

AN ORDINANCE 2007-04-19-0458

AUTHORIZING FIELD USE AND MAINTENANCE LICENSE AGREEMENTS WITH THE FOLLOWING SIX (6) YOUTH OR ADULT NON-PROFIT SPORTS LEAGUES: ALAMO CITY RUGBY AND EAST CENTRAL LAKESIDE ATHLETIC ASSOCIATION AT BROOKS PARK; SOUTHEAST PONY BASEBALL AT SOUTHSIDE LIONS PARK; SOUTHSIDE LITTLE COWBOYS FOOTBALL AND SOUTH CENTRAL COUGARS POP WARNER FOOTBALL ASSOCIATION AT STINSON PARK; AND LITTLE COWBOYS - NORTH AMERICAN JUNIOR INDEPENDENT FOOTBALL AT JOE WARD PARK, EACH FOR A FIVE YEAR TERM BEGINNING ON MAY 1, 2007 AND ENDING ON APRIL 30, 2012 IN CONSIDERATION OF THE MAINTENANCE SERVICES PROVIDED BY THE LISTED SPORTS LEAGUES.

* * * * *

WHEREAS, the sports leagues listed above have been licensees at Brooks Park, Southside Lions Park, and Stinson Park in Council District 3, and Joe Ward Park in Council District 7 for many years providing organized sports activities for area youth and, with regard to Alamo City Rugby, for adults; and

WHEREAS, under the terms of the proposed License Agreements, the sports leagues: 1) are to provide non-discriminatory sports programs through a non-profit organization, 2) have priority use of the fields on the dates identified in an annually submitted use schedule, 3) are permitted to operate concessions, with proceeds benefiting the program, and 4) are responsible for maintenance of the fields and premises during the term of their agreement; and

WHEREAS, it is consistent with the City policy to facilitate the use of parks for athletic and recreational activities by the citizens of San Antonio; **NOW THEREFORE:**

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

SECTION 1. The City Manager, or her designee or the Director of Parks and Recreation, is authorized to execute License Agreements with the following sports leagues for sports fields in the listed parks: Alamo City Rugby and East Central Lakeside Athletic Association at Brooks Park; Southeast Pony Baseball at Southside Lions Park; Southside Little Cowboys Football and South Central Cougars Pop Warner Football Association at Stinson Park; and Little Cowboys - North American Junior Independent Football at Joe Ward Park. Each License agreement shall be for a five year term beginning on May 1, 2007 and ending on April 30, 2012. A copy of the License Agreements, in substantially final form, are attached hereto and incorporated herein for all purposes as Attachment I.

SW/mgc
04/19/07
Item # 47

SECTION 2. This ordinance shall be effective on and after April 29, 2007.

PASSED AND APPROVED this 19th day of April, 2007.



M A Y O R
PHIL HARDBERGER

ATTEST: Lucinda M. Rice
City Clerk

APPROVED AS TO FORM: Hollis Young
for City Attorney

MEETING OF THE CITY COUNCIL

ALAMODOME
ARTS & CULTURAL AFFAIRS
ASSET MANAGEMENT
AVIATION
BUDGET & PERFORMANCE ASSESSMENT
BUILDING INSPECTIONS
HOUSE NUMBERING
CITY ATTORNEY
MUNICIPAL COURT
REAL ESTATE (FASSNIDGE)
REAL ESTATE (WOOD)
RISK MANAGEMENT
CITY MANAGER
SPECIAL PROJECTS
CITY PUBLIC SERVICE - GENERAL MANAGER
CITY PUBLIC SERVICE - MAPS AND RECORDS
CODE COMPLIANCE
COMMERCIAL RECORDER
COMMUNITY INITIATIVES
COMMUNITY RELATIONS
PUBLIC INFORMATION
CONVENTION AND VISITORS BUREAU
CONVENTION CENTER EXPANSION OFFICE
CONVENTION FACILITIES
ECONOMIC DEVELOPMENT
FINANCE - DIRECTOR
FINANCE - ASSESSOR
FINANCE - CONTROLLER
FINANCE - GRANTS
FINANCE - TREASURY
FIRE DEPARTMENT
HOUSING AND COMMUNITY DEVELOPMENT
HUMAN RESOURCES (PERSONNEL)
INFORMATION SERVICES
INTERGOVERNMENTAL RELATIONS
INTERNAL REVIEW
INTERNATIONAL AFFAIRS
LIBRARY
METROPOLITAN HEALTH DISTRICT
MUNICIPAL CODE CORPORATION
MUNICIPAL COURT
PARKS AND RECREATION
MARKET SQUARE
YOUTH INITIATIVES
PLANNING DEPARTMENT
DISABILITY ACCESS OFFICE
LAND DEVELOPMENT SERVICES
POLICE DEPARTMENT
GROUND TRANSPORTATION
PUBLIC WORKS DIRECTOR
CAPITAL PROJECTS
CENTRAL MAPPING
ENGINEERING
ENVIRONMENTAL SERVICES
PARKING DIVISION
REAL ESTATE DIVISION
SOLID WASTE
TRAFFIC ENGINEERING
PURCHASING AND GENERAL SERVICES
SAN ANTONIO WATER SYSTEMS (SAWS)
VIA

AGENDA ITEM NUMBER: _____

47

DATE: _____

APR 19 2007

MOTION: _____

ORDINANCE NUMBER: _____

2007-04-19-0458

RESOLUTION NUMBER: _____

ZONING CASE NUMBER: _____

TRAVEL AUTHORIZATION: _____

NAME	ROLL	AYE	NAY
ROGER O. FLORES District 1			
SHEILA D. MCNEIL District 2			
ROLAND GUTIERREZ District 3			
RICHARD PEREZ District 4			
PATTI RADLE District 5			
DELICIA HERRERA District 6			
ELENA GUAJARDO District 7			
ART A. HALL District 8			
KEVIN A. WOLFF District 9			
CHRISTOPHER "CHIP" HAASS District 10			
PHIL HARDBERGER Mayor			

CONSENT AGENDA



CMS or Ordinance Number: CN4600005925

TSLGRS File Code:1075-16

Document Title:
CONT - 4600005925

Commencement Date:

6/19/2007

Expiration Date:

7/26/2008

CONSTRUCTION CONTRACT

STATE OF TEXAS
COUNTY OF BEXAR
CITY OF SAN ANTONIO

CONTRACT FOR

REGIONAL YOUTH SPORTS FACILITY – BROOKS PARK

THIS AGREEMENT made and entered into in San Antonio, Bexar County, Texas between the City of San Antonio, a municipal corporation, in the State of Texas, hereinafter termed "City", and

GG&G GENERAL CONSTRUCTION INC.
2896 BLANCO RD.
SAN ANTONIO, TX 78212

hereinafter termed "Contractor", said agreement being executed by the City pursuant to the City Charter and Ordinances and Resolutions of the City Council, and by said Contractor,

WITNESSETH: That the parties hereto, each in consideration of the agreements on the part of the other herein made and referred to, have covenanted mutually, and hereby mutually covenant, the City for itself and its successors, and the Contractor for itself or himself or themselves and his or their heirs, executors and administrators or successors, as follows, to-wit:

A. DEFINITIONS & SCOPE OF CONTRACT

1. **CITY AND OFFICIALS.** Whenever in this contract is found the term "City", "City Council", "City Manager", "Director of Parks & Recreation", "Director of Finance", "City Clerk" or other designation of any City institution, officer, employee or title, or a pronoun in its, his or their place, the same shall, unless indicated otherwise, be understood to mean the City of San Antonio or its successors, or the governing body, or the person or persons now or hereafter holding or exercising the duties of such designated official position, office, employment or title, in said City, or any person or persons acting lawfully in the corresponding official capacity on behalf of said City at such time and within the powers and authority held by him or them;

2. **CONTRACTOR.** Whenever the term "Contractor" or a pronoun in its place is used herein, it shall be taken to include any person, association or persons, firm or corporation, notwithstanding such pronoun may be used in the masculine gender or singular number, and said term or pronoun shall include in their respective capacities, the President, Manager, or other officer or agent for the time being, representing or locally managing the work of any corporation contracting herein.

3. **INCLUDED INSTRUMENTS.** The notice to Contractors, specifications including any Special and General Conditions, plans, instructions to bidders, advertisement for bids, the bid proposal, and the construction bond, payment bond, and other bonds, if any, made by the Contractor, the Charter, Ordinances and Resolutions of the City, all in so far as prepared for or relating to said work herein undertaken are hereby made a part of this agreement and are included in this contract as if rewritten or copied in full herein, and shall be deemed "included instruments" when that term is used. This document and the included instruments taken together constitute the contract between the parties and may be referred to herein as the "Contract".

4. **CONTRACT INTERPRETATION.** In case of conflict or inconsistency between this document and the specifications or other included instruments, this contract shall control, but insofar as such provisions can stand together they shall all be regarded as cumulative.

5. **SCOPE OF CONTRACT AND SPECIAL PROVISIONS FOR SUPERVISION OF WORK.** It is contemplated that this contract shall be used as a general form of construction contract for public works projects and for some of said work independent consulting Architects or Engineers may be engaged, their identity and capacity shall be designated herein; however, Contractor understands that Director of Parks & Recreation may remove such consultant as provided in the terms of its contract relationship with the latter, and the Director of Parks & Recreation shall, in such event, be vested with all powers formerly exercised by such consultant, provided written notice of such substitution shall be immediately served on the Contractor in writing. Nothing herein shall authorize independent agreements between

Contractor and such Engineer or Architect, nor shall the latter be deemed to bear a legal relationship to either Contractor or City other than as evidenced by the City's contract with such consultant.

6. DEFAULT AND VIOLATIONS OF CONTRACT. If Contractor shall fail or refuse to take such measures as the Director of Parks & Recreation may determine to be necessary to insure the completion of the work within the time allowed therefor, or if the work to be done under this contract shall be abandoned by Contractor, or if this contract, or any right or interest therein shall be assigned or sub-let by Contractor otherwise than is herein specified, or if at any time said Director of Parks & Recreation shall certify in writing that Contractor is willfully violating or refusing to observe any of the conditions, provisions or stipulations of this contract or of the specifications, or is executing the same in bad faith or not in accordance with the terms thereof, or if the work is not fully completed within the time allowed for its completion, then, in any such event, the City Manager or designee shall be authorized at his election to order Contractor to discontinue all work under this contract by written notice given as herein provided; and Contractor and his employees shall thereupon discontinue all work upon said premises; and the City shall, upon such notice having been given, be authorized fully to enter upon said premises, through any designated officer, agent or contractor, and to take full possession of said work, and to order or contract for the completion of said work in any manner it may deem proper; and said City shall thereupon have a right to take full possession of, and to use for the purposes of said work, all materials, tools, implements or machinery previously provided by the Contractor for the performance of the work and located at the project site. All costs and expenses requisite to the completion of the work by the City whether accomplished by contract or otherwise, and including reasonable costs of supervision, together with damages for delay as herein specified, shall be charged to and paid by the Contractor. If the cost of such completion by the City shall be less than the amount agreed to be paid to the Contractor hereunder, the Contractor shall forfeit by virtue of his default the right to any difference unless otherwise specified by the City Manager or designee; if, however, the cost of such completion shall exceed the amount herein agreed to be paid to the Contractor, then the Contractor or his bondsman shall pay to the City the amount of such additional costs and expenses to be fixed and determined as herein provided.

7. COMMUNICATIONS BETWEEN CONTRACTOR AND CITY. The Contractor agrees that the following address in the City of San Antonio, Texas, shall be used for the transmission to him of any notices or correspondence in connection with the performance of this contract:

**2896 BLANCO RD.
SAN ANTONIO, TX 78212**

The above address may be changed only by filing written notice to that effect with the Director of Parks & Recreation. All communications, notices and other correspondence forwarded to the above address shall be presumed conclusively to have been delivered by regular course of mail to the Contractor.

8. PREVAILING WAGE RATE AND GENERAL LABOR CONDITIONS. The Provisions of Chapter 2258, Texas Government Code, are expressly made a part of this contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of workman needed to perform this contract is included with the Special Conditions and made a part hereof. The Contractor shall forfeit as a penalty to the City sixty dollars (\$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 sub-contractor under him. The establishment of prevailing wage rates pursuant to Chapter 2258, Texas Government Code shall not be construed to relieve the Contractor from his 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 hereunder. The Contractor, in the execution of this project, agrees that he shall not discriminate in his employment practices against any person because of race, color, creed, sex or origin. The Contractor agrees that he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap or political belief or affiliation. In addition, Contractor agrees that he/she will abide by all applicable terms and provisions of the Nondiscrimination Clause and the Small and/or Minority Business Advocacy Clause as contained in the City of San Antonio's current Affirmative Action Plan on file in the City Clerk's Office.

9. **ASSIGNMENTS AND SUBLETTING.** Contractor shall not assign, transfer, convey, sub-let or otherwise dispose of this contract, or any portion thereof, or any right, title or interest in, to or under the same, without previous consent in writing of the Director of Parks & Recreation, to be endorsed hereon or hereto attached; and Contractor shall not assign by power of attorney or otherwise any of the monies or other considerations to become due and payable by the City under this contract; unless by and with the consent signified in like manner. And in any event whatsoever, whether by such consent, by operation of law or otherwise, any and all such assignments, transfers or sub-letting, and the entire subject matter thereof, shall be and remain subject to all rights of the City herein or otherwise provided, and no waiver of this stipulation can be invoked against the City. In no event shall the City be liable in excess of the consideration of this contract in the case of any such assignment, transfer, conveyance or sub-letting of the work or performance which is the subject hereof. The City reserves the right to withhold any monthly payment hereafter provided for in the event of an assignment or sub-letting of a portion of the work without the consent and knowledge of the City and by reserving such right, the City shall not be deemed to have waived its right to declare a full breach of this contract for Contractor's failure to comply with provisions hereof, such remedy being alternative only and exercisable at the option of the City.

B. SCOPE OF WORK

1. **DESCRIPTION AND LOCATION.** The site of the work herein contemplated is located and described generally as follows:

REGIONAL YOUTH SPORTS FACILITY – BROOKS PARK

and this contract is performable exclusively in Bexar County, Texas.

2. **GENERAL UNDERSTANDING.** Contractor at his own cost and expense shall furnish all supervision, tools, implements, machinery, labor, materials and accessories, such as are necessary and proper for the purpose, and pay all permit and license fees, and shall at his own cost and expense construct, build and complete, in a good, first class, substantial and workmanlike manner, the structures, work and improvements herein described or referred to in and upon a certain parcel or parcels of land hereinafter described or referred to, all according to this contract and the included instruments, prepared by

RIALTO STUDIO, INC.

and now on file in the office of the Engineering Division of the Public Works Department; and according to field interpretations to be furnished Contractor by the City upon request. If figures or quantities of materials, supplies or other items needed for this project are furnished in the plans and specifications, same shall be understood to be estimates only and the Contractor shall be responsible for any discrepancies between such estimates and the quantities required.

3. **WORK UNDERSTOOD BY CONTRACTOR.** Contractor declares that prior to the submission of his bid proposal on this contract he has thoroughly examined the location of the work to be performed, is familiar with local conditions, and has read and thoroughly understands the "included instruments" as they relate to the physical conditions prevalent or likely to be encountered in the performance of the work at such location. Contractor hereby accepts such "included instruments" as satisfactory in all respects to accomplish the proper performance of the work at the project site and accordingly assumes the risk of any delays or additional costs which might arise from errors or miscalculations in such "included instruments" or from erroneous assumptions upon which same may have been predicated as to the physical conditions at the work site including, but not by way of limitation, latent defects or conditions of the subsoil.

4. **IMPLIED WORK.** Any work or materials that may have been omitted in the description of said project, but the use of which is implied or necessary to the project's completion, shall be deemed to be included in this contract and shall be furnished by the Contractor as if the same had been stated specifically, without any additional charge to the City.

5. **INCIDENTAL WORK, CONNECTIONS AND PASSAGEWAYS.** The Contractor shall do and perform all implied or incidental work necessary to completion of this contract including, but not by way of limitation, the following:

- a) make and provide all suitable connections with existing improvements as are necessarily implied herein for proper completion of the project;
- b) provide passageways or leave open such thoroughfares in the work area as may be required by the City;
- c) protect and guard same at his own risk as more specifically detailed in Paragraph E-1 hereof;
- d) continuously maintain the work area in a clean and workman-like manner; and
- e) prior to final acceptance of the work, restore the site to its prior condition to the extent permitted by the improvement.

All of said incidental work to be done to the satisfaction of the City at Contractor's own cost and expense.

6. **WORK AND MATERIALS.** All materials used by the Contractor shall conform to the specifications. However, if the specifications are silent, only the best quality materials shall be used, and in the event of dispute as to the relative quality of materials, the selection of the Director of Parks & Recreation shall be final. All of said work shall be executed in a good, thorough and workman-like manner, to the satisfaction of the Director of Parks & Recreation, who, together with all assistants and inspectors under his direction, or in the employ of the City for the purpose of said work, shall at all times have free access to the project site, stores and materials, and shall be privileged to take such samples of all materials and to cause tests of materials or of any part of the work to be made except as otherwise provided in the specifications. Contractor shall render all assistance required of him by the Director of Parks & Recreation or his aforementioned assistants or inspectors in connection with any such tests, and if any part of the work or the materials used shall be found unsuitable or improper, either wholly or in part, Contractor shall correct or remove such defective work or materials from the project site. In connection with the visual inspection or materials testing contemplated herein, it is clearly understood that the City exercises no right to control the means of accomplishing the end product of the work and no approval of any phase of the construction project by any of the City's agents or inspectors shall relieve the Contractor from full compliance with the specifications regarding the ultimate work product and any additional cost or delay occasioned by defects in the work or failure to meet specifications at any such phase shall be borne by the Contractor.

7. **CONTRACTOR'S RISK.** Contractor shall be responsible for the complete performance of and compliance with this contract, and for all materials on the ground or elsewhere, and for all the work performed under this contract, and shall protect the same from all loss or damage from any cause whatsoever until final completion and acceptance; and shall deliver said structures, work and improvements to the City in a completed and perfect condition in accordance with this contract.

C. **BEGINNING AND COMPLETION OF WORK, DAMAGES FOR DELAY**

1. **TIME TO BEGIN WORK.** The work embraced in this contract shall be begun by contractor within seven (7) days after Director of Parks & Recreation shall notify Contractor in writing to begin, and if such work be actually begun by Contractor before such notice, then the period of time herein allowed for the completion of the work shall begin to run from such date when work is actually commenced.

2. **COMPLETION OF WORK.**

b. **Date Certain Contract** -- After beginning work as outlined in Paragraph C-1 above, the Contractor shall prosecute same continuously and diligently for and during the period of **NINETY (90) CALENDAR DAYS**, during which period of time the Contractor binds and obligates himself at all times to employ sufficient force and diligence to complete said structures, work and improvements, and to deliver same over to the City in a completed, undamaged and clean condition; and the time of beginning, rate of progress and time of completion of said work are hereby declared and understood to be of the essence of this contract; provided, however, said Director of Parks & Recreation may suspend said work wholly or in part by his written order whenever in his opinion the interests of the City require the suspension of such work, such orders not to continue in effect longer than one week at any one time. The City may, at its discretion, establish phases of the project or areas of the work to be performed and in such order or sequence as the City shall deem best in the public interest. No additional time for completion will be allowed unless granted in writing by the Director of Parks & Recreation.

Should the work be delayed necessarily by any damage that may happen thereto by any unusual, unavoidable accident, or by the condition of the weather, or by action of the elements, or by any general strike of employees, or by shortage of materials, or by suspension of the work, or by any injunction or other court action or by any delay which may exist for the City to procure any title to lands or any right or interest therein needed for the purposes of said work, Contractor shall have no claim for damages on account of such delay, but working days will not be charged during the period of any such delays.

3. **DAMAGES FOR DELAY.** If Contractor shall fail to complete the work within the time herein specified or otherwise allowed therefor, he shall be liable for the wages of any inspector or inspectors employed by the City on said work at the rate of one hundred dollars (\$100.00) per day per inspector from the end of said time allowed for the completion of the work, until actual completion thereof; and in addition to said wages of inspectors, the following sums per day for the period of such delay shall be paid or allowed by Contractor to City or be deducted by the City on final estimate and settlement, not as a penalty, but as liquidated damages due to City for expense, loss and public inconvenience resulting from failure to complete said work within the time allowed, such time of completion being an essential element and consideration, as a result of such delay:

<u>For Amount of Contract</u>	<u>Amount of Liquidated Damages per Day</u>
\$3,000,001 and above	\$900.00
\$2,000,001 to \$3,000,000	\$800.00
\$1,000,001 to \$2,000,000	\$700.00
\$ 750,001 to \$1,000,000	\$600.00
\$ 500,001 to \$ 750,000	\$500.00
\$ 250,001 to \$ 500,000	\$400.00
\$ 100,001 to \$ 250,000	\$300.00
\$ 50,001 to \$ 100,000	\$200.00
\$ 1 to \$ 50,000	\$100.00

The amount of all such damage shall be fixed and determined by the written certificate of Director of Parks & Recreation, whose judgment shall be final disposition thereof.

4. **COMPLETION.** Completion of the project will be considered only after all stipulations, requirements and provisions of this contract are faithfully completed and the project is delivered to the City for use. In the event that only minor items remain for completion, the Director of Parks & Recreation may issue a conditional approval in accordance with Paragraph D-2, listing the exceptions; however, the completion date will not be effective until all items noted as exceptions in the Conditional Approval have been corrected.

5. **NO WAIVER OF CITY'S RIGHTS.** Neither the inspection nor approval by said Director of Parks & Recreation or any inspector, officer or employee of the City, nor any order, measurement or certificate by said Director of Parks & Recreation, nor any estimate or payment by the City for any part of said work, or material or method or equipment, nor any extension of time, nor any possession of the work or place taken by the City, or any officer or employee thereof at any time before final acceptance, shall operate as a waiver of any provision or obligation of this contract or of any right or power herein given or reserved to said City, or of any right to claim any indemnity or damages herein provided for; nor shall any waiver of any breach of this contract be deemed as a waiver of any other or subsequent breach; and every right or remedy under this contract or included instruments shall be cumulative, and in addition to all other rights and remedies.

6. **OCCUPANCY.** The City, at the discretion of the Director of Parks & Recreation, shall have the right to take possession of and use any completed portion or partially completed portion of the structure or work, provided, in the opinion of the Director of Parks & Recreation, such possession or use does not materially affect the Contractor's ability to proceed with his work on the project. No additional time will be granted the Contractor for occupancy or possession and use of any partially completed or completed work, and such possession or use shall not constitute acceptance of the work.

D. PAYMENT

1. **PRICES AND CONSIDERATIONS.** In consideration of the faithful performance of this contract and the construction, completion, and delivery of said structures, work and improvements, the City of San Antonio agrees and shall be and is hereby bound and obligated to pay at the office of the Director of Finance of the City of San Antonio, in Bexar County, Texas, to the Contractor as hereinafter provided out of its fund

the following sum or amount or amounts, or prices, to-wit:

FOR MATERIALS AND LABOR: SEVEN HUNDRED THIRTY-SEVEN THOUSAND, ONE HUNDRED FIFTY-FIVE DOLLARS AND ZERO CENTS. (\$737,155.00)

the same being the amount or amounts or prices for said work named in the proposal of Contractor, attached hereto as an included instrument.

2. **MONTHLY ESTIMATES.** During the early part of each month as the work progresses said Director of Parks & Recreation shall make an estimate of the materials brought into the work and the labor performed during the preceding month, as well as the number of working days used during such month, and the City shall thereupon, about the middle of each month, make payments to Contractor of monthly installments based upon such estimate in a sum equivalent to ninety percent (90%) of each such monthly estimate. At the time the last monthly estimate is paid, a letter of conditional approval will be furnished the Contractor. The remaining ten percent (10%) of the estimated value shall be held by the City until the final settlement hereinafter provided for. However, where the contract price exceeds four hundred thousand dollars, installments shall be paid to Contractor at the rate of ninety-five (95%) percent of each monthly estimate, and the retainage held until final acceptance shall be five (5%) percent. The payments of such installments shall be held to be payments on account of the contract sum, and the certificates or estimates of the Director of Parks & Recreation upon which such monthly payments are based shall be held to have been given only for the purposes of fixing the sums to be so paid in compliance with Paragraph D-5 hereof and shall not in any way be deemed to have been an acceptance of any part of the work, or to prejudice said City in the final settlement of account or in requiring the completion of the work as herein provided.

3. **FINAL ESTIMATE.** Contractor shall not be entitled to receive payment of any sum in excess of the amounts paid upon such monthly estimates as outlined above for at least thirty (30) days after transmittal of the letter of conditional approval and not before all the stipulations, requirements and provisions of this contract are faithfully performed and complied with, and unless and until said structures, work and improvements shall be entirely completed, and delivered to and accepted by the City in accordance with this contract; and such completion, delivery and acceptance is evidenced by the final certificate of the Director of Parks & Recreation and such certificate of acceptance is approved by the City Manager. Simultaneous with the transmittal of the final certificate of completion, delivery and acceptance, the Director of Parks & Recreation shall prepare his final estimate as the basis for final settlement upon this contract, whereupon the same having been first approved by the signature of the City Manager and Director of Finance, City shall pay to Contractor the amount of such final estimate, taking into account all amounts previously retained and deducted from such monthly estimates and remaining payable to Contractor, but deducting from the amount of such final estimate and retaining any and all sums which are to be deducted by the City or paid or allowed by the Contractor to City, or claimed for labor or materials furnished by any person, firm or corporation, or which are to be retained and held by City for any reason.

4. **CLAIMS FOR LABOR OR MATERIALS.** Contractor hereby agrees to promptly pay all persons supplying labor, services and materials in the prosecution of the work provided for in this contract and any and all duly authorized modifications of said contract that may hereafter be made, and shall and will fully indemnify and hold harmless the City against any and all claims, liens, suits or actions asserted by any person, persons, firm or corporation on account of labor, materials or services furnished such Contractor during the prosecution of the work herein undertaken and Contractor shall execute a bond for this purpose as hereinafter set out. Before the City shall be obliged to pay any amount to Contractor on final settlement, Contractor shall furnish to the satisfaction of the Director of Finance, evidence that all labor employed and all materials used in the construction of the work have been fully paid for by Contractor.

5. **DIRECTOR OF PARKS & RECREATION TO FINALLY DETERMINE ALL AMOUNTS PAYABLE OR CHARGEABLE.** It is specially understood and agreed that subject only to the prices, terms and provisions specifically set forth in this contract and included instruments, the written estimates and certificates of the Director of Parks & Recreation shall be final in fixing and determining amounts payable or chargeable hereunder to Contractor by City as required by the other terms and conditions hereof, also in case of controversy, in fixing and determining all unliquidated sums to be deducted and retained by City for any purpose whatever out of any funds estimated as payable to Contractor by City.

6. **ALTERATIONS AND EXTRA WORK.** Said Director of Parks & Recreation may, by his written order, approved by the signature of the City Manager or designee, make deletions, alterations, modifications or additions in the specifications and plans for the work for the purpose of perfecting the work herein undertaken or the ramifications thereof, and the Contractor shall execute the work as so changed, provided the entire cost of such extra work as results from such changes, including the cost of extra work resulting from any prior alterations modifications, or additions so ordered, shall not exceed twenty-five percent (25%) of the original amount of the contract, as set out in paragraph D-1 hereof; and provided further that the price is agreed upon in writing before the work is done or materials furnished and that such agreement is signed by the Contractor and by the Director of Parks & Recreation, it being further agreed and understood that if no such agreement as to price can be reached after discussions, that payment by the City shall be upon the basis of cost of labor and materials plus ten percent (10%). The cost of such extra work shall be added to the estimates payable to the Contractor by the City, all of which shall be effected under the terms and provisions of this contract. The Director of Parks & Recreation may order the Contractor to omit any part or parts of the work remaining to be done and the City shall not be bound to pay for extra work so ordered to be omitted. No additional working time will be granted for alterations and/or extra work unless specified in said written order approving work.

E. INDEMNIFICATION

1. **CARE TO AVOID ACCIDENTS OR INJURY TO PERSON OR PROPERTY.** During the performance of the work within the contemplation of this contract and until final completion and acceptance thereof, Contractor shall exercise the utmost care to avoid accident or injury to persons or property. He shall place and maintain all necessary barriers and safeguards, including watchmen, if necessary, about the work site for the prevention of accidents and at night shall maintain adequate lights and other warning devices, and generally shall take all precautions requisite to the protection of the general public and properties adjacent to the work site. Contractor shall and will indemnify and save harmless the City from and against any and all actions and claims, and against all costs, damages and expenses to which the City may be put by reason of any injury or alleged injury to person or property, resulting or alleged to result from or to be occasioned by the acts or omissions of the Contractor, whether negligent or otherwise, in the performance, conduct or maintenance of the work, or in guarding same, or from any improper methods, tools, implements or materials employed therein, or on account of any such acts or omissions of Contractor's agents, servants, employees, assignees or sub-contractors (including the agents, servants and employees of such sub-contractor); and Contractor or his insurer shall well and truly make payment of any and all sums recovered against the City in any suit or suits on account of such alleged injury or damage, to which the City may be made a party, together with all costs, damages and expenses borne by the City in connection with such suits, all in a manner as to save the City harmless from any expense connected with such actions and claims. The City is further authorized, upon the order of the Director of Parks & Recreation, to deduct or retain from any estimate or estimates or amounts retained hereunder, such sum as may be claimed for any injury or damage described above unless and until Contractor shall give a further and special bond or deposit adequate to cover such contingent liability as determined by the Director of Parks & Recreation or otherwise present evidence of full indemnification to the City in connection with such claims or actions.

2. **INTELLECTUAL PROPERTY RIGHTS, ETC.** Contractor agrees that he will at all times pay all fees, royalties or license charges on all patented, registered or copyrighted machines, materials, methods or processes used in the construction of said work and supplied as a part of the finished work, or appurtenant thereof; and that he will ever hold the City free and harmless from any and all claims on account of the use of any intellectual property.

F. INSURANCE

1. The following types of insurance shall be furnished for the duration of the project, and two copies of Certificates of Insurance showing compliance with the provisions of this paragraph shall be furnished to the Department of Parks & Recreation prior to or at the time this contract is executed by the Contractor and before a Work Order is issued.

a. General Insurance, Commercial General (Public) Liability, Builder's Risk and Business Automobile, Builder's Risk Insurance Coverage shall be carried as specified in the Included Documents,

b. Worker's Compensation Insurance Coverage -- Statutory, \$500,000.00 each occurrence.

A. Definitions:

Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the Contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This includes, without limitation, independent Contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.

C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.

D. If the coverage period shown on the Contractor's current certificate of coverage ends during the duration of the project, the Contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.

E. The Contractor shall obtain from each person providing services on a project, and provide to the governmental entity:

(1) a certificate of coverage, prior to that person beginning work on the project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

(2) no later than seven days after receipt by the Contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The Contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The Contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The Contractor shall contractually require each person with whom it contracts to provide services on a project, to:

(1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;

(2) provide to the Contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;

(3) provide the Contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(4) obtain from each other person with whom it contracts, and provide to the Contractor:

(a) a certificate of coverage, prior to the other person beginning work on the project; and

(b) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;

(5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;

(6) notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and

(7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the contract void if the Contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

The City shall be named as an additional insured in all coverage described above in paragraph a, above.

In the submission of the Certificates of Insurance, the insurance company in every case must agree to providing notice of cancellation of any insurance to the City ten (10) days prior to such cancellation of policies covered by the certificates.

G. BONDS

1. **PERFORMANCE BOND.** Contractor hereby agrees to execute with sureties and deliver to the City, at once, a "Performance Bond" in accordance with Chapter 252, Texas Local Government Code, in the total amount of the contract price, \$737,155.00, approved by the City as to form and sufficiency, conditioned that Contractor shall faithfully perform, observe and comply with all the terms, conditions and stipulations, undertakings and provisions of the contract, said Performance Bond to be attached hereto as an included instrument.

2. **PAYMENT BOND.** Contractor hereby agrees to execute with sureties and to delivery to the City, at once, a "Payment Bond" in accordance with Chapter 252, Texas Local Government Code, in an amount at least equal to the contract price, such as shall be satisfactory to the City as to form and sufficiency, as security for the payment of all persons supplying labor and material in the prosecution of the work provided for in this contract; said Payment Bond to be attached hereto as an included instrument.

3. **CONTRACTOR AND SURETIES STILL BOUND.** No assignment, transfer or subletting, whether with or without the consent of said City, and no order of said City for or approval or any alterations or modifications in said specifications, plans, or work, and no change in the requirements or order for extra work made by the City as provided in this contract, shall ever in any manner release or diminish the responsibility of Contractor or any surety on any bond of Contractor, but on the contrary, such responsibility shall extend to and comprehend all such changes and other matters.

H. COMPLIANCE WITH FEDERAL REGULATIONS

1. The Contractor is responsible for compliance with all Federal regulations included in the City of San Antonio Compliance Manual, as may occasionally be amended. The Compliance Manual is incorporated and made part of this contract.

I. INTEREST IN CITY CONTRACT PROHIBITED

1. No officer or employee of the City shall have a financial interest, direct or indirect, in any contract with the City, or shall be financially interested, directly or indirectly, in the sale to the City of any land, materials, supplies or service, except on behalf of the City as an officer or employee. Contractor acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with the City and/or 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; his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity; a business entity in which any individual or entity above-listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

J. GENERAL PROVISIONS

1. **MERGER.** This document and included instruments is the entire contract and recites the full consideration between the parties, there being no other written or parol agreement; it being understood that the Charter of the City of San Antonio requires all of its contracts to be written and made by ordinance.
2. **CHOICE OF LAWS, VENUE.** This Contract shall be construed under the laws of the State of Texas.
3. **CONSTRUCTION OF TERMS.** The headings preceding the text of the paragraphs hereof are inserted solely for the convenience of reference and shall not constitute a part of this Contract, nor shall they affect its meaning, construction or effect. The use herein of the singular number shall be deemed to include the plural and vice versa, and the use hereof of the masculine shall be deemed to mean the feminine or neuter and vice versa, wherever the sense of this contract so requires.
4. **SEVERABILITY.** If any term or provisions of this contract, or the application thereof, shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, but rather shall be enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, said City of San Antonio has lawfully caused these presents to be executed by the City Manager or designee of said City, and the corporate seal of said City to be hereunto affixed and this instrument to be attested by the City Clerk; and the said Contractor, acting by **AL GUEVARA** thereunto duly authorized **PRESIDENT** does now sign, execute and deliver this instrument.

EXECUTED in San Antonio, Texas on 10th day of June, A.D. 2007

(CITY SEAL)



ATTEST: *Leticia M. Reed*
CITY CLERK

CITY OF SAN ANTONIO

BY: *Ramiro A. Gonzalez*
CITY MANAGER OR DESIGNEE

(CORPORATE SEAL)

GG & G GENERAL CONSTRUCTION, INC.

ATTEST: _____
SECRETARY

BY: *Al Guevara*
AL GUEVARA, PRESIDENT

RE: Ordinance No. 2007-05-17-0548; 5/17/2007

PERFORMANCE BOND

STATE OF TEXAS)
COUNTY OF BEXAR)
CITY OF SAN ANTONIO)

Know all men by these presents:

1. That we **G G & G GENERAL CONSTRUCTION, INC., A TEXAS CORPORATION, ACTING BY AND THROUGH AL GUEVARA, PRESIDENT** as Principal, and Colonial American Casualty and Surety Company

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of \$737,155.00 payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said **G G & G GENERAL CONSTRUCTION, INC.**

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

REGIONAL YOUTH SPORTS FACILITIES - BROOKS PARK

and for the performance and observance of diverse other matters and things in connection with said work; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation.

3. NOW THEREFORE, if Contractor, the principal party to this obligation shall faithfully construct and complete said structures, work and improvements, and shall observe, perform and comply with all the terms, conditions, stipulations, undertakings and provisions of said contract and all included instruments, according to their intent and purpose insofar as the same relate to or are incident to the construction and completion of said structures, work and improvements then and thereupon this obligation shall be and become null and void, but otherwise to remain in full force and effect; and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had hereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinance.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of City.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this

15th day of May A.D. 20 07

G G & G GENERAL CONSTRUCTION, INC.

Al Guevara
AL GUEVARA, PRESIDENT
Colonial American Casualty and Surety Company
BY: Paul W. Poettgen
Surety Paul W. Poettgen, Attorney-in-Fact

P.O. Box 29069, San Antonio, TX 7829
Address of Surety for Service

PAYMENT BOND

Bond No. 08454031

STATE OF TEXAS)
COUNTY OF BEXAR)
CITY OF SAN ANTONIO)

Know all men by these presents:

1. That we **G G & G GENERAL CONSTRUCTION, INC., A TEXAS CORPORATION, ACTING BY AND THROUGH AL GUEVARA, PRESIDENT** as Principal, and Colonial American Casualty and Surety Company

as Sureties, do hereby acknowledge ourselves to be held and firmly bound unto the City of San Antonio, a municipal corporation of the County of Bexar and State of Texas in the sum of \$737,155.00 for payment of which sum well and truly to be made in and unto said City of San Antonio, we do hereby bind and obligate ourselves, our heirs, executors, administrators, assigns, and successors, jointly and severally:

2. THE CONDITIONS OF THIS BOND, HOWEVER, ARE SUCH THAT WHEREAS, the said **G G & G GENERAL CONSTRUCTION, INC.**

hereinafter called Contractor or Principal, has made and does this day make and enter into a certain contract in writing with said City of San Antonio, for the construction and completion for said City of certain structures, work and improvements generally described as

REGIONAL YOUTH SPORTS FACILITIES - BROOKS PARK

and for the performance and observance of diverse other matters and things in connection with said work, and interalia, therein entered into covenants and agreements to promptly pay all persons supplying labor, materials and services in the prosecution of the work provided for in said contract; all as more fully described in said contract and its included instruments which are expressly made a part of this obligation;

3. NOW THEREFORE, if Contractor, the Principal party to this obligation shall promptly make payment to all persons supplying labor and materials in the prosecution of the work provided for in said contract, and any and all duly authorized modifications of said contract that may hereafter be made, notice of which modifications to the surety being hereby waived, then this obligation shall be and become null and void, but otherwise to remain in full force and effect: and it is hereby further understood and agreed that this bond shall be a continuous obligation against the principal and each member of said principal party hereto, and each and all sureties hereon, and that successive recoveries may be had thereon for each and every breach of this bond until the full amount thereof shall have been exhausted; and the liability of the sureties on this bond shall not be in any manner released or diminished by any changes in the work which may be authorized or directed by the City, nor by the exercise or failure to exercise by or on behalf of the City any right or remedy provided by the contract or specifications or by any law or ordinances.

4. It is further understood that this obligation is incurred pursuant to Chapter 2253 of the Texas Government Code, and that this obligation is for the benefit and sole protection of all persons supplying labor and materials in the prosecution of said contract.

5. IN TESTIMONY WHEREOF, witness our hands and the seal of any incorporated surety hereon this 15th day of May A.D. 20 07.

G G & G GENERAL CONSTRUCTION, INC.

Al Guevara
AL GUEVARA, PRESIDENT
Colonial American Casualty and Surety Company

BY: Paul W. Poettgen
Surety Paul W. Poettgen, Attorney-in-Fact

P.O. Box 29069, San Antonio, TX 7829

Address of Surety for Service

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, corporations of the State of Maryland, by THEODORE G. MARTINEZ, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute and appoint **A.C. TINCH, JR., T.A. DRAWERT, Maryanna S. CHRISTENSEN, Paul W. POETTGEN and Rose M. POETTGEN**, all of San Antonio, Texas, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, **any and all bonds and undertakings, EXCEPT bonds on behalf of Independent Executors, Community Survivors and Community Guardians.** and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their own proper persons. This power of attorney revokes that issued on behalf of A.C. TINCH, JR., T.A. DRAWERT, Maryanna S. CHRISTENSEN, Paul W. POETTGEN, William R. DAWLEY, dated November 22, 2004.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seals of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, this 14th day of November, A.D. 2005.

ATTEST:

**FIDELITY AND DEPOSIT COMPANY OF MARYLAND
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY**



Gregory E. Murray

Theodore G. Martinez

By: *Gregory E. Murray* Assistant Secretary *Theodore G. Martinez*

State of Maryland }
City of Baltimore } ss:

On this 14th day of November, A.D. 2005, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came THEODORE G. MARTINEZ, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, and the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself depose and saith, that they are the said officers of the Companies aforesaid, and that the seals affixed to the preceding instrument is the Corporate Seals of said Companies, and that the said Corporate Seals and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Constance A. Dunn

Constance A. Dunn Notary Public
My Commission Expires: July 14, 2007

**FIDELITY AND DEPOSIT COMPANY OF
MARYLAND
COLONIAL AMERICAN CASUATY AND SURETY COMPANY**

IMPORTANT NOTICE:

To obtain information or make a complaint:

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance at:

P. O. Box 149104
Austin, TX 78714-9104
FAX# 1-512-475-1771

Your notice of claim against the attached bond may be given to the Surety Company that issued the bond by sending it to the following address:

Mailing Address: Fidelity and Deposit Company of Maryland
Box 1227
Baltimore, MD 21203

You may also contact the Fidelity and Deposit Company of Maryland's claim office by phone at:

Telephone Number: (410) 539-0800

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID #
GG&GG-1

DATE (MM/DD/YYYY)
05/09/07

PRODUCER
Coleman Company Insurance
Brown & Brown Ins Service SA,
334 North Park Dr
San Antonio TX 78216
Phone: 210-494-3102 Fax: 210-494-7529

INSURED
GG & G General Const Inc.
2896 Blanco Rd
San Antonio TX 78212

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE		NAIC #
INSURER A:	American States Ins Co of TX	19712
INSURER B:	American Home Assurance (AIG)	19380
INSURER C:	First Mercury Ins. Co (PSR)	10657
INSURER D:		
INSURER E:		

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
C	<input checked="" type="checkbox"/> GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	FMFL001113	09/09/06	09/09/07	EACH OCCURRENCE \$ 1,000,000
					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	01BA409841-1	09/05/06	09/05/07	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
					BODILY INJURY (Per person) \$
					BODILY INJURY (Per accident) \$
					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$
					OTHER THAN AUTO ONLY: EA ACC \$
	<input type="checkbox"/> EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$
					AGGREGATE \$
					\$
					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	1843163	09/05/06	09/05/07	WC STATU-TORY LIMITS OTH-ER
					E.L. EACH ACCIDENT \$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
					E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Project: City Park Job: Pearsall Park Phase #2 Youth Sports Practice Fields & Disc Golf Course. Job Length 7/1/07 to 10/1/07. Certificate holder is shown as additional insured with respects to the general liability policy & waiver of subrogation with respects to the workers compensation policy

CERTIFICATE HOLDER

CITYPUB

City Of San Antonio
Purchasing & General Svcs
P.O. Box 839966
San Antonio TX 78283

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Don E. Haney

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Exhibit 1
 Construction Bids
 Regional Youth Sports Facility Improvements Project - Brooks Park

	Base	Alternate	Alternate	Alternate	Alternate	Total
<u>Bidder</u>	Bid	No. 1	No. 2B	No. 3	No. 4	
		Remove Existing Fence and Road	Provide Field Soil Fill and Grading	Irrigation System with Pressure Pump	Entrance Drive, Parking, Road, and Lighting	
G G & G General Construction, Inc.	\$227,695.00	\$27,120.00	\$43,844.00	\$94,044.00	\$344,452.00	\$737,155.00
Amstar, Inc.	\$350,000.00	\$21,275.00	\$253,000.00	\$98,698.00	\$304,283.00	\$1,027,256.00
V. W. Brooks Construction, Inc.	\$307,000.00	\$23,600.00	\$250,380.00	\$99,500.00	\$361,104.00	\$1,041,584.00
The Sabinal Group	\$354,000.00	\$25,000.00	\$285,000.00	\$78,000.00	\$320,000.00	\$1,062,000.00
GRP Group	\$383,000.00	\$18,000.00	\$270,000.00	\$86,000.00	\$421,000.00	\$1,178,000.00

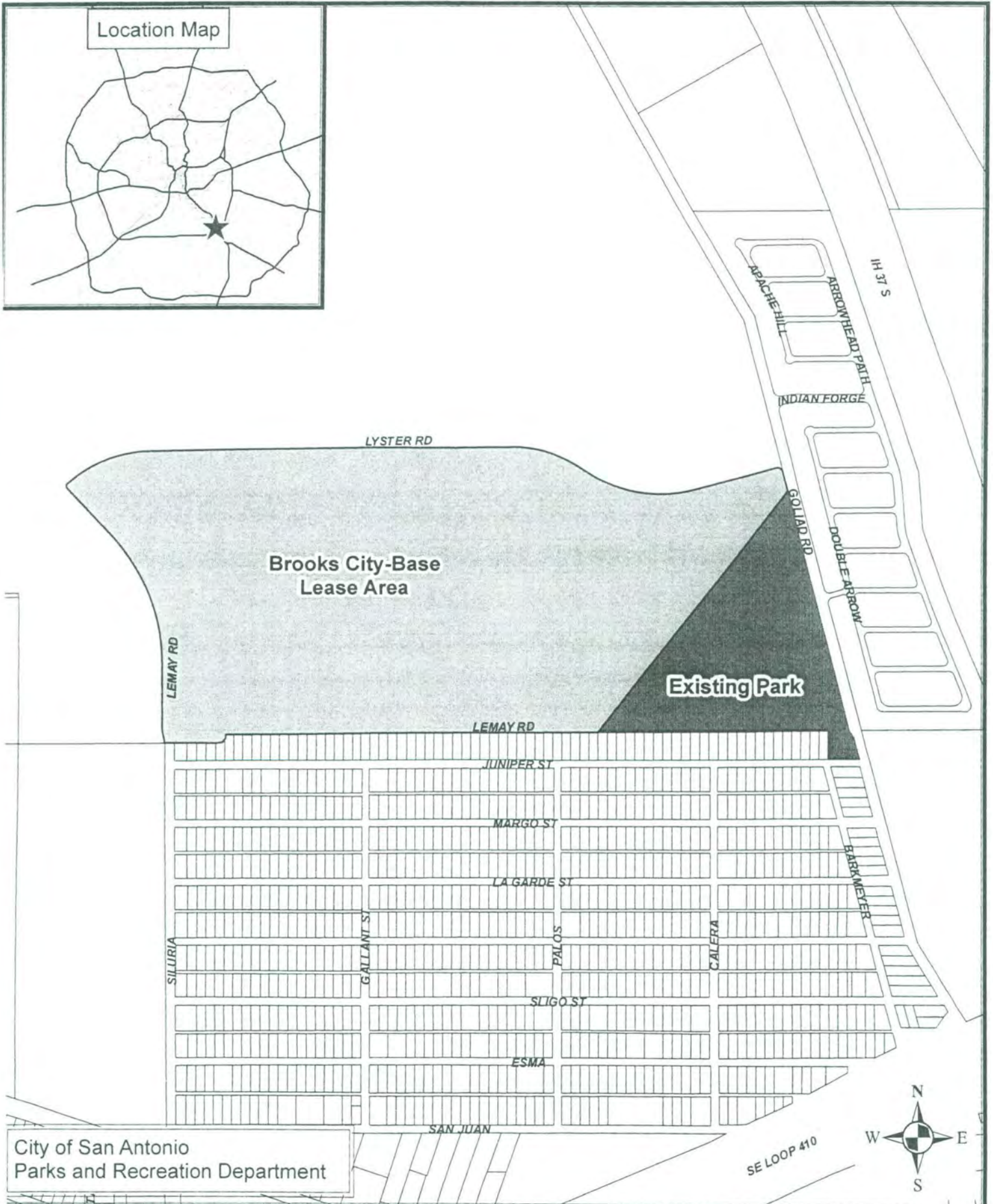
Public Works Bid Tabulation Sheet

Item:		Regional Youth Sports Facilities - Brooks Park									
Date Opened:		4-Apr-07		Alternate 1	Alternate 3	Alternate 6					
Name of Bidder	Bond/Check	Total Bid	Base Bid	Alternate 2A	Alternate 4	Alternate 7					
				Alternate 2B	Alternate 5						
1	G G & General Construction, Inc.	Y									
			\$ 227,695.00	27,120.00	94,044.00	44,777.00					
				21,470.00	344,452.00	28,250.00					
				43,844.00	15,029.00						
											<i>Tot. 618986.00</i>
2	WW Brooks Incorporated	Y									
			\$ 307,000.00	23,600.00	99,500.00	29,000.00					
				141,570.00	361,104.00	31,500.00					
				250,380.00	26,300.00						
											<i>Tot 962954</i>
3	Amstar, Inc.	Y									
			\$ 350,000.00	21,275.00	98,698.00	15,000.00					
				143,750.00	304,283.00	35,386.00					
				253,000.00	23,000.00						
											<i>89432.00</i>
4	GFP Group	Y									
			\$ 383,000.00	18,000.00	86,000.00	21,000.00					
				153,000.00	421,000.00	34,000.00					
				270,000.00	20,000.00						
											<i>1023000.</i>
5	The Sabinal Group	Y									
			\$ 354,000.00	25,000.00	78,000.00	23,000.00					
				97,000.00	320,000.00	39,000.00					
				285,000.00	10,000.00						
											<i>877000</i>
6											
7											
8											
9											

Total
 \$846,621.00
 \$126,9954
 \$124,392
 \$140,000
 \$123,100.

Witness Signature	Printed Name	Title	Department
	Leonor Grimaldo-Hargis	Fiscal Officer	Public Works
	Nancy Sanchez	Contract Officer	Public Works
	Denise Luckey	Administrative Assistant II	City Clerk

Site Map Brooks Park



Section 00300
**BID FORM SUBMITTED TO THE
CITY OF SAN ANTONIO, TEXAS
FOR THE CONSTRUCTION OF**

Regional Youth Sport Facilities – Brooks Park

IN SAN ANTONIO, TEXAS

The undersigned, as Bidder, declares that the only person or parties interested in this bid as principals are those named herein; that this bid is made without collusion with any other person, firm, corporation; that Bidder has carefully examined the Project Manual and plans therein referred to, and has carefully examined the requirements of the proposed work; and agrees that the Bidder will provide all the necessary machinery, tools, apparatus, and other means of construction, and will do all the work and furnish all the materials called for in the Project Manual and plans in the manner prescribed therein and according to the requirements of the Director of Public Works as therein set forth.

It is understood and agreed that the work is to be completed in full on or before Ninety (90) calendar days.

Accompanying this Bid is a Bid Guaranty in the amount of five Percent (5%) percent of the greatest total amount of the Bid. Said Bid Guaranty, in the form of a Certified or Cashier's Check on a State or National Bank, or Bid Bond, is submitted as a guaranty of the good faith of the Bidder and that the Bidder will execute and enter into a written contract to do the work, if his bid is accepted. The Bidder by submitting this completed form hereby agrees that if he/she fails to execute the written contract and furnish satisfactory bond, within ten (10) calendar days after City Council award, the City of San Antonio shall, in any of such events, be entitled and is hereby given the right to retain said Bid Guaranty as liquidated damages. It is understood that the City of San Antonio reserves the right to reject any and all proposals whenever the City Council deems it in the interest of the City to do so, and also the right to waive any informalities in a bid.

In the event of the award of a contract to the undersigned, the undersigned will execute same on Construction Contract (General Form) and make bond for the full amount of the contract, to secure proper compliance with the terms and provisions of the contract, and to insure and guarantee the work until final completion and acceptance or the end of the guarantee period where so stipulated, and to guarantee payment of all lawful claims for labor performed and materials furnished in the fulfillment of the contract.

The work proposed to be done shall be accepted when fully completed and finished to the entire satisfaction of the Director of Public Works. The undersigned certifies all prices contained in this bid have been carefully checked and are submitted as correct and final.

The Bidder by submitting this bid acknowledges that they have received Addenda/Addendum number(s) #1 3-7-07 #2 3-26-07 # 3 4-2-07

The Bidder is:

- A sole proprietorship;
- A partnership composed of _____

and _____

A corporation chartered under the laws of the State of Texas, acting by its officers pursuant to its by-laws or a resolution of its Board of Directors.

(Affix Corporate Seal here)

G G & G GENERAL CONSTRUCTION, INC.

Official Business name

By: Al Guevara, Prsident

Type or print name/title of representative

Attest:



By: Al Guevara 4-4-07
Signature Date

I. BASE BID

Amount of Base Bid (Insert Amount in Words and Numbers):

Two Hundred Twenty Seven Thousand Six Hundred ^{Ninety Five Dollars} \$ 227,695.00

II. Alternates

Amount of each Alternate (if applicable) insert in Numbers:

- 1 27,120.00
- 2A 21,470.00 2B 43,844.00
- 3 94,044.00
- 4 344,452.00
- 5 15,029.00
- 6 44,777.00
- 7 28,250.00

III. Unit Prices Amount of each Unit Price (if applicable) *There are no unit prices*****

G G & G GENERAL CONSTRUCTIO, INC.

Official Name of Company (legal)

733-7147

Telephone No.

2896 Blanco Rd.

Address

733-5050

Fax No.

San Antonio Tex 78212

City, State and Zip Code

E-mail Address

Proposal Form Attachment

Certification of Non-Collusion

"The undersigned affirms that they are duly authorized to execute the proposed contract, that this company, corporation, firm, partnership or individual has not prepared this Bid in collusion with any other Bidder, and that the contents of this Bid as to prices, terms or conditions of said Bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this Bid.

By: Al Guevara

(Print or Type Name)

President

(Print or Type Title/Position with Business)

Al Guevara

(Signature)

4-4-07

(Date)

CITY OF SAN ANTONIO

Request for Ordinance / Resolution Fiscal Impact

SAP FINANCIAL IMPACT

Project Name: Regional Youth Sports Facility Improv. Brooks
 Project Fund #: Fund #45099000 Project# 26-00303
 Council Date:
 Council Item #:

REVENUE TRANSFERS OUT

FUND NO. OR INTERNAL ORDER NO.	FUND NAME OR INTERNAL ORDER NAME	G/L	G/L NAME	CURRENT PLAN VERSION (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
GO-00247-01-01-17	45804000 2003 ('04) GO Bonds - Parks	6102100	Transfer Out	\$681,430.00	\$937,901.00	\$681,430.00
GO-00047-01-01-25	45804000 2003 ('04) GO Bonds - Parks	6102100	Transfer Out	\$1,694,881.50	\$0.00	\$1,694,881.50
GO-00044-01-01-62	45801000	6102100	Transfer Out	\$844,100.00	\$0.00	\$844,100.00
GO-00090-01-01-40	45902001 2003 ('05) G O. BONDS - PARKS	6102100	Transfer Out	\$940,934.03	\$0.00	\$940,934.03
IO#390000000348	29027000	6102100	Transfer Out	\$64,500.00	\$0.00	\$64,500.00
IO#226000000370	29088028	6102100	Transfer Out	\$17,766.50	\$0.00	\$17,766.50
IO#226000000400	29088000	6102100	Transfer Out	\$12,409.31	\$0.00	\$12,409.31
IO#226000000384	29088042	6102100	Transfer Out	\$31,840.16	\$0.00	\$31,840.16
				\$0.00	\$0.00	\$0.00
TOTALS				\$4,287,861.50	\$937,901.00	\$5,225,762.50

REVENUE TRANSFERS IN (Optional)

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION (Optional)	PLAN VERSION 0 REVISION/ (Optional)	REVISED PLAN VERSION 0 (Optional)
26 00303 90-02	Trf Fr GO-00247-01-01-17	6101100	Transfer In	-\$681,430.00	-\$937,901.00	-\$1,619,331.00
26 00303 90-03	Trf Fr GO-00047-01-01-25	6101100	Transfer In	-\$1,694,881.50	\$0.00	-\$1,694,881.50
26 00303 90-05	Trf Fr GO-00044-01-01-62	6101100	Transfer In	-\$844,100.00	\$0.00	-\$844,100.00
26 00303 90-09	Trf Fr GO-00090-01-01-40	6101100	Transfer In	-\$940,934.03	\$0.00	-\$940,934.03
26 00303 90-06	Trf Fr IO#390000000348	6101100	Transfer In	-\$64,500.00	\$0.00	-\$64,500.00
26 00303 90-07	Trf Fr IO#226000000370	6101100	Transfer In	-\$17,766.50	\$0.00	-\$17,766.50
26 00303 90-08	Trf Fr IO#226000000400	6101100	Transfer In	-\$12,409.31	\$0.00	-\$12,409.31
26 00303 90-10	Trf Fr IO#226000000384	6101100	Transfer In	-\$31,840.16	\$0.00	-\$31,840.16
				\$0.00	\$0.00	\$0.00
				\$0.00	\$0.00	\$0.00
TOTALS				-\$4,287,861.50	-\$937,901.00	-\$5,225,762.50

EXPENDITURES

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
26 00303 01-19-01	Architectural Fees	5201100	Architectural Fees	\$537,290.00	\$0.00	\$537,290.00
26 00303 01-19-02	Architectural Contingency	5201100	Architectural Fees	\$45,330.00	\$0.00	\$45,330.00
26 00303 01-10	Bid Advertising & Printing	5201040	Fees to Prof. Cont.	\$9,725.32	\$0.00	\$9,725.32
26 00303 01-19-03	Mandatory Project Fees	5201040	Fees to Prof. Cont.	\$108,504.00	\$0.00	\$108,504.00
26 00303 01-19-04	Design Enhancement	5201100	Architectural Fees	\$60,000.00	\$0.00	\$60,000.00
26 00303 03-02	Land Acquisition Costs	5209010		\$1,250.00	\$0.00	\$1,250.00
26 00303 05-08-01	Brooks Facilities Relocation Fees	5201140	Construction Cost	\$307,000.00	\$0.00	\$307,000.00
26 00303 05-08-02	Construction Fees-Sport Practice Fields	5201140		\$911,990.00	\$0.00	\$911,990.00
26 00303 05-08-04	Little League Improvements Fund	5101140		\$500,000.00	\$0.00	\$500,000.00
26 00303 05-08	Construction Contract	5201140	Construction Cost	\$1,572,227.00	\$737,155.00	\$2,309,382.00
26 00303 05-07	Construction Contingency	5201140	Construction Cost	\$234,545.18	\$184,289.00	\$418,834.18
26 00303 05-08-02	Park Materials	5202020	Contractual Services	\$0.00	\$16,457.00	\$16,457.00
				\$0.00	\$0.00	\$0.00
				\$0.00	\$0.00	\$0.00
TOTALS				\$4,287,861.50	\$937,901.00	\$5,225,762.50

Comments:
 99304 06/03/2004
 2006-11-30-1354

Prepared by: Veronica S. Arguello Dept: Parks & Rec Ext: X72880

Date prepared: 03/01/2007 Submitted Date:

Date received by Finance: Finance updated by:

Date submitted back to Dept:

Only companies certified as MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied towards the contracting goals. All MBE-WBE-AABE-SBE subcontractors must submit a copy of certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a subcontractor is not certified, please call the Small Business Outreach Division at (210) 207-3900 for information and details and how subcontractors can obtain certification.

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of Economic Development and Director of the appropriate contracting department (through the submittal of the Request for Approval of Change to Affirmed List of Subcontractors form).

NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBE s.

G. G. & G. GENERAL CONSTRUCTION, INC.

2896 Blanco
San Antonio, Texas 78212-1811

Phone
(210) 733-7147

11- 1- 94

Fax
(210) 733-5050

ATTACHMENT 8

THIS COMPANY DOES NOT DISCRIMINATE AGAINST ANY APPLICANT OR EMPLOYEE BECAUSE OF RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN AGE, VETERAN STATUS OR DISABILITY, IN ITS HIRING AND ASPECTS OF EMPLOYMENT POLICIES BASED ON THE TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND THE AGE DISCRIMINATION EMPLOYMENT ACT OF 1967

PROSPECTIVE EMPLOYEES AND EMPLOYEES ARE ENCOURAGED IF THEY BELIEVE THEIR RIGHTS HAVE BEEN VIOLATED, TO CONTACT THE:

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
(EEOC)
5410 FREDERICKSBURG RD.
SAN ANTONIO TEXAS 78229
229-4810


NAME _____ PRSIDENT _____
TITLE

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

Al Guerosa
SIGNATURE OF AUTHORIZED OFFICIAL

President
TITLE OF OFFICIAL

4-4-07 733-7147
DATE PHONE

FOR CITY USE

Plan Reviewed By: _____

Recommendation: Approval _____ Denial _____

Action Taken: Approved _____ Denied _____

DIRECTOR OF ECONOMIC DEVELOPMENT



CITY OF SAN ANTONIO
DEPARTMENT OF PARKS AND RECREATION
WORK PROJECT AUTHORIZATION

Regional Youth Sports Facility Improvements – Brooks Park
Project #: 26-00303

June 15, 2007

TO: G G & G General Construction, Inc.

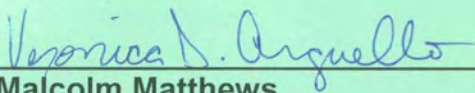
Your Pre-Construction meeting has been scheduled for:

Date: Friday, June 15, 2007
Time: 10:00 a.m.
Location: Park Project Services Conference Room
506 Dolorosa, Ste 105
San Antonio, TX 78204

An original executed contract with the City of San Antonio dated June 10, 2007, in the amount of \$737,155.00 along with approved Ordinance #2007-05-17-0548 are attached.

In accordance with Article 2, "Time of Completion", this contract is for a period of 90 Calendar Days. Please notify the project manager, Scott Stover, of the date on which you plan to commence work.

Sincerely,

for 

Malcolm Matthews
Director of Parks and Recreation

MM/vsa

cc: **City Clerk**
Contractor
CIP Contract File
Construction Inspector
Engineer / Architect
EDD, SBEDA
Wage & Hour Office
Plans & Records



CMS or Ordinance Number: CN0040000941

TSLGRS File Code:1000-25

Document Title:

CONT - Field Use and Maintenance License Agreement for NAJIF Little Cowboys to use 1.54 acre field at Joe Ward Park for practice only. League agrees

Commencement Date:

5/8/2007

Expiration Date:

4/30/2012

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT
LITTLE COWBOYS OF THE NORTH AMERICAN JUNIOR
INDEPENDENT FOOTBALL**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into as of the 19th day of April, 2007, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No 2007-04-19-0458, dated April 19, 2007 (herein called "**CITY**"), and **LITTLE COWBOYS, NORTH AMERICAN JUNIOR INDEPENDENT FOOTBALL**, a Texas non-profit corporation (herein called "**LEAGUE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, **LEAGUE** is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this Agreement; and
- 1.3 WHEREAS, for the benefit not only of **LEAGUE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **LEAGUE'S** offer to maintain the field at hereinafter named park; and
- 1.4 WHEREAS, in consideration of **LEAGUE'S** maintenance of hereinafter cited field **CITY** desires to grant permission to **LEAGUE** to enter and use said field as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT

- 2.1. For so long as **LEAGUE** maintains its non-profit and 501(c)(3) status, **CITY** hereby designates **LEAGUE** as the primary user and maintainer of City-owned property as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Joe Ward Park Complex at 435 E. Sunshine Dr., being part of N.C.B. 8399, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2. By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "Director"), and **LEAGUE** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

3. USE OF FIELDS BY LEAGUE

- 3.1. **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein (hereafter called "Premises"). Such free use shall also apply to any fields added in the future pursuant to paragraph 2.2 hereinbefore.
 - 3.1.1 **LEAGUE'S** use of said field in **EXHIBIT A** shall be limited to the purpose of **practice only**, on Monday through Friday 5 p.m. to 8 p.m. from the dates of August 1st through December 31st of the License Years designated in Section 4.1 of this Agreement and;
- 3.2. Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-built and operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.
 - 3.2.1. Prior to August 1st of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced Premises. Said schedule must include any and all practice dates.
 - 3.2.2. At those times in which **LEAGUE** is not utilizing above referenced Premises for practice, **CITY** shall coordinate use of said Premises through its Field Reservation Service.
- 3.3. The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.4. **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.5. **LEAGUE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability

Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. **LEAGUE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the City, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LEAGUE**'s activities under this contract.

- 3.6. **LEAGUE** is hereby authorized to establish fees and charges for its membership and to collect and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **LEAGUE** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.
- 3.7. **LEAGUE is hereby prohibited from using these Premises for any other reason than for football practice as stated in Section 3.1.1. Any other use of this field will result in termination of this License Agreement.**

4. TERM OF AGREEMENT

- 4.1. The term of this Agreement is five (5) years, beginning on May 1, 2007, which is hereafter referred to as the commencement date, and expiring on April 30, 2012, if not earlier terminated according to the terms hereof.
- 4.2. Before the expiration date of this Agreement, **LEAGUE** must submit a letter to the Director requesting continued utilization of the property.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.

6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this Agreement, **LEAGUE** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields), from the dates of August 1st through December 31st of each License Year. In addition to the other obligations of **LEAGUE**

set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed field, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:

- 6.1.1. Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
 - 6.1.2. Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
 - 6.1.3. At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris following all practice and regular games;
 - 6.1.4. Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
 - 6.1.5. Provide ant control services as frequently as required to control these pests;
 - 6.1.6. Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7. Maintain concession building and repair as needed (if applicable);
 - 6.1.8. Storage buildings must be maintained, painted, and in good general condition (if applicable);
 - 6.1.9. Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises;
 - 6.1.10. Maintain and repair bleachers as needed; all bleachers are property of the **CITY** and are not to be removed from the Premises (if applicable);
 - 6.1.11. Any lighting (if applicable) that benefits the licensed field must be maintained, kept in working order, and replaced by the **LEAGUE**; and,
 - 6.1.12. Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti within 5 days.
- 6.2. **LEAGUE** shall promptly repair any damage to the Premises caused by the use of the Premises by **LEAGUE** or those persons under its control. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3. No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.4. In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

7.1 **CITY will pay the cost of electric and water utilities.** During the designated usage term, **LEAGUE** will be responsible for performing regular field irrigation and watering in a conservative, non-wasteful manner.

7.1.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:

7.2.1.1. **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.

7.2.1.2. **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

7.2.1.3. or a **LEAGUE** Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED FIELD MAINTENANCE

8.1. **LEAGUE** agrees to formulate an annual field maintenance program and to submit same in writing to the Director no later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities. The Director shall review said maintenance program and shall notify **LEAGUE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LEAGUE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.

8.2. **LEAGUE** further agrees to notify the Director or his designee, in writing two weeks in advance, of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LEAGUE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

9.1. **CITY**, through the Director and/or his representative(s), shall have the right to inspect the field and their amenities at any time.

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

10. CONCESSIONS

- 10.1. As this License Agreement pertains to the use of the Premises for practice only, **LEAGUE** shall not have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items.

11. IMPROVEMENTS

- 11.1. **LEAGUE** may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, **LEAGUE**, its members, employees, agents, and contractors shall insure that the performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property.
- 11.2. **LEAGUE** shall present, for review and written approval, all designs, plans, and specifications to the Director and applicable **CITY** boards prior to commencing any construction or installation upon the Premises. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LEAGUE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure **LEAGUE'S** compliance with this Agreement.
- 11.3. **LEAGUE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA. A copy of said permits or clearances shall be provided to the Director prior to the start of any construction. **LEAGUE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LEAGUE** during the performance of any said construction and against any claim for injury to person or property.
- 11.4. Any improvements so installed by **LEAGUE** which can be removed without damage to the Premises may be removed at the sole expense of **LEAGUE** at the termination of this Agreement without payment therefore being made by **CITY**. If the improvements are not so removable without said damage to the Premises, then said improvements become the property of the **CITY**.

12. DEFAULTS AND TERMINATION RIGHTS

- 12.1. Default by LEAGUE: Any of the following events shall constitute default by **LEAGUE** under this Agreement:
- 12.1.1 **LEAGUE** shall fail to maintain its non-profit or 501(c)(3) status; or
- 12.1.2 **LEAGUE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or

performed by **LEAGUE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LEAGUE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that **LEAGUE** has commenced to cure such default.

- 12.2. Remedies of **CITY**: Upon the occurrence of an event of default by **LEAGUE** as specified in this Agreement hereof, **CITY** shall be entitled to terminate this Agreement. After such termination, **LEAGUE** shall have not further rights to access the fields, shall immediately cease all activities thereon and **CITY** shall have no further obligation hereunder.
- 12.3. Default by **CITY**: **CITY** shall be in default under this Agreement if **CITY** fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that **CITY** has commenced to cure such default.
- 12.4. Remedies of **LEAGUE**: Upon the occurrence of an event of default as specified in this Agreement hereof, **LEAGUE** shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.
- 12.5. Either **CITY** or **LEAGUE**, with or without cause, may cancel this Agreement by giving six (6) months written notice thereof to the other party.

13. INDEMNIFICATION

- 13.1 **LEAGUE** covenants and agrees to **FULLY INDEMNIFY and HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LEAGUE'S** activities under this **AGREEMENT**, including any acts or omissions of **LEAGUE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LEAGUE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT.** The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LEAGUE** shall promptly advise the **CITY** in writing of any claim or demand against

the CITY or LEAGUE known to LEAGUE related to or arising out of LEAGUE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LEAGUE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LEAGUE of any of its obligations under this paragraph.

- 13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 12), is an INDEMNITY extended by LEAGUE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. LEAGUE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1. Any and all employees, representatives, agents or volunteers of LEAGUE while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of LEAGUE only and not of the CITY. Any and all claims that may result from any obligation for which LEAGUE may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of LEAGUE.
- 14.2. Prior to the commencement of any work under this Agreement, LEAGUE shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the CITY'S Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.
- 14.3. The CITY reserves the right to review the insurance requirements of this section 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 the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.

14.4. **LEAGUE'S** financial integrity is of interest to **CITY**, therefore, subject to **LEAGUE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LEAGUE** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **LEAGUE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (vii.) or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence
	a. Premises/Operations	\$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
	b. Independent Contractors	
	c. Broad Form Contractual Liability	
	d. Products/completed operations	
	e. Broad form property damage, to include fire legal liability	
	f. Personal Injury	
3.	Comprehensive Automobile Liability*	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
	a. Owned/Leased Vehicles	
	b. Non-owned Vehicles	
	c. Hired Vehicles	
4.	Property Insurance: For physical damage to the property of LEAGUE , including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of LEAGUE'S property.

14.5. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LEAGUE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

14.6. **LEAGUE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

14.6.1. Name the **CITY** and its officers, 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;

14.6.2. 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;

14.6.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

14.7. **LEAGUE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

14.8. If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **LEAGUE** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **LEAGUE'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 **LEAGUE** to stop work hereunder, and/or withhold any payments(s) which become due to **LEAGUE** hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.

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

14.10. All personal property placed in the Premises shall be at the sole risk of **LEAGUE**. **CITY** shall not be liable, and **LEAGUE** waives all claims for any damage either to the person or property of **LEAGUE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LEAGUE** shall save and hold harmless **CITY** from any claims arising out of damage to **LEAGUE'S** property or damage to **LEAGUE'S** business, including subrogation claims by **LEAGUE'S** insurers.

15. REPORTS

15.1. **LEAGUE** shall inform the Director, in writing, of its current officers of the **LEAGUE** and promptly advise said Director, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this Agreement, **LEAGUE** will furnish to the Director a report and financial statement including the following information:

- 15.1.1. Value of the physical improvements placed on the property during the previous twelve (12) months;
- 15.1.2. Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements for the previous twelve (12) months;
- 15.1.3. Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
- 15.1.4. Number of participants in **LEAGUE'S**, teams, and ages;
- 15.1.5. Certificate of insurance including endorsements (required year-round);
- 15.1.6. Names, addresses, phone numbers and zip codes of all current executive board officers of **LEAGUE**;
- 15.1.7. Starting and ending date and month of each regular season;
- 15.1.8. Number of tournaments and special events held (briefly describe);
- 15.1.9. Current constitution and by-laws, articles of incorporation, and corporation provision/signature of authority;
- 15.1.10. Proof of compliance with Policies and Procedures established by the North American Junior Independent Football Federation;
- 15.1.11. Copy of the organization's annual financial report.

16. SIGNS

- 16.1 **LEAGUE** hereby agrees not to install or display any sign(s) upon the Premises without prior written approval of said sign(s) by the **CITY** through the Director. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs.

17. ASSIGNMENT

- 17.1 This Agreement is personal to **LEAGUE**. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to **LEAGUE** hereunder.

18. RELATIONSHIP OF PARTIES

- 18.1 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 ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and Licensee.

19. CONFLICT OF INTEREST

- 19.1 **LEAGUE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 19.2 **LEAGUE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

20. SEPARABILITY

- 20.1 The parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

- 21.1 Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **LEAGUE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LEAGUE** at:

**Ruben Trevino, President
Little Cowboys, North American Junior Independent Football
2338 Frontier Trail
San Antonio, Texas 78251**

or at such other address on file with the City Clerk as **LEAGUE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 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.

24. NON-DISCRIMINATION

- 24.1 **LEAGUE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LEAGUE** acknowledges is prohibited.

25. CAPTIONS

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

26. HOLDING OVER

- 26.1 Should **LEAGUE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding License Agreement continuing in effect until such time as **LEAGUE** permanently ceases use of the field or a new License Agreement is executed.

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LEAGUE**.
- 27.2. No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

28.1 The signer of this License Agreement for **LEAGUE** hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of **LEAGUE**.

IN WITNESS WHEREOF, we have affirmed our signatures this 7th day of May 2007.

LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

Sheryl Sculley
City Manager

ATTEST:

Lucia M. ...
City Clerk



LICENSEE:

LITTLE COWBOYS, NORTH AMERICAN
JUNIOR INDEPENDENT FOOTBALL, a
Texas Non-profit Corporation

By: Ruben ...

Title: Director

APPROVED AS TO FORM: [Signature], City Attorney

RE: ordinance 2007-04-19-0458; 4/19/2007

JOE WARD PARK

SCALE: 1:40

EXHIBIT "A"



• REFERENCE BEARING OFF SURVEY
PLAT OF 2.214 ACRE TRACT BY
H. CRUZ (NOV. 22, 1977).

CURVE DATA
 $\Delta = 04^{\circ}23'54''$
 $R = 773.98'$
 $L = 59.42'$

McNEEL RD.

*S 83°51'E 370.55'

CHAIN-LINK FENCE

S 06°07'25" W 158.62'

PLAY FIELD
1.54 ACRES

N 06°09' E 156.50'

P.O.B.
IP

CHAIN-LINK FENCE

FENCE COR.
IP

15' ALLEY EASEMENT

N 83°52'37"W 430.0'

CHAIN-LINK FENCE

PP
FC

CHAIN-LINK FENCE

PP

PP
PP

IP

PP

POWER
POLE



CMS or Ordinance Number: CN0040000947

TSLGRS File Code:1000-25

Document Title:

CONT - Field Use and Maintenance License Agreement for Southside Little Cowboys at Stinson Park. League is licensed 8.07 acres and will maintain the

Commencement Date:

5/8/2007

Expiration Date:

4/30/2012

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT
SOUTHSIDE LITTLE COWBOYS, INC.**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the 19th day of April, 2007, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. 2007-04-19-0458, dated April 19, 2007 (herein called "**CITY**"), and **SOUTHSIDE LITTLE COWBOYS, INC.**, a Texas non-profit corporation (herein called "**LEAGUE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, **LEAGUE** is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this **Agreement**; and
- 1.3 WHEREAS, for the benefit not only of **LEAGUE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **LEAGUE'S** offer to maintain the field at hereinafter named park; and
- 1.4 WHEREAS, in consideration of **LEAGUE'S** maintenance of hereinafter cited field **CITY** desires to grant permission to **LEAGUE** to enter and use said field as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT

- 2.1 For so long as **LEAGUE** maintains its non-profit and 501(c)(3) status, **CITY** hereby designates **LEAGUE** as the primary user and maintainer of City-owned property as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Stinson Park being part of N.C.B. 11152, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "**Director**"), and **LEAGUE** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

3. USE OF FIELDS BY LEAGUE

- 3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the

Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein. Such free use shall also apply to any fields added in the future pursuant to paragraph 2.2 hereinbefore.

- 3.2 Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-built and operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.
 - 3.2.1 Prior to August 1st of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced fields. Said schedule must include any and all practice and game dates. Prior to October 31st of each License Year, **LEAGUE** shall submit to a **CITY** a Playoff/Bowl Game (or its equivalent) schedule of dates and times for use of above referenced fields. Said Playoff/Bowl Game schedule must include any and all practice and game dates.
 - 3.2.2 At those times in which **LEAGUE** is not utilizing above referenced fields for practice or game play; **CITY** shall coordinate use of said fields through its Field Reservation Service.
- 3.3 The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.4 **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.5 **LEAGUE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. **LEAGUE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the **CITY**, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LEAGUE**'s activities under this contract.

- 3.6 **LEAGUE** is hereby authorized to establish fees and charges for its membership and to collect and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **LEAGUE** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

4. TERM OF AGREEMENT

- 4.1 The term of this **Agreement** is five (5) years, beginning on May 1, 2007, which is hereafter referred to as the commencement date, and expiring on April 30, 2012, if not earlier terminated according to the terms hereof.
- 4.2 Before the expiration date of this **Agreement**, **LEAGUE** must submit a letter to the **Director** requesting continued utilization of the property.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.

6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this **Agreement**, **LEAGUE** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields). In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed field, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
- 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
- 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris following all practice and regular games;
- 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;

- 6.1.5 Provide ant control services as frequently as required to control these pests;
 - 6.1.6 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7 Maintain concession building and repair as needed (if applicable);
 - 6.1.8 Storage buildings must be maintained, painted, and in good general condition (if applicable);
 - 6.1.9 Maintain and repair bleachers as needed; all bleachers are property of the **CITY** and are not to be removed from the Premises (if applicable);
 - 6.1.10 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises;
 - 6.1.11 Any lighting (if applicable) that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**; and,
 - 6.1.12 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti within 5 days.
- 6.2 **LEAGUE** shall promptly repair any damage to the Premises caused by the use of the Premises by **LEAGUE** or those persons under its control. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License **Agreement** and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

- 7.1 In order to offset **CITY**'s cost of electricity, **LEAGUE** will pay to **CITY** \$150 per month per lighted field, or a total of \$150 per month, throughout the term of this **Agreement** during **LEAGUE**'s designated usage term as outlined in Section 3.1.1 herein. Payment shall commence on the first day of the first month following City Council approval of this **Agreement** and shall be due on or before the first day of each month and mailed to:

City of San Antonio
Treasury Division
Central Billing Station
PO Box 839966
San Antonio, TX 78283-3975

7.2 **LEAGUE** may utilize water service available to the Licensed Premises at no cost to **LEAGUE**. **LEAGUE** shall be responsible for the irrigation of the Licensed Premises in a manner and frequency that is not wasteful but sustains the ground cover.

7.2.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:

7.2.1.1. **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.

7.2.1.2. **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

7.2.1.3 or a **LEAGUE** Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED FIELD MAINTENANCE

8.1 **LEAGUE** agrees to formulate an annual field maintenance program and to submit same in writing to the **Director** no later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities. The **Director** shall review said maintenance program and shall notify **LEAGUE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LEAGUE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.

8.2 **LEAGUE** further agrees to notify the **Director** or his designee, in writing two weeks in advance, of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LEAGUE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

9.1 **CITY**, through the **Director** and/or his representative(s), shall have the right to inspect the field and their amenities at any time.

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

10. CONCESSIONS

- 10.1 **LEAGUE** shall, during its use of the Premises, as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it each License year as designated in Section 4.1 of this **Agreement**. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 10.2 **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

11. IMPROVEMENTS

- 11.1 **LEAGUE** may, subject to having first obtained the written approval of the **Director**, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, **LEAGUE**, its members, employees, agents, and contractors shall insure that the performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property.
- 11.2 **LEAGUE** shall present, for review and written approval, all designs, plans, and specifications to the **Director** and applicable **CITY** boards prior to commencing any construction or installation upon the Premises. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LEAGUE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure **LEAGUE'S** compliance with this **Agreement**.
- 11.3 **LEAGUE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA. A copy of said permits or clearances shall be provided to the **Director** prior to the start of any construction. **LEAGUE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LEAGUE** during the performance of any said construction and against any claim for injury to person or property.
- 11.4 Any improvements so installed by **LEAGUE** which can be removed without damage to the Premises may be removed at the sole expense of **LEAGUE** at the termination of this **Agreement** without payment therefore being made by **CITY**. If the improvements are not so removable without said damage to the Premises, then said improvements become the property of the **CITY**.

12. DEFAULTS AND TERMINATION RIGHTS

- 12.1 Default by LEAGUE: Any of the following events shall constitute default by **LEAGUE** under this **Agreement**:
- 12.1.1 **LEAGUE** shall fail to maintain its non-profit or 501(c)(3) status; or
- 12.1.2 **LEAGUE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **LEAGUE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LEAGUE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that **LEAGUE** has commenced to cure such default.
- 12.2 Remedies of CITY: Upon the occurrence of an event of default by **LEAGUE** as specified in this **Agreement** hereof, **CITY** shall be entitled to terminate this **Agreement**. After such termination, **LEAGUE** shall have no further rights to access the fields, shall immediately cease all activities thereon and **CITY** shall have no further obligation hereunder.
- 12.3 Default by CITY: **CITY** shall be in default under this **Agreement** if **CITY** fails to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that **CITY** has commenced to cure such default.
- 12.4 Remedies of LEAGUE: Upon the occurrence of an event of default as specified in this **Agreement** hereof, **LEAGUE** shall be entitled to terminate this **Agreement** and shall have such other rights at law or equity to which it may be entitled.
- 12.5 Either **CITY** or **LEAGUE**, with or without cause, may cancel this **Agreement** by giving six (6) months written notice thereof to the other party.

13. INDEMNIFICATION

- 13.1 **LEAGUE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LEAGUE'S** activities under this **AGREEMENT**, including any acts or omissions of **LEAGUE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LEAGUE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all

without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LEAGUE shall promptly advise the CITY in writing of any claim or demand against the CITY or LEAGUE known to LEAGUE related to or arising out of LEAGUE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LEAGUE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LEAGUE of any of its obligations under this paragraph.

- 13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 13), is an INDEMNITY extended by LEAGUE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. LEAGUE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1 Any and all employees, representatives, agents or volunteers of LEAGUE while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of LEAGUE only and not of the CITY. Any and all claims that may result from any obligation for which LEAGUE may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of LEAGUE.
- 14.2 Prior to the commencement of any work under this Agreement, LEAGUE shall furnish an original completed Certificate(s), including endorsements, of Insurance to the CITY'S Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) and

endorsements must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this **Agreement** until such certificate shall have been delivered to the **CITY'S** Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.

- 14.3 The **CITY** reserves the right to review the insurance requirements of this section 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 the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **Agreement**, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 14.4 **LEAGUE'S** financial integrity is of interest to **CITY**, therefore, subject to **LEAGUE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LEAGUE** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **LEAGUE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	
3. Comprehensive Automobile Liability*	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	
c. Hired Vehicles	
4. Property Insurance: For physical damage to the property of LEAGUE , including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of LEAGUE'S property.

*If Applicable

- 14.5 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LEAGUE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

14.6 **LEAGUE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

14.6.1 Name the **CITY** and its officers, 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;

14.6.2 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;

14.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.

14.7 **LEAGUE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

14.8 If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **Agreement**. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **LEAGUE** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **LEAGUE'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 **LEAGUE** to stop work hereunder, and/or withhold any payments(s) which become due to **LEAGUE** hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.

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

- 14.10 All personal property placed in the Premises shall be at the sole risk of **LEAGUE**. **CITY** shall not be liable, and **LEAGUE** waives all claims for any damage either to the person or property of **LEAGUE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LEAGUE** shall save and hold harmless **CITY** from any claims arising out of damage to **LEAGUE'S** property or damage to **LEAGUE'S** business, including subrogation claims by **LEAGUE'S** insurers.

15. REPORTS

- 15.1 **LEAGUE** shall inform the **Director**, in writing, of its current officers of the **LEAGUE** and promptly advise said **Director**, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this **Agreement**, **LEAGUE** will furnish to the **Director** a report and financial statement including the following information:
- 15.1.1 Value of the physical improvements placed on the property during the previous twelve (12) months;
 - 15.1.2 Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements for the previous twelve (12) months;
 - 15.1.3 Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
 - 15.1.4 Number of participants in **LEAGUE'S**, teams, and ages;
 - 15.1.5 Certificate of insurance (required year-round), including endorsements;
 - 15.1.6 Names, addresses, phone numbers and zip codes of all current executive board officers of **LEAGUE**;
 - 15.1.7 Starting and ending date and month of each regular season;
 - 15.1.8 Number of tournaments and special events held (briefly describe);
 - 15.1.9 Current constitution and by-laws, articles of incorporation, and corporation provision/signature of authority;
 - 15.1.10 Proof of compliance with Policies and Procedures established by the national Pop Warner Football association;
 - 15.1.11 Copy of the organization's annual financial report.

16. SIGNS

- 16.1 **LEAGUE** hereby agrees not to install or display any permanent sign(s) upon the Premises without prior written approval of said sign(s) by the **CITY** through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. Signs which advertise businesses, sponsors, products, services, logos, or events not available on the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. **LEAGUE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs.

17. ASSIGNMENT

- 17.1 This **Agreement** is personal to **LEAGUE**. It is non-assignable, and any attempt to assign this **Agreement** will terminate all privileges granted to **LEAGUE** hereunder.

18. RELATIONSHIP OF PARTIES

- 18.1 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 ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and Licensee.

19. CONFLICT OF INTEREST

- 19.1 **LEAGUE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 19.2 **LEAGUE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

20. SEPARABILITY

- 20.1 The parties hereto agree that if any clause or provision of this **Agreement** is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this **Agreement**, then and in that event it is the intention of the parties hereto that the remainder of this **Agreement** shall not be affected thereby, and it is also the intention of the parties to this **Agreement** that in lieu of each clause or provision of this **Agreement** that is illegal, invalid or unenforceable, there be added as a part of this **Agreement** a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

- 21.1 Notices to **CITY** required or appropriate under this **Agreement** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **LEAGUE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LEAGUE** at:

Mr. Daniel Gusme, President
Southside Little Cowboys
127 Creath
San Antonio, Texas 78221

or at such other address on file with the City Clerk as **LEAGUE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 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.

24. NON-DISCRIMINATION

- 24.1 **LEAGUE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LEAGUE** acknowledges is prohibited.

25. CAPTIONS

- 25.1 The captions contained in this **Agreement** are for convenience of reference only and in no way limit or enlarge the terms and conditions of this **Agreement**.

26. HOLDING OVER

- 26.1 Should **LEAGUE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding License **Agreement** continuing in effect until such time as **LEAGUE** permanently ceases use of the field or a new License **Agreement** is executed.

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 This **Agreement**, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LEAGUE**.
- 27.2 No amendment, modification or alteration of the terms of this **Agreement** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

28.1 The signer of this License **Agreement** for **LEAGUE** hereby represents and warrants that he or she has full authority to execute this **Agreement** on behalf of **LEAGUE**.

IN WITNESS WHEREOF, we have affirmed our signatures this 7th day of May 2007.

LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation


Sheryl Sculley
City Manager


ATTEST:


City Clerk



LICENSEE:

SOUTHSIDE LITTLE COWBOYS, a Texas
Non-profit Corporation

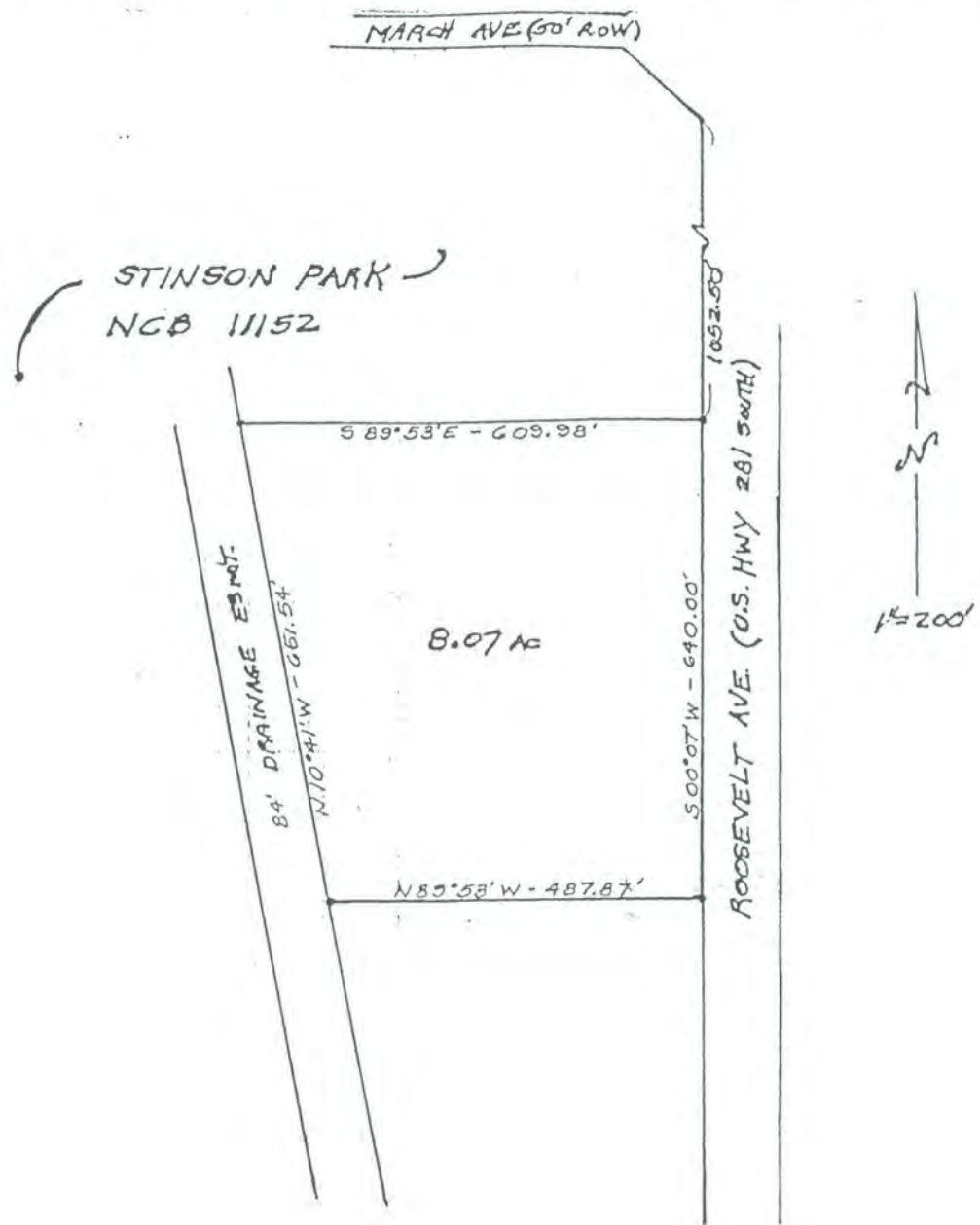

By: _____
Danny A. Busma

Title: SSLC Pres. 2007

APPROVED AS TO FORM:  City Attorney

RE: Ordinance 2007-04-19-0458; 4/19/2007

SOUTHSIDE LITTLE COWBOYS, INC.



SOUTHSIDE LITTLE COWBOYS, INC.
 Drawing showing 8.07 ACRES Tract out of
 N.C.B. 11152, San Antonio, Bexar County,
 Texas

STATE OF TEXAS
 COUNTY OF BEXAR

APRIL, 1999

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT
 ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER
 MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR
 ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT
 ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS
 SHOWN ABOVE.

This _____ day of _____, 19____ A. D.

Reference

EXHIBIT A

Field Book _____ Page _____

Job No. _____



CMS or Ordinance Number: CN0040000945

TSLGRS File Code:1000-25

Document Title:

CONT - Field Use and Maintenance License Agreement for South Central Cougars at Stinson Park. League agrees to maintain 8.16 acre field in exchange for

Commencement Date:

5/8/2007

Expiration Date:

4/30/2012

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT
SOUTH CENTRAL COUGARS POP WARNER FOOTBALL ASSN.**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the 19th day of April, 2007, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. 2007-04-19-0458, dated April 19, 2007 (herein called "**CITY**"), and **SOUTH CENTRAL COUGARS POP WARNER FOOTBALL ASSOCIATION**, a Texas non-profit corporation (herein called "**LEAGUE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, for the benefit not only of **LEAGUE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **LEAGUE'S** offer to maintain the field at hereinafter named park; and
- 1.3 WHEREAS, in consideration of **LEAGUE'S** maintenance of hereinafter cited field **CITY** desires to grant permission to **LEAGUE** to enter and use said field as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT

- 2.1. **CITY** hereby designates **LEAGUE** as the primary user and maintainer of City-owned property as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Stinson Park being part of N.C.B. 11152, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2. By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "Director"), and **LEAGUE** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

3. USE OF FIELDS BY LEAGUE

- 3.1. **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein (hereafter called "Premises"). Such free use shall also apply to any fields added in the future pursuant to paragraph 2.2 hereinbefore.
 - 3.1.1 **LEAGUE'S** use of said field in **EXHIBIT A** shall be for the dates of August 1st through December 31st of the License Years designated in Section 4.1 of this Agreement.

- 3.2. Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-built and operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.
- 3.2.1. Prior to August 1st of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced fields. Said schedule must include any and all practice and game dates. Prior to October 31st of each License Year, **LEAGUE** shall submit to a **CITY** a Playoff/Bowl Game (or its equivalent) schedule of dates and times for use of above referenced fields. Said Playoff/Bowl Game schedule must include any and all practice and game dates.
- 3.2.2. At those times in which **LEAGUE** is not utilizing above referenced fields for practice or game play; **CITY** shall coordinate use of said fields through its Field Reservation Service.
- 3.3. The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.4. **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.5. **LEAGUE** is hereby authorized to establish fees and charges for its membership and admission fees to games, and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **LEAGUE** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

4. TERM OF AGREEMENT

- 4.1. The term of this Agreement is five (5) years, beginning on November 1, 2006, which is hereafter referred to as the commencement date, and expiring on October 31, 2011, if not earlier terminated according to the terms hereof.
- 4.2. Before the expiration date of this Agreement, **LEAGUE** must submit a letter to the Director requesting continued utilization of the property.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health

and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.

- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.

6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this Agreement, **LEAGUE** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields). In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed field, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
 - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
 - 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris following all practice and regular games;
 - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
 - 6.1.5 Provide insect and vermin control services as frequently as required to control these pests;
 - 6.1.6 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7 Maintain the fields/courts as required to sustain acceptable standards of playing conditions;
 - 6.1.8 Maintain concession building and repair as needed;
 - 6.1.9 Storage buildings must be maintained, painted, and in good general condition;
 - 6.1.10 Maintain and repair bleachers as needed, if applicable. All bleachers are property of the **CITY** and are not to be removed from the Premises;
 - 6.1.11 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises;
 - 6.1.12 Any lighting that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**; and,
 - 6.1.13 Paint, maintain, and keep storage shed placed on Premises by **LEAGUE** in a

condition acceptable to **CITY**.

- 6.1.14 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti within 5 days.
- 6.2. **LEAGUE** shall promptly repair any damage to the Premises caused by the use of the Premises by **LEAGUE** or those persons under its control. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

- 7.1 **CITY will pay the cost of electric and water utilities.** During the designated usage term, **LEAGUE** will be responsible for performing regular field irrigation and watering in a conservative, non-wasteful manner.
- 7.1.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:
- 7.2.1.1. **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.
- 7.2.1.2. **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.
- 7.2.1.3. or a **LEAGUE** Water Use Plan, which has been pre-approved by SAWS.

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

8. SCHEDULED FIELD MAINTENANCE

- 8.1. **LEAGUE** agrees to formulate an annual field maintenance program and to submit same in writing to the Director no later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities. The Director shall review said maintenance program and shall notify **LEAGUE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LEAGUE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.
- 8.2. **LEAGUE** further agrees to notify the Director or his designee, in writing two weeks in advance, of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LEAGUE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

- 9.1. **CITY**, through the Director and/or his representative(s), shall have the right to inspect the field and their amenities at any time.

10. CONCESSIONS

- 10.1. **LEAGUE** shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it from August 1st through December 31st of each License year as designated in Section 4.1 of this Agreement. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 10.2. **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

11. IMPROVEMENTS

- 11.1. **LEAGUE** may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, **LEAGUE**, its members, employees, agents, and contractors shall insure that the performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property.
- 11.2. **LEAGUE** shall present, for review and written approval, all designs, plans, and specifications to the Director and applicable **CITY** boards prior to commencing any construction or installation upon the Premises. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LEAGUE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure **LEAGUE'S** compliance with this Agreement.

- 11.3. **LEAGUE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA. A copy of said permits or clearances shall be provided to the Director prior to the start of any construction. **LEAGUE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LEAGUE** during the performance of any said construction and against any claim for injury to person or property.
- 11.4. Any improvements so installed by **LEAGUE** which can be removed without damage to the Premises may be removed at the sole expense of **LEAGUE** at the termination of this Agreement without payment therefore being made by **CITY**. If the improvements are not so removable without said damage to the Premises, then said improvements become the property of the **CITY**.

12. DEFAULTS AND TERMINATION RIGHTS

- 12.1. Default by **LEAGUE**: Any of the following events shall constitute default by **LEAGUE** under this Agreement:
- 12.1.1 **LEAGUE** shall apply for or consent to the appointment of a receiver, trustee, or liquidator of **LEAGUE** or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against **LEAGUE** in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgement, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating **LEAGUE** as bankrupt or insolvent or approving a petition seeking reorganization of **LEAGUE**, or appointing a receiver, trustee, or liquidator of **LEAGUE** or of all a substantial part of its assets, and such order, judgement, or decree shall continue non-stayed and in effect for any period of sixty (60) consecutive days; or
- 12.1.2. **LEAGUE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by **LEAGUE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LEAGUE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that **LEAGUE** has commenced to cure such default.
- 12.2. Remedies of **CITY**: Upon the occurrence of an event of default by **LEAGUE** as specified in this Agreement hereof, **CITY** shall be entitled to terminate this Agreement and **CITY** shall have no further obligation hereunder.
- 12.3. Default by **CITY**: **CITY** shall be in default under this Agreement if **CITY** fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default

cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that CITY has commenced to cure such default.

- 12.4. **Remedies of LEAGUE:** Upon the occurrence of an event of default as specified in this Agreement hereof, LEAGUE shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.
- 12.5. Either CITY or LEAGUE, with or without cause, may cancel this Agreement by giving six (6) months written notice thereof to the other party.

13. INDEMNIFICATION

- 13.1 LEAGUE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LEAGUE'S activities under this AGREEMENT, including any acts or omissions of LEAGUE, any agent, officer, director, representative, employee, consultant or subcontractor of LEAGUE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LEAGUE shall promptly advise the CITY in writing of any claim or demand against the CITY or LEAGUE known to LEAGUE related to or arising out of LEAGUE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LEAGUE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LEAGUE of any of its obligations under this paragraph.
- 13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 13), is an INDEMNITY extended by LEAGUE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. LEAGUE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials,

employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1. Any and all employees, representatives, agents or volunteers of **LEAGUE** while engaged in the performance of any work required by the **CITY** or any work related to a lease of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LEAGUE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LEAGUE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LEAGUE**.
- 14.2. Prior to the commencement of any work under this Agreement, **LEAGUE** shall furnish an original completed Certificate(s), including endorsements, of Insurance to the **CITY'S** Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), and endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the **CITY'S** Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.
- 14.3. The **CITY** reserves the right to review the insurance requirements of this section 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 the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 14.4. **LEAGUE'S** financial integrity is of interest to **CITY**, therefore, subject to **LEAGUE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LEAGUE** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **LEAGUE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (vii.) or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
	a. Premises/Operations	
	b. Independent Contractors	
	c. Broad Form Contractual Liability	
	d. Products/completed operations	

- e. Broad form property damage, to include fire legal liability
 - f. Personal Injury
3. Comprehensive Automobile Liability*
 - a. Owned/Leased Vehicles
 - b. Non-owned Vehicles
 - c. Hired Vehicles
 Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
 4. Property Insurance: For physical damage to the property of **LEAGUE**, including improvements and betterment to the Licensed Premises, if applicable.
 Coverage for a minimum of eighty percent (80%) of the Replacement Cost of **LEAGUE'S** property.
- 14.5. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LEAGUE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.
- 14.6. **LEAGUE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 14.6.1. Name the **CITY** and its officers, 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;
 - 14.6.2. 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;
 - 14.6.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 14.7. **LEAGUE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:
- City of San Antonio
 Department of Parks and Recreation
 Contract Services Division
 P.O. Box 839966
 San Antonio, Texas 78283-3966
- 14.8. If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate Agreement termination proceedings on the first event of default. The **CITY** may upon **LEAGUE'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 **LEAGUE** to stop the use of the Premises hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.

- 14.9. Nothing herein contained shall be construed as limiting in any way the extent to which **LEAGUE** may be held responsible for payments of damages to persons or property resulting from **LEAGUE'S** or its subcontractors' performance of the work covered under this Agreement.
- 14.10. All personal property placed in the Premises shall be at the sole risk of **LEAGUE**. **CITY** shall not be liable, and **LEAGUE** waives all claims for any damage either to the person or property of **LEAGUE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LEAGUE** shall save and hold harmless **CITY** from any claims arising out of damage to **LEAGUE'S** property or damage to **LEAGUE'S** business, including subrogation claims by **LEAGUE'S** insurers.

15. REPORTS

- 15.1. **LEAGUE** shall inform the Director, in writing, of its current officers of the **LEAGUE** and promptly advise said Director, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this Agreement, **LEAGUE** will furnish to the Director a report and financial statement including the following information:
 - 15.1.1. Value of the physical improvements placed on the property during the previous twelve (12) months;
 - 15.1.2. Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements for the previous twelve (12) months;
 - 15.1.3. Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
 - 15.1.4. Number of participants in **LEAGUE'S**, teams, and ages;
 - 15.1.5. Certificate of insurance (required year-round), including endorsements;
 - 15.1.6. Names, addresses, phone numbers and zip codes of all current executive board officers of **LEAGUE**;
 - 15.1.7. Starting and ending date and month of each regular season;
 - 15.1.8. Number of tournaments and special events held (briefly describe);
 - 15.1.9. Current constitution and by-laws, articles of incorporation, and corporation provision/signature of authority;
 - 15.1.10. Proof of compliance with Policies and Procedures established by the national Pop Warner Football association;
 - 15.1.11. Copy of the organization's annual financial report.
 - 15.1.12. Before the expiration date of the Maintenance Agreement, **LEAGUE** must submit a letter to the Director of Parks and Recreation requesting continued

utilization of the property.

16. SIGNS

- 16.1 **LEAGUE** hereby agrees not to install or display any permanent sign(s) upon the Premises without prior written approval of said sign(s) by the **CITY** through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. Signs which advertise businesses, sponsors, products, services, logos, or events not available on the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. **LEAGUE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs.

17. ASSIGNMENT

- 17.1 This Agreement is personal to **LEAGUE**. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to **LEAGUE** hereunder.

18. RELATIONSHIP OF PARTIES

- 18.1 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 ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and Licensee.

19. CONFLICT OF INTEREST

- 19.1 **LEAGUE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 19.2 **LEAGUE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

20. SEPARABILITY

- 20.1 The parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this Agreement, then and in that

event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

- 21.1 Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **LEAGUE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LEAGUE** at:

Ben Guerra, President
South Central Cougars Pop Warner Football
19458 Hwy 281 South
San Antonio, Texas 78221

or at such other address on file with the City Clerk as **LEAGUE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 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.

24. NON-DISCRIMINATION

- 24.1 **LEAGUE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LEAGUE** acknowledges is prohibited.

25. CAPTIONS

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

26. HOLDING OVER

26.1 Should **LEAGUE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding License Agreement continuing in effect until such time as **LEAGUE** permanently ceases use of the field or a new License Agreement is executed.

27. ENTIRE AGREEMENT/AMENDMENT

27.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LEAGUE**.

27.2 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

28.1 The signer of this License Agreement for **LEAGUE** hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of **LEAGUE**.

IN WITNESS WHEREOF, we have affirmed our signatures this 7th day of May 2007.

LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

Sheryl Sculley
Sheryl Sculley
City Manager

ATTEST:

Lucinda M. Meeks
City Clerk



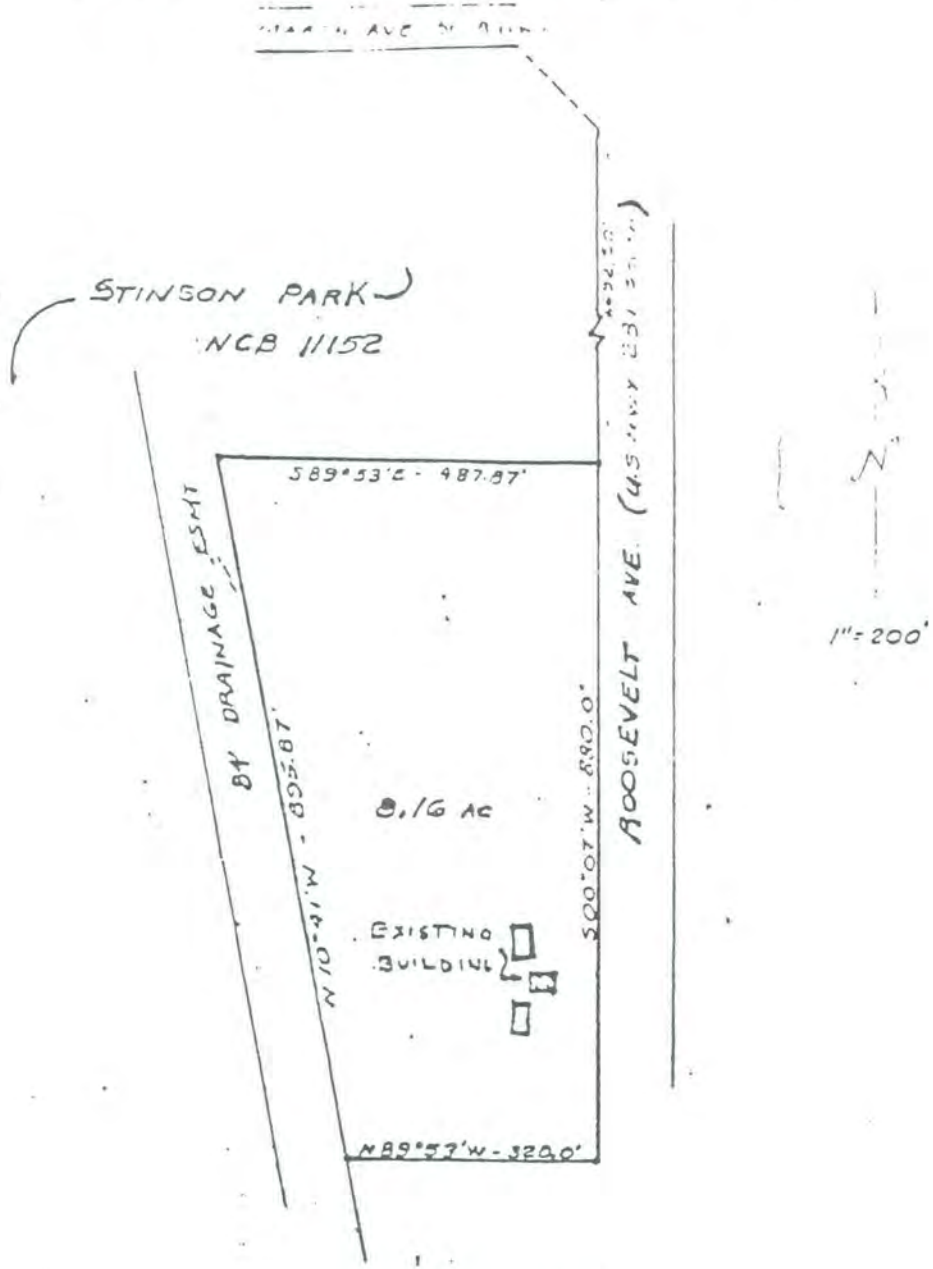
LICENSEE:

By: *[Signature]*
Title: President / Board Rep
SR pop warfare

APPROVED AS TO FORM: *[Signature]*, City Attorney

AE: Ordinance 2007-04-19-0458; 4/19/2007

STINSON FIELD



SOUTH CENTRAL COUGARS, INC.
STINSON PARK
CONTRACT 26-0402

STINSON FIELD

SOUTH CENTRAL COUGARS
POP WARNER FOOTBALL

A drawing showing an
8.16 Acre Tract out of
N.C.B. 11152,
San Antonio, Texas, Bexar
County

STATE OF TEXAS
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE PLAT IS TRUE AND CORRECT
ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER
MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR
ENCROACHMENTS OF BUILDINGS ON ADJOINING PROPERTY AND THAT
ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS
SHOWN ABOVE

EXHIBIT A

This _____ day of _____, 19____ A. D.

Total Pages _____ Page _____ Sub No. _____



CMS or Ordinance Number: CN0040000934

TSLGRS File Code:1000-25

Document Title:

CONT - Field Use and Maintenance License Agreement for East Central Lakeside Athletic Association at Brooks Park.

Commencement Date:

5/8/2007

Expiration Date:

4/30/2012

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT
EAST CENTRAL LAKESIDE ATHLETIC ASSOCIATION, INC.**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the 19th day of April, 2007, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. 2007-04-19-0458, dated April 19, 2007 (herein called "**CITY**"), and **EAST CENTRAL LAKESIDE ATHLETIC ASSOCIATION, INC.**, a Texas non-profit corporation (herein called "**LEAGUE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, **LEAGUE** is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this agreement; and
- 1.3 WHEREAS, for the benefit not only of **LEAGUE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **LEAGUE'S** offer to maintain the field at hereinafter named park; and
- 1.4 WHEREAS, in consideration of **LEAGUE'S** maintenance of hereinafter cited field **CITY** desires to grant permission to **LEAGUE** to enter and use said field as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT

- 2.1. For so long as **LEAGUE** maintains its non-profit and 501(c)(3) status, **CITY** hereby designates **LEAGUE** as the primary user and maintainer of City-owned property as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Brooks Park being part of N.C.B. 13733, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2. By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "Director"), and **LEAGUE** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

3. USE OF FIELDS BY LEAGUE

- 3.1. **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein (hereafter called "Premises"). Such free use shall also apply to any fields added in the future pursuant to paragraph 2.2 hereinbefore.

- 3.2. Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-built and operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.
- 3.2.1. Prior to August 1st of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced fields. Said schedule must include any and all practice and game dates.
- 3.2.2. At those times in which **LEAGUE** is not utilizing above referenced fields for practice or game play; **CITY** shall coordinate use of said fields through its Field Reservation Service.
- 3.3. The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.4. **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.5. **LEAGUE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. **LEAGUE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the City, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LEAGUE**'S activities under this contract.
- 3.6. **LEAGUE** is hereby authorized to establish fees and charges for its membership and admission fees to games, and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **LEAGUE** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

4. TERM OF AGREEMENT

- 4.1. The term of this Agreement is five (5) years, beginning on May 1, 2007, which is hereafter referred to as the commencement date, and expiring on April 30, 2012, if not earlier terminated according to the terms hereof.
- 4.2. Before the expiration date of this Agreement, **LEAGUE** must submit a letter to the

Director requesting continued utilization of the property.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.

6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this Agreement, **LEAGUE** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields¹). In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed field, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
 - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
 - 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris following all practice and regular games;
 - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
 - 6.1.5 Provide insect and vermin control services as frequently as required to control these pests;
 - 6.1.6 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7 Maintain the fields/courts as required to sustain acceptable standards of playing conditions;
 - 6.1.8 Maintain concession building and repair as needed;
 - 6.1.9 Storage buildings must be maintained, painted, and in good general condition;
 - 6.1.10 Maintain and repair bleachers as needed, if applicable. All bleachers are property of the **CITY** and are not to be removed from the Premises;
 - 6.1.11 Any lighting that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**;

- 6.1.12 Paint, maintain, and keep storage shed placed on Premises by **LEAGUE** in a condition acceptable to **CITY**;
 - 6.1.13 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises; and
 - 6.1.14 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti within 5 days.
- 6.2. **LEAGUE** shall promptly repair any damage to the Premises caused by the use of the Premises by **LEAGUE** or those persons under its control. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

- 7.1 **LEAGUE** has no lighted sports fields and, as such, is not required to reimburse **CITY** for the cost of electricity.
- 7.2 **LEAGUE** may utilize water service available to the Licensed Premises at no cost to **LEAGUE**. **LEAGUE** shall be responsible for the irrigation of the Licensed Premises in a manner and frequency that is not wasteful but sustains the ground cover
- 7.2.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:
- 7.2.1.1 **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.
 - 7.2.1.2 **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m.

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

7.2.1.3 or a **LEAGUE** Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED FIELD MAINTENANCE

8.1. **LEAGUE** agrees to formulate an annual field maintenance program and to submit same in writing to the Director no later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities. The Director shall review said maintenance program and shall notify **LEAGUE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LEAGUE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.

8.1.1. During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:

8.2. **LEAGUE** further agrees to notify the Director or his designee, in writing two weeks in advance, of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LEAGUE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

9.1. **CITY**, through the Director and/or his representative(s), shall have the right to inspect the field and their amenities at any time.

10. CONCESSIONS

10.1. **LEAGUE** shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it from August 1st through December 31st of each License year as designated in Section 4.1 of this Agreement. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.

10.2. **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

11. IMPROVEMENTS

11.1. **LEAGUE** may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, **LEAGUE**, its members, employees, agents, and contractors shall insure that the

performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property.

- 11.2. **LEAGUE** shall present, for review and written approval, all designs, plans, and specifications to the Director and applicable **CITY** boards prior to commencing any construction or installation upon the Premises. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LEAGUE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure **LEAGUE'S** compliance with this Agreement.
- 11.3. **LEAGUE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA. A copy of said permits or clearances shall be provided to the Director prior to the start of any construction. **LEAGUE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LEAGUE** during the performance of any said construction and against any claim for injury to person or property.
- 11.4. Any improvements so installed by **LEAGUE** which can be removed without damage to the Premises may be removed at the sole expense of **LEAGUE** at the termination of this Agreement without payment therefore being made by **CITY**. If the improvements are not so removable without said damage to the Premises, then said improvements become the property of the **CITY**.

12. DEFAULTS AND TERMINATION RIGHTS

- 12.1. Default by **LEAGUE**: Any of the following events shall constitute default by **LEAGUE** under this Agreement:
 - 12.1.1 **LEAGUE** shall fail to maintain its non-profit or 501(c)(3) status; or
 - 12.1.2 **LEAGUE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by **LEAGUE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LEAGUE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that **LEAGUE** has commenced to cure such default.
- 12.2. Remedies of **CITY**: Upon the occurrence of an event of default by **LEAGUE** as specified in this Agreement hereof, **CITY** shall be entitled to terminate this Agreement. After such termination, **LEAGUE** shall have no further rights to access the fields, shall immediately cease all activities thereon **CITY** shall be entitled to terminate this Agreement and **CITY** shall have no further obligation hereunder.
- 12.3. Default by **CITY**: **CITY** shall be in default under this Agreement if **CITY** fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that **CITY** has commenced to cure such default.

- 12.4. Remedies of **LEAGUE**: Upon the occurrence of an event of default as specified in this Agreement hereof, **LEAGUE** shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.
- 12.5. Either **CITY** or **LEAGUE**, with or without cause, may cancel this Agreement by giving six (6) months written notice thereof to the other party.

13. INDEMNIFICATION

- 13.1 **LEAGUE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LEAGUE'S** activities under this **AGREEMENT**, including any acts or omissions of **LEAGUE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LEAGUE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE **CITY**, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF **CITY**, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LEAGUE** shall promptly advise the **CITY** in writing of any claim or demand against the **CITY** or **LEAGUE** known to **LEAGUE** related to or arising out of **LEAGUE'S** activities under this **AGREEMENT** and shall see to the investigation and defense of such claim or demand at **LEAGUE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **LEAGUE** of any of its obligations under this paragraph.
- 13.2 It is the **EXPRESS INTENT** of the parties to this **AGREEMENT**, that the **INDEMNITY** provided for in this section (Section 13), is an **INDEMNITY** extended by **LEAGUE** to **INDEMNIFY**, **PROTECT** and **HOLD HARMLESS**, the **CITY** from the consequences of the **CITY'S OWN NEGLIGENCE**, provided however, that the **INDEMNITY** provided for in this section **SHALL APPLY** only when the **NEGLIGENT ACT** of the **CITY** is a **CONTRIBUTORY CAUSE** of the resultant injury, death, or damage, and shall have no application when the negligent act of the **CITY** is the sole cause of the resultant injury, death, or damage. **LEAGUE** further **AGREES TO DEFEND**, AT ITS OWN EXPENSE and ON BEHALF OF THE **CITY** AND IN THE NAME OF THE **CITY**, any claim or litigation brought against the **CITY** and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this **INDEMNITY** shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1. Any and all employees, representatives, agents or volunteers of **LEAGUE** while engaged in the performance of any work required by the **CITY** or any work related to a lease of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **LEAGUE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **LEAGUE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **LEAGUE**.
- 14.2. Prior to the commencement of any work under this Agreement, **LEAGUE** shall furnish an original completed Certificate(s) of Insurance, including endorsements, to the **CITY'S** Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) and endorsements must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the **CITY'S** Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.
- 14.3. The **CITY** reserves the right to review the insurance requirements of this section 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 the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 14.4. **LEAGUE'S** financial integrity is of interest to **CITY**, therefore, subject to **LEAGUE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LEAGUE** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **LEAGUE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (vii.) or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence and \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	
3. Comprehensive Automobile Liability*	Combined Single Limit for Bodily Injury and

- | | |
|--|---|
| <ul style="list-style-type: none"> a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles | Property Damage of \$1,000,000 per occurrence or its equivalent |
|--|---|
4. Property Insurance: For physical damage to the property of **LEAGUE**, including improvements and betterment to the Licensed Premises, if applicable. Coverage for a minimum of eighty percent (80%) of the Replacement Cost of **LEAGUE'S** property.
- 14.5. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LEAGUE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.
- 14.6. **LEAGUE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 14.6.1. Name the **CITY** and its officers, 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;
- 14.6.2. 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;
- 14.6.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 14.7. **LEAGUE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:
- City of San Antonio
 Department of Parks and Recreation
 Contract Services Division
 P.O. Box 839966
 San Antonio, Texas 78283-3966
- 14.8. If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate Agreement termination proceedings on the first event of default. The **CITY** may upon **LEAGUE'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 **LEAGUE** to stop the use of the Premises hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.

- 14.9. Nothing herein contained shall be construed as limiting in any way the extent to which **LEAGUE** may be held responsible for payments of damages to persons or property resulting from **LEAGUE'S** or its subcontractors' performance of the work covered under this Agreement.
- 14.10. All personal property placed in the Premises shall be at the sole risk of **LEAGUE**. **CITY** shall not be liable, and **LEAGUE** waives all claims for any damage either to the person or property of **LEAGUE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LEAGUE** shall save and hold harmless **CITY** from any claims arising out of damage to **LEAGUE'S** property or damage to **LEAGUE'S** business, including subrogation claims by **LEAGUE'S** insurers.

15. REPORTS

- 15.1. **LEAGUE** shall inform the Director, in writing, of its current officers of the **LEAGUE** and promptly advise said Director, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this Agreement, **LEAGUE** will furnish to the Director a report and financial statement including the following information:
- 15.1.1. Value of the physical improvements placed on the property during the previous twelve (12) months;
 - 15.1.2. Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements for the previous twelve (12) months;
 - 15.1.3. Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
 - 15.1.4. Number of participants in **LEAGUE'S**, teams, and ages;
 - 15.1.5. Certificate of insurance including endorsements (required year-round);
 - 15.1.6. Names, addresses, phone numbers and zip codes of all current executive board officers of **LEAGUE**;
 - 15.1.7. Starting and ending date and month of each regular season;
 - 15.1.8. Number of tournaments and special events held (briefly describe);
 - 15.1.9. Current constitution and by-laws, articles of incorporation, and corporation provision/signature of authority;
 - 15.1.10. Proof of compliance with Policies and Procedures established by the national Pop Warner Football association;
 - 15.1.11. Copy of the organization's annual financial report.
 - 15.1.12. Before the expiration date of the Maintenance Agreement, **LEAGUE** must submit a letter to the Director of Parks and Recreation requesting continued utilization of the property.

16. SIGNS

- 16.1 **LEAGUE** hereby agrees not to install or display any permanent sign(s) upon the Premises without prior written approval of said sign(s) by the **CITY** through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. Signs which advertise businesses, sponsors, products, services, logos, or events not available on the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. **LEAGUE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs.

17. ASSIGNMENT

- 17.1 This Agreement is personal to **LEAGUE**. It is non-assignable, and any attempt to assign this Agreement will terminate all privileges granted to **LEAGUE** hereunder.

18. RELATIONSHIP OF PARTIES

- 18.1 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 ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and Licensee.

19. CONFLICT OF INTEREST

- 19.1 **LEAGUE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 19.2 **LEAGUE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

20. SEPARABILITY

- 20.1 The parties hereto agree that if any clause or provision of this Agreement is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this Agreement, then and in that event it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that

in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

- 21.1 Notices to **CITY** required or appropriate under this Agreement shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **LEAGUE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LEAGUE** at:

Jose Martinez, President
East Central Lakeside Athletic Association, Inc.
1546 W. Magnolia Avenue
San Antonio, Texas 78201

or at such other address on file with the City Clerk as **LEAGUE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 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.

24. NON-DISCRIMINATION

- 24.1 **LEAGUE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LEAGUE** acknowledges is prohibited.

25. CAPTIONS

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

26. HOLDING OVER

- 26.1 Should **LEAGUE** hold over the Licensed Premises, or any part thereof, after the

expiration or termination of the term of this License, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding License Agreement continuing in effect until such time as **LEAGUE** permanently ceases use of the field or a new License Agreement is executed.

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LEAGUE**.
- 27.2. No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 27.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

28. AUTHORITY

28.1 The signer of this License Agreement for **LEAGUE** hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of **LEAGUE**.

IN WITNESS WHEREOF, we have affirmed our signatures this 7th day of May 2007.

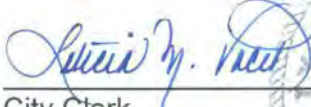
LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation



Sheryl Sculley
City Manager

ATTEST:




City Clerk



LICENSEE:

**EAST CENTRAL LAKESIDE ATHLETIC
ASSOCIATION, INC.**, a Texas Non-profit
Corporation

By: 

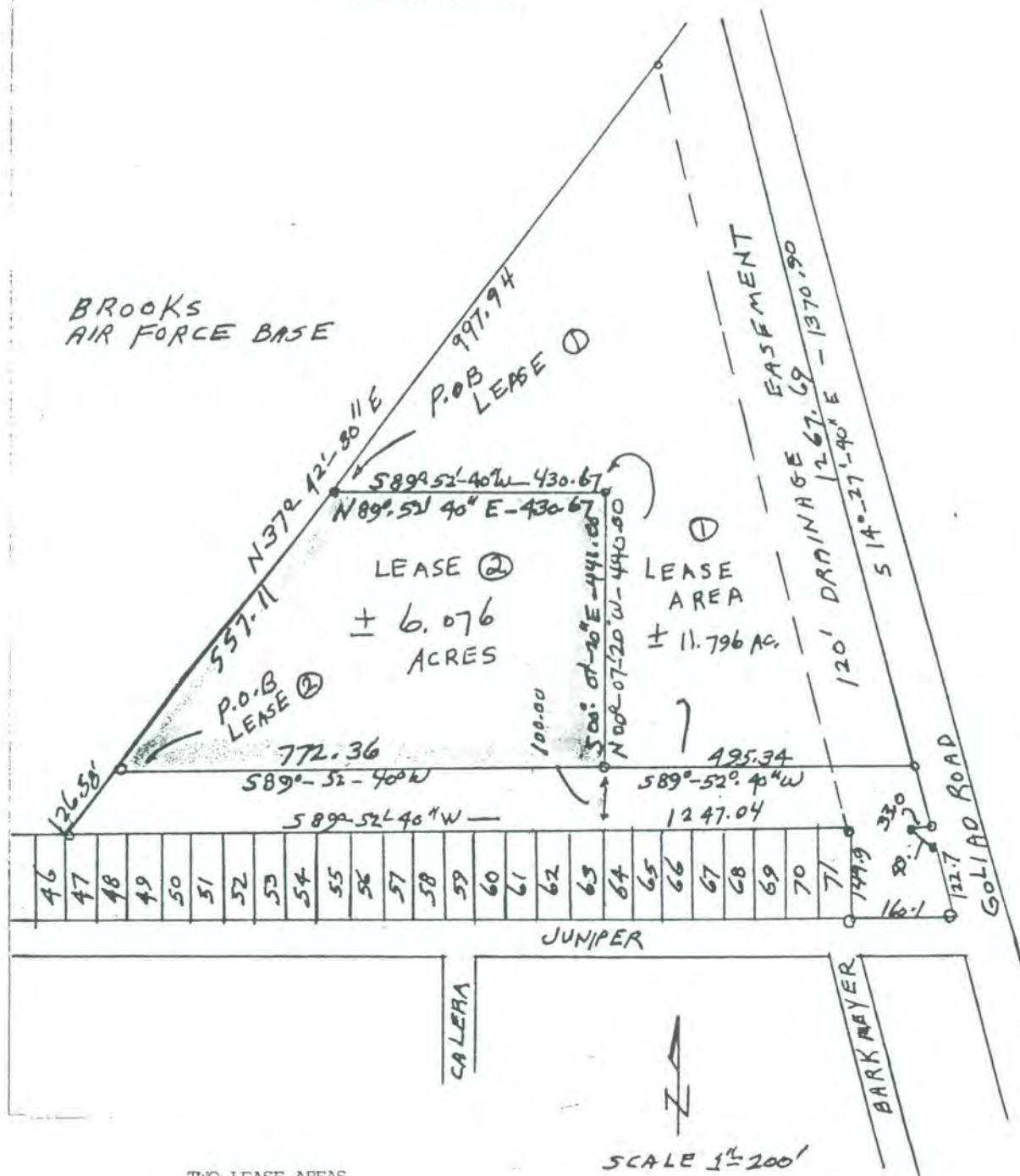
Title: President

APPROVED AS TO FORM: 
_____, City Attorney

RE: Ordinance 2007-04-19-0458 ; 4/19/2007

EAST CENTRAL LAKESIDE
ATHLETIC ASSOCIATION

BROOKS PARK



TWO LEASE AREAS

- #1. A DRAWING A ± 11.796 ACRE TRACT LEASE OF BROOKS' PARK ± 21.373 ACRE TRACT AND NCB 10889
- #2. A DRAWING SHOWING A ± 6.076 ACRE TRACT OUT OF 21.373 ACRE TRACT NCB 10889, SAN ANTONIO, BEXAR COUNTY TEXAS

STATE OF TEXAS
COUNTY OF BEXAR

EXHIBIT A

I HEREBY CERTIFY THAT THE ABOVE DEPICTION OF THIS TRACT, ACCORDING TO AN ACTUAL SURVEY MADE BY ME OR UNDER MY SUPERVISION AND THAT THERE ARE NO UNRECORDED ENCUMBRANCES OF BUILDINGS OR ADJACENT LOTS, AND THAT ALL BUILDINGS ARE WHOLLY DELETED FROM THE SURVEY AS SHOWN ABOVE.

This _____ day of _____ 19____ A. D.

Reference

VOL - 7575 - PAGE 422
7683 - PAGE 36

Field Book Page _____



CMS or Ordinance Number: CN0040000933

TSLGRS File Code:1000-25

Document Title:

CONT - Field Use and Maintenance License Agreement for the use of Brooks Park.

Commencement Date:

5/7/2007

Expiration Date:

4/30/2012

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT
ALAMO CITY RUGBY FOOTBALL CLUB, INC.**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the 19th day of April, 2007, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No 2007-04-19-0458, dated April 19, 2007 (herein called "**CITY**"), and **ALAMO CITY RUGBY FOOTBALL CLUB, INC.**, a Texas non-profit corporation (herein called "**LEAGUE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, **LEAGUE** is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this **Agreement**; and
- 1.3 WHEREAS, for the benefit not only of **LEAGUE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **LEAGUE'S** offer to maintain the field at hereinafter named park; and
- 1.4 WHEREAS, in consideration of **LEAGUE'S** maintenance of hereinafter cited field **CITY** desires to grant permission to **LEAGUE** to enter and use said field as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT

- 2.1. For so long as **LEAGUE** maintains its non-profit and 501(c)(3) status, **CITY** hereby designates **LEAGUE** as the primary user and maintainer of City-owned property as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Brooks Park being part of N.C.B. 13733, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2. By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "Director"), and **LEAGUE** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

3. USE OF FIELDS BY LEAGUE

- 3.1. **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein (hereafter called "Premises"). Such free use shall also apply to any fields added in the future pursuant to paragraph 2.2 hereinbefore.

- 3.2. Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-built and operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.
- 3.2.1. Prior to January 1st of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced fields. Said schedule must include any and all practice and game dates.
- 3.2.2. At those times in which **LEAGUE** is not utilizing above referenced fields for practice or game play; **CITY** shall coordinate use of said fields through its Field Reservation Service.
- 3.3. The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.4. **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.5. **LEAGUE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. **LEAGUE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the **CITY**, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LEAGUE**'s activities under this contract.
- 3.6. **LEAGUE** is hereby authorized to establish fees and charges for its membership and admission fees to games, and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **LEAGUE** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

4. TERM OF AGREEMENT

- 4.1. The term of this Agreement is five (5) years, beginning on May 1, 2007 which is hereafter referred to as the commencement date, and expiring on April 30, 2012, if not earlier terminated according to the terms hereof.
- 4.2. Before the expiration date of this Agreement, **LEAGUE** must submit a letter to the

Director requesting continued utilization of the property.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.

6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this Agreement, **LEAGUE** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields¹). In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed field, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
 - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
 - 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris following all practice and regular games;
 - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
 - 6.1.5 Provide insect and vermin control services as frequently as required to control these pests;
 - 6.1.6 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7 Maintain the fields/courts as required to sustain acceptable standards of playing conditions;
 - 6.1.8 Maintain concession building and repair as needed;
 - 6.1.9 Storage buildings must be maintained, painted, and in good general condition;
 - 6.1.10 Maintain and repair bleachers as needed, if applicable. All bleachers are property of the **CITY** and are not to be removed from the Premises;
 - 6.1.11 Any lighting that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**;

- 6.1.12 Paint, maintain, and keep storage shed placed on Premises by **LEAGUE** in a condition acceptable to **CITY**;
 - 6.1.13 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises; and
 - 6.1.14 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti within 5 days.
- 6.2. **LEAGUE** shall promptly repair any damage to the Premises caused by the use of the Premises by **LEAGUE** or those persons under its control. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

- 7.1 In order to offset **CITY**'s cost of electricity, **LEAGUE** will pay to **CITY** \$150 per month per lighted field throughout the term of this Agreement during **LEAGUE**'s designated term as outlined in Section 3.1.1 herein. Payment shall commence on the first day of the first month following City Council approval of this **Agreement** and shall be due on or before the first day of each month and mailed to:

City of San Antonio
Treasury Division
Central Billing Station
PO Box 839966
San Antonio, Texas 78283

- 7.2 **LEAGUE** may utilize water service available to the Premises at no cost to **LEAGUE**. **LEAGUE** shall be responsible for the irrigation of the Premises in a manner and frequency that is not wasteful but sustains the ground cover.

During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:

- 7.2.1. **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00

a.m.¹, and only once a week.

7.2.2. **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

7.2.3. or a **LEAGUE** Water Use Plan, which has been pre-approved by SAWS

8. SCHEDULED FIELD MAINTENANCE

- 8.1. **LEAGUE** agrees to formulate an annual field maintenance program and to submit same in writing to the Director no later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities. The Director shall review said maintenance program and shall notify **LEAGUE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LEAGUE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.
- 8.2. **LEAGUE** further agrees to notify the Director or his designee, in writing two weeks in advance, of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LEAGUE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

- 9.1. **CITY**, through the Director and/or his representative(s), shall have the right to inspect the field and their amenities at any time.

10. CONCESSIONS

- 10.1. **LEAGUE** shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 10.2. **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

11. IMPROVEMENTS

- 11.1. **LEAGUE** may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, **LEAGUE**, its members, employees, agents, and contractors shall insure that the performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property.
- 11.2. **LEAGUE** shall present, for review and written approval, all designs, plans, and specifications to the Director and applicable **CITY** boards prior to commencing any construction or installation upon the Premises. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LEAGUE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure **LEAGUE'S** compliance with this Agreement.
- 11.3. **LEAGUE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA. A copy of said permits or clearances shall be provided to the Director prior to the start of any construction. **LEAGUE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LEAGUE** during the performance of any said construction and against any claim for injury to person or property.
- 11.4. Any improvements so installed by **LEAGUE** which can be removed without damage to the Premises may be removed at the sole expense of **LEAGUE** at the termination of this Agreement without payment therefore being made by **CITY**. If the improvements are not so removable without said damage to the Premises, then said improvements become the property of the **CITY**.

12. DEFAULTS AND TERMINATION RIGHTS

- 12.1. Default by **LEAGUE**: Any of the following events shall constitute default by **LEAGUE** under this Agreement:
 - 12.1.1 **LEAGUE** shall fail to maintain its non-profit or 501(c)(3) status; or
 - 12.1.2 **LEAGUE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **LEAGUE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LEAGUE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that **LEAGUE** has commenced to cure such default.
- 12.2. Remedies of **CITY**: Upon the occurrence of an event of default by **LEAGUE** as specified in this **Agreement** hereof, **CITY** shall be entitled to terminate this **Agreement** and **CITY** shall have no further obligation hereunder. After such termination, **LEAGUE** shall have no further rights to access the fields, shall immediately cease all activities thereon

- 12.3. **Default by CITY:** CITY shall be in default under this **Agreement** if CITY fails to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by CITY, and such default shall continue for a period of thirty (30) days after notice thereof by LEAGUE to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that CITY has commenced to cure such default.
- 12.4. **Remedies of LEAGUE:** Upon the occurrence of an event of default as specified in this **Agreement** hereof, LEAGUE shall be entitled to terminate this **Agreement** and shall have such other rights at law or equity to which it may be entitled.
- 12.5. Either CITY or LEAGUE, with or without cause, may cancel this **Agreement** by giving six (6) months written notice thereof to the other party.

13. INDEMNIFICATION

- 13.1 LEAGUE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to LEAGUE'S activities under this AGREEMENT, including any acts or omissions of LEAGUE, any agent, officer, director, representative, employee, consultant or subcontractor of LEAGUE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LEAGUE shall promptly advise the CITY in writing of any claim or demand against the CITY or LEAGUE known to LEAGUE related to or arising out of LEAGUE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LEAGUE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LEAGUE of any of its obligations under this paragraph.
- 13.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 13), is an INDEMNITY extended by LEAGUE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have

no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. LEAGUE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

14. INSURANCE REQUIREMENTS

- 14.1. Any and all employees, representatives, agents or volunteers of LEAGUE while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of LEAGUE only and not of the CITY. Any and all claims that may result from any obligation for which LEAGUE may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of LEAGUE.
- 14.2. Prior to the commencement of any work under this Agreement, LEAGUE shall furnish an original completed Certificate(s) of Insurance, including endorsements to the CITY'S Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s), including endorsements, must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.
- 14.3. The CITY reserves the right to review the insurance requirements of this section 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 the CITY'S Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement, but in no instance will the CITY allow modification whereupon the CITY may incur increased risk.
- 14.4. LEAGUE'S financial integrity is of interest to CITY, therefore, subject to LEAGUE'S right to maintain reasonable deductibles in such amounts as are approved by CITY, LEAGUE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at LEAGUE'S sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A- (vii.) or better by A.M. Best Company and/or otherwise acceptable to the CITY, in the following types and amounts:

	TYPE	AMOUNT
1.	Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2.	Commercial General (Public) Liability	Combined Single Limit for Bodily Injury

- | | |
|---|---|
| <p>Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury | <p>and Property Damage of \$1,000,000 per occurrence and \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage</p> |
| <p>3. Comprehensive Automobile Liability*</p> <ul style="list-style-type: none"> a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles | <p>Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent</p> |
| <p>4. Property Insurance: For physical damage to the property of LEAGUE, including improvements and betterment to the Licensed Premises, if applicable.</p> | <p>Coverage for a minimum of eighty percent (80%) of the Replacement Cost of LEAGUE'S property.</p> |
- 14.5. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LEAGUE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.
- 14.6. **LEAGUE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 14.6.1. Name the **CITY** and its officers, 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;
- 14.6.2. 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;
- 14.6.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 14.7. **LEAGUE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Department of Parks and Recreation

Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

- 14.8. If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **Agreement** termination proceedings on the first event of default. The **CITY** may upon **LEAGUE'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 **LEAGUE** to stop the use of the Premises hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.
- 14.9. Nothing herein contained shall be construed as limiting in any way the extent to which **LEAGUE** may be held responsible for payments of damages to persons or property resulting from **LEAGUE'S** or its subcontractors' performance of the work covered under this **Agreement**.
- 14.10. All personal property placed in the Premises shall be at the sole risk of **LEAGUE**. **CITY** shall not be liable, and **LEAGUE** waives all claims for any damage either to the person or property of **LEAGUE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LEAGUE** shall save and hold harmless **CITY** from any claims arising out of damage to **LEAGUE'S** property or damage to **LEAGUE'S** business, including subrogation claims by **LEAGUE'S** insurers.

15. REPORTS

- 15.1. **LEAGUE** shall inform the Director, in writing, of its current officers of the **LEAGUE** and promptly advise said Director, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this **Agreement**, **LEAGUE** will furnish to the Director a report and financial statement including the following information:
- 15.1.1. Value of the physical improvements placed on the property during the previous twelve (12) months;
- 15.1.2. Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements for the previous twelve (12) months;
- 15.1.3. Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
- 15.1.4. Number of participants in **LEAGUE'S**, teams, and ages;
- 15.1.5. Certificate of insurance including endorsements (required year-round);
- 15.1.6. Names, addresses, phone numbers and zip codes of all current executive board officers of **LEAGUE**;
- 15.1.7. Starting and ending date and month of each regular season;
- 15.1.8. Number of tournaments and special events held (briefly describe);
- 15.1.9. Current constitution and by-laws, articles of incorporation, and corporation

provision/signature of authority;

15.1.10. Copy of the organization's annual financial report.

15.1.11. Before the expiration date of the Maintenance Agreement, **LEAGUE** must submit a letter to the Director of Parks and Recreation requesting continued utilization of the property.

16. SIGNS

16.1 **LEAGUE** hereby agrees not to install or display any permanent sign(s) upon the Premises without prior written approval of said sign(s) by the **CITY** through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. Signs which advertise businesses, sponsors, products, services, logos, or events not available on the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. League agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs.

17. ASSIGNMENT

17.1 This **Agreement** is personal to **LEAGUE**. It is non-assignable, and any attempt to assign this **Agreement** will terminate all privileges granted to **LEAGUE** hereunder.

18. RELATIONSHIP OF PARTIES

18.1 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 ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and Licensee.

19. CONFLICT OF INTEREST

19.1 **LEAGUE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.

19.2 **LEAGUE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

20. SEPARABILITY

- 20.1 The parties hereto agree that if any clause or provision of this **Agreement** is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this **Agreement**, then and in that event it is the intention of the parties hereto that the remainder of this **Agreement** shall not be affected thereby, and it is also the intention of the parties to this **Agreement** that in lieu of each clause or provision of this **Agreement** that is illegal, invalid or unenforceable, there be added as a part of this **Agreement** a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

21. NOTICES

- 21.1 Notices to **CITY** required or appropriate under this **Agreement** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **LEAGUE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LEAGUE** at:

**Kris Newman, President
Alamo City Rugby Football, Inc.
3329 Windway Creek
Schertz, Texas 78154**

or at such other address on file with the City Clerk as **LEAGUE** may provide from time to time in writing to **CITY**.

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 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.

24. NON-DISCRIMINATION

- 24.1 **LEAGUE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LEAGUE** acknowledges is prohibited.

28. AUTHORITY

28.1 The signer of this License Agreement for LEAGUE hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of LEAGUE.

IN WITNESS WHEREOF, we have affirmed our signatures this 7th day of May 2006.

LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation


Sheryl Sculley
City Manager

ATTEST:


City Clerk



LICENSEE:

ALAMO CITY RUGBY FOOTBALL CLUB, INC., a Texas Non-profit Corporation

By: 

Title: PRESIDENT

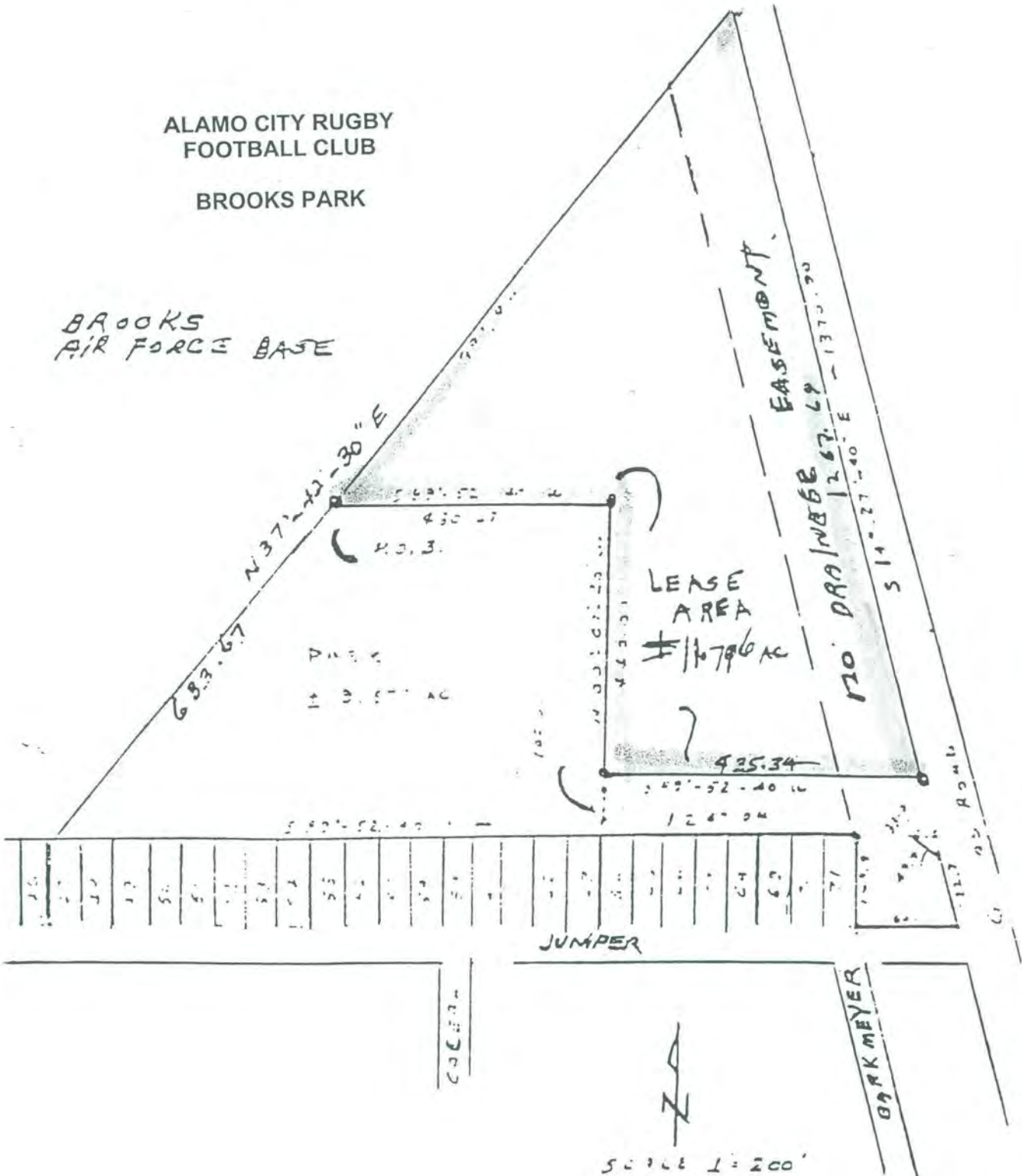
APPROVED AS TO FORM: , City Attorney

RE: ordinance 2007-04-19-0458; 4/19/2007

ALAMO CITY RUGBY
FOOTBALL CLUB

BROOKS PARK

BROOKS
AIR FORCE BASE



A drawing showing a lease area of +/- 11.796 acres out of Brooks Park a +/- 21.373 acre tract. Brooks Air Force Base and N.C.B. 10889, San Antonio, Bexar County, Texas

EXHIBIT A

Reference

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STATE OF TEXAS
COUNTY OF BEXAR

I HEREBY CERTIFY THAT THE ABOVE IS TRUE AND CORRECT ACCORDING TO AN ACTUAL SURVEY MADE ON THE GROUND UNDER MY SUPERVISION AND THAT THERE ARE NO VISIBLE EASEMENTS OR ENCROACHMENTS OF BUILDINGS ON ADJACENT PROPERTY AND THAT ALL BUILDINGS ARE WHOLLY LOCATED ON THIS PROPERTY EXCEPT AS SHOWN ABOVE.

This _____ day of _____, 19____ A. D.



CMS or Ordinance Number: CN4600004409

TSLGRS File Code:1075-16

Document Title:

CONT - An ordinance authorizing the execution of a Funding Agreement with the San Antonio Parks Foundation for the expenditure of up to \$600,000.00

Commencement Date:

3/27/2006

Expiration Date:

9/30/2008

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT
SOUTHEAST PONY BASEBALL AND SOFTBALL**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the 19th day of April, 2007, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. 2007-04-19-0458 dated April 19, 2007 (herein called "**CITY**"), and **SOUTHEAST PONY BASEBALL AND SOFTBALL**, a Texas non-profit corporation (herein called "**LEAGUE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, for the benefit not only of **LEAGUE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **LEAGUE'S** offer to maintain the field at hereinafter named park; and
- 1.3 WHEREAS, in consideration of **LEAGUE'S** maintenance of hereinafter cited field **CITY** desires to grant permission to **LEAGUE** to enter and use said field as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT

- 2.1 **CITY** hereby designates **LEAGUE** as the primary user and maintainer of City-owned property as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Southside Lions Park being part of N.C.B. 10833, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "**Director**"), and **LEAGUE** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

3. USE OF FIELDS BY LEAGUE

- 3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the

Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein. Such free use shall also apply to any fields added in the future pursuant to paragraph 2.2 hereinbefore.

3.1.1 **LEAGUE'S** use of said fields in **EXHIBIT A** shall be limited to the dates of January 1st through July 31st of the License Years designated in Section 4.1 of this **Agreement**.

3.2 Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-built and operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.

3.2.1. Prior to January 1st of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced fields. Said schedule must include any and all practice and game dates. Prior to May 31st of each License Year, **LEAGUE** shall submit to **CITY** a Playoff/All Star Game (or its equivalent) schedule of dates and times for use of above referenced fields. Said Playoff/All Star Game schedule must include any and all practice and game dates.

3.2.2. At those times in which **LEAGUE** is not utilizing above referenced fields for practice or game play; **CITY** shall coordinate use of said fields through its Field Reservation Service.

3.3 The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.

3.4 **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.

3.5 **LEAGUE** is hereby authorized to establish fees and charges for its membership and to collect and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **LEAGUE** shall not charge or attempt

to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

4. TERM OF AGREEMENT

- 4.1. The term of this **Agreement** is five (5) years, beginning on May 1, 2007, which is hereafter referred to as the commencement date, and expiring on April 30, 2012, if not earlier terminated according to the terms hereof.
- 4.2. Before the expiration date of this **Agreement**, **LEAGUE** must submit a letter to the **Director** requesting continued utilization of the property.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.
- 5.3 **LEAGUE** acknowledges that the Premises are situated on top of an unpermitted landfill and that any activities that it undertakes under this Field Use and Maintenance Agreement shall be in full compliance with all state and federal environmental regulations related to landfills. This **Agreement** does not confer any right to **LEAGUE** to build any structures on the Premises.

6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 **General Maintenance:** During the term of this **Agreement**, **LEAGUE** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields), from the dates of January 1st through July 31st of each License Year. In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed field, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
 - 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
 - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be

- cleared of all debris and foliage;
- 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession area, and parking area(s) free from litter and debris following all practice and regular games;
 - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
 - 6.1.5 Provide ant control services as frequently as required to control these pests;
 - 6.1.6 Level the fields with dirt/sand as needed to sustain acceptable standards of playing conditions;
 - 6.1.7 Maintain concession building and repair as needed (if applicable);
 - 6.1.8 Storage buildings must be maintained, painted, and in good general condition (if applicable);
 - 6.1.9 Maintain and repair bleachers as needed; all bleachers are property of the **CITY** and are not to be removed from the Premises (if applicable);
 - 6.1.10 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises;
 - 6.1.11 Any lighting (if applicable) that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**; and
 - 6.1.12 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti within 5 days.
- 6.2 **LEAGUE** shall promptly repair any damage to the Premises caused by the use of the Premises by **LEAGUE** or those persons under its control. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License **Agreement** and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

- 7.1 In order to offset **CITY**'s cost of electricity, **LEAGUE** will pay to **CITY** \$150 per month per lighted field, or a total of \$450 per month for three lighted fields, throughout the term of this **Agreement** during **LEAGUE**'s designated usage term as outlined in Section 3.1.1 herein. Payment shall commence on the first day of the first month following City Council approval of this **Agreement** and shall be due on or before the first day of each month and mailed to:

**City of San Antonio
Treasury Division
Central Billing Station
PO Box 839966
San Antonio, TX 78283-3975**

- 7.2 **LEAGUE** may utilize water service available to the Licensed Premises at no cost to **LEAGUE**. **LEAGUE** shall be responsible for the irrigation of the Licensed Premises in a manner and frequency that is not wasteful but sustains the ground cover.
- 7.2.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LEAGUE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:
- 7.2.1.1 **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.¹, and only once a week.
- 7.2.1.2 **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.
- 7.2.1.3 or a **LEAGUE** Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED FIELD MAINTENANCE

- 8.1 **LEAGUE** agrees to formulate an annual field maintenance program and to submit same in writing to the **Director** no later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding,

¹ SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.

fertilization, and other programmable field maintenance activities. The **Director** shall review said maintenance program and shall notify **LEAGUE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LEAGUE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.

- 8.2 **LEAGUE** further agrees to notify the **Director** or his designee, in writing two weeks in advance, of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LEAGUE** from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

- 9.1 **CITY**, through the **Director** and/or his representative(s), shall have the right to inspect the field and their amenities at any time.

10. CONCESSIONS

- 10.1 **LEAGUE** shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it from January 1st through July 31st of each License year as designated in Section 4.1 of this **Agreement**. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 10.2 **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

11. DEFAULTS AND TERMINATION RIGHTS

- 11.1 Default by **LEAGUE**: Any of the following events shall constitute default by **LEAGUE** under this **Agreement**:
- 11.1.1 **LEAGUE** shall apply for or consent to the appointment of a receiver, trustee, or liquidator of **LEAGUE** or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against **LEAGUE** in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating **LEAGUE** as bankrupt or insolvent or approving a petition seeking reorganization of **LEAGUE**, or appointing a receiver, trustee, or liquidator of **LEAGUE** or of all a substantial part of its assets, and such order, judgment, or decree shall continue non-stayed and in effect for any period of sixty (60)

consecutive days; or

- 11.1.2 **LEAGUE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **LEAGUE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LEAGUE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that **LEAGUE** has commenced to cure such default.
- 11.2 Remedies of **CITY**: Upon the occurrence of an event of default by **LEAGUE** as specified in this **Agreement** hereof, **CITY** shall be entitled to terminate this **Agreement** and **CITY** shall have no further obligation hereunder.
- 11.3 Default by **CITY**: **CITY** shall be in default under this **Agreement** if **CITY** fails to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that **CITY** has commenced to cure such default.
- 11.4 Remedies of **LEAGUE**: Upon the occurrence of an event of default as specified in this **Agreement** hereof, **LEAGUE** shall be entitled to terminate this **Agreement** and shall have such other rights at law or equity to which it may be entitled.
- 11.5 Either **CITY** or **LEAGUE**, with or without cause, may cancel this **Agreement** by giving six (6) months written notice thereof to the other party.

12. INDEMNIFICATION

- 12.1 **LEAGUE** covenants and agrees to **FULLY INDEMNIFY** and **HOLD HARMLESS**, the **CITY** and the elected officials, employees, officers, directors, volunteers and representatives of the **CITY**, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the **CITY** directly or indirectly arising out of, resulting from or related to **LEAGUE'S** activities under this **AGREEMENT**, including any acts or omissions of **LEAGUE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LEAGUE**, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this **AGREEMENT**, all without however, waiving any governmental immunity available to the **CITY** under Texas Law and without waiving any defenses of the parties under Texas Law. **IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND**

REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LEAGUE shall promptly advise the CITY in writing of any claim or demand against the CITY or LEAGUE known to LEAGUE related to or arising out of LEAGUE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at LEAGUE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LEAGUE of any of its obligations under this paragraph.

- 12.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 12), is an INDEMNITY extended by LEAGUE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. LEAGUE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

13. INSURANCE REQUIREMENTS

- 13.1 Any and all employees, representatives, agents or volunteers of LEAGUE while engaged in the performance of any work required by the CITY or any work related to a lease of space or Concession Agreement with the CITY shall be considered employees, representatives, agents or volunteers of LEAGUE only and not of the CITY. Any and all claims that may result from any obligation for which LEAGUE may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of LEAGUE.
- 13.2 Prior to the commencement of any work under this Agreement, LEAGUE shall furnish an original completed Certificate(s) of Insurance to the CITY'S Director, Parks and Recreation Department, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate shall have been delivered to the CITY'S Director, Parks and Recreation Department, and no officer or employee shall have authority to waive this requirement.

- 13.3 The **CITY** reserves the right to review the insurance requirements of this section 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 the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **Agreement**, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 13.4 **LEAGUE'S** financial integrity is of interest to **CITY**, therefore, subject to **LEAGUE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **LEAGUE** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **LEAGUE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	
3. Comprehensive Automobile Liability*	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	
c. Hired Vehicles	
4. Property Insurance: For physical damage to the property of LEAGUE , including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of LEAGUE'S property

*If Applicable

- 13.5 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **LEAGUE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.

- 13.6 **LEAGUE** agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:
- 13.6.1 Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insureds 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;
- 13.6.2 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;
- 13.6.3 Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 13.7 **LEAGUE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

- 13.8 If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may initiate **Agreement** termination proceedings on the first event of default. The **CITY** may upon **LEAGUE'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 **LEAGUE** to stop the use of the Premises hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.
- 13.9 Nothing herein contained shall be construed as limiting in any way the extent to which **LEAGUE** may be held responsible for payments of damages to persons or property resulting from **LEAGUE'S** or its subcontractors' performance of the work covered under this **Agreement**.
- 13.10 All personal property placed in the Premises shall be at the sole risk of **LEAGUE**. **CITY** shall not be liable, and **LEAGUE** waives all claims for any damage either to the person or property of **LEAGUE** or to other persons due to the Premises or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current;

or from any act or omission of employees, or other occupants of the Premises, or any other persons; due to the happening of any accident in or about Premises. **LEAGUE** shall save and hold harmless **CITY** from any claims arising out of damage to **LEAGUE'S** property or damage to **LEAGUE'S** business, including subrogation claims by **LEAGUE'S** insurers.

14. REPORTS

- 14.1 **LEAGUE** shall inform the **Director**, in writing, of its current officers of the **LEAGUE** and promptly advise said **Director**, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this **Agreement**, **LEAGUE** will furnish to the **Director** a report and financial statement including the following information:
- 14.1.1 Value of the physical improvements placed on the property during the previous twelve (12) months;
 - 14.1.2 Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements for the previous twelve (12) months;
 - 14.1.3 Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
 - 14.1.4 Number of participants in **LEAGUE'S**, teams, and ages;
 - 14.1.5 Certificate of insurance (required year-round);
 - 14.1.6 Names, addresses, phone numbers and zip codes of all current executive board officers of **LEAGUE**;
 - 14.1.7 Starting and ending date and month of each regular season;
 - 14.1.8 Number of tournaments and special events held (briefly describe);
 - 14.1.9 Current constitution and by-laws, articles of incorporation, and corporation provision/signature of authority;
 - 14.1.10 Proof of compliance with Policies and Procedures established by the PONY Baseball/Softball, Inc.;
 - 14.1.11 Copy of the organization's annual financial report.
 - 14.1.12 Before the expiration date of the Maintenance Agreement, **LEAGUE** must submit a letter to the Director of Parks and Recreation requesting continued utilization of the property

15. SIGNS

- 15.1 **LEAGUE** hereby agrees not to install or display any permanent sign(s) upon the Premises without prior written approval of said sign(s) by the **CITY** through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. Signs which advertise businesses, sponsors, products, services, logos, or events not available on the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. **LEAGUE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs.

16. ASSIGNMENT

- 16.1 This **Agreement** is personal to **LEAGUE**. It is non-assignable, and any attempt to assign this **Agreement** will terminate all privileges granted to **LEAGUE** hereunder.

17. RELATIONSHIP OF PARTIES

- 17.1 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 ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of Licensor and Licensee.

18. CONFLICT OF INTEREST

- 18.1 **LEAGUE** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, 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, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity.
- 18.2 **LEAGUE** warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

19. SEPARABILITY

- 19.1 The parties hereto agree that if any clause or provision of this **Agreement** is determined to be illegal, invalid or unenforceable under any present or future federal, state, or local law, including, but not limited to, the City Charter, City Code, or City ordinances of the City of San Antonio, Texas, effective during the term of this **Agreement**, then and in that event it is the intention of the parties hereto that the remainder of this **Agreement** shall not be affected thereby, and it is also the intention of the parties to this **Agreement** that in lieu of each clause or provision of this **Agreement** that is illegal, invalid or unenforceable, there be added as a part of this **Agreement** a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

20. NOTICES

- 20.1 Notices to **CITY** required or appropriate under this **Agreement** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **LEAGUE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **LEAGUE** at:

Jo Ann Ramon, President
Southeast PONY Baseball and Softball
3939 Portsmouth
San Antonio, Texas 78223

or at such other address on file with the City Clerk as **LEAGUE** may provide from time to time in writing to **CITY**.

21. TEXAS LAW TO APPLY

- 21.1 **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.**

22. GENDER

- 22.1 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.

23. NON-DISCRIMINATION

- 23.1 **LEAGUE** covenants that it, or its agents, employees or anyone under its control, will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin, or handicap, in employment practices or in the use of or admission to the Premises, which said discrimination **LEAGUE** acknowledges is prohibited.

24. CAPTIONS

- 24.1 The captions contained in this **Agreement** are for convenience of reference only and in no way limit or enlarge the terms and conditions of this **Agreement**.

25. HOLDING OVER

- 25.1 Should **LEAGUE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License **Agreement**, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding License **Agreement** continuing in effect until such time as **LEAGUE** permanently ceases use of the field or a new License **Agreement** is executed.

26. ENTIRE AGREEMENT/AMENDMENT

- 26.1 This **Agreement**, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LEAGUE**.
- 26.2 No amendment, modification or alteration of the terms of this **Agreement** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.
- 26.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

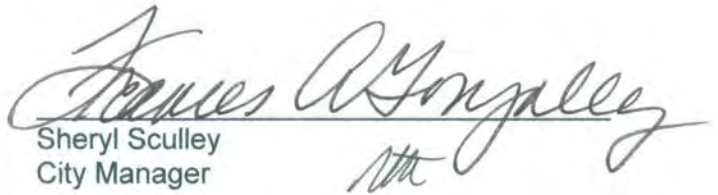
27. AUTHORITY

27.1 The signer of this License **Agreement** for **LEAGUE** hereby represents and warrants that he or she has full authority to execute this **Agreement** on behalf of **LEAGUE**.

IN WITNESS WHEREOF, we have affirmed our signatures this 7th day of May 2007.

LICENSOR:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation


Sheryl Sculley
City Manager

ATTEST:


City Clerk



LICENSEE:

**SOUTHEAST PONY BASEBALL AND
SOFTBALL**, a Texas Non-profit
Corporation

By: 

Title: President

APPROVED AS TO FORM: , City Attorney

RE: ordinance 2007-04-19-0458; 4/19/2007

SOUTHSIDE LIONS PARK

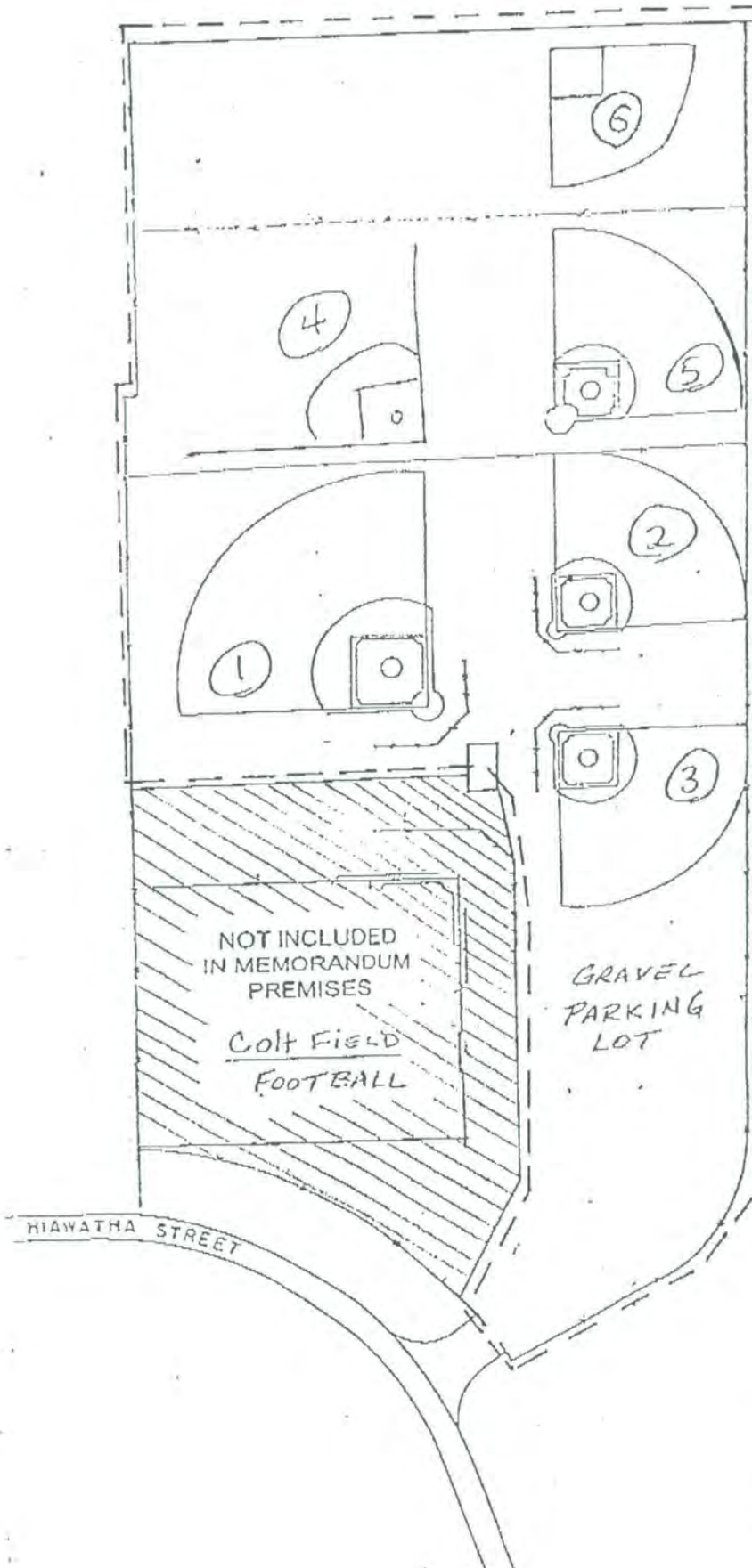



EXHIBIT "A"

FIELD USE AND MAINTENANCE
MEMORANDUM OF UNDERSTANDING
SOUTHEAST PONY BASEBALL AND SOFTBALL

Approximately 14 acres 
Includes the six existing Baseball/Softball Fields,
And parking lot (only during regular playing season)

****DOES NOT INCLUDE THE FOOTBALL FIELD****



CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 47
Council Meeting Date: 4/19/2007
RFCA Tracking No: R-1418

DEPARTMENT: Parks & Recreation

DEPARTMENT HEAD: Malcolm Matthews

COUNCIL DISTRICT(S) IMPACTED:
Council District 3, Council District 7

SUBJECT:
Use and Maintenance Sports License Agreements

SUMMARY:

This ordinance authorizes the execution of six (6) Field Use and Maintenance License Agreements between the City and sports groups for the following associated parks: Alamo City Rugby and East Central Lakeside Athletic Association at Brooks Park; Southeast Pony Baseball at Southside Lions Park; Southside Little Cowboys Football and South Central Cougars Pop Warner Football Association at Stinson Park; and Little Cowboys - North American Junior Independent Football at Joe Ward Park, each for a five year term beginning on May 1, 2007 and ending on April 30, 2012 for youth and adult sports fields.

BACKGROUND INFORMATION:

These sports leagues have been licensees at Brooks Park, Southside Lions Park, and Stinson Park in Council District 3, and Joe Ward Park in Council District 7 for many years. The groups provide organized sports activities for area youth and, with regard to Alamo City Rugby, for adults.

Under the terms of the proposed License Agreements, the sports leagues:

- are to provide non-discriminatory sports programs through a non-profit organization
- have priority use of the fields on the dates identified in an annually submitted use schedule
- are permitted to operate concessions, with proceeds benefiting the program
- are responsible for maintenance of the fields and premises during the term of their agreement

ISSUE:

There are no significant issues related to this proposed action. It is consistent with the City policy to facilitate the use of parks for athletic and recreational activities by the citizens of San Antonio.

ALTERNATIVES:

The alternative is to allow the organizations to rent the use of the fields. However, the Parks and Recreation Department would be responsible for maintenance of the fields and premises and the athletic program would be subject to available scheduling dates.

FISCAL IMPACT:

Under the terms of the License Agreements, the sports leagues will be responsible for providing maintenance of the fields.

RECOMMENDATION:

Staff recommends approval.

The Discretionary Contracts Disclosure Forms required by the Ethics ordinance are attached.

ATTACHMENT(S):

File Description	File Name
South Central Cougars Pop Warner Football Assn License Agreement	South Central Cougars Pop Warner Football Assn License Agreement.pdf
South Central Cougars Pop Warner Football Assn Discretionary Contracts Disclosure Form	South Central Cougars Pop Warner Football Assn Discretionary Contracts Disclosure Form.pdf
East Central Lakeside Athletic Assn Inc License Agreement	East Central Lakeside Athletic Assn License Agreement.pdf
East Central Lakeside Athletic Assn Discretionary Contracts Disclosure Form	East Central Lakeside Athletic Assn Inc Discretionary Contracts Disclosure Form.pdf
Southeast Pony Baseball and Softball License Agreement	Southeast Pony Baseball and Softball License Agreement.pdf
Southeast Pony Baseball and Softball Discretionary Contracts Disclosure Form	Southeast Pony Baseball and Softball Discretionary Contracts Disclosure Form.pdf
Southside Little Cowboys Inc License Agreement	Southside Little Cowboys Inc License Agreement.pdf
Southside Little Cowboys Inc Discretionary Contracts Disclosure Form	Southside Little Cowboy Inc Discretionary Contracts Disclosure Form.pdf
Little Cowboys of the North American Junior Independent Football License Agreement	Little Cowboys of the North American Junior Independent Football License Agreement.pdf
Little Cowboys of the North American Junior Independent Football Discretionary Contracts Disclosure Form	Little Cowboys of the North American Junior Independent Fottball Discretionary Contracts Disclosure
Alamo City Rugby Football Club Inc License Agreement	Alamo City Rugby Football Club Inc License Agreement.pdf
Alamo City Rugby Football Club Inc	Alamo City Rugby Football Club Inc

Discretionary Contracts Disclosure Form

Discretionary Contracts Disclosure Form.pdf

DEPARTMENT HEAD AUTHORIZATIONS:

Mike Gonzaba Assistant Director Parks & Recreation

APPROVED FOR COUNCIL CONSIDERATION:

Frances A. Gonzalez Assistant City Manager

47

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3).

No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:


(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed, whichever occurs first.

Signature: 	Title: Director Company or D/B/A: CANTOYS/NASIFF	Date: 3-21-07
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For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

NA

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

No partner, parent or subsidiary; or NA

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

No subcontractor(s); or NA

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

NA

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law. A sole proprietor should list the name of the individual and the d/b/a, if any.

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(6) Disclosures in Proposals


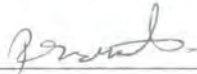
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Signature: 	Title: Company or D/B/A: 	Date: 3/12/07
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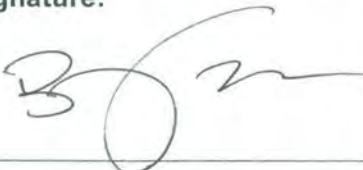
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Signature: 	Title: <i>President</i> Company or D/B/A: <i>South Central Congress</i> <i>prop W owners</i>	Date: <i>3/16/07</i>
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City of San Antonio
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Signature: 	Title: <i>President</i> Company or D/B/A:	Date: <i>3/14/07</i>
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Signature: <i>Josephine (Jo Ann)</i> <i>Ramon</i>	Title: <i>President</i> Company or D/B/A: <i>Southeast Sonny</i> <i>Baseball & Softball</i>	Date: <i>3-14-07</i>
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**City of San Antonio
Parks and Recreation Department**

Interdepartmental Correspondence Sheet

TO: Frances A. Gonzalez, Assistant City Manager
FROM: Malcolm Matthews, Director of Parks and Recreation
COPIES: File
SUBJECT: Signature Request – Field Use and Maintenance License Agreements

DATE: April 25, 2007


Attached are Field Use and Maintenance License Agreements with:

South Central Cougars Pop Warner Football Association
East Central Lakeside Athletic Association, Inc.
Southeast Pony Baseball and Softball
Southside Little Cowboys, Inc.
Little Cowboys, North American Junior Independent Football
Alamo City Rugby Football Club, Inc.

These contracts require your signature.

They were authorized by City Council through Ordinance 2007-04-19-0458 on April 19, 2007.

Please call me if you need additional information.


Malcolm Matthews
Director of Parks and Recreation

MM:ml

San Antonio Parks and Recreation Department

Contract/Agreement Routing Slip

Date: April 26, 2007

RECEIVED
APR 20 2007
City Attorney's Office
San Antonio, Texas

RE: Ordinance 2007-04-19-0458 Passed and Approved April 19, 2007

BM
514672

SIGNATURES:

1. City Attorney Office
Attn: Steve Whitworth
Please sign
After signature, please forward to:

Initial: SW [Signature]

2. Frances A. Gonzalez, Assistant City Manager
Please sign
After signature, please forward to:

Initial: [Signature]

3. Leticia M. Vacek, City Clerk
Please sign and return all originals to:
(One will be returned for your files)

Initial: LV 5/1/07

4. Parks and Recreation Department, Municipal Plaza Bldg. 11th Floor
Attn: Molly Lendman

Comments: Field Use and Maintenance License Agreements with:

- South Central Cougars Pop Warner Football Association ✓
- East Central Lakeside Athletic Association, Inc. ✓
- Southeast Pony Baseball and Softball
- Southside Little Cowboys, Inc. ✓
- Little Cowboys, North American Junior Independent Football ✓
- Alamo City Rugby Football Club, Inc.

Brooks
Park
CN 0040000933

Please call Molly Lendman at 207-8393 if you have any questions. Thank you.