

Bond Funding Agreement Lease security

(Capitol Little League)

Authorizing Ordinance:

Funding Agreement That certain Bond Funding agreement by and between The City of San Antonio and Capitol Park Little League coterminous with this Lease agreement.

Landlord: Capitol Park Little League (hereinafter referred to as "Landlord" or "Grantee")

Landlord's Address: 10898 Hillpoint Dr. San Antonio, TX 78217

Tenant: City of San Antonio (hereinafter referred to as "Tenant" or "City")

Tenant's Address: P.O. Box 839966, San Antonio, Texas 78283-3966

Premises: 10898 Hillpoint Dr. _____ San Antonio, Bexar County, Texas, more particularly described on **Exhibit A**, which is incorporated herein for all purposes.

Permitted Use: Sports Recreational Activities

Lease Commencement Date: The effective date of the Authorizing Ordinance

Initial Term: Either 20 years from the Lease Commencement Date or the date at which all bonds issued by City to finance its obligations in furtherance of the project that is the subject hereof or any City bond issued to re-finance such initial issuance of bonds remain outstanding, which ever date is later.

Initial Term Annual Rent: In consideration of Tenants financial support for the construction of the improvements, there will be no rent.

Background:

In 2017, the City of San Antonio (City) held a Bond Election and received voter approval to fund a variety public improvements pursuant to such bonds. Among the projects approved in 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" The City is legally bound to comply with official brochure terms and conditions including fulfillment of a public purpose in accordance with all applicable laws of public funding and authorizing instruments for the public funding. The City has, by resolution of its City Council, identified the project that is the subject as the project that was identified and contemplated in this official brochure and other City documentation relating to this bond election. The purpose of this lease agreement to provide security to the City that the public purposes stated in the bond election and brochure will be carried out.

1. Demise of Premises.

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. Notwithstanding the preceding, it is the intent of the parties that Tenant will only take possession of the premises in the event that it is necessary for Tenant to take action to ensure the public purposes as stated in the bond Proposition and the bond brochure ("Bond Documents") are being fully carried out for the life of the City bonds issued by the City to finance its contribution toward the identified project.

2. Lease Term.

2.01. The Term is as stated above.

2.02. *Termination.* This lease terminates without further notice when the Term expires. Tenant's holding over expiration is not a renewal of the lease and does not give Tenant rights under the Lease in or to the Premises.

3. Rent.

3.01. In consideration of Tenants financial support for the construction of the improvements, there is no rent.

4. Taxes.

Payment by Landlord

4.01. Landlord must pay and discharge all taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, whether belonging to Landlord or to Tenant. Landlord must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency. Landlord hereby indemnifies Tenant and holds it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments. Landlord may, in

good faith at its own expense, contest taxes, charges, and assessments. However, it must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

5. Utilities.

Landlord must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the lease term, including any connection fees. Landlord understands and agrees that this provision applies to any existing as well as contemplated facilities.

6. Use of Premises.

Permitted Use of Premises

6.01. The Premises may be used only for the Permitted Use, unless agreed to in writing by Landlord and Tenant. It is the intent of the Parties that Landlord shall have full possession of and use of the Premises throughout the term. Landlord hereby covenants and agrees that it shall use the Premises to provide the public services as stated in the Bond Documents throughout the term of the Lease.

Prohibited Use

6.02. Landlord must not use or permit the Premises to be used:

- a. for any activity violating any applicable local, state, or federal law, rule, or regulation; or
- b. for any activity which shall violate the terms of the bonds used to finance the improvements, including any bond covenants and any applicable federal regulations regarding tax exempt debt.

7. Construction.

7.01. Landlord shall have the right to make the improvements agreed to by the parties, including the improvements to be paid for by funds realized by the City through its sale of general obligation bonds in the summer of 2017.

Specific Conditions: Landlord shall design and construct a new baseball complex for Capitol Park Little League, the total cost of which is estimated to be \$10,105,042, which includes \$2,000,000 in City Funds. Landlord has committed to raising its share of the funds necessary to construct the center and agreed to fund on-going operations, once completed. This Lease is subject to the Funding Agreement entered into between the parties.

7.02. Any buildings, improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the lease term become part of the real property of the Premises and must remain on the Premises and become Landlord's property when the lease terminates.

8. Assignment.

Neither party shall have the right assign or sublease any portion of the premises without the prior written approval of the other party. Any attempted assignment or sublease, including and attempted sale of the Premises by Landlord, shall be void *ab initio*.

9. Repairs, Maintenance, and Restoration.

Landlord's Duty to Maintain and Repair

9.01. Landlord must keep and maintain all buildings and improvements erected on the Premises in a good state of appearance and repair (except for reasonable wear and tear) at Landlord's own expense.

Damage or Destruction

9.02. If any building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Landlord must, within one year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement at its own cost. Landlord must pursue the repair, reconstruction, or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty. However, if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond Landlord's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

10. Mechanic's Liens.

Landlord must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises. If such a lien is recorded, Landlord must either cause it to be removed.

11. Condemnation.

Parties' Interests

11.01. If the Premises or any part of them are taken by condemnation as a result of any action or proceeding in eminent domain or are transferred in lieu of condemnation to any authority entitled to condemn, this article governs Landlord's and Tenant's interests in the award or consideration for the transfer and the effect of the taking or transfer on this lease.

Total Taking—Termination

11.02. If the entire Premises are taken or so transferred, this lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. Tenant shall receive a portion of the proceeds

of the condemnation award sufficient to repay the pro rate share of the bond funds provided by Tenant for construction of the improvements.

Partial Taking—Termination

11.03. If only part of the Premises is taken or transferred, this lease terminates if, in Tenant's opinion, the remainder of the Premises is in such a location, or is in such form, shape, or reduced size, that Landlord's business cannot be effectively and practicably operated on it. In such case, this lease and all rights, title, and interest under it cease on the date that title vests in the condemning authority. Tenant shall receive a portion of the proceeds of the condemnation award sufficient to repay the pro rate share of the funds of the City's general obligation bonds provided by Tenant for construction of the improvements.

Partial Taking

11.04. If part of the Premises is taken or transferred and, in Landlord's opinion, the remainder of the Premises is in such that Landlord's business can be effectively and practicably operated on the remaining Premises, this Lease terminates only as to the portion of the Premises taken or transferred. The termination is as of the date title vests in the condemning authority. The Lease continues as to the portion not taken or transferred All proceeds of condemnation are Landlord's.

12. Insurance

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" 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 Landlord's financial integrity is of interest to the City; therefore, subject to Landlord's right to maintain reasonable deductibles in such amounts as are approved by the City, Landlord shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Landlord'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 2. Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability *f. Environmental Impairment/ Impact – sufficiently broad to cover disposal liability. *g. Explosion, Collapse, Underground h. Damage to property rented by Landlord	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage h. \$100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> 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	
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12.04 Landlord agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Landlord herein, and provide a certificate of insurance and endorsement that names the Landlord and the City as additional insureds. Landlord 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). Landlord 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. Landlord 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 Landlord 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 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, Landlord shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Landlord'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 Landlord'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 Landlord to stop work hereunder, and/or withhold any payment(s) which become due to Landlord hereunder until Landlord demonstrates compliance with the requirements hereof.

12.09 Nothing herein contained shall be construed as limiting in any way the extent to which Landlord may be held responsible for payments of damages to persons or property resulting from Landlord's or its subcontractors' performance of the work covered under this Agreement.

12.10 It is agreed that Landlord'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 Landlord and any Subcontractors are responsible for all damage to their own equipment and/or property.

12.13 Landlord 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).

13. Indemnity.

13.01 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 FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

13.02 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.

13.03 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.

15. Default and Remedies.

Termination on Default

15.01. Landlord may not terminate this lease during any period in which there is outstanding debt owed by Tenant for bonds issued for the financing or refinancing of the construction of improvements on the Premises.

15.02. Landlord understands and agrees that the public services required by the Bond Documents must be provided throughout the term of this Lease. Therefore, if Landlord defaults in performing any obligation arising out of this lease and does not correct the default within 60 days after receipt of written notice to Landlord, Tenant may then take possession of the Premises for purposes of fulfilling the public purposes stated in the Bond Documents.

- A. The provisions of this Section shall be enforceable by a court order of specific performance. Landlord waives its right to object to an injunction to specifically enforce Tenant taking possession of the Premises or for the necessity on the part of Tenant to prove irreparable harm or to post a bond in any such action.
- B. Landlord hereby waives any objection to Tenant seeking out and employing Landlord's employees in an effort to continue uninterrupted service. Landlord shall make no claim against Tenant for contractual interference caused by this action.

15.02. Termination of this lease does not relieve either party from paying (A) money owing under the lease at the time of termination, or (B) any claim for damages against under this lease. Either party may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by either party of a breach of any covenant or condition of this lease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this lease.

16. General Protective Provisions.

Right of Entry and Inspection

16.01. Landlord must permit Tenant or its agents, representatives, or employees to enter the Premises to inspect and determine whether Landlord is complying with this lease.

No Partnership or Joint Venture

16.02. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

17. Prohibited Interests in Contracts

Prohibited Interest

17.01. The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the City or in the sale to the City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:

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

Landlord's Warranties

17.02. Landlord warrants and certifies as follows:

- (i) Landlord and its officers, employees and agents are neither officers nor employees of the City.
- (ii) Landlord has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

18. Miscellaneous.

Rights and Remedies Cumulative

18.01. The rights and remedies under agreement are cumulative, and either party's using any right or remedy does not preclude or waive its right to use any other remedy. The rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

Time of Essence

18.02. Time is of the essence under this agreement.

Applicable Law

18.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. The construction of this agreement and the rights, remedies, and

obligations arising hereunder are governed by the laws of the State Of Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Severability

18.05. If any portion hereof is determined to be invalid or unenforceable, the determination does not affect the remainder hereof.

Successors

18.06. This Agreement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. This clause does not authorize any assignment not otherwise authorized.

Integration

18.07. This Written Agreement Represents the Final Agreement Between The Parties And May Not Be Contradicted By Evidence Of Prior, Contemporaneous, Or Subsequent Oral Agreements Of The Parties. There Are No Oral Agreements Between The Parties.

Notices

18.10. Any notice provided for or permitted hereunder must be in writing and by certified mail, return receipt requested, addressed to the parties at their respective addresses set forth in the preamble. If the addressee is a corporation, notices must be addressed to the attention of its President. Notice is complete three days after deposit, properly addressed and postage prepaid, with the United States Postal Service. Failure to use certified mail does not defeat the effectiveness of notice actually received, but such notice is effective only on actual receipt. Address for notice may be changed by giving notice hereunder.

Further Assurances

18.13. The parties must execute and deliver such additional documents and instruments as may be required to affect fully the provisions hereof. No such additional document(s), however, may alter the rights or obligations of the parties as contained in this agreement

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

City of San Antonio, a Texas
municipal corporation

Capitol Park Little League

Signature: _____

Signature: _____

Printed
Name: _____

Printed
Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

City Attorney

Exhibit A

DRAFT