

FY 2016-17 AMENDMENT OF THE FACILITY CONSTRUCTION AND USE AGREEMENT
BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL
DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL/ST. JOHN'S
COMMUNITY CENTER

This Amendment ("2016 Amendment") of the FACILITY CONSTRUCTION AND USE AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL/ST. JOHN'S COMMUNITY CENTER ("Agreement") is entered into by and between THE CITY OF AUSTIN, a Texas home rule municipality ("City"), and the AUSTIN INDEPENDENT SCHOOL DISTRICT, a Texas public school district ("AISD") (each a "Party" and collectively, the "Parties").

RECITALS

On February 8, 2000, the City and AISD, the Parties, entered into an Agreement ("Agreement", Exhibit A) to jointly fund, design, and construct several buildings on what is generally known as the St. John Community Center campus, including an AISD elementary school, city library, city public health facility, recreation center, shared facilities, and space for police department activities. These buildings are collectively referred to below as the "J.J. Pickle Elementary School/St. John Multipurpose Neighborhood Center" or "Center".

The parties increased funding for the design and construction of the Center in 2000 and 2001.

All of the buildings described in the Agreement have been constructed and are used by the parties for various educational and municipal purposes.

Section 10 of the Agreement addresses responsibilities for certain operation and maintenance costs for both the City and AISD buildings.

In 2010, the parties amended the agreement ("2010 Amendment", Exhibit B) to authorize payment by the City to AISD for certain services provided by AISD from September 1, 2006 through August 31, 2009, to authorize payment for the one-year period ending August 31, 2010, to authorize one 12-month renewal period for payment of certain operating and maintenance expenses, and to establish a process to meet and negotiate a subsequent amendment to clarify operating and maintenance responsibilities and payments.

In 2011, the parties exercised the renewal option for operating and maintenance expenses for the term September 1, 2010 through August 31, 2011.

In 2012, the parties amended the agreement to revise certain definitions, as well as certain operations, maintenance and funding provisions, and to authorize a one-year renewal for operating and maintenance expenses for the term September 1, 2011 through August 31,

2012, with up to four additional 12-month renewal terms, in an amount payable by City of up to \$250,000 for each renewal term ("2012 Amendment", Exhibit C).

The parties exercised the first renewal option for operating and maintenance expenses in 2012 for the term beginning September 1, 2012, through August 31, 2013.

The parties exercised the second renewal option for operating and maintenance expenses in 2013 for the term beginning September 1, 2013, through August 31, 2014.

The parties exercised the third renewal option for operating and maintenance expenses in 2014 for the term beginning September 1, 2014, through August 31, 2015.

The parties exercised the fourth renewal option for operating and maintenance expenses in 2015 for the term beginning September 1, 2015, through August 31, 2016. This is the last renewal option authorized under the 2012 Amendment.

The parties now wish to execute this 2016 Amendment to the Agreement, for a new one-year term and agree to the terms and conditions stated below:

I. Term

The term of this 2016 Amendment shall be September 1, 2016 through August 31, 2017. The parties may choose to renew this 2016 Amendment for up to nine additional 12-month terms, in a not to exceed amount payable by City of \$250,000 for each renewal term. The renewals shall be contingent upon sufficient appropriations by City in the City's annual budget.

II. Billing and Payment Procedures.

A. AISD shall invoice the City no later than September 30, 2017, for all amounts payable under this 2016 Amendment. The invoice shall be sent to Beverly Mendez, Contract Compliance Manager of the City's Parks and Recreation Department at the following address: 200 South Lamar, Austin, TX 78704. AISD shall send a copy to Dana McBee, Assistant Director, Library Department, Faulk Central Library, 800 Guadalupe, 4th Floor, Austin, TX 78701.

AISD shall specify on the invoice the costs incurred for services and utilities provided at both the Exclusive and Shared Facilities. AISD agrees to include reasonable back-up documentation, including invoices from any contractors and utility providers, with the invoice. The City's Contract Manager shall distribute copies of the invoice and documentation to the Financial Managers of the Library and Health and Human Services Department for review and approval, and shall coordinate payment of the invoice. City shall pay AISD within sixty (60) calendar days of receipt of the invoice and back-up documentation.

B. City shall reimburse AISD for services provided under this 2016 Amendment in an amount not to exceed Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000).

This 2016 Amendment has been executed and delivered on behalf of AISD and the City by their duly authorized representatives in one or more counterparts, which together with the Agreement and the three prior amendments shall constitute one agreement.

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: _____
Paul Cruz, Ph.D
Superintendent
Date: _____

By: _____
Kendall Pace
Board President
Date: _____

CITY OF AUSTIN

By: _____
Bert Lumbreras
Assistant City Manager
Date: _____

EXHIBIT A

FACILITY CONSTRUCTION AND USE AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL / ST. JOHN'S COMMUNITY CENTER

RECITALS

The City of Austin ("City") and the Austin Independent School District ("AISD") have each adopted a policy encouraging the joint development of educational and recreational programs and facilities to reduce duplication in services and to improve the delivery of services to citizens through a more efficient use of public funds.

AISD has identified a need to construct an elementary school in the vicinity known as the St. John's Neighborhood and has identified properties to be acquired on which to locate the school.

The City plans to construct a community center in the St. John's neighborhood to meet the needs of the neighborhood for recreational and other community services during the same period of time.

The City and AISD desire to cooperate in designing, constructing, operating and maintaining needed facilities in a way intended to realize greater efficiencies in the expenditure of limited public funds.

The City and AISD believe that it is in their best interest to co-locate their respective facilities at a single campus, so as to maximize operational efficiencies and to enhance the educational and municipal services provided for the benefit and convenience of the public.

The Parties believe at this time it is necessary, appropriate, and in their mutual best interests to express in this Agreement ("Agreement"), their respective duties, responsibilities, and covenants by and between each entity with respect to the properties, structures and facilities to be known and referred to herein as the J.J. Pickle Elementary School/St. John's Community Center.

This Agreement is an interlocal agreement authorized and governed by the Interlocal Cooperation Act, ch. 791 Texas Government Code. Each party represents and warrants that in the performance of its respective obligations as set forth in this Agreement, it is carrying out a duly authorized governmental function which it is authorized to perform individually under the applicable statutes of the State of Texas and/or its charter. Each party represents and warrants that the compensation to be made to the other party as set forth in this Agreement are in amounts that fairly compensate the performing party for the services or functions described herein, and are made from current revenues available to the paying party.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises that follow and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the Parties do hereby agree as follows:

TERMS:

1. Definitions.

Agreement -- this Agreement together with all attachments and schedules appended hereto.

AISD -- the Austin Independent School District

Campus -- the buildings and improvements constructed under this Agreement for use by AISD or the City.

City -- the City of Austin, Texas.

Contract Documents -- the drawings and specifications prepared by AISD's architect/engineer for the construction of the Project.

Custodial Services -- the labor, supplies and equipment necessary for daily cleaning and building maintenance.

Exclusive Facilities -- the improvements (or portions thereof) or areas of the Campus designed for use by only one of the parties as reflected on "Exhibit A" attached hereto.

Maintenance Expenses -- the expenses incurred in the upkeep or repair of Project buildings or improvements.

Operating Expenses -- the expenses for services necessary for conducting City or AISD programs or services on Campus facilities, such as building system services, utilities, custodial services, grounds maintenance and security.

Parties -- the City of Austin, Texas and the Austin Independent School District

Premises -- that area of land comprising the School Site and those portions of Buttermilk Branch Park upon which any part of the Campus is situated.

Project -- the building improvements, consisting of a school, a public library, a gymnasium, offices and related facilities, approved by the Parties for construction on the Premises.

Project Account -- the depository account established and maintained by AISD for the purpose of holding funds for the design and construction of the Project.

Project Budget -- the document attached as "Exhibit B" setting forth the proposed budget for the Project, as well as the allocation of such budgeted amounts to the party responsible therefor.

School Site -- that area of land acquired or to be acquired by AISD, described and shown on the attached "Exhibit A".

Shared Facilities -- the improvements (or portions thereof) or areas of the Campus designated for common and general use by either party, as reflected on "Exhibit A" attached hereto.

Substantial Completion -- that stage in the construction of the Project when work is sufficiently completed in accordance with contract documents such that the improvements may be occupied for the intended uses.

Utilities -- water, sanitary sewer, electric and gas utility service. Other services such as telephone, cable television and other communications services are specifically excluded.

2. **Parties.** The Parties to this Agreement are to the City of Austin, a home-rule city and municipal corporation situated in Williamson and Travis Counties and the Austin Independent School District, a political subdivision of the State of Texas.

3. **Incorporation of Recitals.** The recitals which appear above are found by the Parties to be true and are incorporated into this Agreement by reference.

4. **Term.**

4.1. This Agreement shall commence on the Effective Date and shall continue for a term of Fifty (50) years, unless terminated earlier as provided in this Agreement or by law. Subject to such termination provisions, after the initial term, unless modified as provided in the next paragraph, this Agreement shall renew automatically upon the same terms and conditions.

4.2. If the Parties desire to modify this Agreement during or after the initial term, any modifications may be either incorporated herein by written amendment or set forth in a new written agreement.

5. **Termination.**

5.1. Notwithstanding any other provision, this Agreement may be terminated as follows:

5.1.1. By mutual agreement of the Parties, as evidenced by a written agreement to terminate;

or

5.1.2. It is the intent and understanding of the Parties that the obligations of each party under this Agreement shall remain effective only so long as and provided that

each party has duly appropriated funds for performing such obligations for the party's current fiscal year. If for any fiscal year of either party funds are not appropriated for such party's performance of its obligations under this Agreement, this Agreement shall become void and such party shall promptly give notice to the other party of the nonappropriation of funds.

5.2. All improvements constructed, erected or installed by or on behalf of AISD, (including Shared Facilities), at its expense shall be and at all times remain the property of AISD. All improvements constructed, erected or installed by or on behalf of the City shall be and at all times remain the property of the City.

5.3. In the event a party ("canceling party") can no longer operate on or make use of Campus facilities, the parties agree to cooperate and make good faith efforts to compensate a canceling party for its contribution to the design and construction of the campus. In the absence of use of the canceling party's exclusive facilities, the non-canceling party shall have no obligation to compensate the canceling party.

6. **Project Site Plan / Acquisition of Real Property.**

6.1. A site plan of the Premises is attached as "Exhibit A" and incorporated herein. It is contemplated by the Parties the Campus will be located on the Premises. The Project will include but is not limited to the School Site, the Shared Facilities as well as all Exclusive Facilities to be used by the City.

6.2. As soon as is reasonable practicable, AISD shall acquire at its sole expense fee simple title to the School Site. In addition, AISD is granted a license to use those portions of Buttermilk Branch Park constituting part of the Premises for the construction of Project improvements. The Parties agree the license to AISD shall remain in effect for a term of at least fifty (50) years, notwithstanding any early termination of this Agreement.

6.3. As part of AISD's acquisition of the School Site, AISD will purchase at fair market value all real property owned by the City within the School Site, including lots and structures thereon, streets (subject to closure by the City) and other rights-of-way owned by the City. The City agrees to utilize the proceeds it receives from AISD in connection with AISD's acquisition of properties comprising the School Site towards its relocation efforts for the residents affected by AISD's acquisition of such properties. Other than making such payments to the City and to third-Parties as is necessary to acquire the properties comprising the School Site, AISD shall not be responsible for any relocation expenses of any residents affected by the Project.

6.4. City and AISD agree to utilize reasonable efforts to work together to obtain such agreements, conveyances, instruments, and consents as may be necessary from third parties so as to allow for the construction of the Project, however, in no event shall this section 6.4

be interpreted to impose a financial obligation on either party. In the event AISD is unable to obtain clear title to the School Site sufficient to construct the Project, then AISD at its sole option may notify the City in writing of such fact, including specific details of the title defect and the efforts expended to cure the defect. Upon the expiration of seven (7) days from the receipt of such notice, this Agreement shall automatically terminate without further notice or action by either party. In the event of termination pursuant to this subsection 6.4, AISD as soon as is practicable shall provide the City with a full accounting of expenditures from the Project Account. Upon receipt of such accounting, the Parties shall negotiate a fair and reasonable allocation of the remaining funds in the Project Account, such allocation proportionate to the contributions of each party into the Project Account prior to termination of this Agreement.

6.5. This Agreement shall not affect or impair in any way each party's right at any time to add on to or remodel its Exclusive Facilities and/or Shared Facilities, provided such addition or remodel does not permanently and unreasonably affect in an adverse manner the Exclusive Facilities of the other.

7. **Project Budget / Project Account.**

7.1. The Parties adopt the "Project Budget" attached hereto as "Exhibit B" as inclusive of all services, materials, fees and expenses to be incurred in connection with the design and construction of the Project. Costs or expenses incident to the Project and not included in the Project Budget shall be borne by the party incurring the cost or expense, and shall not be chargeable to the Project Budget. Changes to the Project Budget shall be mutually approved in writing in order to become effective.

7.2. Payments. The City agrees to pay AISD an amount not to exceed \$5,785,600.00 for Project costs as budgeted in the Project Budget. The City warrants that it has appropriated and committed funds in the amount of \$5,785,600.00 for the Project. Payments shall be made by the City to AISD monthly, according to the schedule attached hereto as "Exhibit B". During the design and construction of the Project, the Parties may agree to amend the schedule of payments ("Exhibit B") to be made by City to AISD to cover unforeseen contingencies as more fully described in section 7.6 below. AISD warrants that it has appropriated and has committed funds in the amount of at least \$6,895,000.00 for the Project. The total contributions paid into the Project Budget are more fully set forth in "Exhibit B".

7.3. The funds comprising the Project Budget shall be deposited and kept in a special account ("Project Account") established and maintained by AISD for the benefit of the Parties in contemplation of the Project. Funds deposited in the Project Account shall be fully insured and collateralized to the extent required by law for public funds. Interest earnings from the Project Budget, if any, shall inure to AISD, but shall be used exclusively for Project costs. AISD shall be authorized to make disbursements from the Project Account to cover Project costs.

7.4. AISD shall keep such books and records as is necessary to fully account for the deposit and disbursement of funds from the Project Account. Information regarding the Project Account shall be made available to the City upon request.

7.5. To the extent the funds comprising the Project Budget exceed the total Project costs upon completion of construction of the Project and acceptance thereof by the Parties, AISD shall cause the funds remaining in the Project Account to be promptly disbursed to the Parties in proportion to their respective contributions to the Project Budget.

7.6. In the event the Project costs exceed the funds comprising the Project Budget, the parties agree to exercise reasonable diligence in locating and securing additional funding to complete the Project, however, in no event shall either Party be required to make additional appropriations to cover any shortfall.

8. **Project Design.**

8.1. AISD agrees to engage a professional architect/engineer to design Project contract documents integrating an elementary school with facilities intended to be used by the City for the operation of library, health, police and recreational programs and services. Project facilities shall be designated as either exclusive to a party or as shared facilities. Although the professional architect/engineer shall be retained by AISD, the Parties agree that a City representative shall serve as a consultant to AISD architect/engineer in all matters involving the design, development or construction of the Project. AISD shall be responsible for the payment of the professional fees and expenses of the architect/engineer from the Project Account.

8.2. Project design and contract documents shall be prepared by AISD's architect/engineer subject to approval by the City, based on the terms and process specified in the AE Agreement, which approval shall not be unreasonably withheld. In matters involving a facility intended to be used as an Exclusive facility, accommodation shall be made to that party's design requirements if cost efficiencies for the totality of the Project design are not substantially and adversely affected. Any such accommodation shall also be expressly subject to the terms and conditions of the architect/engineer's agreement.

8.3. A party may make changes to the Project contract documents, including approval of written change orders, if such a change affects only its Exclusive Facilities and if the change neither results in an increase in the Project Budget nor a substantial and adverse impact on cost efficiencies for the Project, including operating and maintenance expenses. All other design and/or construction changes of any significance to the Project shall require written mutual approval, which approval shall not be unreasonably withheld.

9. Construction.

9.1. Development Agreement. In connection with the contemplated construction of the Project facilities, the Parties agree that the AISD Land Development Standards Agreement, covering construction of AISD facilities within the City, shall control such construction. The parties may mutually agree to amend the AISD Land Standards Agreement and/or agree to specific design parameters specific to the Project.

9.2. Fixed Construction Budget. The Parties agree to adopt a construction budget and schedule. AISD agrees to engage a construction manager to construct the Project in accordance with the contract documents approved by the Parties. AISD shall use reasonable efforts to diligently prosecute completion of the Project and shall endeavor to complete the Project within the fixed construction budget and on schedule.

9.3. Construction. AISD shall enter into such construction agreements as are necessary to construct the Project in accordance with the construction documents. AISD shall observe all state laws and AISD policies regarding the construction of the facility and selection of contractors, including competitive bidding, bond requirements, and prevailing wages. AISD agrees to create an advisory committee composed of representatives from various local minority and women trade groups, AISD and its construction representatives, and the City's departments of Public Works and Transportation, and Small and Minority Business Resources to advise AISD on Project specific issues regarding work opportunities for minority and women-owned businesses.

9.4. During the construction of the Project, AISD shall require to be carried builders risk insurance in completed value form and in an amount equal to the cost of the completed improvements. After construction of the Project, AISD will continuously insure the improvements on the Premises under its then existing property policy (or approved self-insurance program) or cause to be insured the improvements against loss or damage by fire or other risks now insured against by standard "extended coverage" provisions of policies generally in force on improvements of like type of Austin, Texas in amounts sufficient to provide coverage for the full insurable value of the improvements.

9.5. Should any building or other improvements now or hereafter situated on the Premises be wholly or partially destroyed or damaged during the term by fire, or any other casualty whatsoever: (a) the happening of any such casualty shall not cause the termination of this Agreement; and (b) all fire and extended coverage proceeds shall be utilized to restore, replace, or reconstruct all improvements to the Premises as nearly as possible to their value, condition and character immediately prior to any casualty, loss or destruction.

9.6. Construction Progress Payments. AISD shall timely make progress payments to the construction manager and contractors performing the construction of the Project from funds available in the Project Account, and in accordance with the Project Budget.

9.7. Each party shall have the right to make interior alterations or repairs to its Exclusive Facilities at its expense. Each party shall be responsible for all repairs required for its Exclusive Facilities. Repairs or alterations to Shared Facilities shall be mutually approved and shall be borne by the Parties in such proportion as may be agreed to in writing after a recommendation is received from the Operations Committee as defined in section 10.4 below.

9.8. Inspections. The City shall have the right to inspect the progress of the work and shall have reasonable access to the Premises during normal business hours. The City shall receive copies of all reports provided to AISD concerning the Project construction. At such time the Project is nearing completion, AISD shall schedule a walk-through inspection with the City's representatives to identify punch list items. The Project shall not be declared substantially complete until the Project is substantially complete in accordance with the requirements of the contract documents.

9.9. Within 30 days following the receipt from the contractor of details of deviation from the contract documents, AISD shall provide the City with a complete set of record documents ("as built") as well as a final accounting of expenditures from the Project Account.

9.10. Upon final acceptance of the Project, ownership of all building improvements shall vest in AISD, including all construction warranties; however, the City shall be granted the exclusive use of those Exclusive Facilities intended to be used solely by the City for its library, health, police and recreational programs. The City shall be granted a non-exclusive use of those facilities designed as Shared Facilities.

10. Operation of Facilities

10.1. Utilities. To the extent possible, Exclusive Facilities shall be separately metered for electricity, water and wastewater and gas, and each party shall be responsible for payment of utility services to its Exclusive Facilities. Charges for utility services that cannot be separately metered and utility services to Shared Facilities shall be apportioned to the parties based on projected annual use by each party. The City shall reimburse AISD for its portion of the expenses.

10.2. Maintenance. AISD shall provide routine maintenance, groundskeeping, irrigation, HVAC maintenance, security, fire alarm and custodial services and supplies to the Campus and Premises. The City shall reimburse AISD for 30% of costs incurred by AISD in connection with same.

10.3. Repairs. Each party shall be responsible for repairs to its Exclusive Facilities after the warranty period. Repair, replacement and maintenance costs for Shared Facilities shall be apportioned 70% to the City and 30% to AISD.

10.4. Operations Committee. A joint committee ("Operations Committee") comprised of representatives from relevant departments of both AISD and the City, and representatives from both AISD and City on-site personnel, as well as facility management staff from both AISD and City will be established and empowered to make decisions regarding ongoing operational issues including scheduling, replacement of furniture and equipment, problems associated with breakage of personal property and fixtures and related issues. The Operations Committee will be responsible for annually examining the apportionment of costs and for making any adjustments that will result in a true apportionment of costs based on the actual benefit to and use by each Party. In addition, the Operations Committee will make recommendations to the AISD and City regarding the efficient utilization of funds for the maintenance, operation and continued use of the Campus as may be individually budgeted by the Parties.

10.5. Reserved Use.

The gymnasium and play areas shall be reserved for AISD use when school is in session.

10.6. Identification of Personal Property. Personal property shall be inventoried, identified and marked in accordance with policies and procedures of AISD and the City.

10.7. Insurance. AISD shall insure the campus improvements. The City and AISD agree to obtain and maintain separate policies of insurance for purposes of insuring the personal property of each as may be located from time to time in the campus. In addition, the Parties agree to obtain and maintain separate policies of insurance to cover any obligations arising from third-party claims. Such coverages may be obtained through an authorized self-insurance program or insurance pool.

11. Rights Upon Default.

11.1. This Agreement may be enforced in law or in equity, including a suit for specific performance and/or for damages. The Parties agree that specific performance should be an available remedy due to the difficulty in determining the damages that may accrue as a result of a material breach of the Agreement by the other party. In the alternative, should either party breach any of the terms of this Agreement, the other party may obtain a judgment against the breaching party to remedy such breach. Such rights upon breach shall be supplemental to those procedures set forth in Section 12 below.

12. Dispute Resolution Process.

12.1. Before commencing formal legal proceedings concerning any dispute arising under or relating to this Agreement, or any breach thereof, the Parties agree to observe the following procedures ("Dispute Resolution Process").

12.1.1. The aggrieved party shall notify the responding party of the dispute, by way of a meeting or a writing which contains sufficient detail to clearly identify the problems giving rise to the dispute, and the responding party shall attend said meeting or respond to the writing within a reasonable time as may be determined by the circumstances alleged.

12.1.2. After consulting with and obtaining input from the appropriate individuals so as to facilitate a complete discussion and proposed solution of the problem, the Parties shall schedule a meeting and designate representatives to attend such meeting to attempt to effect an agreed resolution of the issue.

12.1.3. If the Parties' designated representative reach an impasse concerning the dispute, the AISD Superintendent and the City's City Manager shall meet to discuss the dispute.

12.1.4. If the Parties reach an accord at any stage of the meeting, they shall reduce their agreement to a writing which shall constitute an amendment to this Agreement with respect to the subject matter of the notice of the dispute. The terms and conditions of such amendment shall not supersede the terms and conditions of this Agreement with respect to any matter other the subject matter submitted to the Dispute Resolution Process.

12.1.5. If the Parties are unable to reach a resolution of the dispute within a reasonable time, either party may pursue such legal and equitable remedies as are available to them under Texas law.

13. Miscellaneous.

13.1. Although drawn by one party, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against either party.

13.2. City and AISD acknowledge that there may be opportunities to pursue and secure funding opportunities from public agencies, charitable foundations, private individuals and other entities in support of programs which may support or advance the purposes and intent of the Project and this Agreement. The City and AISD agree to cooperate in efforts to create a non-profit corporation to pursue such funding opportunities and conduct such programs, and to apply for and obtain the appropriate state and federal tax exempt status for such non-profit corporation.

13.3. Administration of Agreement. The Parks and Recreation Department shall initially administer this Agreement on behalf of the City. The Construction Management Office of AISD shall administer this Agreement on behalf of AISD. Each party may designate a new administrator on written notice to the other.

13.4. Governing law. This Agreement shall be governed by the laws of the State of Texas. If the final judgment of a court of competent jurisdiction invalidates any part of this Agreement, then the remaining parts shall be enforced, to the extent possible, consistent with the intent of the Parties as evidenced by this Agreement.

13.5. Venue. Venue for all lawsuits concerning this Agreement will be in the City of Austin, Travis County, Texas.

13.6. Non-Assignability. Neither party shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.

13.7. Notices. Any notice or request required by this Agreement must be in writing, and may be given or be served by depositing the same in the United States Postal Service, postal prepaid, and certified and addressed to the party to be notified, with return receipt requested, or by delivering the same in person to such party (or to an officer of such party), or by telecopy, when appropriate, addressed to the party to be notified. Notice deposited in the mail in the manner herein above described shall be effective from and after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For purposes of notice, the addresses of the Parties shall, until changed as herein provided, be as follows:

For AISD: Austin Independent School District
Construction Management Department
1111 West Sixth Street
Suite B-300
Austin, TX 78703-5399
(512) 414-9994
ATTN: Mr. Curtis E. Shaw
Executive Director

For City: City of Austin
Department of Public Works and Transportation
Architectural & Engineering Services Division
One Texas Center, Suite 900
P.O. Box 1088
505 Barton Springs Road
Austin, Texas 78767-8839
ATTN: Nick Naccarato
Project Manager

However, the Parties hereto shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice to the other party.

13.8. Entire Agreement. This Agreement is the entire agreement of the Parties. This Agreement may not be altered or amended except by mutual written agreement.

13.9. Severability. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

13.10. Non-waiver. Failure of a party to exercise any right or remedy in the event of default by the other party shall not constitute a waiver of such right or remedy for any subsequent breach or default.

13.11. Authority of Signatories. The Parties represent that the individuals signing this Agreement on their behalf possess full power and authority to enter into this Agreement from their respective governing boards in compliance with the laws of the State of Texas.

13.12. Further Assurances. Each party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

13.13. Retention of Defenses. The Parties agree that, neither this Agreement nor the operation or use of the Campus by the Parties shall affect, impair nor limit their respective immunities and limitations of liability to the claims of third parties, including claims predicated upon premises defects.

DATED to be effective this the 8th day of February, 2000.

CITY OF AUSTIN
124 West 8th Street
Austin, Texas 78701

AUSTIN INDEPENDENT SCHOOL DISTRICT
1111 West 6th Street
Austin, Texas 78703

ATTENTION: City Manager

ATTENTION: Superintendent

pc. BY: Jessie Bay

BY: Carol Lynne 1-25-00

TITLE: City Manager

TITLE: _____

“EXHIBIT A”

PROJECT SITE PLAN

EXHIBIT B

**2010 AMENDMENT OF THE FACILITY CONSTRUCTION AND USE AGREEMENT
BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL
DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL/ST. JOHN'S
COMMUNITY CENTER**

This 2010 Amendment of the FACILITY CONSTRUCTION AND USE AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL/ST. JOHN'S COMMUNITY CENTER ("Agreement") is entered into by and between the City of Austin, a Texas home rule municipality ("City"), and the Austin Independent School District, a Texas public school district ("AISD") (each a "Party" and collectively, the "Parties"). This amendment shall be effective upon the date of last signature (the "Effective Date").

RECITALS

WHEREAS, on February 8, 2000, the Parties entered into the Agreement, the purpose of which was to jointly fund, design and construct several buildings on what is generally known as the St. John Community Center campus, including an AISD elementary school, city library, city health care facility, recreation center, shared facilities and space for police department activities. These buildings are collectively referred to below as the "J.J. Pickle Elementary School/St. John Multipurpose Neighborhood Center" or "Center".

WHEREAS, the parties amended the Agreement in 2000 and 2001 in order to increase funding for the design and construction of the Center.

WHEREAS, all of the buildings described in the Agreement have been constructed and are used by the parties for various educational and municipal purposes.

WHEREAS, Section 10 of the Agreement addresses responsibilities for certain operation and maintenance costs for both the City and AISD buildings.

WHEREAS, the parties wish to amend the Agreement in order to authorize payment by City to AISD for certain services provided by AISD from September 1, 2006 through August 31, 2009, to authorize payment for the one-year period ending August 31, 2010, and to establish a process to meet and negotiate a subsequent amendment to clarify operating and maintenance responsibilities and payments..

NOW, THEREFORE, the parties agree to the terms and conditions stated below:

City and AISD agree to add a new Section 10.8, entitled "Operating and Maintenance Billing and Payment", to the Agreement, which shall read as follows:

Section 10.8: Operating and Maintenance Billing and Payment

- a) AISD shall invoice City on an annual basis for the City's share of minor repairs, replacement, grounds keeping, irrigation, HVAC maintenance, security, fire alarm and custodian services, supply costs, and utility costs incurred during the previous one-year term and payable under Sections 10.1, 10.2 and 10.3 (collectively, "O&M Services"). Each invoice shall be sent to the City's Contract Manager, Angela Means, Financial Manager of the Parks and Recreation Department, by November 1, at the following address: 200 South Lamar, Austin, Tx 78704. The invoice shall include information that identifies the O&M Services, including the utilities, provided to each of the following City departments: Health and Human Services, Library, Austin Police Department, and Parks and Recreation.

AISD also agrees to specify on the invoice the costs incurred for services and utilities at the Shared Facilities, as defined in the Agreement. AISD agrees to provide reasonable back-up documentation, including invoices from any subcontractors and utility providers, upon request. The City's Contract Manager shall distribute copies of the invoice to the directors of the four City departments named above for review and approval. City shall pay AISD within sixty (60) calendar days of receipt of the invoice.

- (b) 2009 - 2010: For the period September 1, 2009 through August 31, 2010, City agrees to reimburse AISD for O&M Services in a total amount not to exceed \$200,000. Billing and payment procedures shall follow the process described in subsection (a) above.

- (c) City agrees to pay AISD the following amounts for O&M Services provided to the City's Library and Parks and Recreation Departments during the following periods:

September 1, 2006 through August 31, 2007 \$ 80,270.55

September 1, 2007 through August 31, 2008 \$ 84,039.77

City agrees to pay AISD the following amounts for O&M Services provided to the City's Library, Parks and Recreation, Health and Human Services, and Police Departments during the following periods:

September 1, 2008 through August 31, 2009 \$165,801.22

TOTAL: \$ 330,111.54

The total amount above shall be paid to AISD within forty-five (45) calendar days following the Effective Date of this Amendment.


- d) Representatives of City and AISD agree to begin meeting, not later than October 15, 2010, to negotiate an amendment to the Agreement to further clarify and negotiate responsibilities and procedures under Section 10 (including but not

limited to developing a method for calculating and paying utility costs and developing a method for calculating and paying significant repair costs), and to agree upon billing and payment processes for future years.

e) If the City and AISD are unable to finalize the terms and obtain approval of the subsequent amendment by May 31, 2011, the parties may choose to renew this Amendment for one additional 12-month term, in a not to exceed amount payable by City of \$200,000, upon written agreement of the parties. The renewal shall be contingent upon sufficient appropriations by City in the City's annual budget.

IN WITNESS WHEREOF, this Amendment has been executed and delivered on behalf of AISD and the City by their duly authorized representatives in one or more counterparts, which together with the Agreement and the two prior amendments shall constitute one agreement.

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: 
Meria Carstarphen
Superintendent
Date: 7.14.10

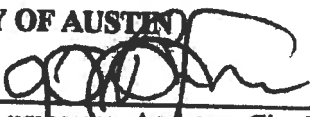
CITY OF AUSTIN
By: 
Bert Lumboreras, Assistant City Manager
Date: 06/28/10

EXHIBIT C

2012 AMENDMENT OF THE FACILITY CONSTRUCTION AND USE AGREEMENT
BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL
DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL/ST. JOHN'S
COMMUNITY CENTER

This 2012 Amendment of the FACILITY CONSTRUCTION AND USE AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE AUSTIN INDEPENDENT SCHOOL DISTRICT FOR THE J.J. PICKLE ELEMENTARY SCHOOL/ST. JOHN'S COMMUNITY CENTER ("Agreement") is entered into by and between the City of Austin, a Texas home rule municipality ("City"), and the Austin Independent School District, a Texas public school district ("AISD") (each a "Party" and collectively, the "Parties"). This amendment shall be effective upon the date of last signature (the "Effective Date").

RECITALS

WHEREAS, on February 8, 2000, the Parties entered into the Agreement, the purpose of which was to jointly fund, design and construct several buildings on what is generally known as the St. John Community Center campus, including an AISD elementary school, city library, city health care facility, recreation center, shared facilities and space for police department activities. These buildings are collectively referred to below as the "J.J. Pickle Elementary School/St. John Multipurpose Neighborhood Center" or "Center".

WHEREAS, the parties amended the Agreement in 2000 and 2001 in order to increase funding for the design and construction of the Center.

WHEREAS, all of the buildings described in the Agreement have been constructed.

WHEREAS, Section 10 of the Agreement addresses responsibilities for certain operation and maintenance costs for both the City and AISD buildings.

WHEREAS, in 2010 the parties amended the Agreement ("2010 Amendment") in order to authorize payment by City to AISD for certain services provided by AISD from September 1, 2006 through August 31, 2009, to authorize payment for the one-year period ending August 31, 2010, and to authorize one 12-month renewal period for payment of certain operating and maintenance expenses, and to establish a process to meet and negotiate a subsequent amendment to clarify operating and maintenance responsibilities and payments.

WHEREAS, in 2011 the parties exercised the renewal option for operating and maintenance expenses for the term September 1, 2010 through August 31, 2011 ("Renewal").

WHEREAS, the parties wish to renew the Agreement for an additional one-year term and amend the Agreement as described below.

NOW, THEREFORE, the parties agree to the terms and conditions stated below:

I. Term

The term of this Agreement shall be September 1, 2011, through August 31, 2012. The parties may choose to renew this Agreement for up to four additional 12-month terms, in a not to exceed amount payable by City of \$250,000 for each renewal term. The renewals shall be contingent upon sufficient appropriations by City in the City's annual budget.

II. Definitions

City and AISD agree that, for purposes of this 2012 Amendment, the following definitions shall control.

"Exclusive Facilities" mean those improvements (or portions thereof) on the Campus designed for use and used by only one of the parties. Exclusive Facilities are identified as such on Exhibit A. City's Exclusive Facilities are labeled "Health and Human Services", "Library", and "Parks and Recreation Department". AISD's Exclusive Facility is labeled the "Café".

"Shared Facilities" means the improvements (or portions thereof) on the Campus designed for use and used by both parties. Shared Facilities are identified as such on Exhibit A. The area labeled "Gym" on Exhibit A is occupied and used by AISD and the City's Parks and Recreation Department.

III. Operations and Maintenance

City and AISD agree to amend Section 10.1., entitled "Utilities" as follows:

Section 10.1. Utilities. The parties agree that electricity, water and wastewater, and gas utilities in the Exclusive Facilities cannot be separately metered at this time. AISD shall pay utility bills for all Exclusive Facilities, and City shall reimburse AISD for utility payments made for the Exclusive Facilities occupied by City during the term. AISD shall be solely responsible for the utility charges for Exclusive Facilities occupied by AISD.

Shared Facilities: Charges for utility services to Shared Facilities shall be apportioned to the parties as follows: AISD shall pay the utility bills for Shared Facilities and the City shall reimburse AISD for 35% of utility costs, with the City's portion further allocated based on a percent of actual square footage of each City department's facilities as follows: Health and Human Services – 44.6%; Library – 36.5%; Parks and Recreation Department – 18.9%.

City and AISD agree to amend Section 10.2., entitled "Maintenance" as follows:

Section 10.2. Preventive Maintenance.

For Shared Facilities, AISD shall arrange and pay for preventive maintenance services, defined as a planned and controlled program of periodic inspection, adjustment, lubrication, and replacement of components, as well as performance testing and analysis, including but not limited to HVAC equipment, belts, lubrication, adjustments and filters, light bulbs, drinking fountains and filters, faucet washers, door hardware lubrication & adjustment. The City shall reimburse AISD for 50% of preventive maintenance costs incurred by AISD for Shared Facilities, with the City's portion further allocated based upon a percentage of actual square footage used by each City department that operates in a Shared Facility, as follows: Health and Human Services – 44.6%; Library – 36.5%; Parks and Recreation Department – 18.9%.

Each party shall be solely responsible for preventive maintenance in its Exclusive Facilities.

City and AISD agree to amend section 10.3., entitled "Repairs" as follows:

Section 10.3. Repair Maintenance. Each party shall be responsible for arranging and paying for repair maintenance to its Exclusive Facilities. AISD shall arrange and pay for repair maintenance services for Shared Facilities. These services include unscheduled repair and/or adjustments of equipment and components, including but not limited to window replacement, minor roof repairs, minor electrical repairs, minor plumbing repairs, painting and sheetrock work and door hardware. The City shall reimburse AISD for 50% of repair maintenance costs incurred by AISD for Shared Facilities, with the City's portion further allocated based on the percentage of actual square footage used by each City department that operates in a Shared Facility, as follows: Health and Human Services – 44.6%; Library – 36.5%; Parks and Recreation Department – 18.9%.

City and AISD agree to add a new Section 10.9., entitled "Custodial Services", to the agreement, which shall read as follows:

Section 10.9. Custodial Services. AISD shall provide all custodial services to Shared and Exclusive Facilities. Custodial Services are defined as cleaning, trash pick-up, and renewal of facility finishes, furniture and equipment, including but not limited to sweeping and mopping floors, vacuuming carpets and rugs, dusting furniture and equipment, polishing floors, walls, woodwork and furniture, cleaning glass surfaces and windows, cleaning and sanitizing bathrooms and stocking paper products and soap, collecting and disposing of trash. AISD and City shall agree upon the schedule for custodial services. The City shall reimburse AISD for 100% of the custodial costs paid by AISD for City's Exclusive Facilities, and for a portion of the custodial costs paid by AISD for Shared Facilities. The City's portion for Shared Facilities shall be determined based upon the percentage of actual square footage used by the City, with the City's portion

further allocated as follows: Health and Human Services – 44.6%; Library – 36.5%; Parks and Recreation Department – 18.9%.

City and AISD agree to add a new Section 10.10., entitled “Security Services”, to the agreement, which shall read as follows:

Section 10.10. Security Services. AISD shall provide AISD Police Officers to provide security services for both Exclusive and Shared Facilities. The City shall reimburse AISD for 50% of security costs incurred by AISD, with the City’s portion further allocated as follows: Health and Human Services – 44.6%; Library – 36.5%; Parks and Recreation Department – 18.9%.

City and AISD agree to add a new Section 10.11., entitled “Construction Management”, to the agreement, which shall read as follows:

Section 10.11. Construction Management. Construction Management services mean renovation or construction requiring licensed tradesman or contractors and permitting, including but not limited to installation of new fixtures and equipment, patching and repair of exterior envelope (roof and wall leaks), and replacement of failed mechanical, electrical, or plumbing equipment. Each party shall be responsible for construction management services for the improvements and common areas for which it holds title to the property.

III. Billing and Payment Procedures.

(a) AISD shall invoice the City no later than September 30, 2012, for all amounts payable under this Agreement. The invoice shall be sent to Beverly Mendez, Contract Compliance Manager of the City’s Parks and Recreation Department at the following address: 200 South Lamar, Austin, TX 78704. AISD shall send a copy to Dana McBee, Assistant Director, Library Department, Faulk Central Branch, 800 Guadalupe, 4th Floor, Austin, Texas 78701.

AISD also agrees to specify on the invoice the costs incurred for services and utilities provided at both the Exclusive and Shared Facilities. AISD agrees to include reasonable back-up documentation, including invoices from any contractors and utility providers, with each invoice. The City’s Contract Manager shall distribute copies of the invoice and documentation to the Financial Manager of the Library and Health and Human Services Department for review and approval, and shall coordinate payment of the invoice. City shall pay AISD within sixty (60) calendar days of receipt of the invoice and back-up documentation.

(b) 2011 – 2012: For the period September 1, 2011 through August 31, 2012, City agrees to reimburse AISD for services provided under this Agreement in an amount not

to exceed Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000). Billing and payment process shall follow the procedures described in subsection (a) above.

IN WITNESS WHEREOF, this Amendment has been executed and delivered on behalf of AISD and the City by their duly authorized representatives in one or more counterparts, which together with the Agreement and the three prior amendments shall constitute one agreement.

AUSTIN INDEPENDENT SCHOOL DISTRICT

By: [Signature]

Meria Carstarphen
Superintendent

Date: 8/15/12

APPROVED AS TO LEGAL FORM

[Signature] 8/15/12

CITY OF AUSTIN

By: [Signature]

Bert Lumbreras
Assistant City Manager

Date: 8/15/12

