

**SOFTBALL LEASE AND MANAGEMENT AGREEMENT
AMENDMENT NO. 2**

This Amendment No. 2 (“Amendment”) to the Softball Lease and Management Agreement (“Agreement”) is by and between the City of San Antonio, a Texas municipal corporation (“City”), acting by and through its City Manager or her designee, pursuant to Ordinance No. _____ passed and approved on _____, 2013, and San Antonio Amateur Softball Association, Inc., a Texas non-profit organization (“SAASA”).

WHEREAS, pursuant to Ordinance No. 2012-05-31-0393, passed and approved on May 31, 2012, City and SAASA entered into a Softball Lease and Management Agreement for Alva Jo Fischer, Kennedy Park, and Koger Stokes Softball Complexes; and

WHEREAS, pursuant to Ordinance No. 2012-09-20-0750, passed and approved on September 20, 2012, City and SAASA approved Amendment No. 1 to the Softball Lease and Management Agreement; and

WHEREAS, City utilized the Complexes for its Girls Fastpitch Softball program during 2013 and will continue to utilize the Complexes for this purpose through at least the spring and summer seasons of 2014; and

WHEREAS, City and SAASA now mutually desire to amend the Agreement to incorporate Food and Beverage concession operations, which have been provided by SAASA under the terms of a separate agreement which ends on December 31, 2013, and to make other modifications to the Agreement,

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, City and SAASA agree as follows:

1. ARTICLE 4 USE IS MODIFIED TO ADD THE FOLLOWING:

4.4 Effective January 1, 2014 SAASA shall offer food and beverage concessions within the Complexes.

4.4.1 SAASA shall be responsible for the operation of the food and beverage concessions at its sole cost and expense and shall retain all associated revenue, which shall be considered revenue for all purposes under this Agreement.

4.4.2 The menu and pricing shall be subject to the prior review and written approval of City through its Parks and Recreation Director.

4.4.3 In order to provide healthier food and beverage options, SAASA is obligated to offer the following menu options:

4.4.3.1 Entrees/Meals: a minimum of two items that include a poultry protein, vegetables and/or whole grain and do not exceed 300 calories

4.4.3.2 Snacks: a minimum of three items that meet the snack criteria of the City of San Antonio Metropolitan Health District Healthy Snack and Beverage Nutrition Criteria Recommendations (attached as Exhibit D).

4.4.3.3 Beverages: a minimum of three items that meet the beverage criteria of the City of San Antonio Metropolitan Health District Healthy Snack Beverage Nutrition Criteria Recommendations (attached as Exhibit D).

4.4.3.4 SAASA shall provide nutrition label information or other information acceptable to City to demonstrate that these healthier options meet the requirements of this Paragraph.

4.5 Effective January 1, 2014 SAASA shall have the right to sell merchandise which is related to softball and/or other sports activities.

4.5.1 SAASA shall be responsible for the operation of the merchandise concession at its sole cost and expense and shall retain all associated revenue, which shall be considered revenue for all purposes under this Agreement.

4.5.2 The merchandise and pricing shall be subject to the prior review and written approval of the City through its Parks and Recreation Director.

2. ARTICLE 9 FEES IS MODIFIED AS FOLLOWS:

Under Paragraph 9.3 Reservation Fees, subparagraphs 9.3.1, 9.3.2, 9.3.4 and 9.3.5 are deleted and replaced with the following:

9.3.1 SAASA shall establish reservation fees. Effective January 1, 2014 the reservation fees shall be subject to the approval of City through its Parks and Recreation Director and may not exceed the rate at comparable facilities.

3. ARTICLE 10 CITY RIGHTS IS MODIFIED AS FOLLOWS:

10.3 is modified to add the following to the City's responsibilities: g) provide janitorial supplies in an amount agreeable to the Parties during all periods of City use.

4. ARTICLE 11 CAPITAL REPAIR AND IMPROVEMENT FUND IS MODIFIED AS FOLLOWS:

Paragraph 11.1 is deleted in its entirety and replaced with the following:

11.1 At the end of each calendar year during the term of this Agreement, SAASA shall calculate the amount of total revenue that exceeds the amount of total expenditures for the previous calendar year, or portion thereof ("Net Revenue"). On or before March 1 of each year SAASA shall deposit the amount that is 50% of Net Revenue over and above \$10,000 into a Capital Repair/Capital Improvement Fund, which shall be interest bearing and established at a reputable financial institution in San Antonio, Texas ("Account"). For purposes of clarification, an example of the calculation of the amount to be placed in the Account is as follows:

Net Revenue:	\$40,000
Less:	\$10,000
Subtotal:	\$30,000
50%:	\$15,000 – to be placed in Account

5. ARTICLE 12 BUDGETS, REPORTING AND RECORDKEEPING IS MODIFIED AS FOLLOWS:

Paragraph 12.1 is deleted in its entirety and replaced with the following:

- 12.1 Budget Report: On or before October 1 of each year SAASA will provide to City its proposed budget for the following calendar year. The budget will reflect SAASA's proposed revenue and expenditures, broken down and detailed by categories.

The following is added to Paragraph 12.3

- 12.3 In addition to the March 1 Activity Report, SAASA shall provide a report to City on or before October 1 of each year reflecting the number of leagues to be offered the following calendar year, broken down by each league season, such report to reflect SAASA's obligation to offer at least 125 leagues each year.

Paragraph 12.5 is deleted in its entirety and replaced with the following:

- 12.5 Financial Report: On or before the later of May 1 or the date on which SAASA submits its IRS tax return of each year SAASA shall provide to City an annual financial statement ("Annual Financial Statement") prepared by an independent Certified Public Accountant for the previous calendar year.

The first sentence of 12.8 is deleted in its entirety and replaced with the following:

- 12.8 SAASA shall maintain in the City of San Antonio, Texas, all books, information and records fully and accurately reflecting its operations.

Paragraph 12.10 is added as follows:

- 12.10 On or before October 1, 2014 SAASA shall obtain and begin utilization of an electronic accounting system to track all revenues and expenditures segregated by source and having the ability to retain historical fiscal data and generate a variety of electronic reports appropriate for this business function.

6. ARTICLE 15 MAINTENANCE AND UTILITIES IS MODIFIED AS FOLLOWS:

In consideration for the City's use of the Complexes for its Girls Fastpitch Softball program, all references in Paragraph 15.5 to SAASA assuming responsibility for payment of the Utility Services for the Complexes on October 1, 2014 will be deleted.

15.5 will be deleted and replaced with the following:

15.5 City will provide electricity and water/sewer services (Utility Services) to the Complexes from the Commencement Date until such time as City ceases utilizing the Complexes for its Girls Fastpitch Softball program, as outlined in paragraph 10.3. In the event that City use at all Complexes ceases, SAASA will assume responsibility for all Utility Services and the transfer of meter service, as outlined in 15.5.1, 15.5.2 and 15.5.3, will occur within thirty (30) days following the end of City's use. In the event that City use is reduced, but not eliminated, the responsibility for Utility Services shall be shared on a pro-rata basis calculated by the number of days of City use. For example, if City use is reduced from seven days each week to four days a week, City will be responsible for 4/7 of the cost and SAASA will be responsible for 3/7 of the cost. City will provide SAASA with an invoice on a quarterly basis and SAASA shall pay the invoiced amount within twenty (20) days after receipt of City's invoice.

7. ARTICLE 24 INSURANCE IS MODIFIED TO ADD THE FOLLOWING:

Paragraph 24.3 is amended to add Liquor Liability Coverage in the amount of \$1,000,000 to the insurance table.

8. ARTICLE 36 NON-DISCRIMINATION

Article 36, as outlined below, is added to the Agreement and the existing Article 36 is renumbered to Article 37.

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

Except as modified herein, all terms and conditions contained in the Agreement entered into under the authority of Ordinance No. 2012-05-31-0393, and as amended by Ordinance No. 2012-09-20-0750, shall remain in full force and effect.

EXECUTED on this _____ day of _____, 2013

CITY:

City of San Antonio, a Texas
Municipal Corporation

SAASA:

By: _____
City Manager

By: 
Cruz Olivarri
President

Attest: _____
City Clerk

Approved as to Form: _____

Exhibit D

Healthy Snack & Beverage Nutrition Criteria Recommendations:

Snacks:

- No more than 200 calories
- No more than 35% of calories as fat
- No more than 10% of calories as saturated fat
- No more than 35% of calories as sugar
- No more than 250mg sodium per package

Beverages:

- Water
- Plain or Flavored Fat-Free or Low Fat Milk (150 cal/8 oz), or equivalent calorie count based on size
- 100% Real Fruit Juice (120 cal/8oz), or equivalent calorie count based on size
- No or Low-Calorie Beverages (10 cal/8 oz), or equivalent calorie count based on size
- Other drinks (66 cal/8 oz), or equivalent calorie count based on size