

ORDINANCE 2019-06-13-0524

**AUTHORIZING EXECUTION OF A LICENSE AGREEMENT  
WITH MAC WYLIE GOLF CENTER FOR MANAGEMENT,  
OPERATIONS, AND MAINTENANCE OF A GOLF DRIVING  
RANGE AT O.P. SCHNABEL PARK FOR AN INITIAL THREE  
(3) YEAR TERM WITH THE OPTION TO EXERCISE TWO (2)  
ADDITIONAL ONE (1) YEAR ADMINISTRATIVE RENEWALS.**

\* \* \* \* \*

**WHEREAS**, as part of the 2017 Bond Program, the City purchased the premises previously known as Alamo Golf Club for general park improvements and land acquisition to expand O.P. Schnabel Park (Park); and

**WHEREAS**, a concept plan has been developed with extensive neighborhood engagement in which the community expressed interest in continued golf driving range operations; and

**WHEREAS**, on March 5, 2018, the Parks and Recreation Department released a Request for Qualifications (RFQ) to solicit responses from qualified respondents for the purpose of maintaining, operating, and programming of the driving range at the expanded Park; and

**WHEREAS**, the RFQ was advertised in the *San Antonio Express-News*, *La Prensa*, the City's Bidding and Contracting opportunities website, and Channel 21 TVSA; further, outreach notices were sent notifying potential respondents of the RFQ; and

**WHEREAS**, a pre-submittal conference attended by four companies was held at the driving range on March 12, 2018, to answer questions from potential respondents; and

**WHEREAS**, the solicitation closed on April 6, 2018, and two (2) proposal responses were received and were deemed eligible for evaluation; and

**WHEREAS**, the Evaluation Committee, consisting of representatives from the Parks and Recreation Department, Municipal Golf Association, and Northside Independent School District, interviewed both respondents; and

**WHEREAS**, after completion of interviews, additional information was requested from each respondent which included a Pro Forma statement based on the operation of the facility; and

**WHEREAS**, on September 20, 2018, the proposals were scored by the Evaluation Committee; and

**WHEREAS**, the evaluation of each proposal response was based on a total of 100 points; 35 points were allotted for experience, background, and qualifications; 50 points were allotted for a proposed plan and investment schedule; 10 points allotted for the Local Preference Program; and 5 points for the Veteran-Owned Small Business Preference Program; and

**WHEREAS**, after review and discussion by the Evaluation Committee, scores were finalized; and

**WHEREAS**, McAdams Holdings, LLC dba Mac Wylie Golf Center (Mac Wylie Golf Center) received the highest score and is being recommended for award; and

**WHEREAS**, the City's Small Business Economic Development Advocacy Program (SBEDA) was not applicable to this project; and

**WHEREAS**, in accordance with the Local Preference Program and the Veteran Owned Small Business Preference Program, the recommended respondent does not meet the eligibility and, thus, the program points were not applied; and

**WHEREAS**, the License Agreement shall have an initial three (3) year term which shall commence immediately upon execution by the parties, with two (2) additional one (1) year administrative renewals; and

**WHEREAS**, the License Agreement requires Mac Wylie Golf Center to pay annual rent of \$6000.00 in the first year, \$9000.00 in the second year, and \$12,000 in the third year, and \$12,000 in each of the additional one-year renewal periods; and

**WHEREAS**, Mac Wylie Golf Center shall be responsible for repairs, maintenance, operating expenses and additional improvements to the facility; **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 License Agreement with the Mac Wylie Golf Center for management, operations, and maintenance of a Golf Driving Range at O.P. Schnabel Park for an initial three (3) year term with the option to exercise two (2) additional one (1) year administrative renewals. A copy of the License Agreement in substantially final form is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** Funds generated by this Ordinance will be deposited into Fund 11001000 Internal Order 226000000xxx and General Ledger Account 4407720.

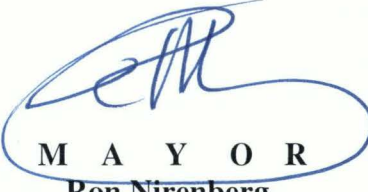
**SECTION 3.** The financial allocations in this Ordinance are subject to approval by the Chief Deputy Financial Officer, City of San Antonio. The Chief Deputy Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Fund Numbers, SAP Project Definitions, WBS Elements, Internal Orders, Fund Centers, Cost Centers, Functional Areas, Funds Reservation Document Numbers, and GL Accounts as necessary to carry out the purpose of this Ordinance.



SW/ah  
6/13/19  
Item #48

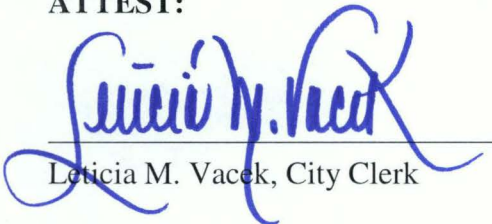
**SECTION 4.** This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

**PASSED AND APPROVED this 13<sup>th</sup> day of June 2019.**




**M A Y O R**  
**Ron Nirenberg**

**ATTEST:**



Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**



Andrew Segovia, City Attorney

<b>Agenda Item:</b>	<b>48 ( in consent vote: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21A, 21B, 22, 24, 25, 26, 27, 30, 31, 32, 33, 34, 35, 37, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 48, 50, 51A, 51B, 52 )</b>
<b>Date:</b>	06/13/2019
<b>Time:</b>	10:10:52 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	Ordinance approving a License Agreement with Mac Wylie Golf Center for management, operations and maintenance of a Golf Driving Range at O. P. Schnabel Park for an initial three year term through December 31, 2022, in the amount of \$27,000.00, with renewal options. Revenue generated by this license agreement will be deposited into the General Fund. [Colleen M. Bridger, MPH, PhD, Interim Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]
<b>Result:</b>	Passed

<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Ron Nirenberg	Mayor	x					
Roberto C. Treviño	District 1		x			x	
Art A. Hall	District 2		x				
Rebecca Viagran	District 3		x				x
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Greg Brockhouse	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

SW/ah  
6/13/19  
Item #48

# ATTACHMENT I



<b>STATE OF TEXAS</b>	<b>§</b>	<b>LICENSE AGREEMENT</b>
	<b>§</b>	<b>AT O.P. SCHNABEL PARK</b>
<b>COUNTY OF BEXAR</b>	<b>§</b>	<b>MAC WYLIE GOLF CENTER</b>

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 Mac Wylie Golf Center (hereinafter referred to as "LICENSEE"). LICENSEE and CITY shall collectively be referred to as "the Parties."

**PREAMBLE**

WHEREAS, CITY purchased the premises previously known as Alamo Golf as part of the 2017-2020 Bond Program for general park improvements and land acquisition to expand O.P. Schnabel Park; and

WHEREAS, CITY desires to provide a golf driving range for community use; and

WHEREAS, LICENSEE assumes responsibility for the management, operations and maintenance of the golf driving range at O.P. Schnabel Park; 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 initial term of this Agreement is three (3) years, beginning upon execution and expiring December 31, 2022, if not terminated sooner according to the terms of this Agreement.
- 1.2 So long as LICENSEE is not then in default of any of the provisions of this Agreement, the Parties may administratively extend this Agreement for up to two (2) additional one (1) year terms.

**II. GENERAL RESPONSIBILITIES AND RENT**

- 2.1 In consideration of LICENSEE's proposed improvements to the golf driving range, a rental discount will be applied to the first two years of rent. LICENSEE shall pay monthly rent to the CITY as outlined in Exhibit B – Rent Consideration.
- 2.2 LICENSEE shall maintain insurance, as outlined in Section X. Insurance Requirements of this Agreement, throughout the term of the Agreement.

**III. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 3.1 Upon completion of CITY renovations, LICENSEE 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 LICENSEE**

- 4.1 LICENSEE may establish membership and admissions fees ("General Revenue"). General Revenue shall be utilized to offset the cost of management, operations and maintenance.
- 4.2 SIGNS:
  - 4.2.1 LICENSEE 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 LICENSEE to contract a licensed and bonded sign company.
  - 4.2.2 LICENSEE 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.



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

#### 4.3 CONCESSIONS AND PRO SHOP:

- 4.3.1 LICENSEE shall have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items within the Licensed Premises.
- 4.3.2 If Licensed Premises has an existing concession stand/building the LICENSEE shall have the exclusive use.
- 4.3.3 LICENSEE shall be responsible for all applicable permits.
- 4.3.4 Concession and Pro Shop Revenue shall be applied to the management, operations and maintenance of the Licensed Premises.
- 4.3.5 Mobile vendor shall be permitted as defined in the CITY Code. LICENSEE 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.

#### 4.4 PARKING:

- 4.4.1 LICENSEE shall have non-exclusive use to public parking lots in the proximity of the Licensed Premises. LICENSEE shall not charge parking fees when utilizing public parking lots.
- 4.4.2 If a parking lot is included in the Licensed Premises the LICENSEE shall maintain the parking lot as outlined in Section V. Maintenance Obligations. LICENSEE may charge a small parking fee ("Parking Fee") which will be utilized to offset the cost of parking lot maintenance.
- 4.4.3 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.

#### 4.5 ASSIGNMENT:

- 4.5.1 Sublease: LICENSEE shall not assign or sublease the Licensed Premises.
- 4.5.2 One-Time Use: LICENSEE 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.
- 4.5.3 LICENSEE 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.

- 4.6 STORAGE: LICENSEE 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 LICENSEE shall be responsible for securing the unit. If LICENSEE 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.

- 4.7 SECURITY: LICENSEE shall be responsible for securing the items in the Licensed Premises. Security equipment and monitoring services shall be the responsibility of the LICENSEE.

## V. MAINTENANCE OBLIGATIONS



- 5.1 LICENSEE shall be strictly responsible for the condition of the Licensed Premises and shall maintain the Licensed Premises in a safe, clean, neat, sanitary condition and attractive in appearance. The CITY shall have the right at reasonable times to make inspections of the Licensed Premises and to insure that fire, safety, and sanitation regulations and other provisions contained in this License Agreement are adhered to by the LICENSEE.
- 5.2 LICENSEE will, at the termination of this License Agreement, return the Licensed Premises to CITY in as good condition as at the commencement of the term hereof, usual wear and tear, acts of God, or unavoidable accident only accepted.
- 5.3 LICENSEE agrees to hold CITY harmless for any theft, damages, or destruction of signs, goods, and/or other property of LICENSEE both during the term of this License Agreement and as so left on the Licensed Premises after LICENSEE vacates the Licensed Premises. If said signs, goods, and any other property placed by LICENSEE upon the Licensed Premises are not removed by it within thirty (30) days after the Licensed Premises are vacated, then the CITY may remove same without further notice or liability therefore.

#### **VI. UTILITIES**

- 6.1 LICENSEE shall be responsible for payment of all utility services used in the Licensed Premises with the exception of water/sewer utility service. LICENSEE shall use its best efforts to ensure that its water usage shall occur in a manner, amount and frequency that is consistent with efforts to conserve water resources, and in a manner which is in strict compliance with all state and local regulation of water usage.

#### **VII. IMPROVEMENTS**

- 7.1 LICENSEE shall not without the prior written approval of City, construct, or allow to be constructed, any permanent improvements to the Licensed Premises 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 LICENSEE shall be responsible for securing, at its cost, all necessary and required permits for any activities or improvements.
- 7.3 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by LICENSEE and at any time placed or maintained by LICENSEE on any part of the Premises shall be and remain the property of the LICENSEE; 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.
- 7.4 CITY shall not be responsible or liable for, and LICENSEE covenants that it will not bind or attempt to bind, CITY for payment of any money in connection with any Improvements to the Premises.
- 7.5 During any periods of time that Improvements are occurring within the Leased Premises, LICENSEE'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.

#### **VIII. REPORTING**

- 8.1 LICENSEE shall report annually on all program activities for the previous year, due by January 31, such as but not limited to the number of visitors/participants, buckets of balls sold, and inclement weather days.



- 8.2 CITY reserves the right to conduct, or cause to be conducted, a review and/or audit of LICENSEE'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, LICENSEE agrees to make available to CITY all accounting records.
- 8.3 Throughout the term of this agreement and any extensions hereof, LICENSEE 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.

#### **IX. DEFAULTS AND TERMINATION**

- 9.1 Should LICENSEE 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 LICENSEE, effective upon the date set forth in the notice. CITY may, in CITY's sole discretion, provide an opportunity for LICENSEE to cure the default. If CITY elects to offer an opportunity to cure, CITY shall provide notice to LICENSEE specifying the matters in default and the cure period. If LICENSEE 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 LICENSEE of any liability to the CITY for damages sustained by virtue of any breach by LICENSEE.

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

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 advance 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 **LICENSEE 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 LICENSEE's activities under this Agreement, including any acts or omissions of LICENSEE, any agent, officer, director, representative, employee, LICENSEE or subcontractor of LICENSEE, 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 LICENSEE 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. LICENSEE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LICENSEE known to LICENSEE related to or arising out of LICENSEE's activities under this Agreement and shall see to the investigation and defense of such claim or demand at LICENSEE's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LICENSEE 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

Mac Wylie Golf Center at O.P. Schnabel Park  
Attn: Owner  
26254 IH 10 West, Suite 500  
Boerne, Texas, 78006

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 LICENSEE warrants and certifies as follows:

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

13.3 LICENSEE 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, LICENSEE 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 LICENSEE. LICENSEE 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 LICENSEE, for performance of or payment for work services.

16.3 LICENSEE 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 LICENSEE 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 LICENSEE 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 LICENSEE hereby represents and warrants that they have full authority to execute this Agreement on behalf of the LICENSEE.

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

25.3 LICENSEE 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**

**MAC WYLIE GOLF CENTER**

By: \_\_\_\_\_  
Xavier D. Urrutia, Director

By: \_\_\_\_\_  
Robin McAdams (Mac) Wylie

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

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

**EXHIBIT A: Licensed Premises Map**  
**EXHIBIT B: Rent Consideration**