

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made effective as of the date of the last to execute this Memorandum of Understanding by the parties hereto being the McAllen Independent School District (“MISD”), the City of McAllen (“City”), Hidalgo County acting by and through its Precinct 4 (“County”) and Capable Kids Foundation Inc., a 501(c)(3) non-profit organization, (“Kids”) collectively the “Parties”.

Whereas MISD is an independent school district and desires to make available certain excess land at one of its elementary school sites being Sanchez Elementary School with a physical address of 2901 Incarnate Word, McAllen, TX 78504 on which MISD desires to construct an all-inclusive park (the “Park”) subject to the execution of a mutually agreeable interlocal cooperation agreement by and between MISD and City;

Whereas City and MISD have entered into various joint City MISD park interlocal agreements for various school sites of MISD;

Whereas County has participated in construction of various parks with at least one all-inclusive park in another school district;

Whereas Kids has participated in construction and/or funding of various all-inclusive parks; and

Whereas MISD, City, County and Kids desire to proceed with the construction of an all-inclusive park at MISD’s Sanchez Elementary School (the “Project”).

NOW THEREFORE, the following Agreement shall supersede all previous Agreements made by MISD, City, County, and Kids. The Parties, in consideration of the mutual covenants expressed hereinafter, agree as follows:

1. MISD

1.1 MISD will act as fiscal agent for the construction and maintenance of the Project as well as providing a project rendering of the Park.

1.2 MISD will bear responsibility for all its internal staff administrative costs of the Project.

2. City

2.1 City will construct and provide bathrooms on City property adjacent to the Park and construct a vehicular parking lot on City property adjacent to the Park in accordance with the terms of an interlocal cooperation agreement by and between District and City to be executed subsequent to the date of this Agreement.

3. County

3.1 County shall contribute the sum total of Three Hundred Fifty Thousand and no one hundredths Dollars (\$350,000.00) to MISD on or before 60 days after the signing of this MOU towards the construction of the Park, or in lieu thereof, in cooperation with Kids, properly procure, in compliance with all applicable laws, purchase of a playscape (a description and model number or other identifying description which shall be approved by MISD and City, the "Playscape") and provide a copy of such Playscape order to the manufacturer of such Playscape to MISD by 120 days after the signing of this MOU with the Playscape to be delivered to MISD by 180 days after the signing of this MOU together with any and all applicable manufacturer warranties in the name of MISD.

4. Kids

4.1 Kids shall contribute the sum One Hundred and Twenty Five Thousand and no one hundredths Dollars (\$125,000.00) to MISD on or before 60 days after the signing of this MOU, towards the construction of the Park (phase I), and an additional Three Hundred Seventy Five Thousand and no one hundredths Dollars (\$375,000.00) to MISD on or before December 31, 2021, towards the construction of the Park (phase II), or in lieu thereof, in cooperation with County, properly procure, in compliance with all applicable laws, purchase of a Playscape (a description and model number or other identifying description of which shall be approved by MISD and City, the "Playscape") and provide a copy of such Playscape order to the manufacturer of such Playscape to MISD by 120 days after the signing of this MOU with the Playscape to be delivered to MISD by 180 or before December 31, 2021 after the signing of this MOU together with any and all applicable manufacturer warranties in the name of MISD.

5. Term

This MOU shall commence on \_\_\_\_\_, 2021 and shall terminate if either County or Kids fail to either contribute their respective monetary contributions by the dates stated in numbered 3.1 and 4.1 as applicable, or in lieu thereof, fails to provide the Playscape by the dates stated in numbered 3.1 and 4.1 respectively.

If Kids contributes its respective monetary contributions as stated by the date(s) specified in numbered paragraph 4.1 as applicable for phase 1, and the other fails to contribute any remaining sum of money as specified in numbered paragraph 4.1 for phase II, the money contributed by the County and Kids to MISD towards the construction of the Park (phase 1) shall be utilized by MISD for said purpose and this agreement shall terminate upon the completion of the installation and construction of phase I of the Playscape.

If both County and Kids contribute their respective specified amounts of money by the dates specified in numbered paragraphs 3.1 and 4.1 respectively then this Agreement shall remain in effect until the completion of the installation and construction of the Playscape.

6. Binding Effect

This MOU is binding on the parties in accordance with its terms. The parties signing below represent and warrant that they have the legal authority to bind the party for whom they are signing.

7. Governing Law

This MOU shall be governed by the laws of the State of Texas and is performable in Hidalgo County, Texas.

8. Notices

All notices permitted or required under this MOU shall be in writing, and shall be deemed made when delivered to the applicable party at the following addresses either by first class mail postage prepaid, facsimile, or personal delivery:

If to MISD:

McAllen Independent School District  
Attention: Jose A. Gonzalez, Ed.D., Superintendent  
2000 North 23rd Street  
McAllen, Texas 78501

If to City:

City of McAllen  
Attention: City Manager  
1300 Houston  
McAllen, Texas 78501

If to County:

Hidalgo County Judge's Office  
Attn: County Judge  
100 E. Cano St. 2nd Floor  
Edinburg, Texas 78539

If to Kids:

Capable Kids Foundation Inc.  
Attn: Sofia Pena, Executive Director  
1223 E Hackberry Ave  
McAllen, Texas 78501

9. Entire Agreement

This MOU represents the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, representations or agreements, whether written or oral, regarding the matters described herein. This MOU may be amended only by a written agreement signed by all of the Parties.

10. Authority to Bind

The undersigned represent and warrant that they are authorized to sign on behalf of and bind to the terms of this MOU the party each represents.

**[SIGNATURE PAGE TO FOLLOW]**

**IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date of the last party to execute this Agreement.**

**City of McAllen**

**McAllen Independent School District**

\_\_\_\_\_  
By:  
Its:  
Date:

\_\_\_\_\_  
By:  
Its:  
Date:

ATTEST:

Hidalgo County

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
By:  
Its: County Judge  
Date:

Capable Kids Foundation Inc.

ATTEST:

\_\_\_\_\_  
By:  
Its:  
Date:

\_\_\_\_\_  
County Clerk

Approved as to form:  
Atlas, Hall, & Rodriguez LLP

By: \_\_\_\_\_  
Stephen Crain