

**FIRST AMENDMENT AND EXTENSION TO
FIRST AMENDED AND RESTATED
BASEBALL STADIUM FACILITY LEASE AGREEMENT**

FOR VALUE RECEIVED, the receipt and sufficiency of which is hereby acknowledged, this First Amendment and Extension to First Amended and Restated Baseball Stadium Facility Lease Agreement ("First Amendment") is entered into by the City of San Antonio, a Texas Municipal corporation ("City"), acting by and through its City Manager pursuant to and duly authorized by Ordinance No. 2017-__-__-__, passed and approved on _____, 2017, and San Antonio Missions Baseball Club, Inc., a Texas corporation ("Lessee"), acting by and through its duly authorized designated officer.

A. City and Lessee (the "Parties") entered into the First Amended and Restated Baseball Stadium Facility Lease Agreement ("Agreement") pursuant to City of San Antonio Ordinance No. 2006-11-16-1300, passed and approved on November 16, 2006, with an initial term expiring on September 30, 2016.

B. City and Lessee agree to amend specific provisions of the Agreement as set out in this First Amendment and to exercise option for the First Option Term and extend the Term of the Agreement through September 30, 2021, all as more particularly set forth in this First Amendment.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements set forth in this First Amendment, City and Lessee agree as follows:

1. Section 3.03 is added to the Agreement as follows:

"No later than September 30, 2018, the Parties shall develop a mutually agreed upon plan for improvements to be made to the Stadium ("Stadium Improvements Plan") and the cost for these improvements ("Stadium Improvements") shall be split between City and Lessee, with Lessee responsible for 30% of the costs and City responsible for 70% of the costs, subject to future City Council budgetary appropriation. The Stadium Improvements Plan shall set forth the costs for the Stadium Improvements and the structure of associated payments. The Stadium Improvements Plan shall not require payments by Lessee prior to payment by City of corresponding required payments. If and at such time as agreed to in writing by the Parties, the Stadium Improvements Plan shall be added, attached to and incorporated into this Agreement as Exhibit V. The inclusion of the Stadium Improvements Plan in the Agreement shall not require amendment of the Agreement under Subsection 24.01.17."

2. Subsection 3.03.1 is added to the Agreement as follows:

"If and at such time as the Stadium Improvements Plan is agreed to by the Parties, it shall be implemented no later than September 30, 2019."

3. Subsection 3.03.2 is added to the Agreement as follows:

"All Stadium Improvements shall become the property of City upon termination of this Agreement."

4. Subsection 8.01.5 is added to the Agreement as follows:

"Lessee shall achieve a 'best in Texas League' standard for attention to maintenance by ensuring that maintenance staffing provided under Subsections 8.01.2, 8.01.3 and 8.01.4 is consistent with the average provided at other Texas League stadiums. No later than April 1 of each Lease Year, Lessee shall provide a survey list including the top 3 most attended stadiums in the Texas League and implement staffing at or above the average."

5. Article XV is deleted in its entirety and replaced with the following:

“Section 15.01. Indemnification. LESSEE covenants and agrees to INDEMNIFY, DEFEND, AND HOLD HARMLESS the City of San Antonio, its members, agents, officers and employees, contractors, and subcontractors, their successors and assigns, individually or collectively, from and against all liability for any and all fines, claims, and liens, including, but not limited to, mechanic's and materialmen's and laborers, liens created during alterations, additions, renovations, remodeling, reconstruction, or other improvements, damages, expenses, fees, penalties, proceedings, suits, demands, actions or causes of action, or liability of any kind and nature, including, but not limited to, personal injury or death and property damage, in any way arising out of, or resulting from, or related to any performance or non-performance of any activity or operation of LESSEE in, on or about the Leased Premises and the Stadium or in connection with LESSEE's use of the Leased Premises and Stadium, or from any condition of said Premises caused by LESSEE, including any acts or omissions of LESSEE, any employee, contractor, subcontractor, or licensee of LESSEE and LESSEE's officers, agents, and representatives and in addition thereto, without limiting the parties covered hereunder, any other person whom LESSEE controls or has the right to control, while in the exercise of the performance of the rights or duties under this Agreement, or by reason of any breach, violation or non-performance of any covenant or condition hereof on the part of LESSEE under this Agreement; and such indemnity shall apply even where any such fines, claims, liens, damages, expenses, fees, penalties, proceedings, suits, demands, actions, causes of action, or liability arise in any part from the negligence of CITY, under this Agreement. It is the express intention of CITY and LESSEE that the indemnity provided for in this Section is INDEMNITY by LESSEE to INDEMNIFY and PROTECT CITY from the consequences of CITY's own negligence, excluding only where the cause of the injury, death or damage was proven by a court of competent jurisdiction to have resulted from, or be a consequence of, CITY's sole negligence under this Agreement, and then only to the extent of CITY's limits of liability under the Texas Tort Claims Act.

Section 15.02. The provisions of this INDEMNIFICATION 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.

Section 15.03. LESSEE shall promptly advise CITY, in writing, of any claim or demand made against LESSEE or CITY or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or might affect either party, or which is related to or arises out of LESSEE's activities under this Agreement, including, but not limited to, those acts or omissions of LESSEE and others, specified earlier in this Section and LESSEE shall see to the investigation of and defense of any such claim or demand, including, but not limited to, the payment of attorneys' fees and court costs.

Section 15.04. Defense Counsel. CITY shall have the right, which must be exercised reasonably, to approve defense counsel to be retained by LESSEE in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. Upon CITY's written notice that CITY is invoking its right to indemnification under this Agreement, LESSEE shall retain CITY approved defense counsel no later than the earlier of (i) twenty (20) business days after CITY's written notice invoking its right to indemnification, or (ii) seven (7) business days prior to the date on which CITY is required to answer litigation for which CITY is invoking its right to indemnification. If LESSEE fails to retain counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and LESSEE shall be liable for all reasonable costs incurred by CITY.

CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Section 15.05. In any and all claims against any party indemnified hereunder by any employee of LESSEE, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for LESSEE or any subcontractor under worker's compensation or other employee benefit acts."

6. Section 20.06.1 is added to the Agreement as follows:

"Lessee shall conduct semi-annual facility maintenance inspections by March 15 and October 15 of each Lease Year that detail the needed maintenance. Lessee shall provide a copy of the inspection and a corresponding action plan to City no later fifteen (15) days following such inspections. Lessee shall complete all action plan items within forty-five (45) days of the submission of the inspection and action plan."

7. Subsection 24.01.2 is deleted in its entirety and replaced with the following:

"Non-Discrimination. As a party to this Agreement, Lessee 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 of 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 in the Agreement."

8. Subsection 24.01.5 is amended by deleting the addresses for Lessee and replacing them with the following:

"If to Lessee:

D.G. Elmore
555 N. Morton
Bloomington, IN 47404

And to:

Gregg C. Davis
Thompson & Knight, LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201"

9. The Parties exercise the First Option Term and extend the Term of the Agreement through September 30, 2021. The First Option Term shall begin October 1, 2016.
10. Capitalized terms used but not defined in this First Amendment shall have the meanings ascribed to them in the Agreement.

Except as otherwise expressly modified by this First Amendment, all terms and provisions of the Agreement are ratified and confirmed and shall remain in full force and effect, enforceable in accordance with their terms.


Signatures on following page

EXECUTED AND SIGNED to be effective March 1, 2017.

CITY OF SAN ANTONIO

SAN ANTONIO MISSIONS BASEBALL CLUB, INC.

Sheryl Sculley
City Manager



Name: BURL YARBROUGH
Title: PRESIDENT

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney