

ORDINANCE 2018-06-21-0475

**AUTHORIZING THE NEGOTIATION AND EXECUTION OF A LICENSE AGREEMENT WITH THE YMCA OF GREATER SAN ANTONIO, AND THE CITY OF SAN ANTONIO FOR THE CONSTRUCTION AND OPERATION OF AN AMATEUR SPORTS FACILITY ON THE 6.4 ACRE SITE LOCATED ON THE SOUTHWEST CORNER OF RICHLAND HILLS DR. AND INGRAM RD. NEAR THE POTRANCO BRANCH LIBRARY.**

\* \* \* \* \*

**WHEREAS**, the Mays Family YMCA facility, located at the corner of Potranco and Highway 151, opened in October 2016; and

**WHEREAS**, developed by the YMCA of Greater San Antonio, the facility includes the Potranco Branch Library that has quickly become a popular destination for recreation in the area; and

**WHEREAS**, with an emphasis to expand their reach to provide programs and opportunities to make the community healthier, a new project to build sports fields and amenities was planned for the property adjacent to the existing YMCA; and

**WHEREAS**, the City's Bond Program allocated \$2,000,000 to be paid on a reimbursement basis to the YMCA of Greater San Antonio for the construction of the sports fields and support building on a 6.4 acre site located on the southwest corner of Richland Hills Dr. and Ingram Rd; and

**WHEREAS**, the YMCA of Greater San Antonio will receive \$473,000.00 in proceeds from sale of 5.8 acres of land to the San Antonio Housing Trust PFC which is adjacent to the future sports facility and was finalized on May 30, 2018; and

**WHEREAS**, a previous action authorizing the use of the remaining proceeds towards the sports fields was approved by City Council on June 8, 2017, through Ordinance 2017-06-08-0423; and

**WHEREAS**, this agreement will be executed in compliance with the Small Business Economic Development Advocacy (SBEDA) Program, which requires contracts be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on the contract; and

**WHEREAS**, the Goal Setting Committee set a 25% Minority and/or Women-Owned Business Enterprise (M/WBE) and 3% AABE subcontracting goal; and

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**WHEREAS**, the YMCA of Greater San Antonio will also receive \$473,000.00 in proceeds contingent on the sale of the adjacent 5.8 acres to the San Antonio Housing Trust PFC; and

**WHEREAS**, a previous action authorizing the use of the remaining proceeds towards the sports fields was approved by City Council on June 8, 2017, through Ordinance 2017-06-08-0423; **NOW THEREFORE:**

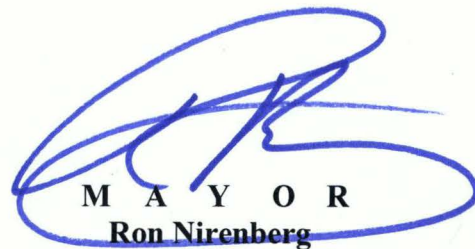
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to negotiate and execute a License Agreement with the YMCA of Greater San Antonio for the construction and operation of an amateur sports facility on the 6.4 acre site located on the southwest corner of Richland Hills Dr. and Ingram Rd. near the Potranco Branch Library. A copy of the License Agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** 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.

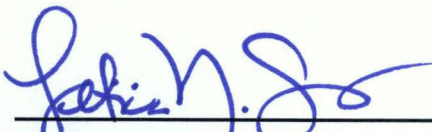
**SECTION 3.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.


**PASSED AND APPROVED this 21<sup>st</sup> day of June, 2018.**

  
**M A Y O R**  
**Ron Nirenberg**

**ATTEST:**

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leticia M. Vacek, City Clerk

  
\_\_\_\_\_  
Andrew Segovia, City Attorney

<b>Agenda Item:</b>	18B ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 19, 20, 21, 22, 23, 24, 25A, 25B, 25C, 27, 28, 29, 30, 31, 34, 35A, 35B, 36, 37, 38, 39, 40, 41, 42, 43, 46, 47, 49, 50, 51, 52, 53, 54, 56A, 56B, 56C, 56D, 56E )						
<b>Date:</b>	06/21/2018						
<b>Time:</b>	09:39:05 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Approving a License Agreement with the YMCA of Greater San Antonio for the construction and operation of an amateur sports facility on the 6.4 acre site located on the southwest corner of Richland Hills Dr. and Ingram Rd. near the Potranco Branch Library.						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x			x	
William Cruz Shaw	District 2		x				x
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

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# **ATTACHMENT I**

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2018 (herein called "**CITY**"), and [**LICENSEE NAME**], a Texas non-profit corporation (herein called "**LICENSEE**");

WHEREAS, CITY desires to provide amateur sports and recreational facilities for the use of the citizens of San Antonio and Bexar County; and

WHEREAS, LICENSEE is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this Agreement; and

WHEREAS, CITY owns \_\_\_\_\_; and

WHEREAS, CITY and LICENSEE desire to enter into a License Agreement which will allow for the construction and operation of an amateur sports facility and, in the event that LICENSEE'S rights under this Agreement cease earlier than twenty (20) years from the date of this Agreement, CITY intends to enter into an agreement with an alternate amateur sports group for the operation of the improvements; and

NOW THEREFORE, the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

**I. APPOINTMENT AND RENT**

1.1 For so long as **LICENSEE** maintains its non-profit and 501(c)(3) status and remains in good standing with its governing body throughout the term of this Agreement, CITY hereby designates LICENSEE as the primary user and maintainer of approximately \_\_\_\_ acres at \_\_\_\_\_ being part of N.C.B. \_\_\_\_\_, San Antonio, Bexar County, and LICENSEE hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.

1.2 In consideration of the public benefit of derived from LICENSEE's operations, LICENSEE shall not owe any rent under this agreement.

**II. USE**

2.1 CITY, for and in consideration of the mutual benefits to CITY and LICENSEE and the observance of the terms and conditions set forth hereinafter, hereby grants to LICENSEE permission to enter and use the Premises described in EXHIBIT A which is attached hereto and incorporated by reference herein for the purposes set forth in this Agreement.

2.2 The Premises shall be occupied by LICENSEE for amateur sports and related activities. LICENSEE agrees and specifically understands that permission herein given does not grant to LICENSEE any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that CITY retains dominion, possession and control of the Premises, including access thereto at all times. CITY reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.

2.3 LICENSEE shall allow the use of the Premises by other amateur sports groups, subject to the availability of the Premises based on LICENSEE's use for its own practices, games, tournaments, maintenance, and other related uses. LICENSEE shall establish policies and fees associated with the use of the Premises by other amateur sports groups, and such policies and fees will be consistently and fairly applied to all other users. Fees established shall be reasonable, customary, and based on rates found at similar facilities for similar use. All fees collected from use by other amateur sports groups shall be used to offset LICENSEE's cost of maintenance of the Premises. Information on the policies and fees shall be made available to the general public, either through LICENSEE's website, publications, or other means of dissemination to the public. LICENSEE agrees to give priority consideration to regional

tournaments and other events that will result in attendance by large numbers of citizens of CITY, Bexar County, or visitors outside of Bexar County.

- 2.4 Following final completion of the improvements, CITY shall have the right to use the Premises for CITY activities and events for up to ten (10) days in any calendar year during the term of this Agreement ("City Days"). CITY's right to City Days shall be subject to the availability of the Premises based on LICENSEE's use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups as outlined above. CITY shall be exempt from the payment to LICENSEE of any rent or fees for City Days. During City Days, CITY shall be bound by any exclusivity contracts for concession sales entered into by LICENSEE with any concession suppliers.
- 2.5 LICENSEE agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of LICENSEE is called to any such violation, LICENSEE or those under its control will immediately desist from and correct such violation.
- 2.6 LICENSEE acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. LICENSEE covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the CITY, indemnify, hold harmless and defend CITY from all claims which might arise from LICENSEE's activities under this Agreement.
- 2.7 LICENSEE understands and agrees that the improvements to the Premises are being financed by CITY with tax exempt debt, possibly to include General Obligation Bonds (GO) and/or Certificates of Obligation (CO). This tax exempt financing carries with it the burden of complying with the covenants contained in the debt issuing instruments as well as all applicable federal and state law related to tax exempt debt for the life of the debt. LICENSEE understands and agrees that its actions under this License could cause detriment to the City's debt program. Any activity in violation of the bond covenants or federal tax exempt regulation is strictly prohibited and LICENSEE further agrees that upon written notice it will immediately cease any activity that is deemed by CITY to be in potential violation of the debt covenants and/or federal tax exempt regulations.

### **III. TERM OF AGREEMENT**

- 3.1 The term of this Agreement is twenty (20) years, beginning on \_\_\_\_\_, 20\_\_, which is hereafter referred to as the commencement date, and expiring on \_\_\_\_\_, 20\_\_, if not earlier terminated according to the terms hereof.
- 3.2 So long as LICENSEE is not then in default of any of the provisions of this Agreement, this Agreement may be extended for up to four additional five (5) year administrative renewal options, for a total maximum term of this Agreement of forty (40) years.

### **IV. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 4.1 LICENSEE has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LICENSEE'S taking possession of the Premises shall be conclusive evidence of LICENSEE'S acceptance thereof in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which licensed. CITY specifically disclaims any warranty of suitability for intended commercial purposes of LICENSEE.
- 4.2 LICENSEE agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by CITY or its agents to LICENSEE unless the same are contained herein or made a part hereof by specific reference herein.

## V. LICENSEE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 5.1 General Maintenance: During the term of this Agreement, LICENSEE shall, at its sole expense, provide year round maintenance service of the Premises. The level of maintenance shall be of the quality of maintenance service demonstrated in other CITY-owned fields and improvements. In addition to the other obligations of LICENSEE set forth herein, LICENSEE shall render the following services and perform the following duties with regard to its maintenance of the Premises for CITY in a faithful, diligent, and efficient manner:
- 5.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
  - 5.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
  - 5.1.3 At a minimum, provide weekly trash pickup and removal service and keep all areas of the Premises free from litter and debris, including following all practices and games;
  - 5.1.4 Seed and fertilize fields as required to sustain acceptable standards of playing conditions;
  - 5.1.5 Provide pest control services as needed;
  - 5.1.6 Level the fields with dirt/sand as needed to sustain acceptable standards of playing conditions;
  - 5.1.7 Maintain all buildings and structures, including but not limited to, concession structures, restrooms, storage units, signage, lighting fixtures, irrigation systems in good repair at all times, promptly making any needed repairs or replacements;
  - 5.1.8 Keep all improvements free of graffiti
  - 5.1.9 Provide such other maintenance tasks and chores as may be required to sustain the fields, parking areas, and all improvements at acceptable standards of use conditions. All structures and equipment that are vandalized must be cleared of debris and graffiti within five (5) days.
- 5.2 LICENSEE shall be responsible for making all capital repairs and/or improvements (including physical and functional obsolescence) necessary to maintain the Premises in a first class condition throughout the term of this Agreement.
- 5.3 Upon completion of the initial improvements, or at such earlier date as it may desire, LICENSEE shall establish a Capital Repair and Improvement Fund and deposit into such Capital Repair and Improvement Fund all net revenues remaining after payment of all usual and customary operating expenses and after funding any necessary contingency reserve funds (such contingency reserve funds not to exceed ten percent (10%) of LICENSEE'S total annual revenue). Revenues are hereby defined as all revenues and income of every nature and from whatever source derived by LICENSEE from the operation of the Premises (but excluding grants and donations for capital purposes or specific projects) including, but not limited to, rents, ticket sales, concessions, and other revenues received therefrom. The Capital Repair and Improvement Fund will be a funding source for the maintenance, repair, refurbishment and replacement of the improvements to the Premises including without limitation all furniture, fixtures and equipment. LICENSEE shall maintain complete books and records reflecting the sources and uses of the Capital Repair and Improvement Fund, including the manner in which LICENSEE has allocated revenues to the Capital Repair and Improvement Fund. CITY shall have the right to examine, inspect and audit such records as necessary to determine LICENSEE's compliance with the requirement hereof. Lack of adequate funding in the Capital Repair and Improvement Fund shall not reduce or eliminate LICENSEE'S obligation to make necessary capital improvements and repairs. At the conclusion of the term of this Agreement, or any extended term, or upon the early termination of this Agreement, all funds remaining in the Capital Repair and Improvement Fund shall become the property of CITY.
- 5.4 LICENSEE shall promptly repair any damage to the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, CITY shall be under no obligation to rebuild or repair the Premises, however, LICENSEE shall be obligated to rebuild or repair the Premises to the same or better condition as prior to any event of casualty.
- 5.5 No parking is allowed in any area other than the designated parking area shown as a parking lot in EXHIBIT A (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.

5.6 In carrying out the aforesaid maintenance responsibilities, LICENSEE agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

#### **VI. UTILITIES**

6.1 LICENSEE shall provide for and pay directly to the utility companies, all utility company connection charges, including, but not limited to, the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, used in or on the Premises and LICENSEE shall furnish and install all electric light bulbs, tubes, and ballasts. CITY shall not be liable to LICENSEE in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of CITY.

6.2 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, LICENSEE agrees to follow and comply with the posted water restrictions, as may be modified from time to time.

#### **VII. SCHEDULED MAINTENANCE**

7.1 LICENSEE agrees to formulate an annual maintenance program and to submit same in writing to the CITY no later than January 1 of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities, as well as planned maintenance for other improvements. The CITY shall review said maintenance program and shall notify LICENSEE in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to LICENSEE'S program as submitted said program shall be deemed approved in the absence of CITY instructions to the contrary.

7.2 LICENSEE further agrees to notify CITY in writing two (2) weeks in advance of any anticipated deviations from aforesaid schedule maintenance program except in such cases when inclement weather precludes LICENSEE from carrying out the planned maintenance schedule.

#### **VIII. CITY'S RIGHT OF INSPECTIONS**

8.1 CITY, through its Parks and Recreation Director and/or his representative(s), shall have the right to inspect the Premises at any time.

#### **IX. CONCESSIONS**

9.1 LICENSEE shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. LICENSEE shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it. No fee for the right to operate said concessions shall be payable to CITY; provided however, that all profits generated thereby shall be applied to the operation of LICENSEE. LICENSEE shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder. LICENSEE shall have the right to enter into exclusive sales contracts with concession suppliers which will prohibit the sale of the products of other suppliers.

#### **X. IMPROVEMENTS**

10.1 LICENSEE may, subject to having first obtained the written approval of CITY, install and/or construct facilities and improvements suitable for amateur sports and recreational activities, said facilities and improvements to include, but not necessarily be limited to \_\_\_\_\_ (insert general description of planned improvements) \_\_\_\_\_. LICENSEE'S improvements must be completed on or before the Scheduled Completion Date as set forth in the Funding Agreement between CITY and LICENSEE. During any period of construction or installation, LICENSEE, its members, employees, agents, and contractors shall ensure that the performance of said construction or installation does not cause or result in damage to CITY property or adjoining property. In the event damage does occur, LICENSEE shall promptly make all repairs so as to restore the property to its condition prior to the damage. Improvements constructed or installed by LICENSEE shall be the property of LICENSEE during the term of this Agreement.



- 10.2 LICENSEE shall present, for review and written approval, all designs, plans, and specifications to the CITY and applicable CITY boards prior to commencing any construction or installation upon the Premises, including the initial improvements and any and all improvements during the term of this Agreement. While CITY may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by LICENSEE. CITY reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of fields and facilities so as to insure LICENSEE's compliance with this Agreement.
- 10.3 LICENSEE must comply with the Preconstruction Milestones of the Funding Agreement with CITY prior to commencement of the initial improvements to the Premises.
- 10.4 LICENSEE agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA, if required. A copy of said permits or clearances shall be provided to CITY prior to the start of any construction. LICENSEE covenants that it shall not bind, or attempt to bind, CITY for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the CITY against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to LICENSEE during the performance of any said construction and against any claim for injury to person or property.
- 10.5 LICENSEE shall provide to CITY copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.
- 10.6 Any improvements so installed by LICENSEE which can be removed without damage to the Premises may be removed at the sole expense of LICENSEE at the termination of this Agreement without payment therefore being made by CITY, except however, that equipment and improvements paid for by CITY shall not be removed. If the improvements are not so removable without said damage to the Premises or were paid for by CITY, then said improvements become the property of the CITY.

#### **XI. DEFAULTS AND TERMINATION RIGHTS**

- 11.1 Default by LICENSEE: Any of the following events shall constitute default by LICENSEE under this Agreement:
- 11.1.1 LICENSEE shall apply for or consent to the appointment of a receiver, trustee, or liquidator of LICENSEE or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against LICENSEE in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating LICENSEE as bankrupt or insolvent or approving a petition seeking reorganization of LICENSEE, or appointing a receiver, trustee, or liquidator of LICENSEE or of all or a substantial part of its assets, and such order, judgment, or decree shall continue non-stayed and in effect for any period of sixty (60) consecutive days; or
  - 11.1.2 LICENSEE shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by LICENSEE, and such default shall continue for a period of ten (10) days after notice thereof by CITY to LICENSEE, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided so long as LICENSEE has commenced to cure such default and diligently pursues such cure to completion.
  - 11.1.3 LICENSEE abandons all or any part of the Premises.
  - 11.1.4 LICENSEE fails to maintain its status as a 501(c)(3) non-profit entity.
- 11.2 Remedies of CITY: Upon the occurrence of an event of default by LICENSEE as specified in this Agreement hereof, CITY shall be entitled to terminate this Agreement and CITY shall have no further obligation hereunder.
- 11.3 Upon receipt by LICENSEE of notice of default from CITY, LICENSEE shall cease the expenditure of any funds

contained in the Capital Repair and Improvement Fund, unless LICENSEE requires the use of a portion of the Fund to cure the default. In such case, LICENSEE shall submit to CITY, for their written approval, a request for expenditure from the Fund and shall provide a detailed description of the planned use of the Fund which would cure the default. In the event that the default is cured, LICENSEE's right to expend monies contained in the Capital Repair and Improvement Fund shall be restored. In the event that the default is not cured and the Agreement is terminated by CITY, LICENSEE shall immediately transfer all funds contained in the Capital Repair and Improvement Fund to CITY for use for maintenance, repair, replacement, refurbishment of the Premises.

- 11.4 **Default by CITY:** CITY shall be in default under this Agreement if CITY fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by CITY, and such default shall continue for a period of thirty (30) days after notice thereof by LICENSEE to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that CITY has commenced to cure such default and diligently pursues such cure to completion.
- 11.5 **Remedies of LICENSEE:** Upon the occurrence of an event of default as specified in this Agreement hereof, LICENSEE shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.

## **XII. INDEMNIFICATION**

- 12.1 **LICENSEE covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to LICENSEE's activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, consultant or subcontractor of LICENSEE, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LICENSEE shall advise the CITY in writing within twenty four (24) hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this Agreement and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE of any of its obligations under this paragraph.

## **XIII. INSURANCE REQUIREMENTS**

- 13.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "LICENSEE NAME -" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty

to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

13.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

13.3 A Contractor's financial integrity is of interest to the City; therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by the City, Contractor shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A-(VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
<b>1. Workers' Compensation</b> <b>2. Employers' Liability</b>	<b>Statutory</b> \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00
<b>3. Commercial General Liability Insurance to include coverage for the following:</b> <b>a. Premises/Operations</b> <b>b. Products/Completed Operations</b> <b>c. Personal/Advertising Injury</b> <b>d. Sexual Abuse/ Molestation</b>	For <u>Bodily Injury</u> and <u>Property Damage</u> of:  <b>\$1,000,000.00</b> per occurrence; <b>\$2,000,000.00</b> General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
<b>4. Business Automobile Liability:</b> <b>a. Owned/leased vehicles</b> <b>b. Non-owned vehicles</b> <b>c. Hired Vehicles</b>	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of <b>\$1,000,000.00</b> per occurrence

13.4 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.5 Contractor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Contractor herein, and provide a certificate of insurance and endorsement that names the Contractor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Contractor. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

13.6 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Contractor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Contractor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio  
Attn: Parks and Recreation Department  
P.O. Box 839966  
San Antonio, Texas 78283-3966

13.7 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- 13.7.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- 13.7.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- 13.7.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- 13.7.4 Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

13.8 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

13.9 In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.

13.10 Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractors' performance of the work covered under this Agreement.

13.11 It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

13.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.

13.13 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property

#### **XIV. REPORTS AND RECORDS**

- 14.1 Commencing upon completion of the initial improvements, LICENSEE shall provide to CITY an annual report.
- 14.2 To the extent that this information is not included in the Annual Report, LICENSEE shall provide to CITY, at the same time the Annual Report is provided, the following information:
- 14.2.1 List of current officers, including addresses, telephone numbers and, if available, e-mail addresses;
  - 14.2.2 Accounting of the Capital Repair and Improvement Fund, including detail regarding all funds deposited on a monthly basis and withdrawals for repairs and improvements, accompanied by copies of each monthly bank statement for the Capital Repair and Improvement Fund bank account for the previous year;
  - 14.2.3 Number of participants in LICENSEE's programs and teams, and ages;
  - 14.2.4 LICENSEE's by-laws and, unless previously provided to CITY, its articles of incorporation.
- 14.3 Throughout the term of this Agreement and any extensions hereof, LICENSEE shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Such financial records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to CITY inspection, review, and audit following reasonable notification of intent to inspect.
- 14.4 CITY reserves the right to conduct, or cause to be conducted, a review and/or audit of LICENSEE's records at any and all times deemed necessary by CITY provided, however, an audit will be conducted no more often than one time per year. CITY staff, a Certified Public Accountant (CPA), or other auditors as designated by CITY, may perform such audits and/or reviews. CITY reserves the right to determine the scope of every audit and/or review. In accordance herewith, LICENSEE agrees to make available to CITY all accounting records.

#### **XV. SIGNS**

- 15.1 LICENSEE hereby agrees not to install or display any permanent sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the CITY. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the CITY as long as standard design of the sign has been approved in advance. For purposes of this Agreement, temporary signs shall be defined as any sign or banner that is placed on the Premises before the game begins, and removed at the conclusion of the game. Signs which advertise businesses, sponsors, products, services, logos, or events not available upon the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. LICENSEE agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. LICENSEE further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized CITY authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor.

#### **XVI. ASSIGNMENT**

- 16.1 This Agreement is personal to LICENSEE. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to LICENSEE hereunder.

#### **XVII. RELATIONSHIP OF PARTIES**

- 17.1 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 ventures, 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 create a relationship other than the relationship of LICENSOR and LICENSEE.

#### **XVIII. CONFLICT OF INTEREST**

- 18.1 LICENSEE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined therein, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, material, supplies, or services, if any of the

following individual(s) or entities is a party to the contract or sale: a CITY officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

18.2 LICENSEE warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as CITY owned utilities.

#### **XIX. SEPARABILITY**

19.2 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, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, 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 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.

#### **XX. NOTICES**

20.1 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

City of San Antonio  
Parks & Recreation Department  
Attn: Director  
P.O. Box 839966  
San Antonio, TX 78283

LICENSEE NAME  
Attn: CEO / President  
LICENSEE Address  
San Antonio, TX 782xx

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

#### **XXI. TEXAS LAW TO APPLY**

21.1 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.

#### **XXII. NON-DISCRIMINATION**

22.1 As a party to this contract, LICENSEE understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis or race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

#### **XXIII. CAPTIONS**

23.1 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.

#### **XXIV. HOLDING OVER**

24.1 Should LICENSEE hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, or any extension thereof, unless otherwise agreed in writing, such holding over

shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding Agreement continuing in effect. The inclusion of the preceding sentence shall not be construed as CITY's consent for LICENSEE to hold over.

**XXV. ENTIRE AGREEMENT/AMENDMENT**

25.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with CITY being expressly waived by LICENSEE.

25.2 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.

25.3 It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance.

**XXVI. AUTHORITY**

26.1 The signer of this Agreement for LICENSEE hereby represents and warrants that they have full authority to execute this Agreement on behalf of LICENSEE.

**EXECUTED** and **AGREED** to this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

**CITY OF SAN ANTONIO  
PARKS AND RECREATION DEPARTMENT**

**LICENSEE NAME**

By: \_\_\_\_\_  
Xavier D. Urrutia, Director

By: \_\_\_\_\_  
President / CEO

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A: Licensed Premises Map**

DRAFT