

RIGHT OF ENTRY AND CONSTRUCTION AGREEMENT

This Right of Entry and Construction Agreement (the “Agreement”), dated _____, 2020-21 (the “Effective Date”), is entered into by and between _____ Parent Teacher Organization (the “PTO”), and _____ Independent School District (the “District”). The District and the PTO are herein collectively referred to as the “Parties” and individually as a “Party”.

WHEREAS the District is the owner of certain property known as _____ Elementary, located at _____ (the “District’s Property”);

WHEREAS the PTO desires to utilize a portion of the District’s Property for purposes of the construction and installation of certain recreational facilities including a walking trail and soccer, basketball and related athletic equipment (the “Recreational Facilities”), subject to the terms and conditions set forth below; and

WHEREAS the District desires the PTO to utilize the District’s Property located on District’s Property (the “District’s Property”) for purposes of the construction and installation of the Recreational Facilities”, subject to the terms and conditions set forth below;

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the execution of this Agreement, the Parties hereby agree as follows:

1. Right of Entry.

a. The District hereby grants to the PTO, and the PTO’s applicable employees, contractors, and representatives, a right of entry (“Right of Entry”) over and across the District’s Property for purposes related to the construction and/or installation of the Recreational Facilities, subject to the terms set forth in Section 2(b), below.

2. Construction Requirements.

a. The PTO shall engage the services of _____ (the “Contractor”) pursuant to a separate agreement to perform the construction and/or installation related to the Recreational Facilities, which shall be performed in accordance with the estimate attached hereto as Exhibit A and incorporated herein by reference.

b. Prior to the commencement of any installation or construction activities related to the Recreational Facilities, the PTO shall provide written notice to the District Attn: _____, and receive a written notice to proceed from the District setting forth the permitted dates and times to perform such installation and/or construction. In addition, all plans and specifications related to the installation and/or construction of the Recreational Facilities shall be subject to the District's prior written approval. The PTO shall submit all such plans and specifications to the District for its approval, and shall obtain such approval from the District, prior to the commencement of any installation or construction activities by Contractor.

c. To the extent that any digging or excavation will be necessary in connection with the construction and/or installation of the Recreational Facilities, the PTO shall first obtain a survey of the subject property to determine the location of any underground utility, fiber optic, and similar facilities and lines, by contacting the Center Point Energy "Call Before You Dig" Service.

d. The PTO shall ensure that the Recreational Facilities to be installed and/or constructed by Contractor pursuant to this Agreement shall comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use", published by ASTM International. In addition, if such Recreational Facilities include a horizontal bare metal platform or a bare metal step or slide, such bare metal shall be shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the Recreational Facilities are installed. Furthermore, to the extent that surfacing is required for the construction, installation or operation of the Recreational Facilities, such surfacing shall comply with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing," published by ASTM International.

e. The PTO hereby assigns to the District any and all warranties and claims it may have or accrue against Contractor arising out of the PTO's agreement with the Contractor and/or Contractor's performance of any work related to the construction or installation of the Recreational Facilities.

f. Contractor must satisfy the Insurance Requirements specified in Exhibit B, attached hereto and incorporated herein by reference.

g. Prior to the commencement of any installation or construction activities, the PTO shall cause the Contractor to complete and return to the District the "Contractor Certification" regarding the criminal history of covered employees, attached hereto as Exhibit C and incorporated herein by reference.

h. Any agreement between the PTO and the Contractor shall provide, and the PTO shall ensure, that all workers on the project are paid the minimum prevailing wage

rate adopted by the District, as set forth in Exhibit D. The PTO shall indemnify and hold the District harmless from any and all damages, costs, penalties, fines or other liabilities arising from the PTO's breach of this provision.

3. Miscellaneous.

a. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Texas, excluding any conflict of laws rule or principle that might refer the governance or the construction of this Agreement to the law of another jurisdiction.

b. Subject to any terms or provisions hereof to the contrary, this Agreement shall be effective on the Effective Date and shall remain in effect for a term of 60 days following commencement of the installation and construction activities (the "Term").

c. This Agreement sets forth the entire agreement and understanding of the Parties with respect to the subject matter contemplated hereby, and supersedes all prior agreements, arrangements, and understandings related to the subject matter hereof.

d. This Agreement may be amended or modified only by a written instrument executed by both Parties hereto.

e. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

f. All notifications under this Agreement shall be sent by certified U.S. mail return receipt requested. All notifications shall be sent to following mailing address and fax number:

If to **District**:

Attn: _____

If to **PTO**:

Attn: _____

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have set their hands hereto, effective as of the Effective Date above defined.

_____ **PTO:**

By: _____

Name: _____

Title: _____

Date: _____

DISTRICT:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

[See attached]

EXHIBIT B

CONSTRUCTION BOND & INSURANCE REQUIREMENTS

It is suggested that this Exhibit be provided to the Contractor's insurance provider.

Contractor shall not commence work until all required bonds and insurance coverages have been obtained and such insurance has been reviewed and accepted by the District. Certificates of Insurance on the current ACORD form shall be issued to the District showing all required insurance coverages.

Bonds Required

Construction, installation and service contracts (including repair and alteration) exceeding \$100,000 requires that a 100% Performance Bond be furnished by the successful bidder (contractor). Contracts exceeding \$25,000 require that a 100% Payment Bond be furnished by the successful bidder (contractor).

Bonds shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least A- X and included on the U.S. Department of the Treasury Listing of Approved Sureties (Dept. Circular 570). The contractor shall be responsible for obtaining bonds and shall absorb any and all costs of such Bonds.

<u>Insurance Required</u>	<u>Limit Required</u>
Automobile Liability insurance covering Any Auto	\$1,000,000 Combined Single Limit
Comprehensive (Commercial) General Liability insurance including Products, Completed Operations, Independent Contractors, Broad Form Property Damage, Pollution and Blanket Contractual Liability coverages. XCU exclusions to be removed when underground work is performed.	\$1,000,000 Occurrence \$2,000,000 Aggregate \$1,000,000 Personal Injury \$ 500,000 Fire Damage \$ 5,000 Medical Payments Per Project Aggregate (CG 70 49) Evidence of coverage must be shown on certificates of insurance.
Workers Compensation insurance with limits to comply with the requirements of the Texas Workers' Compensation Act	Statutory Limits
Employers Liability insurance	\$1,000,000

Insurance Conditions

All insurance coverages shall be issued on an Occurrence basis (except Professional Liability) by companies acceptable to District and licensed to do business in the State of Texas by the Texas Department of Insurance. Such companies shall have a Best's Key rating of at least "A- X".

All certificates must include:

1. The location or description and the bid number (if applicable), CSP number or Purchase Order number
2. A 60 day notice of cancellation of any non-renewal, cancellation or material change to any of the policies
3. "Additional Insured" on the Property, General Liability and Automobile Liability and Liability policies naming the District.
4. A "Waiver of Subrogation" clause in favor of the District will be attached to the Workers Compensation, General Liability, and Automobile Liability policies
5. In addition to certificates of insurance, copies of policy endorsements must be provided (a) listing the District as Additional Insured, and (b) showing waivers of subrogation in favor of the District: CG2010, CG2037, CG2404, CA0070, CA0032, WC0003 or their equivalents.

All insurance must be maintained for one year following substantial completion with Certificates of Insurance provided.

Contractor shall be responsible for payment of all deductibles; the District shall approve the deductibles selected.

If any policy has aggregate limits, a statement of claims against the aggregate limits is required.

The District reserves the right to review the insurance requirements during the effective period of any contract to make reasonable adjustments to insurance coverages and limits when deemed reasonably prudent by District based upon changes in statutory laws, court decisions or potential increase in exposure to loss.

EXHIBIT C
Contractor Certification

Definitions:

Covered employees: Employees who have or will have continuing duties related to the service to be performed at the District and have or will have direct contact with students. The District will be the final arbiter of what constitutes direct contact with students.

Disqualifying criminal history: Any conviction or other criminal history information designated by the District, or one of the following offenses, if at the time of the offense, the victim was under 18 or enrolled in a public school: (a) a felony offense under Title 5, Texas Penal Code; (b) an offense for which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure; or (c) an equivalent offense under federal law or the laws of another state.

On behalf of _____ (“Contractor”), I certify that [check one]:

Contractor has no employees; Contractor provides services to the District as an individual and has or will have direct contact with students. Contractor certifies that Contractor does not have a disqualifying criminal history.

Or

None of Contractor’s employees are *covered employees*, as defined above. If this box is checked, I further certify that Contractor has taken precautions or imposed conditions to ensure that Contractor’s employees will not become *covered employees*. Contractor will maintain these precautions or conditions throughout the time the contracted services are provided.

Or

Some or all of Contractor’s employees are *covered employees*. If this box is checked, I further certify that:

1. Contractor has obtained all required criminal history record information regarding its covered employees. None of the covered employees has a disqualifying criminal history.
2. If Contractor receives information that a covered employee subsequently has a disqualifying criminal history, Contractor will immediately remove the covered employee from contract duties and notify the District in writing within 3 business days.
3. Upon request, Contractor will provide the District with the name and any other requested information of covered employees so that the District may obtain criminal history record information on the covered employees.
4. If the District objects to the assignment of a covered employee on the basis of the covered employee’s criminal history record information, Contractor agrees to discontinue using the covered employee to provide services at the District.

Noncompliance or misrepresentation regarding this certification may be grounds for contract termination.

Signature

Date

EXHIBIT D
Prevailing Wage Rates for District

[Attach adopted rates]