

**PFLUGERVILLE ATHLETIC FIELDS OPERATION
MAINTENANCE AND GROUND LEASE AGREEMENT**

THIS OPERATION, MAINTENANCE AND GROUND LEASE AGREEMENT (“Agreement”), effective March 1, 2013, is made and entered into by and between THE CITY OF PFLUGERVILLE, TEXAS, a home-rule city located in Travis County, Texas (the “City”), and PFLUGERVILLE INDEPENDENT SCHOOL DISTRICT, a Texas (the “District”)

**ARTICLE 1
RECITALS**

- 1.1 The District owns ± 12 acre school site, known as “Pflugerville Elementary School” (the “School”), which is located within the City, and which is available for the benefit of residents of and property owners in the District . Currently, there are athletic fields located within the boundaries of the School (the “Athletic Fields”) that have been used for organized youth athletic activities.
- 1.2 The City and the District desire to enter into a contract under which the City will operate, maintain, and improve the Athletic Fields for the benefit of residents of and property owners in the District, and the general public, and in accordance with the terms of this Agreement.

**ARTICLE 2
DEMISE OF LEASED PREMISES**

2.1 The District, for and in consideration of the covenants and obligations described in this Agreement, which are to be kept, performed and observed by the City, does hereby lease and demise to the City, and the City does hereby rent and accept from the District, the Athletic Fields, as more particularly described on Exhibit “A”, attached hereto and incorporated herein by reference (the “Leased Premises”). The District and City acknowledge that there are improvements located upon the Leased Premises that are not owned by the District and are not subject to this Agreement or maintenance by the City.

**ARTICLE 3
TERM**

- 3.1 This Agreement is term commencing on March 1, 2013 and ending on October 31, 2013; subject, however, to earlier termination upon the conditions set forth in this Agreement.

ARTICLE 4
USE OF PREMISES

- 4.1 Permitted Uses. The City may use the Leased Premises only for organized athletic activities sponsored by the City and other organizations approved by the District in accordance with Section 12.2 of this Agreement, and other uses that the District approves in writing. The City must comply with any and all rules and regulations imposed by any governmental entity that affect the operation and maintenance of the Athletic Fields, including any rules, regulations or ordinances established from time to time by the District. Any rules and regulations established by the District must be established by the superintendent or designee and may include limitations on hours of operation and use of the Athletic Fields, restrictions on exterior lighting and restrictions on signage.
- 4.2 Waste, Nuisance or Illegal Uses. The City may not use, or permit the use of, the Leased Premises in any manner that result in waste of the Leased Premises, constitutes a nuisance or is illegal.

ARTICLE 5
CONSIDERATION; OBLIGATIONS OF CITY

- 5.1 Consideration. In consideration of the lease of the Leased Premises to the City, the City will pay the District an annual fee of TEN DOLLARS (\$10.00) payable initially upon the execution of this agreement, and on November 1st of each successive year the agreement is in force. In addition, the City will operate, maintain, repair and preserve the Leased Premises, and provide funding for capital improvements to the Leased Premises, as described in Article 8 hereof.
- 5.2 Operation and Maintenance of Leased Premises. As used in this Agreement, the term “operate and maintain,” and the obligation of the City to operate and maintain the Leased Premises, includes, but is not limited to, the following:
- a. Maintaining the Leased Premises. The City will maintain the Athletic Fields or cause them to be maintained in a safe, clean and orderly condition. The City will mow and water all grass, keep all weeds trimmed, keep all landscaping in a good state of appearance, and keep all trash picked up and secured in clean, enclosed trash receptacles. The City will maintain any improvements constructed by the City. The City will not be required to maintain any improvements that are located upon the Leased Premises and were not constructed by the City, but must notify the District and the entity that constructed the improvements of the need for any repairs.

- b. The employment, compensation and supervision of any employees and any volunteers necessary for the efficient operation of the Athletic Fields. All such employees or volunteers must be employees and/or volunteers of the City or entities contracting with the City.
- c. Maintaining records pertaining to the management and operation of the Leased Premises. The City must allow the Superintendent of the District, or any other authorized representative of the District access to all books and records of the City related to the Leased Premises upon request.
- d. Acquire and maintain public liability insurance and such other insurance as the City, in concert with the District, deems necessary to protect the City, the District and the Leased Premises. Such insurance must be maintained in full force and effect at all times during the term of this Agreement. The District acknowledges and agrees that, at the time of execution of this Agreement, the District is carrying insurance covering the School and the District agrees to maintain such insurance during the term of this Agreement.
- e. Paying all bills, invoices and other obligations incurred in connection with the operation and maintenance of the Leased Premises.
- f. Managing the day-to-day use of the Leased Premises, including scheduling the use of the Athletic Fields by approved organizations. The City must coordinate with the District facility coordinator before scheduling any large events, such as opening day ceremonies and tournaments, and may not schedule any large events for dates and times that would overlap with District-sponsored activities in order to avoid traffic congestion and parking space shortages that would result from 2 well-attended events being scheduled at the same time.
- g. Attend the District's regular meetings at least annually, and more frequently upon written request of the District.

ARTICLE 6
TAXES

- 6.1 It is acknowledged that, at the time this Agreement is entered into, it is contemplated that the Leased Premises, as school property, are exempt from all real property taxes and assessments. The parties agree to cooperate as necessary to maintain the tax exempt status of the Leased Premises.

ARTICLE 7
UTILITIES

- 7.1 The City will pay or cause to be paid all utility charges for water, electricity and other utility services for the Leased Premises. The District will not be obligated to pay any utility charges for the Leased Premises.

ARTICLE 8
CAPITAL IMPROVEMENTS

- 8.1 Capital Improvements. The City and the District will identify certain capital improvements for the Athletic Fields during the Primary Term of this Agreement. The City may enter the Leased Premises to effect the improvements described in Section 8.2
- 8.2 Cooperation. The District acknowledges that the City may apply for matching grant funds through the Texas Parks and Wildlife Department or other entities for certain improvements to the Athletic Fields contemplated in the Master Plan. The District will cooperate with the City in the City's efforts to obtain a grant.
- 8.3 Approval of Capital Improvements, Repairs, Changes or Modifications to the Leased Premises.
- a. Any capital improvement, repair or other major change or modification that the City desires to make to the Leased Premises must be approved, in advance, by the Board of Trustees of the District. For purposes of this subsection, the term "major" refers to any addition to, or repair or replacement of, any existing structure or landscaping or other such modification that (i) requires a building permit, or (ii) exceeds a total project cost or value of \$1,000.00. The City must submit plans to the District detailing the proposed changes, provide a statement of the purpose for any such changes or modifications and obtain the District's approval making such changes or modifications.
 - b. Any and all minor changes, repairs or modifications that the City desires to make to the Leased Premises must be approved in advance by the District's Superintendent. For purposes of this subsection, the term "minor" refers to any addition to, or repair or replacement of, any existing structure or landscaping or other such modification that (i) does not require a building permit or (ii) does not exceed a total project cost or value of \$1,000.00. The City is not required to submit detailed plans regarding such changes to the Superintendent.

- c. The City must obtain any required approvals before initiating any changes or modifications.
- 8.4 District's Ownership of Improvements. It is expressly understood and agreed that all permanent improvements, now on or hereafter placed by the City on the Leased Premises and any and all fixtures of whatsoever nature at any time constructed, placed or maintained on any part of the Leased Premises by the City will become the property of the District and remain upon the Leased Premises at the termination of this Agreement.

ARTICLE 9
REPAIRS AND RESTORATION

- 9.1 City's Duty to Repair. The City accepts the Leased Premises in the condition that the Leased Premises are in on the date of this Agreement. The City must at its sole cost and expense, keep and maintain the Leased Premises, as well as any improvements, additions or fixtures added thereto or constructed by the City, in good repair. At the termination of this Agreement, the City must deliver the Leased Premises, together with any improvements constructed by the City, to the District in a clean and sanitary condition, and in a good state of repair.

ARTICLE 10
CONDEMNATION

- 10.1 If the Leased Premises or any part thereof is taken for public or quasi-public purposes by condemnation as a result of any action or proceeding in eminent domain, or is transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, this Agreement will immediately terminate and any award or consideration for such transfer will be and remain the sole property of the District.

ARTICLE 11
WAIVER OF CLAIMS

- 11.1 Indemnification. To the extent allowed by Texas law, the City and the District hereby waive on their behalf all claims and demands against the other, for any such loss, damage or injury of the other and hereby agree to indemnify and hold the other entirely free and harmless from all liability for any such loss, damage or injury of other persons and from all costs and expenses arising therefrom.

ARTICLE 12
ASSIGNMENT AND SUBLEASE

- 12.1 Assignment. The City may not assign this Agreement without the prior, written approval of the District, which may be withheld. Any transfer,

assignment or sale of this Agreement by the City without the District's prior, written consent will be void and of no force or effect.

- 12.2 Sublease. The City may permit the use and occupancy of the Leased Premises, or portions thereof, by the approved youth athletic organizations set forth on Exhibit "B", attached hereto and incorporated herein by referenced. The City may enter into subleases with the approved organizations set forth on Exhibit "B" and, with the District's prior written consent, other athletic organizations. All subleases must be consistent with the provisions of this agreement. No sublease may operate to release the City from its duty to perform all of its obligations under this Agreement.

ARTICLE 13 **RENEWAL AND TERMINATION**

- 13.1 Termination. The Agreement may be terminated at any time by written agreement of the Parties.
- 13.2 Renewal. The agreement comes with the option to renew for up to four additional one year terms if both parties agree. The district may terminate at the end of each one year period by providing a ninety day written notice.

ARTICLE 14 **GENERAL PROTECTIVE PROVISIONS**

- 14.1 Right of Entry and Inspection. The City will permit the District or District's agents, representatives or employees to enter on the Leased Premises for the purpose of inspection or of maintaining, repairing, improving or altering the Leased Premises.
- 14.2 No Partnership. The relationship between the City and the District at all times is solely that of landlord and tenant and is not a partnership or joint venture.
- 14.3 No Waiver. No waiver by the District of any default or breach of any covenant, condition or stipulation contained in this Agreement may be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.
- 14.4 Use Clause. The City will not use the Leased Premises or any building situated upon the Leased Premises, or any part thereof, for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, the County of Travis, the City, the District or any other lawful authority having jurisdiction over the Leased Premises.

ARTICLE 15
MISCELLANEOUS

- 15.1 Parties Bound. This Agreement is binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
- 15.2 Notices. All notices, demands or requests from one party to another party may be personally delivered or sent by certified mail, postage prepaid, to the addresses stated in this section and will be deemed to have been given at the time of personal delivery or 3 days after mailing.

To the City: City of Pflugerville
 100 East Main #100
 Post Office Drawer 589
 Pflugerville, Texas 78691-0589
 Attention: City Manager

With copy to: George E. Hyde
 Denton, Navarro, Rocha & Bernal
 2500 W. William Cannon #609
 Austin, Texas 78745

To the District: Pflugerville Independent School District
 Attention: Charles E. Dupre, Superintendent
 1401 W. Pecan Street
 Pflugerville, Texas 78660

Either party may change its address(es) for notice under this Agreement by delivery of written notice in accordance with this Section 15.2

- 15.3 Texas Law to Apply. This Agreement will 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 Travis County, Texas.
- 15.4 Severability. If any one or more of the provisions contained in this Agreement is for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision hereof and this Agreement will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 15.5 Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or

written or oral agreements between the parties respecting the within subject matter.

- 15.6 Amendment. This Agreement may only be amended by written agreement of the parties.
- 15.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party does not preclude or waive its right to use any or all other remedies. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.
- 15.8 Attorneys Fees. If the City or the District breach any of the terms of this Agreement whereby one party employs attorneys to protect or enforce its rights hereunder and prevails, then the prevailing party will be reimbursed by the other party for all reasonable attorneys fees incurred in the process.
- 15.9 Time of Essence. Time is of the essence in the performance of all obligations under this Lease.
- 15.10 Headings. The headings in each of the paragraphs of this Agreement are for convenience only and are not to be construed as part of the sections of this Agreement for any reason whatsoever.
- 15.11 Exhibits. The following exhibits are incorporated into this Lease for all purposes:

Exhibit "A" – Description of Athletic Fields

Exhibit "B" – Approved Youth Athletic Organizations

THIS AGREEMENT has been executed by the parties effective on the date and year first above written.

(Signature page follows.)

LESSOR:

PFLUGERVILLE INDEPENDENT SCHOOL
DISTRICT

By: _____
Charles E. Dupre, Superintendent

LESSEE:

CITY OF PFLUGERVILLE

By: _____
Brandon Wade, City Manager

EXHIBIT "A"

Description of Athletic Fields

Being the southern portion of the Pflugerville Elementary School property located on Dessau Road in Pflugerville, Texas, and bounded by Dessau Road on the west, Pigeon Forge Road on the south, Gatlinburg Subdivision in the east, and the paved parking lot of Pflugerville Elementary School on the north.

EXHIBIT "B"

Approved Youth Athletic Organizations

Pflugerville Little League Baseball Association.