

AN ORDINANCE **2016-10-20-0826**

AUTHORIZING THE EXECUTION OF A LICENSE AGREEMENT WITH EASTSIDE CHRISTIAN ACTION GROUP FOR THE CONTINUED OPERATION, MAINTENANCE AND USE OF THE WHEATLEY HEIGHTS SPORTS COMPLEX, LOCATED IN MARTIN LUTHER KING PARK AND THE WHEATLEY HEIGHTS FLOOD BUYOUT PROPERTY IN COUNCIL DISTRICT 2 FOR FIVE (5) YEARS, BEGINNING ON THE DATE OF EXECUTION WITH UP TO TWO (2) ADDITIONAL FIVE (5) YEAR RENEWAL OPTIONS, SUBJECT TO THE APPROVAL OF CITY COUNCIL FOR A TOTAL MAXIMUM TERM OF FIFTEEN (15) YEARS; NO CITY FUNDS ARE ASSOCIATED WITH THIS ACTION.

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WHEREAS, in 2008, voters approved a Bexar County Venue Tax Program (BCVTP) that provided funding for various amateur sports organizations to develop or expand sports complexes to serve local teams and enhance tourism; and

WHEREAS, Eastside Christian Action Group (ECAG) was selected by Bexar County to receive \$7,500,000.00 from the venue tax for the development of a sports complex; and

WHEREAS, pursuant to Ordinance 2009-06-18-0532, ECAG entered into a License Agreement with the City to develop, operate and maintain the Wheatley Heights Sports Complex (WHSC) which is located on approximately 170 acres in Martin Luther King Park and in the Wheatley Heights area; and

WHEREAS, since the execution of the initial License Agreement, ECAG has added amenities including a football field, an eight lane running track, stadium seating, and a parking lot located at the northern area of Martin Luther King Park; and

WHEREAS, under a new, managing consortium established by ECAG at the facility with George Gervin Youth Center and Standard of Athletics, over 107,000 people attended approximately 160 events at the stadium complex from June 2015 through June 2016; and

WHEREAS, in lieu of rental fees, ECAG will operate and continue to maintain the licensed premises and they will bear financial responsibility for any improvements during the term of this License Agreement; **NOW THEREFORE:**

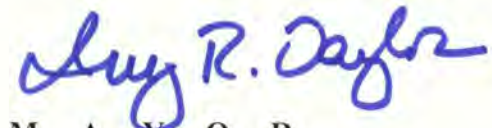
BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager or her designee, or the Director of the Department of Parks and Recreation or his designee, is authorized to execute a License Agreement with Eastside Christian Action Group for the continued operation, maintenance and use of the Wheatley Heights Sports Complex located in Martin Luther King Park and the Wheatley Heights flood buyout property in Council District 2 for five (5) years, beginning on the date of execution with up to two (2) additional five (5) year renewal options, subject to the approval of the City Council for a total maximum term of fifteen (15) years. 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.

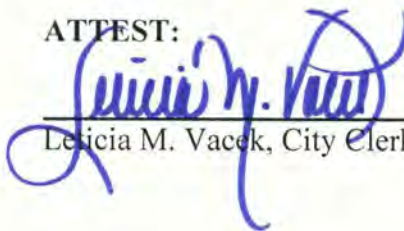
SECTION 3. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 20th day of October, 2016.



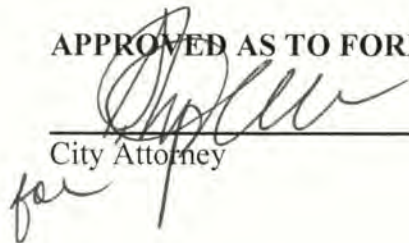
M A Y O R
Ivy R. Taylor

ATTEST:



Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:



for
City Attorney

Agenda Item:	23 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 23)						
Date:	10/20/2016						
Time:	09:27:27 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a License Agreement with Eastside Christian Action Group for the continued operation, maintenance and use of the Wheatley Heights Sports Complex, located in Martin Luther King Park and the Wheatley Heights flood buyout property in Council District 2; the term of the agreement is for five years, beginning on the date of execution with up to two additional five-year renewal options, subject to the approval of City Council for a total maximum term of fifteen years ; no City funds are associated with this action. [Maria Villagómez, Assistant City Manager; Xavier D. Urrutia, 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				x
Rebecca Viagran	District 3	x					
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

**LICENSE AGREEMENT
EASTSIDE CHRISTIAN ACTION GROUP**

THIS LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of the ____ day of _____ 2016, 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 _____, 2016 (herein called "**CITY**"), and **Eastside Christian Action Group**, a Texas non-profit corporation (herein called "**LICENSEE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to provide amateur sports and recreational facilities for the use of the citizens of San Antonio and Bexar County; and
- 1.2 WHEREAS, **LICENSEE** is a Texas non-profit organization and covenants and agrees to maintain such status throughout the term of this **Agreement**; and
- 1.3 WHEREAS, **CITY** owns Martin Luther King Park and flood buyout property known as Wheatley Heights; and
- 1.4 WHEREAS, a Bexar County Venue Tax Project election held May 10, 2008 was approved by the voters of Bexar County and the short term motor vehicle rental tax collected pursuant to Texas Local Government Code Section 334.103 was identified as the source of funds for the design and construction of an amateur sports venue project at Wheatley Heights; and
- 1.5 WHEREAS, pursuant to Ordinance No. 2009-06-18-0532, passed and approved on June 18, 2009, **CITY** and **LICENSEE** entered into a License Agreement for a Bexar County Venue Tax Project for Martin Luther King Park and the Wheatley Heights flood buyout property located in City Council District 2; and
- 1.6 WHEREAS, pursuant to Ordinance No. 2014-06-19-0466 passed and approved on June 9, 2014, **CITY** and **LICENSEE** agreed to renew the License Agreement at Wheatley Heights for an interim one-year (1) term; and
- 1.7 WHEREAS, pursuant to Ordinance 2015-10-15-0875 passed and approved on October 15, 2015, **CITY** and **LICENSEE** entered into a Funding Agreement in the amount of \$150,000 for continued operation and maintenance of the Wheatley Heights Sports Complex and extended the License Agreement for a one-year term; and
- 1.8 **WHEREAS**, the **CITY** and **LICENSEE** wish to establish a new License Agreement for continued long term operation and maintenance of the Wheatley Heights Sports Complex;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LICENSEE** and the

observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT AND RENT

- 2.1 For so long as **LICENSEE** maintains its non-profit 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 170 acres of certain land at Martin Luther King Park and Wheatley Heights being part of N.C.B. 10677, 10698, 10699, 10703, 10704, 10710, 10711, 10712, 10713, 10714, 10715, 10720, 10721, 10722, 10723, 10724, 10725, 10726, 10728, 10729, 10730, 10731, 10732, San Antonio, Bexar County, and **LICENSEE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2 In consideration of the public benefit of derived from **LICENSEE'S** operations, **LICENSEE** shall not owe any rent under this agreement.

3. USE

- 3.1 **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 Section 3.2 below.
- 3.2 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.
- 3.3 **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.
- 3.4 **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 in Section 3.3 above. **CITY** shall be exempt from the payment to **LICENSEE** of any rent or fees for City Days. **CITY** shall use its best efforts to avoid any damage to the Premises, and any damage caused as a result of **CITY's** use shall be promptly repaired by **CITY**, at **CITY's** expense. During City Days and County Days neither **CITY** nor County shall be bound by any exclusivity contracts for concession sales entered into by **LICENSEE** with any concession suppliers.

- 3.5 **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.
- 3.6 **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.

4. TERM OF AGREEMENT

- 4.1 The term of this **Agreement** is five (5) years beginning immediately upon the date of execution by the City Manager or her designee, which is hereinafter referred to as the commencement date, and expiring five (5) years from the commencement date, if not earlier terminated according to the terms hereof.
- 4.2 So long as **LICENSEE** is not then in default of any of the provisions of this **Agreement** or any agreements between Bexar County and **LICENSEE**, this **Agreement** may be extended for up to two (2) additional five (5) year renewal options, subject to the approval of City Council as evidenced by this Ordinance, for a total maximum term of this **Agreement** of fifteen (15) years.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **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**.
- 5.2 **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.

6. LICENSEE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: **LICENSEE** shall, at its sole expense, provide year round maintenance service of the Premises. The level of maintenance will be the more stringent of the maintenance standards required in the Operating Agreement between Bexar County and **LICENSEE** or 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:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
 - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
 - 6.1.3 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;
 - 6.1.4 Seed and fertilize fields as required to sustain acceptable standards of playing conditions;
 - 6.1.5 Provide pest control services as needed;
 - 6.1.6 Level the fields with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7 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;
 - 6.1.8 Keep all improvements free of graffiti;
 - 6.1.9 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.
- 6.2. **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**.
- 6.3 **LICENSEE** shall establish and maintain 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 use its best faith effort to operate the Premises in a manner that results in the deposit of monies into the Capital Repair and Improvement Fund each year. **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**.

- 6.4 **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.
- 6.5 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 **Agreement** and subject to default.
- 6.6 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.

7. UTILITIES

- 7.1 **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**.
- 7.2 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, which currently include, but are not necessarily limited to:
- 7.2.1 **Stage 1** Aquifer level reaches 660 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

7.2.2. **Stage 2** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

7.2.3. or a **LICENSEE** Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED MAINTENANCE

8.1. If requested by City, **LICENSEE** agrees to provide City a copy of its annual maintenance program and to submit same in writing to City within thirty (30) days after receipt of City's request.

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

9. CITY'S RIGHT OF INSPECTIONS

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

10. CONCESSIONS

10.1. **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, subject however to the terms of Section 4.

11. IMPROVEMENTS

11.1. **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. 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**.

11.2. **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**.

- 11.3 **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 regulatory 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. Following execution of this **Agreement**, **CITY** shall request a waiver of **LICENSEE'S** building inspection, review and permitting fees by the Planning and Development Services Department.
- 11.4 **LICENSEE** shall provide to **CITY** copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.
- 11.5 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** or Bexar County shall not be removed. If the improvements are not so removable without said damage to the Premises or were paid for by **CITY** or Bexar County, then said improvements become the property of the **CITY**.
- 11.6 **LICENSEE** has entered into one or more agreement(s) with Bexar County regarding the initial funding of improvements and operation of the Premises ("County Agreements"). **LICENSEE** hereby agrees to notify **CITY** at least ten (10) days prior to an amendment to any County Agreements.

12. DEFAULTS AND TERMINATION RIGHTS

- 12.1. **Default by LICENSEE:** Any of the following events shall constitute default by **LICENSEE** under this **Agreement**:
- 12.1.1 **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

- 12.1.2. **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 thirty (30) days after notice thereof by **CITY** to **LICENSEE**, or if such default cannot be cured within thirty (30) 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.
- 12.1.3. **LICENSEE** abandons all or any part of the Premises.
- 12.1.4. Bexar County ever declares **LICENSEE** in default of any County Agreements with **LICENSEE**.
- 12.1.5 **LICENSEE** fails to maintain its status as a 501(c)(3) non-profit entity.
- 12.2. 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.
- 12.3 Upon receipt by **LICENSEE** of notice of default from **CITY** or Bexar County, **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** and Bexar County, 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, as outlined in Section 6.3 of this **Agreement**, 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.
- 12.4. 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.
- 12.5. 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.

13. INDEMNIFICATION

- 13.1 **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, grantee 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.

- 13.2 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 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.

14. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any work under this License, LICENSEE shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "EASTSIDE CHRISTIAN ACTION GROUP" 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 Memorandum of Insurance or Binder as proof of insurance. The Certificate(s) must have the agent's signature and phone number, and 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 License 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.
- 14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract 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 License. In no instance will CITY allow modification whereupon CITY may incur increased risk.

- 14.3 **LICENSEE'S** financial integrity is of interest to the **CITY**; therefore, subject to **LICENSEE'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LICENSEE** shall obtain and maintain in full force and effect for the duration of this License, and any extension hereof, at **LICENSEE'S** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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:

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$500,000/\$500,000/\$500,000
2. Employers' Liability*	
3. Broad Form Commercial General Liability Insurance to include coverage for the following:	For Bodily Injury and Property Damage of \$1,000,000 per occurrence;
a. Premises/Operations	
b. Independent Contractors*	\$2,000,000
c. Products/Completed Operations	General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
d. Personal Injury	
e. Contractual Liability	
f. Sexual Abuse / Molestation	
g. Damage to property rented by you	g. \$100,000
4. Business Automobile Liability	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	
c. Hired Vehicles	
5. Property Insurance: For physical damage to the property of Licensee, including improvements and betterment to the Licensed Premises, if applicable.	Coverage for 80% of the replacement cost of Licensee's property.

*if applicable.

- 14.4 **LICENSEE** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **LICENSEE** herein, and provide a certificate of insurance and endorsement that name **LICENSEE** and **CITY** as additional insureds. **LICENSEE** shall provide **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.

- 14.5 As they apply to the limits required by **CITY**, the **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **LICENSEE** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **LICENSEE** shall pay any costs incurred resulting from said changes.

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

- 14.6 **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- A. Name the **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insured 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;
 - B. 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;
 - C. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**; and
 - D. Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 14.7 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'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 contract.
- 14.8 In addition to any other remedies the **CITY** may have upon **LICENSEE'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 **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.

- 14.9 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this License.
- 14.10 It is agreed that **LICENSEE'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 contract.
- 14.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided.
- 14.12 **LICENSEE** and any subcontractors are responsible for all damage to their own equipment and / or property.

15. REPORTS AND RECORDS

- 15.1 Within sixty (60) days following the end of **LICENSEE's** fiscal year of each year, **LICENSEE** shall provide to City an annual report that shall include the following:
 - 15.1.1 Copies of all inspection reports completed by Bexar County or their designee in the previous calendar year and provided to **LICENSEE** and all reports submitted to Bexar County by **LICENSEE** during the previous calendar year;
 - 15.1.2 Accounting of the Capital Repair and Improvement Fund, as defined in section 6.3 above, 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 calendar year;
 - 15.1.3 List of current officers including address, telephone number and e-mail address;
 - 15.1.4 Number of participants in **LICENSEE's** programs, including age range;
 - 15.1.5 Any modifications to **LICENSEE's** by-laws and/or articles of incorporation.
- 15.2 If requested by **CITY**, **LICENSEE** will provide an accounting of its revenue and expenditures for one or more of its fiscal years, in a form acceptable to **CITY**; such accounting to be provided within fifteen (15) days after receipt of a written request by **CITY**.
- 15.3 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.
- 15.4 **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.

16. SIGNS

- 16.1 **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. **CITY** hereby acknowledges that **LICENSEE** shall display signage that acknowledges the contribution of Bexar County to the development and construction of the Premises with such signage to be permanently installed in a prominent location agreed to by Bexar County Commissioners Court and **CITY**.

17. ASSIGNMENT

- 17.1 **LICENSEE** shall not sublicense, assign, mortgage, or pledge this **Agreement** or any part of the Licensed Premises or any interest therein without first obtaining the written consent of Bexar County and **CITY** through the Director of the Parks and Recreation Department. Any such action by **LICENSEE** without the written consent of **CITY** shall be null and void, and shall, at the option of **CITY** terminate the **Agreement**. Sublicensee shall accept all terms and conditions of this **Agreement**, including the terms of use outlined in Section 3 herein.

18. RELATIONSHIP OF PARTIES

- 18.1 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**.

19. CONFLICT OF INTEREST

- 19.1 **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.

- 19.2 **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.

20. SEPARABILITY

- 20.1 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, 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.

21. NOTICES

- 21.1 Notices to **CITY** required or appropriate under this **Agreement** shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the **CITY** from time to time. Notices to **LICENSEE** shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to **LICENSEE** at:

**Eastside Christian Action Group
746 Morningview Drive
San Antonio, Texas 78220**

or at such other address on file with the City Clerk as **LICENSEE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 Words of any gender 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 otherwise requires.

24. NON-DISCRIMINATION

- 24.1 **LICENSEE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LICENSEE** acknowledges is prohibited.

25. CAPTIONS

- 25.1 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**.

26. HOLDING OVER

- 26.1 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.

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 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**.
- 27.2 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.
- 27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

28.1 The signer of this License Agreement for **LICENSEE** hereby represents and warrants that he or she has full authority to execute this **Agreement** on behalf of **LICENSEE**.

IN WITNESS WHEREOF, we have affirmed our signatures this ____ day of _____ 2016.

CITY:

CITY OF SAN ANTONIO

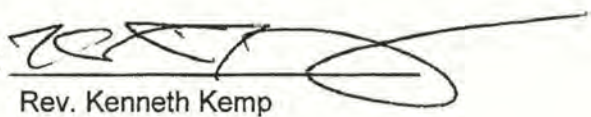
LICENSEE:

EASTSIDE CHRISTIAN ACTION GROUP

By: _____

Xavier D. Urrutia, Director
Parks and Recreation Department

By: _____



Rev. Kenneth Kemp
Board Chair

ATTEST: _____

City Clerk

APPROVED AS TO FORM: _____

City Attorney

