

**STATE OF TEXAS       §  
                                     §               FUNDING AGREEMENT WITH  
  CAPITOL PARK LITTLE LEAGUE**

**COUNTY OF BEXAR   §**

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 Capitol Park Little League (hereinafter referred to as "Grantee"), a Texas Non-profit Corporation, acting by and through its officers, hereto duly authorized.

WHEREAS, City held a Bond Election on May 6, 2017 and received approval from the voters to fund a variety of Parks, Recreation & Open Space Improvements (Proposition 3 on the ballot); and

WHEREAS, among the Proposition 3 Parks, Recreation & Open Space Improvement projects approved is a project titled "Capitol Little League Baseball Fields" (the "Project", such Project to be completed in accordance with the Scope and Plans attached as Exhibit A and Exhibit B); and

WHEREAS, the official brochure for the Bond Election described this project as follows: "General improvement and relocation of baseball fields which may include land acquisition"; and

WHEREAS, the City is bound to comply with the terms and conditions contained in the official brochure as presented to the voters; and

WHEREAS, the City has identified Grantee as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, Grantee is the fee simple owner of the real property located at 10898 Hillpoint Dr. and the proposed location of the Project; and

WHEREAS, Grantee has entered into a 20 year lease agreement with the City for said property described more fully in the attached and incorporated Exhibit E ("Primary Lease"); and

WHEREAS, the City has found, by resolution adopted by its City Council, that the programs and services offered by Grantee at the hereinafter-defined and to be completed Project accomplish the public purpose of delivery of parks, recreation and open spaces and provision of community services to City residences and, accordingly, the

expenditure of proceeds derived from the sale of bonds authorized at the May 6, 2017 City bond election under Proposition 3 to expand and improve the Project represents a valid expenditure of such bond proceeds; and

WHEREAS, the City's issuance of bonds (such initial City bonds, as well as any City bonds from time to time issued to refund these initial City bonds, the "City Bonds") to fund its contribution obligations hereunder is authorized by applicable Texas law, including the City's Home Rule Charter and the City voters' approval of Proposition 3 at the May 6, 2017 City bond election, and such contribution shall satisfy in full the City's funding obligation for the project identified in Proposition 3 of the City's May 6, 2017 bond election as "Capitol Little League Baseball Fields"; and

NOW THEREFORE, the Parties hereto (the "Parties") 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**

1.01 This Agreement shall commence on the later of (a) the effective date of the Authorizing Ordinance or (b) the later of the signatures of the two Parties. The Term shall expire upon the earlier to occur of: (a) final payment by the City of all funding under this Agreement, or (b) termination of this Agreement as otherwise provided herein. The Director of Transportation and Capital Improvements may administratively approve extension of agreement term up to an additional year if deemed necessary by City; provided, however, that the obligations of the Grantee hereunder shall survive until the repayment and discharge by the City of any City Bonds the proceeds from which are used by the City to satisfy its funding obligations hereunder.

### **II. GENERAL RESPONSIBILITIES OF GRANTEE**

2.01 Provided Grantee receives the funding described in Section V of this Agreement, and subject to the other terms and conditions of this Agreement, including, but not limited to, force majeure provisions, Grantee hereby accepts full responsibility for the performance of all services and activities to complete the Project by May 31, 2020, as described in this Agreement.

2.02 The current budget estimates of the Project are approximately \$10,013,026.00. Grantee shall provide all necessary funding for the Project beyond the City's commitment of \$1,940,000, plus \$60,000 which shall be retained by the City per Section 5.01, for a total of \$2,000,000.00. Grantee shall provide evidence to City that all Project funds have been secured prior to the receipt of any funding under this Funding Agreement. In the event that the scope of the Project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly. City is not responsible for any costs over the estimated amount of the Project unless agreed to in writing in the form of an amendment to this Funding Agreement. The City shall fund its commitment hereunder from proceeds derived from City Bonds.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President shall be Grantee's designated representative responsible for the management of this Agreement.

2.04 The Director of Transportation and Capital Improvements (TCI) or designee shall be responsible for the administration of this Agreement on behalf of the City until the completion of the City funded portion of the Project.

2.05 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.03 and 2.04 hereinabove.

2.06 Grantee shall provide to City a narrative Scope for the Project, including a background, project summary and timeline, ("Scope") as Exhibit A.

2.07 Grantee shall provide to City its plans and specifications for the Project, including a construction schedule, ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Funding Agreement. After approval by City, the Plans shall be attached and incorporated into this Funding Agreement as Exhibit B and Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do not relieve Grantee of the burden of obtaining all necessary governmental approvals, including those provided by City through its relevant development departments and relevant boards and commissions and the State of Texas Commission on Environmental Quality (Article 9102). Nor does City's approval of the Plans release Grantee of the responsibility for the correction of Grantee's mistakes, errors or omissions contained in the Plans, including any mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.

2.08 Grantee shall provide to City a Budget for the Project illustrating where City Bond funds are to be utilized in accordance with this agreement, as well as illustrating all funding for the entire Project if applicable as Exhibit C.

2.09 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Scope and Plans and to request copies of construction inspections performed by Grantee and third parties. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the Director of TCI or designee at the completion of the Project construction. Grantee shall notify City and City shall have the right to attend all scheduled construction meetings. Grantee shall provide City with a copy of the Certificate of Occupancy upon completion of the Project.

2.10 Beginning on January 31, 2018, and on each succeeding January 31 throughout the Term of the Agreement, Grantee shall provide Director of TCI or designee an annual report ("Annual Report"). The Annual Report shall include the following:

2.10.1 Description of all activities that occurred during the previous calendar year that were available to the general public, including activity dates, estimated attendance, days and hours that the Project improvements are open to the general public, and the rules and regulations for use.

2.10.2 Evidence of insurance coverage, with City as additional insured, as outlined in Section 12 below.

2.10.3 Description of all maintenance activities, including routine capital and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

2.11 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President shall be Grantee designated representative responsible for the management of this Funding Agreement and the point of contact for City on all matters regarding this Funding Agreement.

### **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.01 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Project.

3.02 To the extent applicable, Grantee agrees to abide by Chapters 252 and 271 of the Texas Local Government Code, and Chapters 2254 and 2267 of the Texas Government Code or other open competitive contracting processes which are advertised to the public in a legal and appropriate manner.

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

#### **3.04 Prevailing Wage Rate and Labor Standards**

A. The requirements of Chapter 2258 of the Texas Government Code, entitled "Prevailing Wage Rates," shall apply to this Funding Agreement. Grantee agrees that its construction contractor will comply with City Ordinance No. 71312 and its successors such as Ordinance No. 2008-11-20-1045 and will require subcontractors to comply with City Ordinance 71312 and its successors such as Ordinance No. 2008-11-20-1045 and shall not accept affidavits.

B. In accordance with the provisions of Chapter 2258 and Ordinance No. 2008-11-20-1045, Grantee shall request upon advertisement of construction bids, and the City will provide Grantee with the appropriate wage determination which includes the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform the construction work. The Grantee is required, and shall require its construction contractor and all subcontractors to comply with each updated schedule of the general prevailing rates in effect at the time the Grantee calls for bids for construction of a given phase. The Grantee is further required to cause the latest prevailing wage determination decision to be included in bids and contracts with the Grantee's general contractor and all subcontractors for construction of each Phase. Grantee is responsible for and shall collect and monitor weekly certified payrolls and perform site visits to ensure the prevailing wage is being paid to all workmen. City will audit certified payroll records as necessary in accordance with this Funding Agreement.

C. Upon audit of the records and certified payrolls under this section, should the City or its auditors find any violations, the Grantee shall cause its Construction Contractor to forfeit as a penalty to the City \$60.00 for each laborer, workman, or mechanic employed, for each calendar day, or portion thereof, that such laborer, workman or mechanic is paid less than the said stipulated rates for any work done under said contract, by the Contractor or any subcontractor. The establishment of prevailing wage rates in accordance with Chapter 2258, Texas Government Code shall not be construed to relieve the Grantee from its obligation under any federal or state law regarding the wages to be paid to or hours worked by laborers, workmen or mechanics insofar as applicable to the work to be performed under this Funding Agreement.

3.05 Environmental - Construction shall be in accordance with all Federal, State, and local environmental requirements including all City applicable construction and development regulations.

3.06 Small Business Economic Development Advocacy Program - Grantee shall comply with all Small/Minority and Woman Owned Business Terms and Conditions as attached hereto as **Exhibit D**.

3.07 Compliance with Bond Covenants – The City's commitment hereunder is funded with City Bonds, which are obligations the interest on which is excluded from the gross income calculations of the holders thereof for the purpose of determining income tax liability under applicable federal law. Maintaining the eligibility of the City Bonds for this tax treatment requires the City's compliance with applicable federal tax law and regulations, which includes agreements regarding the use of City Bonds' proceeds and the use and operation of facilities financed with those proceeds. As the expenditure of the City Bonds' proceeds once delivered to the Grantee, and the use and operation of the completed Project, is under the control of the Grantee, Grantee agrees that it shall not use, or permit the use of, proceeds of the City Bonds, or earnings thereon, or any other amounts or any property, the acquisition, construction, or improvement of which is to be financed directly or indirectly with proceeds of the City Bonds or earnings thereon, in a

manner which, if used or permitted to be used, respectively, would cause the interest on City Bonds to be includable in the gross income of the bond owners for federal income tax purposes. In addition, purposes which are not permissible include, but are not limited to religious activities, restaurants, cafes, and retail stores.

3.08 No Boycotting of Israel. Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:

- (1) does not boycott Israel; and
- (2) will not boycott Israel during the term of the contract.

"Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

"Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.

By signing this Agreement with the City of San Antonio, Grantee hereby verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. City's hereby relies on Grantee's verification. If found to be false, City may terminate the contract for material breach.

3.09 Texas Government Code § 2252.152 - Contracts With Companies Engaged In Business With Iran, Sudan, Or Foreign Terrorist Organization Prohibited

Texas Government Code §2252.152 provides that a governmental entity may not enter into a governmental contract with a company that is identified on a list prepared and maintained under Texas Government Code §2270.0201 or §2252.153 "Listed Companies". Consultant/Contractor hereby certifies that it is not identified on such a list and that it will notify City should it be placed on such a list while under contract with City. City hereby relies on Consultant's/Contractor's certification. If found to be false, or if Consultant/Contractor is identified on such list during the course of its contract with City, City may terminate this Agreement for material breach.

#### **IV. OWNERSHIP, USE OPERATIONS**

4.01 Grantee hereby acknowledges that it will construct the Project in a manner consistent with use by the general public. Grantee hereby agrees that the operating hours

of the facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project improvements. Further, Grantee shall not employ, nor allow others to employ, discriminatory practices in the use of the Project improvements. Grantee hereby agrees that the programs and use described herein will continue for the Term of this Funding Agreement.

4.02 Grantee shall be responsible for the operation and maintenance of the Project facility and all associated costs will be the responsibility of Grantee.

4.03 The Project improvements shall facilitate the construction of the Capitol Little League Baseball Fields in accordance with the Plans and provide for its continued operation during the entire term that the City Bonds issued to finance the City's contribution to the Project remain outstanding.

4.04 For the entire term that the City Bonds remain outstanding, Grantee shall operate the Project continuously and in a manner that accomplishes on the City's behalf the public purposes that form basis for the City's contribution to the Project. Grantee shall satisfy this obligation by assuring that, for the duration immediately hereinbefore specified, the general improvement and relocation of baseball fields services provided at the Project, once completed, as a ratio of all services provided at the completed Project, shall be at least proportionate to the percentage of the total Project cost funded by the City (assuming a City contribution of \$2,000,000.00 and an overall Project cost of \$10,013,026.00).

## **V. FUNDING AND ASSISTANCE BY CITY**

5.01 City shall reimburse Grantee for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City hereunder shall not exceed the sum of \$2,000,000.00.

5.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee and Transportation and Capital Improvements "hereinafter referred to as TCI", for payment of any monies or provision of any goods or services.

5.03 Funding shall consist of reimbursements paid to Grantee for construction cost of the Project, not to exceed \$1,940,000 with \$60,000 to be retained by the City, for total funding by City of \$2,000,000. The City funding provided under this Funding Amendment may only be used for the portions of the Project which are dedicated to public use/public purpose. No City funds may be used for Grantee's personal office space or other non-public aspects of the Project

5.04 Except as otherwise set forth herein, it is further expressly understood and agreed by City and Grantee that this Agreement in no way obligates City's General Fund monies or any other monies or credits of City.

## **VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

6.01 Grantee agrees to maintain readily identifiable records that shall provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and
- (B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this Agreement, including a detailed accounting of the expenditure of amounts received from the City herunder, for so long as the City Bonds remain outstanding, but not less than four (4) years from the completion of the Project.

6.03 City shall reimburse Grantee on a monthly basis upon receipt and approval of an invoice through the City's Project Reporting Information Management Exchange Link (COSA PRIMELink) within thirty (30) days after receipt of an approved invoice.

6.04 All requests for reimbursement shall be submitted through the COSA PRIMELink. Grantee shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing PRIMELink sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on PRIMELink and/or utilizing forms and instructions approved by TCI. Prior to the initial request for reimbursement, Grantee must submit a schedule of values for payment to be approved by TCI, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved shall be processed and approved as task orders through the portal.

6.05 Prior to reimbursement, City shall have the right to inspect work completed to ensure conformance with the approved Plans. Invoices should include all supporting documentation that costs have been incurred, as required by City.

6.06 City agrees to provide Grantee written notice regarding any expenditure for which Grantee has requested reimbursement under this Agreement which the City reasonably determines to be outside the permissible parameters of this Agreement. Said

notice shall provide Grantee thirty (30) days from receipt of said notice to cure the deficiency or refund to the City any sum of money paid by City to Grantee determined to:

- (A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

6.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in this Section VI as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) working days of City's written request wherein the amount disallowed or disapproved shall be specified.

## **VII. ALLOWABLE EXPENDITURES**

7.01 Upon preparation of a construction plan and budget by Grantee, Grantee shall submit said budget to City for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in Grantee's construction budget, or otherwise approved in advance by City in writing, and incurred directly and specifically in the performance of and in compliance with this Agreement and with all applicable city, state and federal laws; regulations and ordinances affecting Grantee's operations hereunder. All funds paid by City shall be for permanent public improvements. Only the following categories of costs shall be considered allowable:

- Construction contract and change orders
- Construction contingencies
- Architectural/Engineering Design Contract and Amendments

Expenditures of the funds provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with the terms of this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this Agreement:

- Personnel costs, salaries or wages paid directly by Grantee or an affiliated organization of Grantee
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project (including but not limited to costs and fees of the Architect)
- Costs or fees associated with attendance of Grantee at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation of Grantee
- Fundraising

- Equipment and Furnishings, except for items of a capital nature which are being provided by Grantee's general contractor and shown on the approved Plans and specifically approved by City.
- Advertising

7.03 Written requests for prior approval shall be Grantee's responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by City. Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

## **VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

8.01 Grantee further represents and warrants that:

(A) All information, data or report heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

(B) It is financially stable and capable of fulfilling, and possesses internally or will outsource duties to acquire the sophistication to fulfill its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely affect its obligations hereunder.

(C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

## **IX. ACCESSIBILITY OF RECORDS**

9.01 At any time during normal business hours and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

9.02 Grantee agrees and represents that it shall cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for

information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

## **X. MONITORING AND EVALUATION**

10.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities so as to ensure compliance by Grantee with this Agreement, and Grantee shall provide reasonable access to City related to such activities, and to ensure Grantee's compliance with all applicable laws, regulations and ordinances related to the performance hereof.

## **XI. INDEMNITY**

11.01 Grantee 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 Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, consultant or subcontractor of Grantee, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or 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 GRANTEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF 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.

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

**11.03 NOTWITHSTANDING THE FOREGOING, TO THE EXTENT PROVIDED BY LAW, CITY SHALL BE RESPONSIBLE FOR ALL CLAIMS,**

**DEMANDS, AND CAUSES OF ACTION AGAINST CITY ARISING IN FAVOR OF ANY PERSON, BECAUSE OF PERSONAL INJURIES OR DEATH OR DAMAGE TO PROPERTY, OCCURRING, GROWING OUT OF, OR INCIDENT TO, RELATED TO OR RESULTING DIRECTLY OR INDIRECTLY FROM THE OCCURRENCE OF ACTIVITIES OR OMISSION OF ACTIVITIES CONTEMPLATED BY THIS AGREEMENT, CAUSED BY THE NEGLIGENCE OF CITY AND/OR ITS EMPLOYEES.**

## **XII. INSURANCE & BONDS**

12.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Transportation & Capital Improvements (TCI) Department, which shall be clearly labeled "Capitol Little League Baseball Fields" 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 shall 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 TCI Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

12.02 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 shall City allow modification whereby City may incur increased risk.

12.03 Grantee's financial integrity is of interest to the City; therefore, subject to Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee'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>   |
|--|--|
|  |  |
| 1. Workers' Compensation   | Statutory  |
| 2. Employers' Liability  | \$500,000/\$500,000/\$500,000  |
| 3. Broad form Commercial General Liability Insurance to include coverage for | For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; |

|  |   |
|--|---|
| the following:<br>a. Premises/Operations<br>*b. Independent Contractors<br>c. Products/Completed Operations<br>d. Personal Injury<br>e. Contractual Liability<br>*f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability.<br>*g. Explosion, Collapse, Underground<br>h. Damage to property rented by Grantee | \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage<br><br><br><br><br><br><br><br><br><br>h. \$100,000     |
| 4. Business Automobile Liability<br>a. Owned/leased vehicles<br>b. Non-owned vehicles<br>c. Hired Vehicles   | <u>C</u> ombined <u>S</u> ingle <u>L</u> imit for <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence |
| 5. Builder's Risk (if applicable)  | All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.              |
| 6. Property Insurance: For physical damage to the property of City, including improvements and betterment to the Leased Premises   | Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of the Contractor's property                |
| *if applicable   |   |

12.04 Grantee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Grantee herein, and provide a certificate of insurance and endorsement that names the Grantee and the City as additional insureds. Grantee 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.

12.05 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 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). Grantee 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. Grantee shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: TCI Department  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

12.06 Grantee 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 where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies shall provide a waiver of subrogation in favor of the City.
- 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.

12.07 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Grantee shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Grantee'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.

12.08 In addition to any other remedies the City may have upon Grantee'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 Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

12.09 Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or

property resulting from Grantee's or its subcontractors' performance of the work covered under this Agreement.

12.10 It is agreed that Grantee'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.

12.11 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.

12.12 Grantee and any Subcontractors are responsible for all damage to their own equipment and/or property.

12.13 Grantee shall ensure that its general contractor complies with Texas Government Code Chapter 2253 provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

### **XIII. NONDISCRIMINATION**

13.01 As a party to this contract, Grantee 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.

### **XIV. CONFLICT OF INTEREST**

14.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

14.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

14.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

- (A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;
- (B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

## **XV. POLITICAL ACTIVITY**

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

## **XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

16.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City (provided that the Grantee shall be entitled to maintain copies of all of the foregoing materials).

## **XVII. CONTRACTING**

17.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all local, state and federal permits and approvals required for the activities under this Agreement are obtained.

17.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

## **XVIII. CHANGES AND AMENDMENTS**

18.01 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 Grantee under authority granted by formal action of the Parties' respective governing bodies.

18.02 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. ASSIGNMENTS**

19.01 Grantee 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, which approval shall not be unreasonably withheld or delayed after construction of the Project is completed. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

### **XX. SEVERABILITY OF PROVISIONS**

20.01 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.

### **XXI. NON-WAIVER OF PERFORMANCE**

21.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

21.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

21.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

## **XXII. ENTIRE AGREEMENT**

22.01 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 be in writing, dated subsequent to the date hereof and duly executed by the Parties.

## **XXIII. NOTICES**

23.01 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: Razi Hosienni P.E., Interim Director, Transportation & Capital  
Improvements Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

And

Grantee: Rob Foster, President  
Capitol Park Little League  
11793 Bulverde Road  
San Antonio, Texas 78217

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.

## **XXIV. PARTIES BOUND**

24.01 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.

## **XXV. RELATIONSHIP OF PARTIES**

25.01 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 venturers or any other similar such relationship between the Parties hereto.

#### **XXVI. TEXAS LAW TO APPLY**

26.01 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.

#### **XXVII. GENDER**

27.01 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.

#### **XVIII. CAPTIONS**

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

#### **XXIX. DEFAULT**

29.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same, and Grantee shall have thirty (30) days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within thirty (30) days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

29.02 In no event shall this Agreement or City's use of the Leased Premises be terminated prior to the final payment or discharge of the City Bonds. As long as City Bonds have not been paid, the City's failure to perform any required actions under this Agreement shall give rise to Grantee's right, upon 60 days written notice to City, to undertake to perform any such actions and to receive reimbursement from City for the cost of performing such actions. After the City Bonds have been finally paid, any breach or violation by City to this Agreement of the provisions herein contained shall give rise immediately to the right on the part of Grantee, at its option, upon thirty (30) days' written notice to City, unless such breach or violation is cured prior to the expiration of the notice period, to cancel this Agreement or to seek any remedy which now is or may be provided by law, whether or not stated herein. No waiver by either party of a breach or violation shall be construed or held to be a waiver of any succeeding or preceding breach or violation of the same or any other provision herein contained.

### **XXX. LEGAL AUTHORITY**

30.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

30.02 The signer of this Agreement for Grantee represents, warrants, assures and guarantees that he or she has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

### **XXXI. FORCE MAJEURE**

31.01 If City or Grantee is delayed or prevented from performing any of their respective obligations under this Agreement by reason of strike, labor troubles, or any cause whatsoever beyond such party's reasonable control, the period of such delay or prevention shall be deemed added to the time herein provided for the performance of any such obligation by the delayed party.

### **XXXII. CONDITIONS TO AGREEMENT**

32.01 This Agreement, and all obligations of the parties hereunder, is expressly made conditioned on the mutual final agreement to the terms and conditions of the Funding Agreement attached hereto.

**(Signatures Appear on the Following Page)**

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**CITY OF SAN ANTONIO**

By: \_\_\_\_\_  
Roderick Sanchez  
Assistant City Manager, City of San Antonio

**CAPITOL PARK LITTLE LEAGUE**

a Texas non-profit corporation

By:  \_\_\_\_\_  
Rob Foster, President

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

## **EXHIBIT A**

### **SCOPE**

#### **Project Background:**

Capitol Park Little League (CPLL) has played baseball/softball at its current site on fields graciously donated by Zachry more than 40 years ago at one of Zachry Corporation's local facilities. Due to a capital improvement, facility expansion and related regulatory requirements, the baseball fields must be removed and the children will not be able to play at the current site after Fall Ball 2019. Consequently, CPLL found a new site through the generous contribution by Capitol Aggregates of 23+ acres of real property.

#### **Project Description:**

The project consists of the construction of a new baseball complex for Capitol Park Little League to include up to 7 baseball fields, concession stands and associated drainage, utilities, excavation, bridge and drive access, and parking lots.

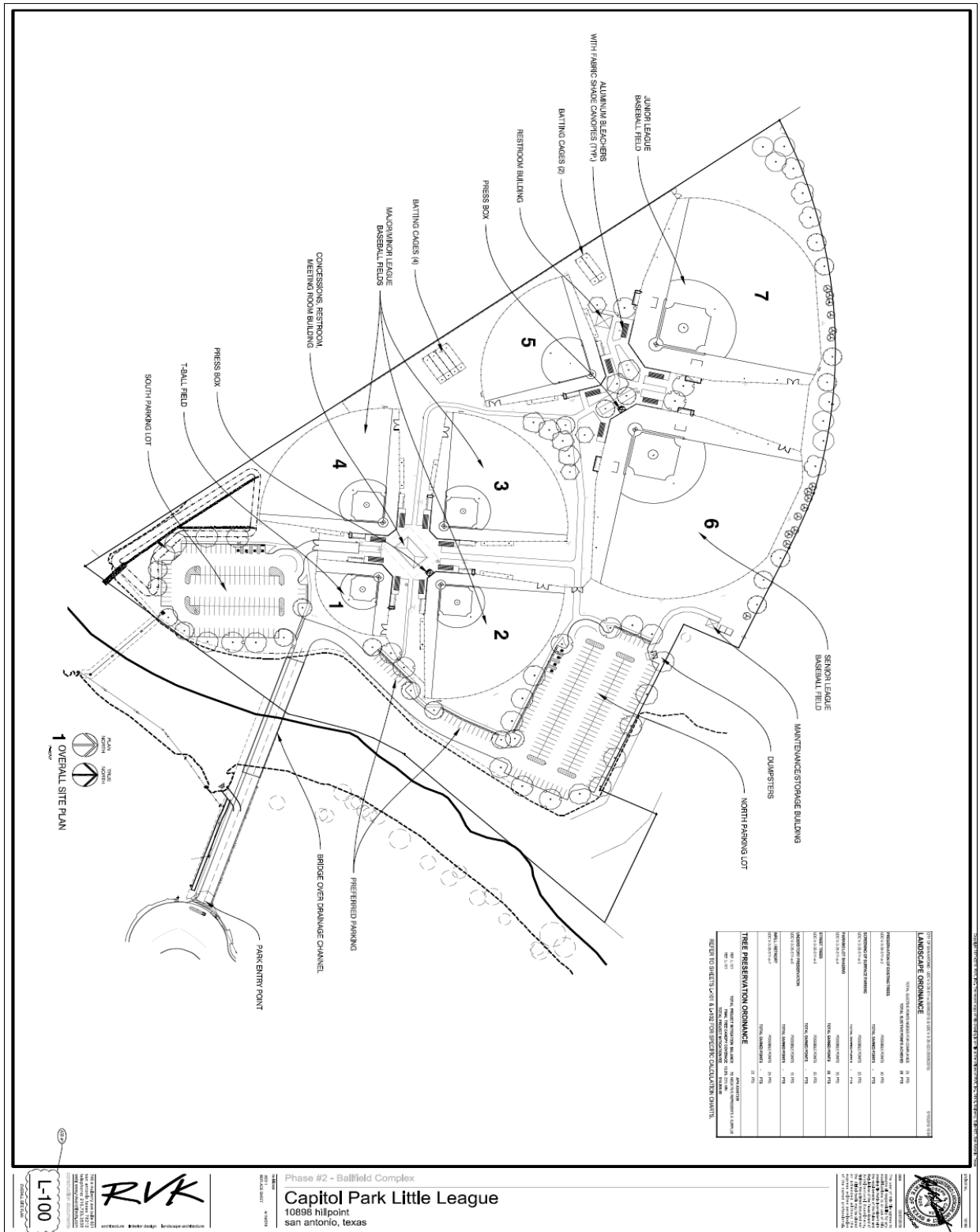
The project is divided into two separate phases. The Phase 1 project will include the construction of the bridge and access drive with pedestrian sidewalks and utilities to the site from Hillpoint, along with the site clearing and grading associated with proposed channel and drainage improvements. The Phase 2 project will include the construction of everything else.

#### **Project Budget:**

The City's Bond contribution will be used to fund improvements included in the Phase 1 project described above.

# EXHIBIT B

## PLANS



## EXHIBIT C

### PROJECT BUDGET

| A  | B  | C                         | D  |
|--|--|---------------------------|--|
| Project Line Items                                     | Partner/Agency Funds<br><i>(Rounded to nearest dollar)</i> | City Funds                | Total Line Item Cost<br>equals B + C         |
| Land   | 1,330,000  |                           | 1,330,000                                    |
| Pre-development &<br>Design/Engineering<br>Services    | 562,042  |                           | 562,042                                      |
| Regulatory Permits,<br>Applications, Fees              | 38,877   | 24,123                    | 63,000                                       |
| Excavation & Site Grading                              |  | 857,355                   | 857,355                                      |
| Bridge Construction &<br>Utilities                     |  | 1,118,522                 | 1,118,522                                    |
| Baseball Fields &<br>Concession Stands<br>Construction | 5,524,123  |                           | 5,524,123                                    |
| Contingency Percentage                                 | 400,000  |                           | 400,000                                      |
| Post Construction O&M                                  | 250,000  |                           | 250,000                                      |
|  |  |                           |  |
|  |  |                           |  |
|  |  |                           |  |
|  |  |                           |  |
|  |  |                           |  |
|  |  |                           |  |
|  |  |                           |  |
|  | <b>Total: \$8,105,042</b>                                  | <b>Total: \$2,000,000</b> | <b>Total Project Funds:<br/>\$10,105,042</b> |

**EXHIBIT D**

**SBEDA ORDINANCE COMPLIANCE PROVISIONS AND COMMITMENT  
FORM**

**EXHIBIT E**

**LEASE AGREEMENT WILL BE ADDED CLOSER TO CONSTRUCTION  
COMPLETION**