

**CITY OF SAN ANTONIO
LIBRARY DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Aubrey W. George, Acting Library Director

SUBJECT: Agreement for Cody Branch Library Parking Lot at Howsman Elementary

DATE: December 16, 2004

SUMMARY AND RECOMMENDATIONS

Approval of this ordinance authorizes a Lease Agreement between the Northside Independent School District (NISD) and the City of San Antonio to construct a parking lot on a portion of the Howsman Elementary School campus, consisting of approximately 23,270 square feet adjacent to and Southwest of the existing Cody Branch Library parking lot, located in Council District 8. The parking lot shall be for the primary use of the public visiting Cody Branch Library as well as City staff and will address inadequate parking by increasing the number of spaces now available. The lease shall be for a term of twenty-five years unless terminated according to the terms of the agreement.

The City will be responsible for construction of the parking lot and related improvements on the leased premises and to maintain the leased premises during the term of the lease. The project is currently under design, will be put out to bid in March 2005 with an estimated completion date of July 2005. Funds in the amount of \$230,000 for the design and construction of the parking lot are an authorized 2003 General Obligation Bond Issue.

Library Board and staff recommend the approval of this ordinance.

BACKGROUND INFORMATION

This ordinance authorizes the City to lease from Northside Independent School District a portion of the Howsman Elementary School campus for the purpose of construction of a parking lot. The City will be responsible for design and construction of the parking lot, related improvements, maintenance of the premises and fees and expenses incurred in connection with the premises. The NISD will have no monetary obligations with respect to the improvement, platting or replatting of the premises. The twenty-five year lease agreement allows NISD the use of the parking lot in common with the City with respect to activities occurring at Howsman Elementary. However, the NISD will not be permitted to use the parking lot as a teacher/employee designated parking area.

The Cody Branch Library located at 11441 Vance Jackson is a 13,617 square foot facility and currently has forty-one regular parking spaces and two handicapped spaces. Cody Branch is the library systems busiest branch. In FY04 310,708 customers visited Cody Branch Library, an increase of 5.7% over FY03 and circulated 612,909 items, an increase of 5.2% over the previous year. Insufficient parking has long been a concern for this location. The Cody Library Parking Lot Expansion was included in the 2003 GO Bond Issue.

POLICY ANALYSIS

Approval of this ordinance shall be a continuation of City Council policy to construct previously approved 2003 GO Bond Issue projects.

FISCAL IMPACT

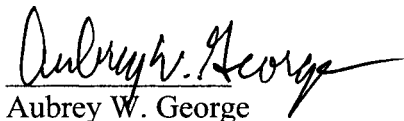
Funds in the amount of \$230,000 are available from the 2003 GO Bond Issue. No additional rental costs will be required under the lease.

COORDINATION

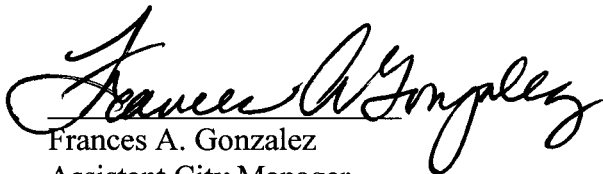
This request for ordinance has been coordinated with the Finance Department and the City Attorney's Office.

SUPPLEMENTARY COMMENTS

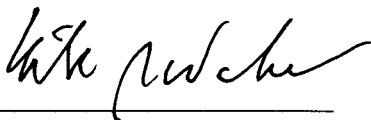
This action requires no disclosure under the City's Ethics ordinance.



Aubrey W. George
Library Department



Frances A. Gonzalez
Assistant City Manager



J. Rolando Bono
Interim City Manager

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**LEASE AGREEMENT
CODY BRANCH LIBRARY
(HOWSMAN ELEMENTARY)**

This lease agreement ("Agreement" or "Lease") is entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation (hereinafter called "CITY"), acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2004, and the NORTHSIDE INDEPENDENT SCHOOL DISTRICT, a political subdivision of the State of Texas, acting by and through its Superintendent, heretofore duly authorized by its Board of Trustees, (hereinafter called "DISTRICT").

**I.
GRANT OF LEASE**

1.1 For and in consideration of the observance of the terms and conditions set forth below, the DISTRICT hereby leases to CITY and CITY leases from DISTRICT a portion of the Howsman Elementary School campus, consisting of approximately 23,270 square feet, as more specifically shown in Exhibit "A," such Exhibit being incorporated herein by reference for all purposes, (hereinafter called "Leased Premises"). Any survey of the Leased Premises required by DISTRICT shall be at CITY'S expense.

**II.
USE**

2.1 This Lease is granted by DISTRICT and herein restricted to the non-exclusive use by CITY for the purpose of allowing CITY to utilize the Leased Premises for use as a parking lot. The parking lot shall be for the primary use of the public visiting Cody Branch library as well as the use of the City staff. The District shall be permitted, however, to use the parking lot in common with CITY for parking by its staff and patrons with respect to activities occurring from time to time at Howsman Elementary School. Notwithstanding the foregoing, in no event shall DISTRICT be entitled to use the parking lot for teacher/employee designated parking.

**III.
TERM**

3.1 The Lease hereby granted shall be for a term of twenty-five (25) years beginning on the effective date of this Agreement as indicated below unless terminated at the option of CITY or DISTRICT pursuant to the terms herein.

3.2 This Agreement shall terminate in the event sufficient funds are not appropriated by CITY in any given year during the term of this Lease to meet CITY'S fiscal obligations herein. Once construction of the parking lot commences, it must however be diligently pursued through completion. Payment for the performance under this Agreement must only be made from current revenues available to the paying party.

IV. CONSIDERATION

4.1 As consideration for this grant of this Lease, the CITY agrees to construct the parking lot and related improvements required herein on the Leased Premises and to maintain the Leased Premises during the term of this Lease for the uses set out in paragraph 2.1, thereby relieving the DISTRICT from these responsibilities as well as the need to commit its own funds for this purpose.

4.2 As further consideration, CITY agrees that any and all improvements constructed or placed on the Leased Premises shall be considered fixtures to the Leased Premises, part of the Leased Premises and shall immediately become the property of the DISTRICT upon their construction.

4.3 CITY'S obligations in paragraph 4.1 shall begin on the Effective Date of this Lease and continue thereafter until this Lease expires or is terminated as provided herein.

V. IMPROVEMENTS

5.1 CITY covenants and agrees to cause a parking lot to be constructed on the Leased Premises within twenty (20) months from the Effective Date hereof in a good and workmanlike manner pursuant to plans and specifications mutually approved by the parties hereto, such plans and specifications to also include proposed landscaping (with irrigation) and a fence along both sides of the parking lot directly abutting the Howsman Elementary campus, with a gate at a location along the perimeter of the Leased Premises designated by the District. For any and all initial improvements or subsequent modifications thereto approved by the District, CITY agrees to assume full responsibility for all installation and construction costs and related activities, as to such improvements to be made by CITY to the Leased Premises during the term hereof.

5.2 Further, during such construction, CITY and its contractor and subcontractors further agree to comply with all applicable city, federal and state laws and DISTRICT policies in connection with any construction or installation of any improvements. CITY will be responsible for compliance with any tree or landscape ordinances, and in no event will DISTRICT be obligated to mitigate any tree removals made from the Leased Premises by City. In addition, in the event CITY determines that the Leased Premises need to be platted or replatted, CITY will be responsible for any fees and expenses incurred in connection therewith, it being mutually agreed that DISTRICT will have no monetary obligations whatsoever with respect to platting or replatting the Leased Premises.

VI. TERMINATION/REMEDIES

6.1 Any breach or violation by either party to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of the non-violating party, at its option, upon thirty (30) days' written notice to violating party, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Lease or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained. Notwithstanding the foregoing, once the improvements to be constructed by CITY pursuant to Section 5.1 hereof have been substantially completed, in no event shall this Agreement or CITY'S use of the premises be terminated prior to the final payment or defeasement of any bonds theretofore issued by CITY to pay for the improvements. As long as such bonds have not been paid, the CITY's failure to perform any required actions under this Agreement shall not permit DISTRICT to terminate this Agreement but shall give rise to DISTRICT's right, upon 60 days written notice to CITY, to undertake to perform any such actions and to receive reimbursement from CITY for the cost of performing such actions, such payment to occur within thirty (30) days from DISTRICT's written demand accompanied by reasonable supporting back-up information. Nothing contained in this Section 6.1 shall be deemed as extending the term of this Lease Agreement as set forth in Section 3.1 hereof.

VII. MAINTENANCE

7.1 CITY, at its sole cost and expense, agrees to maintain, as reasonably necessary, the improvements within the Leased Premises, adhering to all applicable safety standards and to keep any related landscaping in a neat and attractive condition, providing irrigation at its expense as appropriate.

7.2 CITY agrees to promptly repair any damage to the Leased Premises caused by the maintenance, installation or construction of improvements or landscaping on the Leased Premises provided by CITY.

VIII. THIRD PARTY CLAIMS

8.1 CITY and the DISTRICT acknowledge they are political subdivisions of the State of Texas and are subject to, and comply with the applicable provisions of the Texas Tort Claims Act, as set out in the Texas Civil Practice and Remedies Code, Section 101.001 et. seq. and the remedies authorized therein regarding claims or causes of action that may be asserted by third parties for accident, injury or death.

IX.
ASSIGNMENT/SUBLETTING

9.1 This Lease is personal and is not assignable.

X.
CONDEMNATION

10.1 It is understood and agreed that in the event that the Leased Premises are taken, in whole or in part, by any governmental authority other than DISTRICT or CITY, this Lease and all rights or permission to use hereunder shall, at the option of DISTRICT cease on the date title to such land so taken or transferred vests in the condemning authority. DISTRICT shall give CITY written notice as soon as DISTRICT receives notice from any condemning entity that it intends to condemn the Leased Premises. CITY hereby waives all rights to any proceeds of such condemnation, but CITY shall have the right to seek a separate condemnation award.

XI.
ATTORNEY'S FEES

11.1 In the event any action is brought under this Lease, the prevailing party shall be entitled to recover from the other Party its reasonable costs and attorney's fees.

XII.
SEVERABILITY

12.1 The Parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable, under any present or future federal or state, effective during the term of this Agreement, then and in that event, it is the intention of the parties hereto that the remainder of this Agreement 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 held to be 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.

XIII.
AMENDMENT

13.1 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 and agreed to by both of the parties hereto.

**XIV.
NOTICES**

14.1 Any notice hereunder may be given by U.S. certified or registered mail to the CITY by addressing: City Clerk, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283-3966, and to DISTRICT at: 5900 Evers Road, San Antonio, Texas 78238-1699, Attn: Superintendent. Such address may be changed from time to time by written notice of such change given in accordance with this Article XIV.

**XV.
APPROVAL OF THE CITY**

15.1 Whenever this Agreement calls for approval by CITY, unless otherwise explained herein, such approval shall be evidenced by the written approval of the Director of the Library Department of the CITY OF SAN ANTONIO or his designee unless City Council approval is required.

**XVI.
RELATIONSHIP OF PARTIES**

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

**XVII.
TEXAS LAW TO APPLY**

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

**XVIII.
GENDER**

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

**XIX.
CAPTIONS**

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

**XX.
COVENANTS**

20.1 Covenants and obligations of CITY contained herein shall be covenants running with the land, binding upon its legal representatives, and permitted successors and assigns.

**XXI.
ENTIRE AGREEMENT**

21.1 This Agreement, together with its exhibits and the authorizing ordinance or ordinances, in writing, constitute the entire agreement, with any other written or parol agreement with CITY being expressly waived by CITY. It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance.

EXECUTED as of the _____ day of _____, 2004 (the "Effective Date").

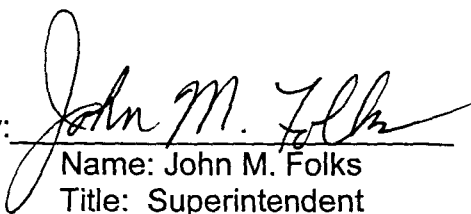
CITY:

DISTRICT:

CITY OF SAN ANTONIO,
A Texas Municipal Corporation

NORTHSIDE INDEPENDENT
SCHOOL DISTRICT


By: _____
Name: Terry Brechtel
Title: City Manager

By: 
Name: John M. Folks
Title: Superintendent

ATTEST:

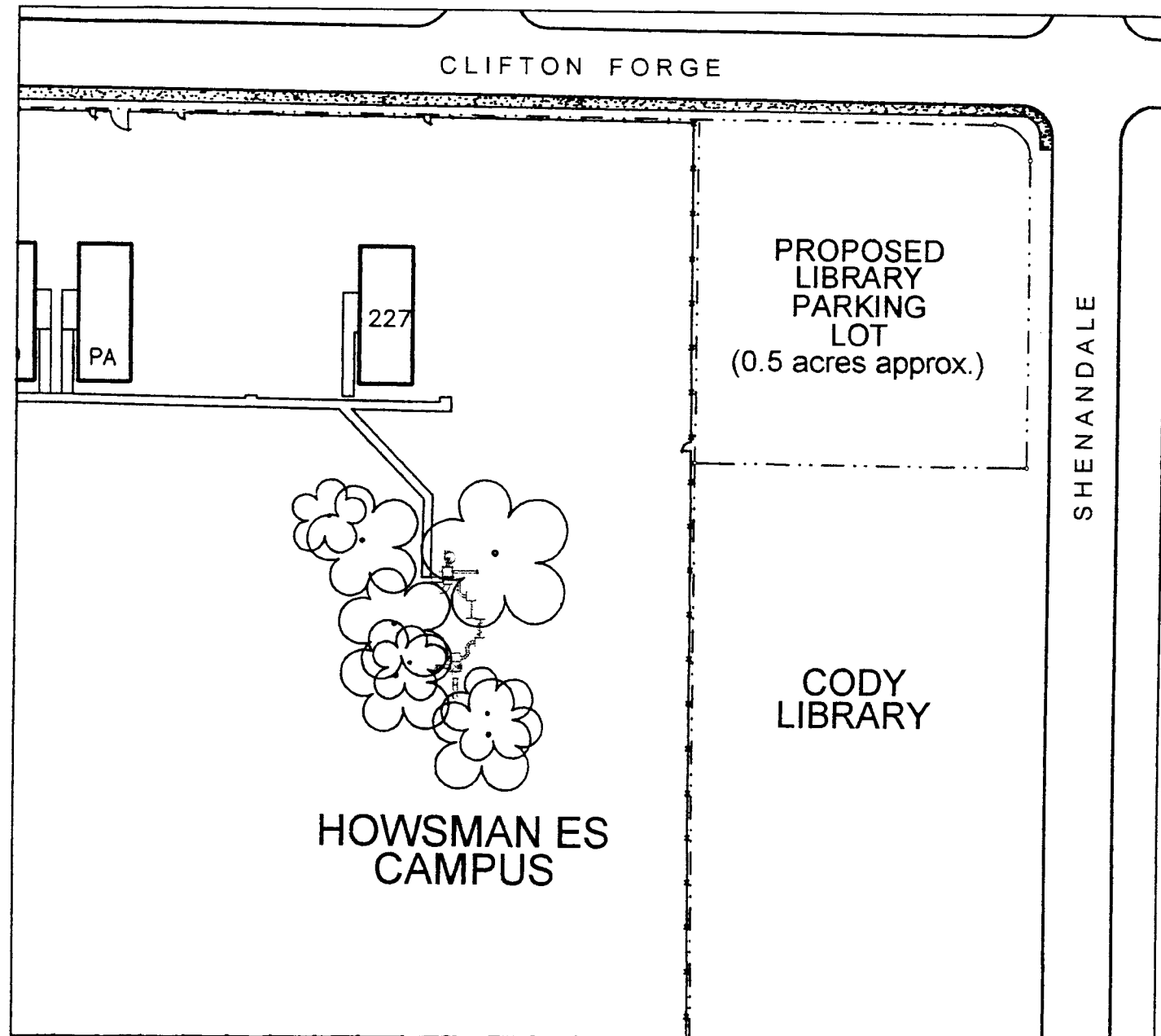
By: _____
City Clerk

APPROVED AS TO FORM:



City Attorney

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VANCE JACKSON

SHENANDALE

HOWSMAN ES
CAMPUS

CODY
LIBRARY

PROPOSED
LIBRARY
PARKING
LOT
(0.5 acres approx.)

CLIFTON FORGE

Parital Site Plan

NOT TO SCALE

SITE DATA

LOT 33
BLOCK 15
N.C.B. 14031

TOTAL OFFICES = 4
TOTAL CLASSROOMS = 46
TOTAL PARKING = 93



Northside I.S.D.
Facilities and
Operations Department

HOWSMAN ELEMENTARY SCHOOL
Proposed Library Parking Lot
11431 Vance Jackson San Antonio, Texas

PROJECT NO.:
DATE 9/30/04
DRAWN PETER C.

C1

SHEET 1 OF 1

EXHIBIT A