of each Party.
13. Cooperation of Parties. It is the intention of the Parties that any details of the use anticipated by this MOU that are not addressed by the terms of this MOU shall be worked out, in good faith, by both Parties.
14. Public Purpose. It is the intent of the Parties that the Facility be developed as a public project and that all of the amenities constructed on the Facility will have a significant public benefit.
15. Entire Agreement. This written MOU is the entire agreement of the parties with respect to the subject matter contained herein and it supersedes all other previous agreements, whether verbal or written, and discussions related thereto. There are no oral representations, warranties, agreements, or promises pertaining to this MOU.

16. Relationship. This MOU is made for the sole benefit of the District and the BP. Nothing in this MOU shall create or be deemed to create a relationship between the Parties to this MOU and any third person, including a relationship in the nature of a third-party beneficiary or fiduciary.
17. Assignment. No assignment of this MOU or of any duty or obligation of performance hereunder, shall be made in whole or in part by any party hereto without the prior written consent of the other parties hereto.
18. Severability. If any portion of this MOU shall be declared illegal or held unenforceable for any reason, the remaining portions shall continue in full force and effect and this MOU shall be liberally construed to carry out the intent of the Parties.
19. Counterparts. The Parties agree that this MOU may be executed in identical counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one document; provided each of the Parties hereto executes at least one counterpart. A facsimile or other electronic signature to this MOU shall be sufficient to prove the execution hereby by any Party.
20. No Representations or Warranties. The BP has inspected the Facility and found it to be safe and appropriate for the BP's use. The District makes no representations that the Facility is safe or suitable for the intended use.
21. Governing Law and Venue. The laws of the State of Texas shall control the construction and interpretation of this MOU. Mandatory exclusive venue for any proceeding under this MOU shall be state district court in Austin County, Texas.
22. Effective Date. This MOU is effective upon execution by both Parties. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

Signed as of the Effective Date:

The Bellville Pickleball Club

By: Linda Niehaus
Name: Linda Niehaus
Title: President, Bellville Pickleball

Bellville Public Independent School District

By: Nicole Pohnitzsch
Name: Nicole Pohnitzsch
Title: Superintendent