

**STATE OF TEXAS
COUNTY OF BEXAR FUNDING AGREEMENT
CITY OF SAN ANTONIO**

This Agreement ("Agreement") is entered into by and between the City of San Antonio ("City"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No. 2017-04-20-_____ and Eastside Christian Action Group ("ECAG").

WITNESSETH:

WHEREAS, following approval by Bexar County voters in May 2008, the Bexar County Venue Tax Program awarded Eastside Christian Action Group (ECAG) \$7,500,000 for development of a sports complex at Martin Luther King Park and in the Wheatley Heights area; and

WHEREAS, City and ECAG are also parties to a License Agreement, which was approved by Ordinance 2009-06-18-0532 and obligates ECAG to serve as the primary operator, manager and maintainer of the Wheatley Heights Sports Complex on approximately 170 acres of the Martin Luther King Park in the Wheatley Heights area; and

Whereas, pursuant to Ordinance 2012-03-01-0146, ECAG and City entered into a Funding Agreement for \$570,000.00 to assist ECAG with initial expenses for operation and management of the Wheatley Heights Sports Complex; and

Whereas, pursuant to Ordinance 2014-09-18-0690, ECAG and City entered into a Funding Agreement for \$125,000.00 to be used by ECAG for the operation and management for the Wheatley Heights Sports Complex, with the City retaining up to \$40,000.00 in consideration of performing certain grounds maintenance duties such as mowing; and

WHEREAS, pursuant to Ordinance 2015-10-15-0895, ECAG and City entered into a Funding Agreement for \$125,000.00 to be used by ECAG for the operation and management for the Wheatley Heights Sports Complex; and

WHEREAS, this action authorizes a one (1) year Funding Agreement of \$25,000.00 to be used by ECAG for the continued operation and management for the Wheatley Heights Sports Complex; and

WHEREAS, as part of the Adopted FY 17 Budget Amendment process, funding in the amount of \$75,000.00 was approved to support Midnight Basketball program summer activities in Council District 2. This action redirects \$25,000.00 from the overall program and continues funding for Council District 2 summer activities at an adjusted level of \$50,000,

NOW THEREFORE:

The parties hereto agree as follows:

1. The term of this Agreement is from October 1, 2016 through September 30, 2017. This Agreement in no way signifies a continued commitment by the City beyond this term.
2. ECAG will operate for the benefit of the public the Wheatley Heights Sports Complex located at 1023 Upland Drive, San Antonio TX ("Project").
3. In order to partially offset ECAG's operating and management expenses associated with the

Project, the City will provide up to \$25,000.00 ("Funds") to ECAG during the term of this Agreement for the expenses reflected in the attached Exhibit A ("Allowable Expenses").

The Director of the Parks and Recreation Department may amend this Agreement without further action by City Council in order to revise the Allowable Expenses in Section 3 and Exhibit A of this Agreement.

A total of \$25,000.00 in Funds is subject to appropriation by City Council as part of the Fiscal Year 2017 Annual Budget. In the event that City Council appropriates a funding amount of less than \$25,000.00.00 in the Fiscal Year 2017 Annual Budget, the Director of the City's Parks and Recreation Department shall amend this Agreement without further City Council action in order to accurately reflect the cumulative amount of funding appropriated for the Project by City Council in the Fiscal Year 2017 Annual Budget.

ECAG shall be limited to receiving disbursements for Allowable Expenses totaling no more than the amount appropriated by City Council through September 30, 2017.

4. City will provide the Funds as follows:
 - a. For all disbursements, ECAG shall submit to City a monthly report listing allowable expenses paid, the payee, and date and amount paid. A copy of invoices and evidence of payment for each expenditure must be attached to each report. ECAG agrees to provide other supporting documentation as may be requested by City.
 - b. City will review ECAG's reports and supporting documentation and notify ECAG if any expenditures are determined by City to be outside the permissible parameters of this Agreement and funding for those items will be deducted from subsequent disbursements to ECAG. If deductions are made from the periodic payments for items that City has determined to be ineligible, ECAG shall have the right to request payment at a later date for an alternate eligible expenditure so that the full potential funding amount may be achieved.
5. ECAG shall furnish the Parks and Recreation Department a year-end financial statement prepared by a certified public accountant for the budget line items funded by or through the City as set out in Exhibit A within one hundred and twenty (120) days of the last disbursement.
6. All Funds and accounts into which ECAG may deposit the Funds will be subject to review and/or audit by City.
7. Payment and financial transactions shall be as follows:
 - a. An accounting system which accurately reflects all costs chargeable (paid and unpaid) with the Funds is mandatory. A Receipts and Disbursements Ledger of paid invoices relating to the matters set out in Exhibit A must be maintained which will reflect paid invoices revealing check number, date paid and evidence of goods or services received;
 - b. All records and files on matters funded by this Agreement will be open for inspection and audit at any reasonable time during the term hereof by representatives of the City, and shall continue to be so available for a period of three (3) years. If at the end of three (3) years, there is litigation or if the audit report covering such Agreement has not been accepted, ECAG shall retain the records until the resolution of such litigation or audit.

- c. City shall not be obligated to any third parties (including any subcontractors of ECAG);
 - d. Notwithstanding any other remedy contained herein or provided by law, the City may delay, suspend, limit, or cancel rights or privileges herein given to ECAG for failure to comply with this Agreement. Specifically, the City may withhold Funds in cases where it determines that ECAG is not in compliance with this Agreement.
8. The City's Department of Parks and Recreation is assigned monitoring, fiscal control, and evaluation of ECAG's use of Funds as set out in Exhibit A. Therefore, at such times and in such form as may be required, ECAG shall furnish such statements, records, data, and information and permit such interviews with personnel and board members pertaining to the matters covered by this Agreement.
 9. Should any expense or disbursement be subsequently disapproved or disallowed as a result of any audit, ECAG will refund such amount to the City. ECAG further authorizes the City to deduct such amount or charge as a claim against future disbursements.
 10. THIS SECTION INTENTIONALLY LEFT BLANK
 11. All furniture, fixtures, equipment and unused supplies purchased with City Funds shall remain at the Project site upon termination of this Agreement.
 12. No City employment rights or benefits are implied or conveyed to ECAG or any employees hired by ECAG or its contractors under this Agreement.
 13. ECAG warrants that no person or selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant the City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from the sums to be paid under the terms of this Agreement or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee, or to seek such other remedies as legally may be available.
 14. ECAG agrees that neither the Project nor the funds provided therefore, nor the personnel employed in the administration of the program, shall be in any way or in any extent engaged in the conduct of political activities in violation of its tax-exempt status. Prohibited activities include, but are not necessarily limited to, the assignment by ECAG of any employee in the agency to work for or on behalf of a political activity, to take part in voter registration activities, to provide voters and prospective voters with transportation to the polls, or to participate in partisan political activities, such as lobbying, collecting funds, making speeches, assisting at meetings, doorbell ringing, and distributing political pamphlets in an effort to persuade others of any political view.
 15. ECAG agrees that under no circumstances will the Funds received under this Agreement be used, either directly or indirectly, to pay costs or attorney fees incurred in any adversarial proceeding against the City or any other public entity.
 16. ECAG agrees that none of the performance rendered hereunder shall involve, and no portion of the funds received hereunder shall be used, directly or indirectly, for the construction, operations, maintenance or administration of any sectarian or religious facility or activity, nor shall said performance rendered or funds received be utilized so as to benefit, directly or indirectly, any such sectarian or religious facility or activity.

17. Except when the terms of this Agreement expressly provide otherwise, any alterations, additions or deletions to the terms hereof shall be by amendment in writing executed by both City and ECAG.

18. INSURANCE

- a. Prior to the commencement of any work under this Agreement, ECAG 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 “Eastside Christian Action Group, Wheatley Heights Sports Complex” 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 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 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.
- b. 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 the City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will the City allow modification whereby the City may incur increased risk.
- c. ECAG’s financial integrity is of interest to the City; therefore, subject to ECAG’s right to maintain reasonable deductibles in such amounts as are approved by the City, ECAG shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at ECAG’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:

TYPE	AMOUNTS
1. Broad form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. \$100,000

*If applicable

- d. ECAG agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of ECAG herein, and provide a certificate of insurance and endorsement that names ECAG and CITY as additional insureds. Respondent 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 the City's Risk Manager, which shall become a part of the contract for all purposes.

- e. As they apply to the limits required by the City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto 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). ECAG 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. ECAG shall pay any costs incurred resulting from said changes.

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

- f. ECAG agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
 - 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;
 - 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;
 - 3. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - 4. 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 notice for nonpayment of premium.
- g. Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, ECAG shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend ECAG'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.
- h. In addition to any other remedies the City may have upon ECAG'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 ECAG to stop work hereunder, and/or withhold any payment(s) which become due to ECAG hereunder until ECAG demonstrates compliance with the requirements hereof.
- i. Nothing herein contained shall be construed as limiting in any way the extent to which ECAG

may be held responsible for payments of damages to persons or property resulting from ECAG's or its subcontractors' performance of the work covered under this Agreement.

- j. It is agreed that ECAG'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.
- k. 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..
- l. ECAG and any Subcontractors are responsible for all damage to their own equipment and/or property.

19. INDEMNIFICATION

ECAG 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 ECAG's activities under this Agreement, including any acts or omissions of ECAG, any agent, officer, director, representative, employee, lessee or subcontractor of ECAG, 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 ECAG 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.

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. ECAG shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or ECAG known to ECAG related to or arising out of ECAG's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at ECAG's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving ECAG of any of its obligations under this paragraph.

20. THIS SECTION INTENTIONALLY LEFT BLANK

- 21. ECAG shall not assign or transfer its interest in this Agreement without the written consent of the City Council of San Antonio. Any attempt to transfer, pledge or other assignment shall be void ab initio and shall confer no rights upon any third person or party.
- 22. For purposes of this Agreement, all official communications and notices among the parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, to the addresses set forth below:

CITY

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

Physical Address: 114 West Commerce Street, 11th Floor
San Antonio, Texas 78205

ECAG

Kenneth R. Kemp, Interim Board Chair
746 Morningview Drive
San Antonio, Texas 78220

Notices of changes of address by either party must be made in writing delivered to the other party's last known address within five (5) business days of the change.

23. No elected official, director, officer, agent or employee of City or ECAG shall be charged personally or held contractually liable by or to City or ECAG under any term or provision of this Agreement, or because of any breach thereof, or because of its or this execution, approval, or attempted execution of this Agreement.
24. If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of City, then and in that event it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.
25. Should ECAG fail to fulfill, in a timely and proper manner, obligations under this Agreement and (i) it shall not correct any such failure within sixty (60) days following the date the City provides ECAG of written notice of such violation, or (ii) if such default cannot be reasonably cured within sixty (60) days of such notice, if ECAG has failed to begin to cure such matter within sixty (60) day period and diligently pursue such cure thereafter, the City shall thereupon have the right to terminate this Agreement by sending written notice to ECAG of such termination and specify the effective date thereof. ECAG shall be entitled to receive just and equitable compensation for any work satisfactorily completed prior to such termination date. The question of satisfactory completion of such work shall be determined by the City alone, and its decision shall be final.
26. All of the work performed under this Agreement by ECAG shall comply with all applicable laws, rules, regulations and codes of the United States and the State of Texas and with the charter, ordinances, bond ordinances, and rules and regulations of the CITY OF SAN ANTONIO and County of Bexar.
27. 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.
28. The signer of this Agreement for City and ECAG each represents, warrants, assures and

guarantees that he has full legal authority to execute this Agreement on behalf of City and ECAG respectively, and to bind City and ECAG to all of the terms, conditions, provisions and obligations herein contained.

29. Conflict of Interest:

- a. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, 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, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
 - (i) a City officer or employee;
 - (ii) his parent, child or spouse;
 - (iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;
 - (iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.
- b. Consultant warrants and certifies as follows:
 - (i) Consultant and its officers, employees and agents are neither officers nor employees of the City.
 - (ii) Consultant has tendered to the City a Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- c. Consultant acknowledges that City’s reliance on the above warranties and certifications is reasonable.

In witness of which this Agreement has been executed effective the ____ day of _____, 2017.

CITY OF SAN ANTONIO:

ECAG:

Xavier D. Urrutia, Director
Parks and Recreation Department

Kenneth R. Kemp,
Interim Board Chair

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk

**EASTSIDE CHRISTIAN ACTION GROUP FUNDING AGREEMENT
EXHIBIT A
FY2017 ALLOWABLE EXPENSES**

WHEATLEY HEIGHTS SPORTS COMPLEX

<u>Allowable Expenses</u>	<u>Original Budget</u>
<u>Immediate Payables Due</u>	\$
<u>Facility - Utilities</u>	
Water & Electricity	\$
<u>Insurance</u>	\$
<u>Communications</u>	
Phone, Internet, Web maintenance	\$
<u>Contractual Services</u>	
Facility Security	\$
Legal, Accounting & Audit Fees	\$
Custodial-Maintenance/Repair & Storage Services	\$
Total Contractual Services	\$
TOTAL	<u>\$25,000.00</u>