

AN ORDINANCE 2015-09-17-0801

AUTHORIZING THE ASSIGNMENT FROM SPORTSAMERICA, INC. TO NORTHEAST INDEPENDENT SCHOOL DISTRICT (NEISD) OF A LEASE AGREEMENT FOR AN INITIAL TERM OF TWENTY-FIVE (25) YEARS FOR THE OPERATION OF TIME WARNER CABLE PARK IN COUNCIL DISTRICT 10 AND AUTHORIZING THE NEGOTIATION AND EXECUTION OF AN AMENDMENT OF THE LEASE AGREEMENT TO EFFECTUATE THE FULL TRANSFER OF ALL OPERATIONS AND LEASEHOLD INTERESTS OF THE SPORTS COMPLEX TO NEISD; NO CITY FUNDS ARE ASSOCIATED WITH THIS ACTION.

* * * * *

WHEREAS, in August 1990, the City leased a 45.822 acre tract of land near the northeast corner of McAllister Park on Wetmore Road to SportsAmerica, Inc. for an initial term of twenty-five years for the purpose of developing and managing a sports complex currently identified as Time Warner Cable Park; and

WHEREAS, the City only provided property for the tenant funded improvements at the private-for-profit operated sports complex; and

WHEREAS, the Lease Agreement was amended in 1991 to expand the premises to 56.685 acres, and was subsequently amended in support of improvements and extended the term through May 24, 2026; and

WHEREAS, the North East Independent School District (NEISD) informed the City regarding the proposed purchase of improvements at the sports complex from SportsAmerica, Inc. as allowed under the existing agreement with the intent to assume full operations on a permanent basis under the assignment of the leasehold interest from SportsAmerica, Inc.; and

WHEREAS, to meet the needs of the school district and enhance the recreational offerings to the community, NEISD intends to make initial improvements of \$8 - \$10 million to the sports complex through the school district bond program and general operating budget including heating the existing pool and establishing shade over sports fields; and

WHEREAS, NEISD secured an earnest money contract for the purchase of the improvements from SportsAmerica, Inc. which expires September 28, 2015; and

WHEREAS, as a governmental entity serving a public purpose, NEISD requires a fully amended contract reflecting a modified contractual relationship with the City; and

WHEREAS, as a result, the proposed modified agreement has a term of twenty-five years with one renewal option of the same length, and NEISD will be solely responsible for all operational, maintenance, and improvement costs of the premises; and

WHEREAS, the sports complex will be open to the public when not in use by the school district for its own activities; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The assignment of a lease agreement from SportsAmerica, Inc. to Northeast Independent School District (NEISD) is hereby approved.

SECTION 2. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute an amended lease agreement for an initial term of twenty-five years for the operation of Time Warner Cable Park in Council District 10. A copy of the amended lease agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**.

SECTION 3. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is further authorized execute any and all necessary documents to effectuate the full transfer of all operations and leasehold interests of the sports complex to NEISD.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

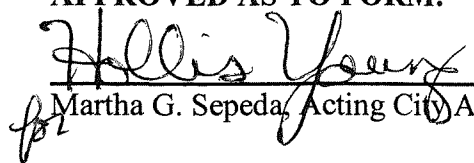
SECTION 5. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 17th day of September, 2015.


M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vaccck, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	26 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 22A, 22B, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43)
Date:	09/17/2015
Time:	10:02:11 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the assignment from SportsAmerica, Inc. to Northeast Independent School District of a Lease Agreement for an initial term of twenty-five years for the operation of Time Warner Cable Park in Council District 10 and authorizing the negotiation and execution of an amendment of the Lease Agreement to effectuate the full transfer of all operations and leasehold interests of the sports complex to NEISD; no City funds are associated with this action. [Xavier D. Urrutia, Interim Assistant City Manager; Janet A. Martin, Acting Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x			x	
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

LEASE AGREEMENT FOR SPORTS COMPLEX

This AGREEMENT is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (the "City"), acting by and through its City Manager pursuant to Ordinance No. _____ adopted _____, 2015, and the NORTH EAST INDEPENDENT SCHOOL DISTRICT, a public school district and political subdivision of the State of Texas ("NEISD" or "the District").

In consideration of the mutual covenants and promises herein expressed and other good and valuable consideration, the receipt of which is hereby acknowledged, the City and NEISD hereby agree as follows:

RECITALS

WHEREAS, City owns a tract consisting of 56.685 acres of land, which is more fully described at Exhibit A to this lease;

WHEREAS, since 1990, City has leased this 56.685 tract of land to SportsAmerica, Ltd., a Texas corporation, for the purpose of operating a Sports Complex known currently as "Time Warner Park," which consists of, among other facilities, a swimming pool, softball fields and volleyball courts;

WHEREAS, the lease between the City and SportsAmerica, Ltd., was last amended on May 24, 2001, pursuant to Ordinance No. 93999, in which City granted a term of twenty-five (25) years from the date of the amendment, or until May 24, 2026, with an additional single ten (10) year renewal option therein;

WHEREAS, NEISD has purchased the Sports Complex currently known as Time Warner Park from SportsAmerica, Ltd., intends to make additional improvements to the existing facilities, and plans to use it to serve the needs of its schoolchildren, parents and the community at large, which will include competitive activities;

WHEREAS, NEISD and City, recognizing the public benefit to be derived from NEISD's acquisition of the Sports Complex currently known as Time Warner Park, and its surrounding land more fully described in Exhibit A, and the non-profit nature of NEISD's purpose, which is the education and enrichment of its schoolchildren and their families, hereby desire to enter into this Lease Agreement which will supersede and replace any and all prior Lease Agreements related to any portion of the land identified in Exhibit A to this Agreement.

**I.
PURPOSE AND USE**

1.1 City and NEISD hereby acknowledge and agree that the purpose of this Agreement is to have NEISD exclusively operate, maintain and/or make improvements to the Sports Complex located on approximately 67 acres of land referenced specifically in Exhibit A ("Leased Premises"). NEISD will use the Sports Complex for the benefit of its

students, parents, and community, to include, but not be limited to, athletic practices, events, and competitions. NEISD shall remain solely responsible for the maintenance of any current and/or future facilities located on the Leased Premises, including, but not limited to, the Sports Complex.

1.2 NEISD agrees not to use the Leased Premises or any facilities on the premises, whether currently existing or added later, for any purposes that violate any applicable law, regulation or ordinance of the United States, the State of Texas, or the City of San Antonio or Bexar County.

1.3 NEISD will, from time to time and during certain events, only allow authorized school-support organizations (e.g., Band Parent Booster organizations) to sell concessions during events at the Sports Complex. Any monies raised through the sale of concessions will be used as a fundraiser for the particular student organizations supported (e.g. band).

1.4 It is the desire of NEISD to use and operate the Sports Complex in an efficient, yet cooperative manner whereby NEISD may exclusively operate the programs intended for NEISD students, school support organizations and other sports groups within the Sports Complex during the term of this Agreement. The City shall have the right to limited usage of the Sports Complex for public activities and special events so long as such activities and events will not conflict with NEISD's scheduling and/or materially interfere with NEISD's use of the Sports Complex.

II. **TERM**

2.1 The City hereby leases unto NEISD and NEISD hereby accepts the Leased Premises, together with non-exclusive easements of ingress and egress to such property, subject to the terms of this Agreement. NEISD shall, for the duration of the term set forth herein, peacefully enjoy the Leased Premises, and the City hereby covenants said quiet possession unto NEISD, subject only to the terms hereof. The term of this Agreement shall commence ten (10) days after its full execution and shall continue for a period of twenty five (25) years thereafter, unless earlier termination shall occur according to the applicable provisions contained elsewhere in this Agreement.

III. **RENEWAL OPTION**

3.1 As long as NEISD is not in default hereunder, NEISD may extend this Agreement through written notice to the City for one (1) additional term of twenty-five (25) years under all of the same terms and conditions of this Agreement. Should NEISD wish to avail itself of this renewal option, it shall provide the required written notice no later than six (6) months prior to the date of expiration of any previous term, including the original term set forth in Section II.

IV.
RENT

4.1 NEISD shall pay no rent to the City during the term of this Agreement.

V.
FUTURE IMPROVEMENTS AND CONSTRUCTION

5.1 Subject to the following conditions, NEISD shall have the right at any time and from time to time during the initial and any renewal term of this Agreement to erect, construct, build, maintain, alter, remodel, reconstruct and rebuild the facilities as they currently exist as part of the Sports Complex, or any other facilities needed to meet the needs of the District.

5.2 NEISD shall pay and be responsible for all costs of any such construction, change, alteration, or improvements as contemplated in Paragraph 5.1, including but not limited to architectural/engineering fees, surveys, and permit fees.

5.3 NEISD shall present plans, specifications, and the proposed location of all facilities and improvements to the Leased Premises, including but not limited to the Sports Complex, for approval by the City's Director of the Parks and Recreation Department, as well as to any boards, commissions and review agencies the City deems necessary. The City shall respond to NEISD's request for approval promptly, but in no event shall any such request take longer than thirty (30) days from the initial submission by NEISD, or any authorized agent of NEISD. The City shall not unreasonably withhold approval of any presented plans, specifications, and/or proposed location.

5.4 Should the City, through the Director of Parks and Recreation, require any required changes or modifications to the plans, specifications, or proposed location of any facilities or improvements the District wishes to construct on the Leased Premises, the City shall promptly notify NEISD in writing of any such changes. NEISD shall have the opportunity to review and respond to the City's required changes or modifications, and shall resubmit any corrected plans, specifications, or location information regarding the proposed improvements to the City's Director of Parks and Recreation, who shall promptly review the changes and modifications for approval, and in no event shall fail to respond to NEISD within thirty (30) days. The City shall not unreasonable withhold approval of any presented plans, specifications, and/or proposed location.

5.5 NEISD will comply with any and all federal, state, City, and Bexar County environmental, as well as any other applicable, laws or ordinances with regard to the design and construction of any improvements to the Leased Premises, including the Sports Complex. Any and all improvements shall be designed and constructed in compliance with any applicable Building, Fire, and other City codes and federal, state and Bexar County regulations.

5.6 NEISD may make minor changes to any work or materials related to any construction projects on the Leased Premises without approval from the City.

5.7 As part of City's review of NEISD's future improvement and construction plans, City shall maintain the right to require preservation of buffer area(s) and/or implementation of buffer related improvements in order to protect the aesthetic and quiet enjoyment of surrounding park property and adjacent property owners.

VI. PERSONAL PROPERTY

6.1 The City expressly understands and agrees that any and all machinery, equipment, signs, and other such items of personal property of whatever nature maintained by NEISD on any part of the Leased Premises shall be and remain the property of NEISD. In the event NEISD fails to remove such property within ninety (90) days after the end of the Agreement, such personal property shall become the property of the City without need for any additional action by the City.

VII. ADDITIONAL USE BY OTHER ENTITIES

7.1 At any time during the initial term or renewal term of this Agreement, NEISD may enter into other agreements with third-party entities for use of the Sports Complex, Leased Premises, or any parts thereof. Any such other agreements with third-party entities shall be only for purposes in conformance with any and all applicable NEISD policies, procedures, and practices, and in no event shall be for any purpose deemed objectionable. Alcoholic beverages will not be permitted to be brought, distributed, sold or consumed on the Leased Premises and/or the Sports Complex. Wherever possible, any agreements for outside use will also serve to promote the public benefit and interest with particular emphasis on NEISD students, parents and community.

VIII. MAINTENANCE AND REPAIR

8.1 NEISD shall pay, or cause to be paid, any and all charges for water, heat, gas, electricity, sewers, and any and all other utilities used by NEISD on the Leased Premises throughout the initial term and renewal terms of this Agreement, including any applicable connection fees.

8.2 NEISD, at its sole cost and expense and at all times during the initial term and renewal terms of this Agreement, agrees to keep and maintain, or cause to be kept or maintained, all buildings and fixtures on the Leased Premises, including the Sports Complex and any and all future improvements thereto, in a good state of appearance and in good working order, reasonable wear and tear excepted.

8.3 NEISD shall be strictly responsible for the condition of the Leased Premises and shall maintain it in a reasonably safe, clean, neat, sanitary condition and in a good state of appearance. Upon reasonable advance notice, and at such available times that do not conflict with the regular course of District business, the City shall have the right to make inspections of the Leased Premises to insure that NEISD has adhered to applicable fire, safety and sanitation regulations concerning its operation and maintenance of the Leased Premises and Sports Complex.

8.4 Should the Leased Premises, Sports Complex, or any future improvements, be damaged by fire or other casualty, and such casualty does not render the damaged portion of the Leased Premises, Sports Complex or any future improvements inoperable, and reconstruction and/or repair of the damages is economically practical, as determined by NEISD and City in their reasonable judgment, then the damages shall be reconstructed and/or repaired, as appropriate, provided that NEISD shall have received insurance proceeds sufficient to cover the cost of reconstruction or repairs. Alternatively, should insurance proceeds be insufficient to cover the cost of reconstruction and/or repair of the damages, and NEISD does not have sufficient funding in its budget to cover the cost, then at NEISD's option, after notifying the City in writing of the lack of sufficient funding to reconstruct and/or repair the damages, NEISD may terminate this Agreement, provided, however, that NEISD demolish and/or remove any remaining portion of the improvements, to include the Sports Complex prior to vacating the Leased Premises. Such termination shall be effective with sixty (60) days' written notice from NEISD to the City of its intent under this Paragraph. Should reconstruction and/or repairs be made to any damaged portion of the Leased Premises, Sports Complex, and any future improvements, NEISD shall commence such activities as soon as is reasonably possible, and it will ensure the reconstruction and/or repair is completed in a good and workmanlike manner.

8.5 If all or a substantial part of the Leased Premises, Sports Complex and any future improvements are destroyed by fire or other casualty, then NEISD may, at its sole option, terminate this Agreement and all rights thereunder. Such termination will occur upon NEISD providing the City with sixty (60) days' notice of its intent under this Paragraph. If NEISD chooses to rebuild, then such rebuilding shall commence as soon as is reasonably possible, and it will ensure the work in completed in a good and workmanlike manner.

IX. **ACCESS**

9.1 NEISD shall permit the City's agents, representatives or employees to enter upon the Leased Premises at reasonable and necessary times, upon provision of reasonable written notice, to determine whether NEISD is in compliance with its obligations under this Agreement.

X.
CONDEMNATION

10.1 If the entire Leased Premises is appropriated or taken under the power of eminent domain by any public or quasi-public authority greater than that of the City and NEISD, this Agreement shall terminate and expire as of the date of such taking, and both the City and NEISD shall be released from any liability or obligation thereunder. If more than fifty (50) percent of the Leased Premises is taken under the power of eminent domain by any public or quasi-public authority greater than that of the City and NEISD, or if by reason of any appropriation or taking, regardless of the amount so taken, and the amount of the Leased Premises remaining is insufficient for the stated purposes of NEISD's use, then NEISD shall have the right to terminate this Agreement as of the date NEISD is required to vacate the entire and/or portion of the Leased Premises taken with thirty (30) days' written notice to the City of its intent. In the event of a termination under this Paragraph, NEISD and the City shall be released from any liability or obligation under this Agreement.

10.2 The City and NEISD shall each have the right to receive and retain such separate awards and portions of lump sum awards as may be allocated to their respective interests in any condemnation proceedings. The termination of this Agreement under Paragraph 10.1 shall not affect the parties' respective rights to these awards.

XI.
ASSIGNMENT AND SUBLETTING

11.1 NEISD shall not assign this Agreement, or allow it to be assigned by operation of law or otherwise, or sublet the Leased Premises or any part thereof without the prior written consent of the City through whatever appropriate means the City requires for approval of such an assignment or sublease. The City shall not unreasonably withhold approval of any assignment or sublease.

XII.
NO THIRD PARTY RIGHTS

12.1 This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person who is not a party hereto, unless otherwise expressly herein provided.

12.2 Nothing in this Agreement shall be deemed or construed by the parties hereto, or any third party, to create the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein, nor any acts of the parties hereto, creates a relationship other than the relationship of Lessor and Lessee.

XIII.
LIABILITY

13.1 As government entities, NEISD and the City both hereby expressly acknowledge that they are governed by the Texas Tort Claims Act, which is located in Chapter 101 of the Texas Civil Practice and Remedies Code, and nothing in this Agreement shall be construed as a waiver by either of the parties of any of the immunities and protections from liability included therein.

XIV.
INSURANCE

14.1 The City, at its own expense, shall provide and maintain, during the term of this Agreement, either insurance, with or without a retention, or a self-insurance program, allowed and provided by law, to Texas municipalities. This insurance or self-insurance shall cover liability for property damage and personal injury of the City's use and ownership of the Leased Premises during only those periods it is entitled to use the Leased Premises pursuant to the provisions hereof.

14.2 NEISD, at its own expense, shall provide and maintain, during the term of this Agreement, either insurance, with or without retention, or a self-insurance program, allowed and provided by law, to Texas independent school districts. This insurance or self-insurance shall cover liability for property damage and personal injury of the District's use of the Leased Premises during only those periods it is entitled to use the Leased Premises pursuant to the provisions hereof.

14.3 NEISD agrees that during any period of construction, repair, alteration, addition or reconstruction on the Leased Premises, to include the Sports Complex, by NEISD, its contractors or subcontractors, NEISD will obtain and maintain appropriate insurance at its sole cost and expense adequate to protect the City and NEISD against any and all claims for monetary damages and/or other liability for death of or other personal injury to persons or damage to property caused in or about by reason of such construction, repair, alteration, addition or reconstruction as discussed herein.

XV.
NON-DISCRIMINATION

15.1 NEISD, its trustees, employees, and agents do not, and will not, discriminate against any person in its employment practices or admission of persons to the Leased Premises on the basis of race, color, national origin, sex, age, religion, handicap, or any other basis that is recognized as a protected class by law anytime in the future.

XVI.
ENTIRE AGREEMENT/AMENDMENT

16.1 This Agreement, together with any attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between NEISD and the City with respect to the Leased Premises, and further supersedes and fully replaces any prior agreements and obligations contained therein concerning the Leased Premises, including any prior agreements between the City and SportsAmerica, S.A., Ltd., assigned to NEISD.

16.2 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

16.3 The City's Charter requires that all contracts with the City be in writing and adopted by ordinance. As such, any amendments to this Agreement will also require approval evidenced by ordinance.

16.4 By signature below, the Superintendent of Schools for NEISD hereby acknowledges that all requisite action has been taken by its Board of Trustees to approve this Agreement. Any future amendments shall also be required to be approved by the Board of Trustees.

XVII.
SEPARABILITY

17.1 If any clause or provision of this Agreement is deemed illegal, invalid or unenforceable under current or future laws effective during the initial term or any renewal term of this Agreement, then and in that event it is the express intention of the City and NEISD that the remainder of this Agreement, including its Purpose and Use, shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XVIII.
NOTICES

18.1 Notices to the City required or appropriate under this Agreement shall be deemed sufficient if in writing and sent by U.S. Certified Mail, postage prepaid, by facsimile and/or by electronic mail to the following addresses: [INSERT ADDRESS/FAX/EMAIL]. Notices to NEISD shall be deemed sufficient if sent by the same means to the information as follows: Office of the Superintendent of Schools, Richard A. Middleton Education Center, North East Independent School District, 8961

Tesoro Drive, 6th Floor, San Antonio, Texas 78217, facsimile no. 210/804-7101, email: board@neisd.net.

XIX.
PARTIES BOUND

19.1 The covenants and agreements herein contained shall inure to the benefit of and be binding upon the parties hereto, their respective legal representatives, successors and assigns.

XX.
GOVERNING LAW

20.1 The governing law for this Agreement shall be that of the State of Texas, and all of the obligations under this Agreement shall be performable in Bexar County, Texas.

XXI.
CAPTIONS

21.1 The captions to each of the paragraphs in this Agreement are for convenience and reference only and in no way limit or enlarge the terms and conditions of this Agreement.

IN WITNESS WHEREOF, we have affirmed our signatures this _____ day of _____, 2015.

CITY OF SAN ANTONIO

By: _____
Title: _____

ATTEST:

By: _____
Title: _____

NORTH EAST INDEPENDENT SCHOOL
DISTRICT

By: _____
SUPERINTENDENT OF SCHOOLS



	EXHIBIT A NEISD LEASE AGREEMENT	Printed: Sep 09, 2015
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