



SOUTH SAN ANTONIO INDEPENDENT SCHOOL DISTRICT

Agenda Item Summary

Meeting Date: December 18, 2019

- Purpose: [] Presentation/Report [] Recognition [] Discussion/ Possible Action [] Closed/Executive Session [] Work Session [] Discussion Only [x] Consent

From: Lorraine De Leon, Executive Director of Instructional Services

Item Title: Approve the Memorandum of Understanding Between The City of San Antonio and South San Antonio ISD for "Learn to Swim Initiative."

Description: Palo Alto College will provide "Learn to Swim" instruction for all South San Antonio ISD second grade students, which will include swim instruction, aquatics supervision, facilities, and awards. The City of San Antonio is providing \$25,000 grant to apply to this initiative.

Historical Data: South San Antonio ISD second grade students have participated in the Learn to Swim Program since 17-18 school year. The MOU with Alamo Community College District was approved on Oct. 16, 2019 as swim lessons will be at Palo Alto College.

Recommendation: Approve the Memorandum of Understanding Between The City of San Antonio and South San Antonio ISD for "Learn to Swim Initiative."

District Goal/Strategy:

Strategy 4 We will build partnerships with businesses and the community to promote parental involvement, support opportunities for student success, and increase student attendance and enrollment.

Funding Budget Code and Amount: City of San Antonio Grant \$25.000

APPROVED BY: SIGNATURE DATE
Chief Officer: [Signature] 12.11.19
CFO Funding Approval:
Superintendent: [Signature] 12.11.19

STATE OF TEXAS §
COUNTY OF BEXAR §

**INTERLOCAL AGREEMENT
WITH
SOUTH SAN ANTONIO
INDEPENDENT SCHOOL DISTRICT**

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. 2019-09-12-0691 dated September 12, 2019, and South San Antonio Independent School District (hereinafter referred to as "SSAISD"), a Texas non-profit corporation. SSAISD and CITY shall collectively be referred to as "the Parties."

This Agreement is entered into by the Parties pursuant to authority granted under the Interlocal Cooperation Act being Chapter 791 of the Texas Government Code, and Texas Local Government Code § 323.011.

PREAMBLE

WHEREAS, the CITY'S FY 2020 adopted budget, funds were appropriated to the Parks and Recreation General Fund Operating Budget in support of the Learn to Swim Program.

NOW THEREFORE, the parties hereto ("Parties") severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

1.1 This Agreement shall commence on October 1, 2019 and shall terminate on September 30, 2020. Services will be completed on a timeline specified as agreed to by the Parties.

II. GENERAL RESPONSIBILITIES

2.1 CITY shall provide \$25,000.00 to offset SSAISD's expenses associated with the Learn to Swim Program.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.1 SSAISD warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to SSAISD, and to SSAISD's use of CITY Funds for this project.

3.2 To the extent applicable, SSAISD agrees to abide by all applicable laws regarding the expenditure of these CITY funds.

IV. LEGAL AUTHORITY

4.1 SSAISD represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required and that the undersigned has full legal authority to execute this Agreement on behalf of SSAISD and to bind SSAISD to all terms, performances and provisions herein contained.

V. FUNDING AND ASSISTANCE BY CITY

5.1 In consideration of SSAISD's performance of all services and activities set forth in this Agreement, CITY agrees to pay SSAISD for all Eligible Expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by CITY shall not exceed \$25,000.00.

5.2 In order to partially offset SSAISD's expenses associated with the Project, the City shall provide advanced payment during the term of this Agreement for the transportation expenses in support of the swimming lessons conducted at the Palo Alto Natatorium.

5.3 Distribution of funds will be based upon a request submitted by SSAISD and shall provide City with the following supporting information:

- a) List of schools from which students were transported
- b) Number and age of students transported per school
- c) Dates of trips to and from Palo Alto Natatorium per school
- d) Total transportation costs per school participating in this program to include but not limited to: mileage costs and personal wages
- e) Total swim lesson cost per student

5.4 In the event there are funds not disbursed such unused funds will remain with CITY.

5.5 CITY shall not be obligated nor liable under this Agreement to any party, other than SSAISD, for payment of any monies or provision of any goods or services.

VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY SSAISD

6.1 SSAISD agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. SSAISD further agrees:

- a) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- b) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- c) That SSAISD's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.2 SSAISD agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

6.3 SSAISD agrees to submit to CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and shall provide supporting documentation, in such detail as CITY may request, including but not necessarily limited to, a copy of the subsequent paid invoice(s) within 45 days after the project completion.

6.4 CITY agrees to provide SSAISD written notice regarding any expenditure the CITY reasonably determines to be outside the permissible parameters of this Agreement. SSAISD shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to SSAISD, refund to the CITY those funds, determined to:

- a) Have not been spent by SSAISD strictly in accordance with the terms of this Agreement; or
- b) Not be supported by adequate documentation to fully justify the expenditure.

6.5 Unless CITY has questions concerning an expenditure by SSAISD, CITY agrees to provide payment to SSAISD within thirty (30) calendar days of receipt of a request for payment as defined above.

6.6 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section V as a result of any auditing or monitoring by CITY, SSAISD shall refund such amount to CITY within thirty (30) calendar days of CITY's written request therefore wherein the amount disallowed or disapproved shall be specified.

VII. ELIGIBLE EXPENSES

7.1 Eligible expenses by SSAISD provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

8.1 SSAISD further represents and warrants that as of the date hereof:

- a) All information, data or reports heretofore or hereafter provided to CITY is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY.
- b) It is financially stable and capable of fulfilling its obligations under this Agreement and that SSAISD shall provide CITY immediate written notice of any adverse material change in the financial condition of SSAISD that may materially and adversely affect its obligations hereunder.
- c) No litigation or proceedings are presently pending or to SSAISD's knowledge, threatened against SSAISD.
- d) None of the provisions contained herein contravene or in any way conflict with the authority under which SSAISD is doing business or with the provisions of any existing indenture or agreement of SSAISD.

IX. ACCESSIBILITY OF RECORDS

9.1 At any time during normal business hours and as often as CITY may deem necessary, upon three (3) days written notice, SSAISD shall make all of its records pertaining to this Agreement available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.2 SSAISD agrees and represents that it will cooperate with CITY, at no charge to the CITY, to satisfy, to the extent required by law, any and all requests for information received by CITY under the Texas Public Information Act or related laws pertaining to this AGREEMENT.

X. MONITORING AND EVALUATION

10.1 SSAISD agrees that CITY may carry out reasonable monitoring and evaluation activities, and SSAISD shall provide reasonable access to CITY for such activities, so as to ensure compliance by SSAISD with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

XI. INSURANCE

Intentionally deleted

XII. INDEMNIFICATION

Intentionally deleted

XIII. NON-DISCRIMINATION

13.1 As a party to this contract, SSAISD understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XIV. POLITICAL ACTIVITY

14.1 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XV. CONTRACTING

15.1 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of SSAISD. SSAISD is responsible to ensure that all permits required for the activities under this Agreement are obtained.

15.2 CITY shall in no event be obligated to any third party, including any sub-contractor of SSAISD, for performance of or payment for work or services.

XVI. CHANGES AND AMENDMENTS

16.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both CITY and SSAISD under authority granted by formal action of the Parties' respective governing bodies.

16.2 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XVII. ASSIGNMENTS

17.1 SSAISD shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XVIII. SEVERABILITY OF PROVISIONS

18.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XIX. DEFAULT

19.1 Upon default by SSAISD in the performance of its obligations hereunder, CITY shall give SSAISD notice of the same and SSAISD shall have 30 days following receipt of written notice of default from CITY (or such reasonably longer time as may be necessary provided SSAISD commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If SSAISD fails to timely cure such default, CITY may pursue all remedies available in law or at equity and/or other rights CITY may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

19.2 Upon default by CITY in the performance of its obligations hereunder SSAISD shall give CITY notice of the same and CITY shall have 30 days following receipt of written notice of default from SSAISD (or such reasonably longer time as may be necessary provided CITY commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If CITY fails to timely cure such default, SSAISD may pursue all remedies available in law or equity and/or other rights SSAISD may have in this Agreement, subject to the limitations set forth in Section 22.01.

XX. NON-WAIVER OF PERFORMANCE

20.1 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision

of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

20.2 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

20.3 No representative or agent of CITY may waive the effect of the provisions of this Article without formal action from the City Council.

XXI. ENTIRE AGREEMENT

21.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXII. NOTICES

22.1 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

City of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283

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

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXIII. PARTIES BOUND

23.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXIV. RELATIONSHIP OF PARTIES

24.1 Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XXV. TEXAS LAW TO APPLY

25.1 This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

XXVI. GENDER

26.1 Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXVII. CAPTIONS

27.1 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ____ day of _____, 2019.

**CITY OF SAN ANTONIO
PARKS AND RECREATION**

**SOUTH SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT**

By: _____
Homer Garcia III, Interim Director

By: _____
Dolores Sendejo, Interim Superintendent

Date: _____

Date: _____

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY