



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: May 18, 2016

Purpose: Report Only Recognition Discussion/ Possible Action

Presenter(s): Mrs. Jenny Arredondo, Executive Director of Operations

Item Title:

Discussion and possible action to approve the city awarded SPARK park grant for Five Palms Elementary School to develop a playground that will be available to students and the community outside of school hours. This grant will improve available playground equipment and provide a safe environment for students and the community to utilize.

Description:

City Council District 4 approved the award for the SPARK park at Five Palms Elementary school. The overall project is in the amount of \$75,000 of which the City will contribute \$50,000 and South San Antonio ISD will contribute \$25,000.

District Goal:

Goal 6 We will promote and ensure a safe and secure learning environment for all students.

Funding Budget Code and Amount:

CFO Approval

\$25,000 To be funded from the 2016 – 17 approved budget.

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APPROVAL ROUTE

SIGNATURE

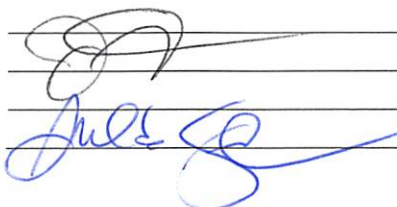
DATE

Principal/Director:

Executive Director:

Chief Administrator:

Superintendent:



5-18-2016

SPARK PROGRAM AGREEMENT

This SPARK Program Agreement (“Agreement”) is made and entered into by and between the City of San Antonio, a Texas home rule municipality (“City”), San Antonio Sports, a non-profit organization (“SAS”), and South San Antonio Independent School District (“District”).

WITNESSETH:

WHEREAS, the City and District are each legally authorized to own, acquire, construct, improve, finance and operate recreational facilities capable of serving both public school purposes and municipal park purposes, and

WHEREAS, SAS has been designated as the non-profit organization that will develop and oversee a SPARK program, which develops public school grounds into parks that benefit both the schools and the public, in San Antonio, and

WHEREAS, the City and SAS desire to increase the availability of park facilities within the boundaries of the City; and

WHEREAS, District is willing to improve and operate portions of certain school playgrounds as public parks and recreational facilities through participation in the SPARK program; and

WHEREAS, District may own and operate athletic and recreational facilities that can also serve as City parks and recreational facilities; and

WHEREAS, \$50,000 in FY 2016 General Funds is available for a SPARK program at Five Palms Elementary School; and

WHEREAS City Council District 4 has approved the use of such funds for the completion of a SPARK project at Five Palms Elementary School within the District; and

WHEREAS, District has agreed to provide \$25,000 in matching funds;

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

I. DEFINITIONS

- A. “SAS Representative” shall mean the person designated by SAS to act as its representative in connection with this Agreement.
- B. “City Representative” shall mean the person from the Parks and Recreation Department designated by the City to be the City’s representative in connection with this Agreement.

- C. “Eligible Expenses” are design, construction, and purchased construction materials for capital improvements within SPARK School Grounds for approved SPARK program improvements. These capital improvements shall be reflected in the project plans found in Exhibit A, Proposed Scope of Project.
- D. “District Representative” shall mean the person designated by the District as its representative in connection with this Agreement.
- E. “Park Hours” shall be from sunrise to sunset, excluding those hours when schools are in session or when use of the SPARK School Grounds is necessary for school purposes.
- F. “SPARK Program” shall mean the cooperative program of the City, SAS, District, parent-teacher groups and the community, whereby interested persons may raise cash donations or provide volunteer services or materials for a particular SPARK School.
- G. “SPARK School” shall mean a school which: (1) is owned and operated by the District; (2) has met the eligibility requirements of the SPARK Program; and (3) has been selected by SPARK and the District and approved by the City for participation in the SPARK Program.
- H. “SPARK School Grounds” shall mean the designated park and recreational area of a SPARK School.

II. DISTRICT AND SAS RESPONSIBILITIES AND GRANT OF LICENSEE RIGHTS TO CITY

- 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, including open green space and improvements associated with recreational and fitness activities. These planned improvements shall be reflected in Exhibit A, Proposed Scope of Project. District agrees to forward the District approved plans to SAS for its review and approval. Once SAS and District have approved the SPARK School plans, the plans will be forwarded to the City for approval.
- B. The District agrees to make improvements at the SPARK School Grounds by contracting for those improvements, utilizing District employees to make the improvements, and/or through volunteer contribution of labor or materials. Such improvements shall be completed as expeditiously as possible considering the scope of work involved.
- C. SAS and District agree that all provisions of Exhibit B are applicable to the design and construction of SPARK School improvements.
- D. 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 available funding for the particular SPARK School, in the discretion of the respective Parties.

- E. During the term of this Agreement, the District grants to City, and City accepts from District, a license for use by general public of the SPARK School Grounds subject to the terms and conditions of this Agreement. District agrees to keep SPARK School Grounds open to the general public as public parks for park and recreational purposes during Park Hours. It is agreed that during non-Park Hours or at times when school activities are occurring at a SPARK School that require the exclusive use of the SPARK School Grounds by the District, the general public may be excluded from the SPARK School Grounds. Park Hours may be altered by the agreement of the Parties, with the City's approval through the Parks and Recreation Director; however, the minimum Park Hours will be one hundred fifty (150) hours each calendar month
- F. All improvements made on District Property to develop SPARK School Grounds as public parks shall be and remain the property of the District; subject to the City's licensee rights to all SPARK School Grounds during the term of this Agreement.
- G. Neither the City nor SAS shall have any responsibility for the operation or maintenance of SPARK School Grounds nor shall either have any ownership interest in the improvements made by the District pursuant to this Agreement.
- H. District shall provide up to a \$25,000 cash match to facilitate the construction of the SPARK School Grounds.
- I. The project planning, design, procurement and construction shall be completed within twenty-four (24) months from commencement date, or until the project is finished, subject to agreement by the Parties. District shall follow all applicable procurement laws and internal policies for the SPARK project, as further referenced in Exhibit B to this Agreement.
- J. District agrees to maintain the SPARK School Grounds and SPARK improvements throughout the term of this Agreement, to include mowing, edging, trimming and litter removal to the same extent as performed on similar non-SPARK School Grounds.

III. FUNDING AND REIMBURSEMENT

- A. District shall contribute up to \$25,000 in matching funds for Eligible Expenses. City shall contribute up to \$50,000 in a 2:1 match to District's contribution for Eligible Expenses.
- B. Prior to reimbursement by City under the terms of this Agreement, the District must provide documentation reflecting that it has paid its match toward Eligible Expenses as required under Article III. A. above, and deliver a request for reimbursement to SAS. Each request for reimbursement must be supported by copies of paid invoices, affidavits of bills paid, or evidence of a payment obligation, together with any other documentation reasonably requested by SAS or City. District reimbursement requests shall be subject to the review and approval of SAS and then may be forwarded to City for City's review, approval and reimbursement by City to SAS. SAS will promptly

present all properly documented requests for reimbursement to the City Representative.

- C. Accompanying each reimbursement request, SAS will submit to City a brief report summarizing the status of each SPARK Program project, along with photographs during periods of construction, such photographs to be provided by District.
- D. City will provide reimbursement to SAS for Eligible Expenses, and SAS shall promptly provide reimbursement to District upon receipt of payment from City.
- E. Funding for this project is authorized as of the date of execution of this Agreement until the date of completion of the SPARK project, as detailed in II.I, above.

IV. TERM

- A. The License granted by District to City and all other 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 five (5) years after the completion of the SPARK improvements. However, in the event that District determines that the SPARK School is no longer needed for school purposes and is to be sold or leased to another entity, District shall either a) continue to operate the SPARK School Grounds for use by the general public, or b) provide an alternate SPARK site to serve the same community with similar amenities and benefits. In either of these scenarios, District shall be obligated to provide five (5) years of SPARK public use.
- B. During the term of this Agreement, the District may reconfigure a SPARK Park size or location at a particular school site, or relocate a SPARK Park from one location to an alternate location at that same school but first must consult with SAS and City. The costs associated with this reconfiguration or relocation would be borne in full by District.
- C. The obligations 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 Grounds as public parks.
- D. The term of this Agreement shall commence upon approval by the City's Council and District's Board of Trustees and upon execution by all parties, and end contemporaneously with the expiration of the License granted by District under Article IV. A. of this Agreement.

V. INDEMNIFICATION/THIRD PARTY CLAIMS

- A. District and City acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 *et seq.* and the remedies authorized therein regarding claims

or causes of action that may be asserted by third parties for accident, injury or death. District does not waive its immunities, defenses or limits of liability by entering or performing under this Agreement.

VI. INSURANCE

A. District agrees that it is responsible for insuring or cause to be obtained necessary and adequate insurance for its employees and subcontractors for Worker’s Compensation or Alternative Plan. District shall be responsible for insuring its own property, equipment, autos and legal liability, to the extent required by law.

VII. MISCELLANEOUS PROVISIONS

A. Address and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply or advice (herein 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, postage paid and registered or certified, and addressed to the party to be notified, with return receipt requested, or by hand delivering the same to any responsible officer of such party. 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.

City: City of San Antonio
Parks and Recreation Department
114 W Commerce, 11th Floor
San Antonio TX 78205
Attn: Director

SAS: San Antonio Sports
P O Box 830386
San Antonio TX 78283-0386
Attn: President

District: South San Antonio Independent School District
5622 Ray Ellison Boulevard
San Antonio, TX 78242
Attn: Superintendent

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.

- B. 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 the Agreement except in accordance with the provisions hereof.
- C. 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.
- D. 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.
- E. 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.
- F. Applicable Law. This Agreement is made subject to and shall be construed in accordance with the United States and Texas Constitutions and all applicable federal, state and local law or regulation whether or not expressly set out herein or appended. All obligations hereunder shall be performable in San Antonio, Bexar County, Texas. Any suit filed hereunder shall be filed in Bexar County, Texas.
- G. Independent Contractor. The District and SAS 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 City.
- H. Assignment. This Agreement shall bind and benefit the respective Parties hereto and their legal successors and shall not be assignable in whole or in part without the approval of all Parties hereto.

- I. Parties in Interest. This Agreement shall bind and benefit the Parties hereto and shall not bestow any rights or benefits upon third Parties.
- J. Compliance with Exhibits. The District, City and SAS agree to abide by the provisions and requirements of Exhibits A and B, attached hereto and made a part herein.
Exhibit A – Proposed Scope of Project
Exhibit B – Requirements for Eligible Expenses
- K. Inspections, Audits and Enforcement. The City shall have the right to perform, or cause to be performed at City’s expense: (1) audits of the books and records of the District and SAS, and (2) inspections of all places where work is undertaken in connection with this Agreement. The District and SAS shall be required to keep such books and records available for such purpose for at least 3 years after termination of this Agreement. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations. The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Agreement without further authorization.
- L. Conflict of Interest. The District and SAS acknowledge that the Home Rule Charter of the City and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. A City officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.
- M. Plaque. San Antonio Sports will order a plaque acknowledging the participation of the District, SAS and the City, which will be placed at the SPARK School Grounds upon completion of the improvements. The District will purchase and install the plaque.

IN TESTIMONY OF WHICH this instrument has been executed on behalf of the District, SAS and the City in multiple originals which shall be considered of equal force and effect, as of the _____ day of _____, 20____.

City:
City of San Antonio,
a Texas Municipal Corporation

District:
South San Antonio
Independent School District

By: _____
Janet A. Martin, Acting Director
Parks and Recreation Department

By: _____
Printed Name _____

Date: _____

Date: _____

Title _____

Approved as to Form:

San Antonio Sports:

City Attorney

Russ Bookbinder, President & CEO

Date: _____

Date: _____

ATTEST:

City Clerk

Date: _____

EXHIBIT A
PROPOSED SCOPE OF PROJECT

School Site: Five Palms Elementary School
7138 Five Palms Drive
San Antonio, TX 78242

Proposed Scope: To be developed and approved by Parties

EXHIBIT B
REQUIREMENTS FOR ELIGIBLE EXPENSES

A. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

District and SAS agree that compliance with the following, as applicable, is required:

1. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (except with regard to work performed by volunteers and District employees).
2. District shall comply with their mandated competitive contracting processes.
3. District agrees that its construction contractor will comply with Government Code Chapter 2258, and all other laws applicable to labor conditions.
4. Texas Accessibility Standards (TAS) established by the Texas Department of Licensing and Regulation (TDLR) under the Elimination of Architectural Barriers Act, Texas Government Code, Chapter 469.

B. District shall be responsible for securing all necessary and required permits and approvals prior to the start of construction.

C. District is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City has the right to audit certified payroll records as necessary in accordance with this Agreement. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the District shall cause its Construction Contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the District from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Agreement.