

ORDINANCE 2020-10-01-0708

APPROVING A SPORTS LICENSE AGREEMENT WITH THE MIRACLE LEAGUE OF SAN ANTONIO FOR OPERATIONS, MAINTENANCE AND PROGRAMMING OF THE MULTI-PURPOSE SPORTS FIELDS LOCATED ADJACENT TO NELSON WOLFF STADIUM. THERE IS NO FISCAL IMPACT ASSOCIATED WITH THIS ORDINANCE.

* * * * *

WHEREAS, on September 1, 2005, the City and The Miracle League of San Antonio entered into a license agreement for ten years with one five-year administrative extension for the use of approximately 3.5 acres of City-owned property located adjacent to Nelson Wolff Stadium in Council District 6 for the development, maintenance and programming of multi-purpose sports fields; and

WHEREAS, the Miracle League of San Antonio provides sports opportunities to children and adults with mental and/or physical disabilities; and

WHEREAS, they have built multi-purpose sports fields which includes smooth asphalt that allows wheelchair bound players to play football, rugby, basketball and other sports; and

WHEREAS, the previous agreement ran through August 31, 2020; and

WHEREAS, the new Sports License Agreement is proposed to commence on September 1, 2020 and expire on December 31, 2023 with two one-year administrative extensions; and

WHEREAS, in lieu of rent, the league shall be responsible for operations and maintenance of the multi-purpose sports fields; and

WHEREAS, in addition, the league will be permitted to operate concessions with proceeds benefitting their program and to offset the cost of operations and maintenance; **NOW THEREFORE:**

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

SECTION 1. The City Manager or designee or the Director of the Parks and Recreation Department or designee is authorized to execute a Sports License Agreement with The Miracle League of San Antonio for operations, maintenance and programming of the multi-purpose sports fields located adjacent to Nelson Wolff Stadium in Council District 6. A copy of the 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.

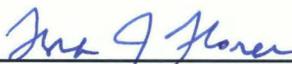
PASSED AND APPROVED this 1st day of October, 2020.



M A Y O R
Ron Nirenberg

ATTEST:

APPROVED AS TO FORM:



Tina J. Flores, City Clerk



Andrew Segovia, City Attorney



City of San Antonio

City Council
October 1, 2020

Item: 26

Enactment Number:
2020-10-01-0708

NAME	MOTION	SECOND	ABSTAIN	AYE	NAY	ABSENT
Roberto Treviño Council District 1				√		
Jada Andrews-Sullivan Council District 2				√		
Rebecca Viagran Council District 3				√		
Adriana Rocha Garcia Council District 4				√		
Shirley Gonzales Council District 5				√		
Melissa Cabello Havrda Council District 6				√		
Ana Sandoval Council District 7				√		
Manny Pelaez Council District 8				√		
John Courage Council District 9	√			√		
Clayton Perry Council District 10		√		√		
Ron Nirenberg Mayor				√		

Comments: Approved on consent

SW
10/1/20
Item No. 26

ATTACHMENT I

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

SPORTS LICENSE AGREEMENT
THE MIRACLE LEAGUE OF SAN ANTONIO

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "CITY"), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and THE MIRACLE LEAGUE OF SAN ANTONIO, (hereinafter referred to as "LEAGUE"), a Texas Non-Profit Corporation. LEAGUE and CITY shall collectively be referred to as "the Parties."

PREAMBLE

WHEREAS, The City of San Antonio and the Miracle League of San Antonio entered into a license agreement for use of 3.67 acres to develop and maintain all weather surface football, soccer, and track fields for use by individuals with physical disabilities; and

WHEREAS, the term of the license agreement with the Miracle League of San Antonio is for ten (10) years, beginning September 1, 2005 and terminating August 31, 2015; and

WHEREAS, the City expanded the acreage licensed to the Miracle League of San Antonio through Ordinance 2006-06-29-0781; and

WHEREAS, the Miracle League is responsible for maintenance of the licensed premises during the term of the agreement; and

WHEREAS, the City and Miracle League wish to extend the term of the license agreement to expire December 31, 2023 with two (2) one-year administrative extensions; 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. TERM

1.1 The term of this Agreement is three (3) years, beginning upon September 1, 2020 and expiring December 31, 2023 with two (2) one-year administrative extensions, if not terminated sooner according to the terms of this Agreement.

II. GENERAL RESPONSIBILITIES AND RENT

2.1 LEAGUE shall maintain its non-profit status with the Secretary of State and remain in good standing throughout the term of this Agreement.

2.2 LEAGUE shall maintain insurance, as outlined in Section X. Insurance Requirements of this Agreement, throughout the term of the Agreement.

2.3 LEAGUE shall operate an organized sports league which shall be affiliated with a national or state organization.

2.4 In consideration of the public benefit derived from the LEAGUE's operations, LEAGUE shall not owe any rent under this Agreement.

III. ACCEPTANCE AND CONDITIONS OF PREMISES

3.1 LEAGUE shall accept the Licensed Premises described in Exhibit A in the present condition "AS IS," the Licensed Premises being currently suitable for the Permitted Use.

IV. USE OF PREMISES BY LEAGUE

4.1 LEAGUE shall have priority use of the Licensed Premises which shall be occupied for recreational purposes including but not limited to organized sports practices, games and events.

4.2 LEAGUE may establish membership and admissions fees ("General Revenue"). General Revenue shall be utilized to offset the cost of programming, operations and maintenance.

4.3 SIGNS:

4.3.1 LEAGUE shall not install permanent signage on or in the Licensed Premises without prior written approval from the CITY. If such permanent signage is approved, CITY may require the LEAGUE to contract a licensed and bonded sign company.

4.3.2 LEAGUE may display temporary signage without written approval from the CITY however the design shall be approved prior to display. For the purposes of this Agreement, temporary signage is defined as any sign or banner that is placed in the Licensed Premises prior to practices, games, or events and removed at the conclusion of each activity.

4.3.3 LEAGUE shall have the right to enter into sponsorship agreements that provide benefits to programming, operations and maintenance, the agreements are subject to prior written approval from the CITY.

4.3.4 LEAGUE shall display signage which advertises businesses, sponsors, products, services, logos or non-League events however the signs must be installed inward towards the field(s); subject to prior written approval from the CITY.

4.3.5 LEAGUE shall not display signage that advertises or promotes political campaigns, religious affiliations, alcohol use, tobacco use, sexually oriented businesses or any other matter inappropriate for youth sports.

4.4 CONCESSIONS:

4.4.1 LEAGUE shall have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items within the Licensed Premises.

4.4.2 If Licensed Premises has an existing concession stand/building the LEAGUE shall have the exclusive use.

4.4.3 LEAGUE shall be responsible for all applicable permits.

4.4.4 Concessions Revenue shall be applied to the programming and operations of the LEAGUE and the maintenance of the Licensed Premises.

4.4.5 Mobile vendor shall be permitted as defined in the CITY Code. LEAGUE hereby acknowledges that Licensed Mobile Vendors have the right to sale prepared and prepackaged food and non-alcoholic beverages. Mobile vendors have the right to vend in public parking lots.

4.5 LIGHTING:

4.5.1 If the Licensed Premises has lighting, CITY shall assess an annual Lighting Fee; refer to Section VI Utilities of this Agreement. Failure to remit payment for the Lighting Fee is a violation of this term and is subject to default.

4.5.2 If field lighting is not available, LEAGUE may be permitted to utilize temporary lighting. For the purposes of this Agreement, temporary lighting is defined as lighting that is placed in the Licensed Premises prior to practices, games, or events and removed at the conclusion each activity.

4.6 PARKING:

4.6.1 LEAGUE shall have non-exclusive use to public parking lots in the proximity of the Licensed Premises. LEAGUE shall not charge parking fees when utilizing public parking lots.

- 4.6.2 If a parking lot is included in the Licensed Premises the LEAGUE shall maintain the parking lot as outlined in Section V. Maintenance Obligations. LEAGUE may charge a small parking fee (“Parking Fee”) which will be utilized to offset the cost of parking lot maintenance.
- 4.6.3 Parking on the sports fields, non-paved areas and fire lane is strictly prohibited; violation of this term is subject to default. Off pavement parking areas can be requested in writing and shall be sent to the CITY no later than fifteen (15) days prior to an event. CITY has the right to refuse off pavement parking request.

4.7 ASSIGNMENT:

- 4.7.1 Sublease: LEAGUE shall not assign or sublease the Licensed Premises.
 - 4.7.2 One-Time Use: LEAGUE may permit one time reserved use of the Licensed Premises, a small usage fee (“Use Fee”) may be charged comparable to the CITY’s reservation fee. All fees are subject to approval by the CITY. Use Fee shall be utilized to offset the cost of maintenance.
 - 4.7.3 LEAGUE shall remain the primary user of the Licensed Premises. Short term assignment to one or more users is strictly prohibited; violation of this term is subject to default.
- 4.8 STORAGE: LEAGUE may store items on the Licensed Premises however all storage units shall be approved by the CITY. If a storage unit is on the Licensed Premises the LEAGUE shall be responsible for securing the unit. If LEAGUE leases the storage unit the CITY shall not be responsible for payment or maintenance of the storage unit. CITY shall not be responsible for stored items within the unit.
- 4.9 SECURITY: LEAGUE shall be responsible for securing the items in the Licensed Premises. Security equipment and monitoring services shall be the responsibility of the LEAGUE.

V. MAINTENANCE OBLIGATIONS

- 5.1 LEAGUE at its sole expense shall maintain the Licensed Premises at or above the standards set by the CITY. LEAGUE shall maintain the Licensed Premises at the same quality of CITY maintained fields and amenities.
- 5.2 LEAGUE shall maintain all sports fields at or better than an acceptable standard for play, including but not limited to: watering, mowing, trimming, seeding, fertilizing and leveling and dragging of the fields.
- 5.3 LEAGUE shall collect and remove trash after every practice, game and event. LEAGUE shall use reasonable efforts to recycle materials. LEAGUE agrees to comply with a recycling program established and implemented during the term of this Agreement.
- 5.4 LEAGUE shall provide pest control services as needed.
- 5.5 LEAGUE shall keep all areas within the Licensed Premises free of graffiti.
- 5.6 LEAGUE shall maintain all amenities and structures in good and working order, repair as necessary.
- 5.7 If irrigation equipment is located on the Licensed Premises, the LEAGUE shall maintain, repair and replace all irrigation equipment including but not limited to: irrigation lines, sprinkler head, and all associated parts.
- 5.8 LEAGUE shall be required to conduct all necessary maintenance to ensure the License Premises is in an acceptable standard.
- 5.9 LEAGUE shall promptly repair any damage to the Licensed Premises. LEAGUE shall have no obligation to repair damage caused by CITY or CITY authorized contractors. Notwithstanding any contrary provisions, should the Licensed Premises be damaged by fire, tornado or other casualty, CITY shall be under no obligation to rebuild or repair the Licensed Premises.
- 5.10 LEAGUE shall not plant or remove trees without prior written approval from the CITY.

5.11 CITY reserves the right to inspect the Licensed Premises without prior notification to the LEAGUE.

VI. UTILITIES

- 6.1 WATER AND SEWER UTILITIES: CITY shall pay for all water and sewer fees. LEAGUE shall comply with the City's Conservation Ordinance, including year round restrictions, drought restrictions, and charity car wash restrictions. If the LEAGUE receives fines or penalties for non-compliance with the City's Conservation Ordinance or any watering restrictions the LEAGUE shall be responsible for the payment of the fines or penalties. LEAGUE shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance.
- 6.2 IRRIGATION: If applicable, LEAGUE may utilize existing irrigation equipment within the Licensed Premises for the purpose of irrigation. LEAGUE will hereby be responsible for the maintenance of the irrigation equipment including but not limited to repair and replacement of irrigation lines and sprinkler heads. CITY shall have the right to implement and modify irrigation policies and practices throughout the term of the Agreement. LEAGUE shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance. LEAGUE shall be responsible for coordinating with CITY the necessary documents to support the irrigation audit.
- 6.3 ELECTRIC UTILITIES: If a separate meter is identified for the Licensed Premises the LEAGUE shall be responsible for all electric utilities. If a separate electric meter is not available and the Licensed Premises contains lighting, the LEAGUE shall be issued an annual invoice for Lighting Fees which is a standard rate set by the CITY. CITY has the right to reevaluate the Lighting Fee throughout the term of this Agreement.

VII. IMPROVEMENTS

- 7.1 LEAGUE may not, without the prior written approval of City, construct, or allow to be constructed, any permanent improvements to the Premises or make or allow to be made any permanent alternations to the structures within the Premises without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, and c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission. If approved by the City's Parks and Recreation Department, the expansion would also be subject to the review and approval of the entities outlined above.
- 7.2 LEAGUE shall be responsible for securing, at its cost, all necessary and required permits for any activities or improvements.
- 7.3 The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans. Such plans and specifications are not approved for architectural or engineering design and the City, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.
- 7.4 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by LEAGUE and at any time placed or maintained by LEAGUE on any part of the Premises shall be and remain the property of the LEAGUE; provided, however, that all Improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Premises shall become the property of the CITY from and after the time that such improvements are made and shall remain the property of the CITY after the termination of this Lease.
- 7.5 CITY shall not be responsible or liable for, and LEAGUE covenants that it will not bind or attempt to bind, CITY for payment of any money in connection with any Improvements to the Premises.

- 7.6 During any periods of time that Improvements are occurring within the Leased Premises, LEAGUE's contractors will be required to secure Builder's Risk insurance, if requested by CITY, and provide CITY with a certificate of insurance evidencing such coverage.
- 7.7 CITY shall not have any responsibility for making any capital repairs or capital improvements to the Licensed Premises.

VIII. REPORTING

- 8.1 LEAGUE shall provide annual reports to include, but not limited to: (a) sport, (b) number of participants in each sport, (c) participant age range and (d) number of teams. CITY shall request additional information as needed.
- 8.2 Annually LEAGUE shall provide a list of board member to include (a) name, (b) board title, (c) phone number, (d) address and (e) email address. LEAGUE shall notify the CITY within ten (10) days of any board changes include but not limited to changes in the: board president, board member or board structure.
- 8.3 If requested by CITY, LEAGUE 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 from CITY.
- 8.4 Throughout the term of this agreement and any extensions hereof, LEAGUE shall maintain complete and accurate permanent financial records of all income and expenditures. 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.
- 8.5 CITY reserves the right to conduct, or cause to be conducted, a review and/or audit of LEAGUE's records at any and all times deemed necessary by CITY provided, however, an audit will be conducted not more often than once 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, LEAGUE agrees to make available to CITY all accounting records.

IX. DEFAULTS AND TERMINATION

- 9.1 Should LEAGUE fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this contract, or violate any of the material terms of this contract, the CITY shall have the right to immediately terminate the contract in whole or in part.
- 9.2 Notice of termination shall be provided in writing to LEAGUE, effective upon the date set forth in the notice. CITY may, in CITY's sole discretion, provide an opportunity for LEAGUE to cure the default. If CITY elects to offer an opportunity to cure, CITY shall provide notice to LEAGUE specifying the matters in default and the cure period. If LEAGUE fails to cure the default within the cure period, CITY shall have the right, without further notice, to terminate the contract in whole or in part. Such termination shall not relieve LEAGUE of any liability to the CITY for damages sustained by virtue of any breach by LEAGUE.

X. INSURANCE REQUIREMENTS

- 10.1 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 "SPORTS LICENSE AGREEMENT" 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.

10.2 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.

10.3 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>
<ol style="list-style-type: none"> 1. Workers' Compensation 2. Employers' Liability 	<p>Statutory \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00</p>
<ol style="list-style-type: none"> 3. Commercial General Liability Insurance to include coverage for the following: <ol style="list-style-type: none"> a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury d. Sexual Abuse/ Molestation 	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of: \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<ol style="list-style-type: none"> 4. Business Automobile Liability: <ol style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000.00 per occurrence</p>

10.4 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.

10.5 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
 P.O. Box 839966
 San Antonio, TX 78283-3966

- 10.6 Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- 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;
 - 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;
 - Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
 - Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days notice for nonpayment of premium.
- 10.7 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.
- 10.8 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.
- 10.9 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.
- 10.10 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.
- 10.11 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.
- 10.12 Contractor and any Subcontractors are responsible for all damage to their own equipment and/or property.

XI. INDEMNIFICATION

- 11.1 **LEAGUE 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 LEAGUE's activities under this Agreement, including any acts or omissions of LEAGUE, any agent, officer, director, representative, employee, LEAGUE or subcontractor of LEAGUE, 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 LEAGUE 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.**

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

XII. NOTICES

12.1 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

The Miracle League of San Antonio
Attn: League President
926 Chulie
San Antonio, TX 78216

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.

XIII. CONFLICT OF INTEREST

13.1 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:

- a City officer or employee;
- parent, child or spouse;
- a business entity in which the officer or employee, or his parent, child or spouse owns (a) 10% or more of the voting stock or shares of the business entity, or (b) 10% or more of the fair market value of the business entity;
- a business entity in which any individual or entity above listed is a (a) subcontractor on a City contract, (b) a partner, or (c) a parent or subsidiary business entity.

13.2 LEAGUE warrants and certifies as follows:

- LEAGUE and its officers, employees and agents are neither officers nor employees of the CITY.
- LEAGUE has tendered to the CITY a Contracts Disclosure Statement in compliance with the City's Ethics Code.

13.3 LEAGUE acknowledges that City's reliance on the above warranties and certifications is reasonable.

XIV. SEVERABILITY OF PROVISIONS

14.1 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 the City of San Antonio, Texas, 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 the 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.

XV. NON-DISCRIMINATION

15.1 As a party to this contract, LEAGUE 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.

XVI. CONTRACTING

16.1 Compliance by contractors with this Agreement shall be the responsibility of the LEAGUE. LEAGUE shall be responsible to ensure that all permits required for the activities under this Agreement are obtained.

16.2 CITY shall in no event be obligated to any third party, including any sub-contractor of LEAGUE, for performance of or payment for work services.

16.3 LEAGUE shall not have liens on the property.

XVII. ENTIRE AGREEMENT

17.1 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

XVIII. CHANGES AND AMENDMENTS

18.1 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both CITY and LEAGUE under authority granted by formal action of the Parties' respective governing bodies.

18.2 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XIX. PARTIES BOUND

19.1 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XX. RELATIONSHIP OF PARTIES

20.1 Nothing contained herein shall be deemed or constructed by Parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

XXI. TEXAS LAW TO APPLY

21.1 This Agreement shall be constructed 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. GENDER

22.1 Words of any gender used in this Agreement shall be held and constructed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXIII. CAPTIONS

23.1 The captions contained in this Agreement as for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXIV. HOLDING OVER

24.1 League shall have no right to hold over after the end of the term of this Agreement.

XXV. AUTHORITY

25.1 The signor of this Agreement for the League hereby represents and warrants that they have full authority to execute this Agreement on behalf of the League.

25.2 If the signor of this Agreement separates from the LEAGUE the signor shall have no authority to continue.

25.3 LEAGUE shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt to transfer, pledge or other assignment shall be void ad initio and shall confer no right upon any third person.

EXECUTED and AGREED to this the _____ day of _____, 20____.

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

THE MIRACLE LEAGUE OF SAN ANTONIO

By: _____
Homer Garcia, III, Director

By: _____
Michael Miller, President

Date: _____

Date: _____

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Licensed Premises Map