

## AGREEMENT

This Agreement is made and entered into by and between **SPRING BRANCH INDEPENDENT SCHOOL DISTRICT**, an independent school district of the State of Texas ("District"), and **SPARK**, a Texas non-profit corporation ("SPARK"), for the purpose of instituting a SPARK Program. The District and SPARK are herein collectively referred to as the "Parties" and individually as a "Party."

## WITNESSETH:

WHEREAS, the District is authorized to provide and operate park and recreational facilities; and

WHEREAS, SPARK is a corporate entity for the purpose of creating neighborhood parks on public school grounds; and

WHEREAS, SPARK desires to increase the availability of park facilities within the boundaries of Harris County; and

WHEREAS, SPARK is willing to improve and the District is willing to operate portions of the school playground at Wilchester Elementary School as a public park and recreational facility;

NOW, THEREFORE, in consideration of the mutual covenants, benefits and premises contained herein, the District and SPARK (hereinafter collectively referred to as the "Parties") agree as follows:

### I.

#### DEFINITIONS

A. "SPARK Representative" shall mean the person designated by SPARK to act as its representative in connection with this Agreement.

B. "District Representative" shall mean the person designated by the District as its representative in connection with this Agreement.

C. "Park Hours" shall be those hours designated by the District for each SPARK School in which the applicable portion of such SPARK School Grounds are to be open and available

for park use purposes by the public, but shall not include those hours when schools are in session or used for school purposes.

D. "SPARK Program" shall mean the cooperative program of the District, SPARK, parent-teacher groups and the community, whereby: (1) interested persons may raise cash donations for a particular SPARK School; and (2) SPARK will allocate private sector funds for each such SPARK School, as funding allows.

E. "SPARK School" shall mean a school which: (1) is owned and/or operated by the District; (2) has met the eligibility requirements of the SPARK Program; and (3) has been selected by SPARK and the District for participation in the SPARK Program.

F. "SPARK School Grounds" shall mean the designated park area of a SPARK School.

## II.

### DISTRICT RESPONSIBILITIES

A. The District agrees to review and approve or disapprove, through the District Representative, plans developed and submitted by SPARK School personnel, parents, and members of the neighboring community, all as designated by the SPARK School principal, for improvements to such SPARK School Grounds for park and recreational uses, and the District agrees to forward one copy of all such approved plans to the SPARK Representative. The District will not approve any plan unless it is sound as to architectural and engineering aspects and expenses for professional services necessary to assure such soundness of architecture and engineering are eligible for reimbursement by SPARK. All approved plans shall conform to the state requirements for Architectural Barriers set forth in Article 9102 of Vernon's Annotated Civil Statutes.

B. For a SPARK School, the Parties agree that any improvements to the SPARK School Grounds specified in the plans approved pursuant to Paragraph A of this Section II will be made to the extent of funding available for the particular SPARK School, in the discretion of the respective Parties.

C. The District agrees to keep SPARK School Grounds open to the general public as public parks for park and recreational purposes during all Park Hours and to have a posted sign on the public entrance to the park displaying the hours of operation of the SPARK Park. It is agreed that during non-Park Hours or at times when school activities are occurring at a SPARK School that reasonably require the exclusive use of the SPARK School Grounds, the general public may be excluded from the SPARK School Grounds. The regular hours of operation of SPARK School Grounds at SPARK Schools may be altered by the District Representative. The District further agrees to maintain the SPARK School Grounds, including mowing, edging, trimming and litter removal to the same extent as performed on similar Non-SPARK School Grounds. SPARK shall be responsible for notifying principals of the SPARK Schools of these requirements a minimum of one time per school year.

D. All improvements made on District property to develop SPARK School Grounds as public parks shall be and remain the property of the District. The District shall be solely responsible for their operation and maintenance.

E. SPARK shall not have any responsibility for the operation or maintenance of SPARK School Grounds nor shall have any control over or ownership interest in the improvements made by the District pursuant to this Agreement.

### III.

#### FUNDING AND SPARK RESPONSIBILITIES

A. For and in consideration of the services to be performed by the District pursuant to Article II hereof in connection with SPARK Schools, it is expressly understood and agreed that SPARK has allocated a maximum sum of \$100,000, consisting of \$50,000 from SPARK and \$50,000 from Wilchester PTA, for the purposes of this Agreement and shall at no time be obligated to pay an amount in excess of \$100,000 for these purposes. The funds will be awarded to Wilchester Elementary School for which improvement plans are approved by the District pursuant to this agreement.

B. SPARK agrees to make improvements to Wilchester Elementary (pursuant to a

separate agreement between SPARK and its contractor(s)), for those improvements as specified in the plans approved pursuant to Paragraph A of Section II. SPARK shall be responsible for payment of the cost of such improvements to its contractor(s) for the construction of such improvements in an amount not to exceed the amount stated in Section III Paragraph A. Such improvements shall be completed within twelve (12) months from the time SPARK enters into a contract with its own contractor(s) for the construction thereof.

C. For and in consideration of the services to be performed by the District pursuant to Article II hereof in connection with SPARK Schools, SPARK agrees to pay the amount due to its contractor(s) in connection with the making of improvements to Wilchester Elementary School SPARK Park pursuant to this Agreement up to the maximum amount of the funds allocated by SPARK for the SPARK Program or the amount actually collected by SPARK for that purpose, whichever is less.

D. The District hereby grants to SPARK and SPARK's applicable employees, contractors, and representatives, a right of entry ("Right of Entry") over and across the SPARK School Grounds for purposes related to the construction and installation of the approved improvements subject to the terms set forth herein.

E. Prior to the commencement of any installation or construction activities related to the approved improvements, SPARK shall provide written notice to the District Attn: Travis Stanford and receive a written notice to proceed from the District setting forth the permitted dates and times to perform such installation and construction.

F. To the extent that any digging or excavation will be necessary in connection with the construction and/or installation of the approved improvements, SPARK shall first obtain a survey of the subject property to determine the location of any underground utility, fiber optic, and similar facilities and lines, by contacting the CenterPoint Energy "Call Before You Dig" service.

G. Unless approved by the campus principal, no work shall be performed while school is in session or instruction is taking place at the SPARK School. In the event work is performed while students are present, SPARK will require the Contractor to obtain all National

Criminal History information from the contractor and its employees, as required by Texas Education Code Section 22.08341, and to submit the required certifications to the District prior to performing any work while students are present on the campus.

H. SPARK hereby assigns to the District any and all warranties and claims it may have or that may accrue against SPARK's contractor(s) arising out of the SPARK's agreement with the Contractor(s) and /or Contractor's performance of any work related to the construction or installation of the Project. SPARK shall ensure that the Contractor must satisfy the District's reasonable insurance requirements related to construction within District property.

#### IV.

##### TERM

A. The obligations of the District to operate and maintain the SPARK School Grounds as public parks and recreational facilities, all as set out in Article II of this Agreement, shall continue for a period of ten (10) years from the date of initial operation of any SPARK School Ground as a public park pursuant to this Agreement. However, after six (6) months from the date of initial operation of any SPARK School Ground as a public park pursuant to this Agreement, the District may terminate this Agreement as to any or all SPARK Schools upon one hundred and eighty (180) days' written notice to SPARK, which notice may only be given after the Spring Branch Independent School District Board of Trustees determines by resolution: (1) that the grounds are no longer needed for school purposes and are to be sold or leased for good and valuable consideration; or (2) that the grounds are needed for exclusive school district use; or (3) that the use of the grounds for park purposes results in an unsafe situation for students and teachers of the SPARK School or increases the threat of vandalism to school property. This Agreement may be extended through a written amendment upon mutual agreement by SPARK and the District. The District may request an extension in writing, at least thirty (30) days prior to the expiration of the initial term or any renewal thereof.

B. The obligation of the District to operate and maintain SPARK School Grounds as public parks and recreational facilities shall in no way be construed as a dedication of these SPARK School Grounds as public parks.

C. The District and SPARK acknowledge and agree that any services they provide to SPARK after the termination date of this Agreement, unless an extension of time has been granted, will be deemed to be gratuitously provided, and SPARK shall have no obligation to pay for such services unless SPARK agrees to do so in its sole discretion.

V.

MISCELLANEOUS PROVISIONS

Address and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (hereinafter severally and collectively, for convenience, called "notice") provided or permitted to be given, made or accepted by any Party to the other must be in writing and may be given or be served by depositing the same in the United States mail, postpaid and registered or certified, and addressed to the Party to be notified, with return receipt requested,. Notice deposited in the United States mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is so deposited and notice given in any other manner shall be effective only if and when received by the Party to be notified. For the purpose of notice, the addresses of the Parties are as specified below:

Spring Branch ISD	SPARK
Jennifer Blaine, Superintendent	Elizabeth Howley, Executive Director
955 Campbell Rd.	P.O. Box 1562
Houston, TX 77024	Houston, TX 77251

Each Party shall have the right, from time to time and at any time, to change its respective address and each Party shall have the right to specify as its address any other address, provided that at least fifteen (15) days' written notice is given of such new address to the other Parties.

Remedies Cumulative. The rights and remedies contained in this Agreement shall not be exclusive but shall be cumulative of all other rights and remedies, now or hereafter existing, whether by statute, at law, or in equity; provided, however, that none of the Parties shall terminate this Agreement except in accordance with the provisions hereof.

Non-Waiver. The failure of any Party hereto to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Agreement, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant or condition by the other Parties hereto; the obligation of such Party with respect to such future performance shall continue in full force and effect.

Entire Agreement. This Agreement comprises the entire understanding between the Parties. This Agreement may not be altered or amended except in writing executed on behalf of all the Parties.

Captions: The captions at the beginning of each Section of this Agreement are guides and labels to assist in location and reading such Sections and, therefore, will be given no effect in construing this Agreement and shall not be restrictive of or be used to interpret the subject matter of any section or part of this Agreement.

Applicable Law. This Agreement is made subject to and shall be construed in accordance with the Constitution and all applicable regulations of the United States and the Constitution and statutes of the State of Texas. All obligations hereunder shall be performable in Harris County, Texas. Any suit filed hereunder shall be filed in Harris County, Texas.

Independent Contractor. The District and SPARK agree that in performing any service to be rendered hereunder, the District, SPARK and/or any entity acting on their behalf is acting as an independent contractor and is not an agent or employee of the other Party.

Assignment. This Agreement shall bind and benefit the respective Parties and their legal successors and shall not be assignable in whole or in part.

Parties in Interest. This Agreement shall bind and benefit the Parties thereto and shall not bestow any rights or benefits upon third Parties.

**IN TESTIMONY OF WHICH** this instrument has been executed on behalf of the District and SPARK in double originals, which shall be considered of equal force and effect, as of the \_\_\_\_\_ day of \_\_\_\_\_, A.D., 20 \_\_\_\_.

Signed \_\_\_\_\_ Date \_\_\_\_\_

Elizabeth Howley, Executive Director, SPARK

Signed \_\_\_\_\_ Date \_\_\_\_\_

Jennifer Blaine, Superintendent of Schools, Spring Branch ISD