

EASTSIDE CHRISTIAN ACTION GROUP

**REQUEST FOR PROPOSAL
("RFP")**

for

**OPERATION AND MANAGEMENT OF THE
WHEATLEY HEIGHTS SPORTS COMPLEX**

Release Date: February 29, 2012

Proposals Due: April 2, 2012

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I. BACKGROUND

The City of San Antonio (“City”) owns the property and improvements known as the Wheatley Heights Sports Complex (“WHSC”). In 2008, Bexar County voters approved an extension of the 1999 hotel occupancy and short term motor vehicle rental tax, referred to as the visitor or venue tax. Eastside Christian Action Group (“ECAG”), a Texas non-profit corporation, was selected by Bexar County to receive \$7,500,000 for the venue tax for development of the WHSC in Martin Luther King Park and on the Wheatley Heights flood buyout property in Council District 2. Following the funding award, the City licensed approximately 170 acres to ECAG for development of the sports complex. Completed in late 2011, the WHSC consists of: one (1) football stadium with press box and 5,000 spectator seating capacity, nine (9) lane track, cross country trail, restrooms, concession areas, four (4) soccer fields, administration building and parking for over 700 vehicles.

ECAG, in cooperation with the City and Bexar County, desires to subcontract the operation and management of WHSC to a third party with proven experience in the operation, management and maintenance of sports complexes or similar facilities. It is the City’s, Bexar County’s and ECAG’s goal that WHSC is well-maintained and operated to its maximum capacity to: support amateur sports activities, including practices, games and tournaments; provide affordable sports facility reservation opportunities to the citizens of San Antonio; and support the local economy through visitors’ hotel reservations and rental of vehicles resulting from sports events held at the sports complex.

ECAG seeks proposals from qualified Respondents interested in providing the services described in this RFP.

II. SCOPE OF SERVICES

Respondents must demonstrate in their response to this RFP knowledge and/or experience of the successful operation and management of one or more sports facilities, either public or private, and the ability to maintain sports fields and associated amenities. Respondent may be either a for-profit or nonprofit entity. Respondents shall prepare a complete proposed business plan for operation, management and maintenance of: A) The WHSC in its entirety or B) Certain portions of the WHSC. The business plan should include five (5) year income/estimates, marketing strategy and a description of amateur sports activities and programs the Respondent would organize/provide or solicit through its combined marketing efforts with ECAG.

The selected respondent (“Respondent”) will be required to enter into a subcontracting agreement with ECAG in order to indirectly assume select terms and conditions of ECAG’s License Agreement with the City as well as ECAG’s Operating Agreement for WHSC which was negotiated and executed through Bexar County’s Community Venues Program (collectively called “Agreements”). Copies of both documents are included as Exhibits VI and VII to this RFP. The following provisions are applicable:

Respondent will:

- Operate, manage and maintain WHSC under the direction of ECAG at no cost to the City or Bexar County. City will not include any funding in its general fund budget for repair/maintenance, operating expenses or improvements for WHSC. **Ownership of WHSC and all related improvements will remain with the City.**
- Provide year-round operation of WHSC on behalf of ECAG including but not limited to maintenance, repair and replacement of structural components, infrastructure improvements, operating systems, insurance, utilities and other duties with operating and managing WHSC. Respondent will be responsible for maintaining the WHSC in a first class condition as good as or better than the condition at the commencement of the Agreement.
- Maintain the fields to be consistent with or exceed the maintenance levels demonstrated at City and Bexar County athletic facilities:
 - Turf: mow weekly; fertilize, aerate, pest treatment and weed control bi-annually; and seeded annually
 - Fields: new clay and sandy loam annually; cracks and low spots filled as needed; dragged at least weekly; and striped as appropriate.
- Use utilities in a manner, amount and frequency that are consistent with conservation efforts and comply with the City’s Conservation Ordinance.
- Employ, pay and supervise all of Respondent’s personnel deemed necessary for operation of WHSC.
- Host tournaments and provide practice and game event facilities through a reservation system, which shall be established by Respondent in cooperation with ECAG. Respondent will share use of the reservation system with ECAG and will assist ECAG in marketing of the WHSC for future events.
- Manage the operation of concession areas during events, handle ordering and restocking of concession supplies and secure/maintain all applicable health and safety permits
- Procure and negotiate contracts with service providers and suppliers of the WHSC on behalf of ECAG.
- Collect revenue on behalf of ECAG from reservations, admission for tournaments and games, parking, concessions and sponsorships. Such revenue will assist ECAG in covering the overall cost of operating the WHSC which will include but shall not limited to utilities, insurance, ECAG staff payroll, janitorial and security services, purchase of equipment and supplies, maintenance of improvements and grounds, contributions to ECAG’s Capital Improvement and Repair Fund and Reserve Fund, and subcontracting expenses.
- Establish a plan for event security. San Antonio Police Department and/or San Antonio Park Police can be contacted to address illegal activity or infractions of City ordinances within City Parks, including the WHSC. City’s current practice is to require that reservations for adult use after 5 pm contract for Park Police presence during that use, at the cost of the reserving party. In its Proposed Plan Respondent will describe any plans they may have with regard to providing security for use of the Complex.

Other:

- City shall reserve the right to utilize WHSC for up to ten (10) full day uses each year during the term of the License Agreement (“City Days”). Bexar County shall reserve the right to utilize WHSC for up to five (5) full days uses each year during the term of the Operating Agreement (“County Days”). City and Bexar County will coordinate with Respondent in advance to reserve the Complexes and will pay no rental fee for the use. City shall additionally be exempt from all other charges associated with use of WHSC and shall not be bound by an exclusivity contracts for concession sales. City and Bexar County may assign their City Days and County Days to others.
- Complex signage within the premises is subject to the approval of City; signs advertising businesses, products, services, etc. must be installed facing inward and not legible from the entrance or street and may not advertise, depict or promote political campaigns, religious affiliations, alcohol or tobacco use or sexually oriented businesses.
- No sports complex naming rights will be conveyed to Respondent. Naming of parks and facilities is subject to applicable City ordinances, approvals and processes.

Reporting Requirements:

- ECAG may require Respondent to assist with preparation and submittal of the following annual reports to Bexar County and City within 60 days after the end of each Fiscal Year:
 - Five year rolling business plan to include operating budget
 - Five year rolling Capital Improvement and Repair Schedule
 - Financial Statement
- Annual Maintenance Program (due to City on or before Jan 1 of each year)
- Respondent’s records to be subject to City review/audit.

III. OWNERSHIP AND LICENSES

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term “local government record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Respondent, if awarded this contract, will be required to

turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City's written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

IV. TERM OF CONTRACT

The Respondent will negotiate a subcontracting agreement with ECAG which shall have a term or terms running concurrently with the term of ECAG's License Agreement with the City Of San Antonio. The current term of the ECAG's License Agreement with the City of San Antonio expires in August 2014 and will be eligible for renewal for up to seven additional five (5) year terms. The term of ECAG's Operating Agreement with Bexar County runs concurrently with ECAG's License Agreement with the City of San Antonio.

V. PRE-SUBMITTAL CONFERENCE

A Pre-Submittal Conference will be held at the Wheatley Heights Sports Complex Administration Building, located at 746 Morningview Drive, San Antonio, Texas at 2:00 pm, **Local Time**, on **Friday, March 16, 2012**. Respondents are encouraged to prepare and submit their questions in writing four (4) business days in advance of the Pre-Submittal Conference in order to expedite the proceedings. ECAG's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on the City's website at <http://epav.sanantonio.gov/RFPListings/>. Attendance at the Pre-Submittal Conference is optional, but highly recommended.

This meeting site is accessible to persons with disabilities. Parking is available. Auxiliary aids and services, including Deaf interpreters, must be requested forty-eight [48] hours prior to the meeting. For assistance, call (210) 207-8480 or 711 (Texas Relay Service for the Deaf).

Any oral responses provided by ECAG at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on ECAG. Only written responses shall be official and all other forms of communication with any officer, employee or agent of ECAG shall not be binding on ECAG. Respondents are encouraged to resubmit their questions in writing, to the City Staff person identified in Section IX – Restrictions on Communication, after the conclusion of the Pre-Submittal Conference.

VI. PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence, tabbed and noted with the appropriate heading as indicated below. If Respondent is proposing as a team or

joint venture, provide the same information for each member of the team or joint venture.

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- TAB 1 – GENERAL INFORMATION & REFERENCES FORM: Use the Form found in this RFP as Attachment A Part One)
- TAB 2 – EXPERIENCE, BACKGROUND & QUALIFICATIONS: Use the Form found in this RFP as Attachment A, Part Two)
- TAB 3 – PROPOSED PLAN - Use the Form found in this RFP as Attachment A, Part Three)
- TAB 4 – LITIGATION DISCLOSURE FORM: Complete and submit the Litigation Disclosure Form, found in this RFP as Attachment B. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form.
- TAB 5 – SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN: Complete, sign and submit the SBEDA form, found in this RFP as Attachment C.
- TAB 6 – PROOF OF INSURABILITY: Submit a letter from insurance provider stating provider’s commitment to insure the Respondent for the types of coverages and at the levels specified in this RFP if awarded a contract in response to this RFP. Respondent shall also submit a copy of their current insurance certificate.
- TAB 7 – FINANCIAL INFORMATION: Submit a copy of Respondent’s two most recent annual financial statements, prepared in accordance with generally accepted accounting principles.

Place **two (2) sets** of financial documents as Tab 7 within Respondent’s ORIGINAL proposal. Additional copies are not required. As an option, Respondent may submit one (1) electronic copy in a PDF format on either a CD or Flash Drive.
- TAB 8 – SIGNATURE PAGE: Respondent must complete, sign and submit the Signature Page found in this RFP as Attachment D. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of a corporate respondent or partner of partnership respondent shall be accompanied by evidence of authority.
- TAB 9 – PROPOSAL CHECKLIST: Complete and submit the Proposal Checklist found in this RFP as Attachment E.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. **FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE**

RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

VII. AMENDMENTS TO RFP

Amendments to the RFP, including written responses to questions received in compliance with Section IX, Restrictions on Communication, may be posted as addendums on the City's website at <http://epav.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, must notify ECAG in accordance with Section IX, Restrictions on Communication, that Respondent wishes to receive copies of addendums by mail or fax.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

VIII. SUBMISSION OF PROPOSALS

- A. Respondent shall submit: One (1) original, signed in ink, and ten (10) copies of the proposal in a sealed package clearly marked with the project name, "Wheatley Heights Sports Complex Operation & Management RFP" on the front of the package.

All proposals must be received in the City's Parks and Recreation Department office no later than **4:00 p.m., Local Time, on Monday, April 2, 2012** at the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City's Parks and Recreation Department office prior to the time and date set for submission of proposals. Any proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City's Parks and Recreation Department office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City of San Antonio
Attn: Parks and Recreation Department
P.O. Box 839966
San Antonio, Texas 78283-3966

Physical Address:

City of San Antonio
Parks and Recreation Department
114 W. Commerce, 11th Floor
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

Proposal Format: Each proposal shall be typewritten and submitted on 8 ½" x 11" white paper. The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Electronic files, websites, or URLs shall not be submitted in lieu of the printed proposal. Each proposal must include the sections and attachments in the sequence listed in the RFP Section VI. Proposal Requirements.

- B. Respondents who submit proposals to this RFP shall correctly state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the General Information form found in this RFP as Attachment A, Part One.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the General Information form, ECAG shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

- D. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for one hundred and eighty (180) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.
- E. All proposals become the property of ECAG upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, ECAG cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.
- F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-Submittal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

IX. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with: 1) ECAG representatives or elected City and Bexar County officials and their staff regarding the RFP or Proposals from the time the RFP has been released until the contract is executed by ECAG; and 2) ECAG or City or Bexar County employees from the time the RFP has been released until the contract is

awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent’s proposal from consideration.

Exceptions to the Restrictions on Communication with ECAG representatives, City employees and Bexar County employees include:

1. Respondents may ask verbal questions concerning this RFP at the Pre-Submittal Conference. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed below until **4:00 pm Local Time, on *Friday, March 23, 2012***. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by email to:

Frank Dunn, Executive Director - Eastside Christian Action Group
 % Phillip Covington, Senior Management Analyst - City of San Antonio
 Phillip.Covington@sanantonio.gov

Questions submitted and ECAG’s responses will be posted in the form of an Addendum to the City's web site at <http://epav.sanantonio.gov/RFPListings/>.

2. Respondents and/or their agents are encouraged to contact the Small Business Office of the Economic Development Department for assistance or clarification with issues specifically related to the City’s Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Shuchi Nagpal. Ms. Nagpal may be reached by telephone at (210) 207-0071 or by e-mail at Shuchi.Nagpal@sanantonio.gov. Contacts to the Small Business Office regarding this solicitation after the solicitation closing date is not permitted.
 3. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. ECAG reserves the right to exclude any persons from interviews as it deems in its best interests.
 4. Upon completion of the evaluation process, Respondents shall receive a notification letter from ECAG indicating the recommended firm. Respondents desiring a review of the solicitation process may submit a written request no later than seven (7) calendar days from the date letter was sent. The letter will indicate the name and address for submission of requests for review.
- B. ECAG reserves the right to contact any Respondent to negotiate if such is deemed desirable by ECAG. Such negotiations, initiated by ECAG representatives, shall not be considered a violation by Respondent of this section.

X. EVALUATION CRITERIA

ECAG, with assistance from City and Bexar County, will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. ECAG will appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If ECAG elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. ECAG may also request additional information from Respondents at any time prior to final approval of a selected Respondent. ECAG reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to approval from City and Bexar County.

Evaluation criteria:

- A. Experience, Background, Qualifications (25 points)
- B. Proposed Plan (35 points)
- C. Proposed Budget and Fees (40 points)
- D. Small Business Economic Development Advocacy Program (SBEDA):

API REQUIREMENTS: Respondents must demonstrate commitment to satisfy a ten percent (10%) SBE subcontracting goal. In the absence of a waiver granted by the Small Business Office, failure of a Respondent to commit to satisfying the SBE subcontracting goal shall render its response NON-RESPONSIVE.

XI. AWARD OF CONTRACT AND RESERVATION OF RIGHTS

- A. ECAG reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to ECAG, as determined by the selection committee.
- C. ECAG may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of ECAG. However, final selection of a Respondent is subject to approval from City and Bexar County.
- D. ECAG reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. ECAG also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.

- E. ECAG will require the selected Respondent(s) to execute a contract with ECAG. No work shall commence until ECAG signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on ECAG until approved by ECAG's Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, ECAG reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFP does not commit ECAG to enter into a Contract, award any services related to this RFP, nor does it obligate ECAG to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. Conflicts of Interest. Respondent 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 City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he 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 value of the business entity; or 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.

If selected, Respondent will be required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City's Ethics Code. (Discretionary Contracts Disclosure – form may be found online at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.)

- I. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be independent contractors, responsible for their respective acts or omissions, and that ECAG shall in no way be responsible for Respondent's actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
- J. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the

Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

SCHEDULE OF EVENTS

Following is a list of **projected dates/times** with respect to this RFP:

RFP Release Date	February 29, 2012
Pre-Submittal Conference	March 16, 2012 at 2:00 PM
Final Questions Accepted	March 23, 2012 at 4:00 PM
Proposals Due	April 2, 2012 at 4:00 PM

RFP ATTACHMENTS

THE DOCUMENTS THAT FOLLOW ARE FORMS THAT MUST BE COMPLETED BY RESPONDENT AND INCLUDED WITH RESPONDENT'S PROPOSAL. ATTACH THESE DOCUMENTS TO YOUR PROPOSAL IN THE ORDER INDICATED IN RFP SECTION VI., WHICH IS ENTITLED "PROPOSAL REQUIREMENTS"

RFP ATTACHMENT A, PART ONE

GENERAL INFORMATION

To be submitted with Respondent’s Proposal as TAB 1

1. Respondent Information: Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: _____
(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Website address: _____

Year established: _____

Provide the number of years in business under present name: _____

Social Security Number or Federal Employer Identification Number: _____

Texas Comptroller’s Taxpayer Number, if applicable: _____
(NOTE: This 11-digit number is sometimes referred to as the Comptroller’s TIN or TID.)

DUNS NUMBER: _____

Business Structure: Check the box that indicates the business structure of the Respondent.

- Individual or Sole Proprietorship If checked, list Assumed Name, if any: _____
- Partnership
- Corporation If checked, check one: For-Profit Nonprofit
Also, check one: Domestic Foreign
- Other If checked, list business structure: _____

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each: _____

Provide address of office from which this project would be managed: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Annual Revenue: \$ _____

Total Number of Employees: ____

Total Number of Current Clients/Customers: ____

Briefly describe other lines of business that the company is directly or indirectly affiliated with: _____

List Related Companies: _____

2. **Contact Information:** List the one person who ECAG may contact concerning your proposal or setting dates for meetings.

Name: _____ Title: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone No. _____ Fax No: _____

Email: _____

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes No

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes No If "Yes", list authorizations/licenses.

5. Where is the Respondent's corporate headquarters located? _____

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes No If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years _____ Months _____

b. State the number of full-time employees at the San Antonio office. _____

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes No If "Yes", respond to c and d below:

c. How long has the Respondent conducted business from its Bexar County office?

Years _____ Months _____

d. State the number of full-time employees at the Bexar County office. _____

7. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes No If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

8. **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes No If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

9. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes No If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

10. **Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If “Yes”, state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

11. **Previous Contracts:**

a. Has the Respondent ever failed to complete any contract awarded?

Yes No If “Yes”, state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes No If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes No If “Yes”, state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

REFERENCES

Provide three (3) references, that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and **be willing to respond to questions** regarding the type, level, and quality of service provided.

Reference No. 1:

Firm/Company Name: _____
 Contact Name: _____ Title: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone No. _____ Fax No: _____
 Email: _____
 Date and Type of Service(s) Provided: _____

Reference No. 2:

Firm/Company Name: _____
 Contact Name: _____ Title: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone No. _____ Fax No: _____
 Email: _____
 Date and Type of Service(s) Provided: _____

Reference No. 3:

Firm/Company Name: _____
 Contact Name: _____ Title: _____
 Address: _____
 City: _____ State: _____ Zip Code: _____
 Telephone No. _____ Fax No: _____
 Email: _____
 Date and Type of Service(s) Provided: _____

RFP ATTACHMENT A, PART TWO

EXPERIENCE, BACKGROUND, QUALIFICATIONS

To be submitted with Respondent's Proposal as TAB 2

Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

1. Describe Respondent's experience and/or knowledge relevant to the Scope of Services requested by this RFP, including the following:
 - a. Operating, organizing and/or soliciting for provision of amateur sports programs
 - b. Operating and/or soliciting regional tournaments
 - c. Managing a field reservation program
 - d. Providing maintenance and repairs for sports complexes
 - e. Providing and managing qualified staff for operation of sports complexes or similar facilities
 - f. Fundraising for amenities and/or improvements to sports complexes
 - g. Operating concessions
2. Describe Respondent's applicable professional affiliations and length of time of those affiliations.
3. Additional Information. Identify any additional skills, experiences, qualifications, and/or other relevant information about the Respondent's experience, background and qualifications.

RFP ATTACHMENT A, PART THREE

PROPOSED PLAN

To be submitted with Respondent’s Proposal as TAB 3

Prepare and submit the following items for Respondent’s proposed operation, maintenance and management of the Wheatley Heights Sports Complex (WHSC). Respondent must clearly specify whether their proposal applies toward operation, maintenance and management of: A) The entire WHSC facility or B) Certain portions of the WHSC facility (please identify).

1. Maintenance Plan – Describe Plan to ensure maintenance of the WHSC (fields and other improvements) throughout term of the Agreement with ECAG. Identify proposed tasks and schedule. Provide a description of any maintenance equipment that would be dedicated for use at WHSC and indicate whether this equipment is currently owned or would be purchased or rented if a contract is awarded.
2. Marketing Plan - Describe Plan to assist ECAG in promoting WHSC’s amenities and attracting regional tournaments that will benefit the economy through support of local businesses and through generation of revenue for Bexar County from hotel occupancy and rental car taxes.
3. Reservation Plan – Describe the Field Reservation System or Program to be developed and utilized in cooperation with ECAG.
 - i. Anticipated availability of WHSC for reservation use
 - ii. Services/support to be offered to reservation users
 - iii. Description of method by which groups and individuals may reserve and pay for fields
4. Staffing Plan – Describe Plan to provide staff for operation and maintenance duties (inc. concessions), league activities, and reservation activities, including the number of staff; titles; salary ranges; and whether each position is part-time, full time, or seasonal; and any benefits that will be provided. In addition, please indicate the role of volunteers in the Staffing Plan, if applicable.
5. Concession Plan – Describe Plan to operate a concession program including description of proposed food and beverage items, concessions equipment, and general practices which would be implemented in order to meet health and safety regulations.
6. Security Plan – Describe any plans for providing event security at WHSC (i.e. tournaments, league and/or reservation activities, and other events).
7. Business Plan – Include estimated revenue and projected expenses for the first five (5) years of operation of the WHSC. Also include a separate schedule of proposed fees for admission, parking, concessions, reservation of fields, and other proposed opportunities for collection of revenue to help ECAG offset operating expenses at WHSC. Describe the accounting system and cash handling procedures which would be implemented for collection of revenue and transfer of revenue to ECAG.
8. Proposed Fee – Provide a detailed breakdown of the proposed fee(s) Respondent will charge to ECAG in exchange for providing the services requested under this RFP.
9. Additional Information – Provide any additional plans and/or relevant information about Respondent’s approach to providing the required services.

RFP ATTACHMENT B

LITIGATION DISCLOSURE FORM

To be submitted with Respondent's Proposal as TAB 4

LITIGATION DISCLOSURE

Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes No

If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.

RFP ATTACHMENT C

SUBCONTRACTOR/SUPPLIER UTILIZATION PLAN

To be submitted with Respondent's Proposal as TAB 5

Documents are posted as separate documents.

RFP ATTACHMENT D

SIGNATURE PAGE

To be submitted with Respondent's Proposal as TAB 8

SIGNATURE PAGE

The undersigned certifies that (s)he is authorized to submit this proposal on behalf of the entity named below:

Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

Co-Respondent Entity Name

Signature: _____

Printed Name: _____

Title: _____

By signature(s) above, Respondent(s) agrees to the following:

1. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
2. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Exhibits II & III.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent's proposal and during Proposal process.
4. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
5. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
6. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is executed.

RFP ATTACHMENT E
PROPOSAL CHECKLIST

To be submitted with Respondent's Proposal as TAB 9

PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Respondent's Proposal	Document	Initial to Indicate Document is Attached to Proposal
	Table of Contents	
<i>Tab 1</i>	General Information and References <ul style="list-style-type: none"> • RFP Attachment A, Part One 	
<i>Tab 2</i>	Experience, Background & Qualifications <ul style="list-style-type: none"> • RFP Attachment A, Part Two 	
<i>Tab 3</i>	Proposed Plan <ul style="list-style-type: none"> • RFP Attachment A, Part Three 	
<i>Tab 4</i>	Litigation Disclosure <ul style="list-style-type: none"> • RFP Attachment B 	
<i>Tab 5</i>	* Subcontractor /Supplier Utilization Plan <ul style="list-style-type: none"> • RFP Attachment C; and • Associated Certificates, if applicable 	
<i>Tab 6</i>	Proof of Insurability (See RFP Exhibit II) <ul style="list-style-type: none"> • Insurance Provider's Letter • Copy of Current Certificate of Insurance 	
<i>Tab 7</i>	Financial Information <ul style="list-style-type: none"> • Place two (2) sets of financial documents as Tab 9 within Respondent's ORIGINAL proposal. Additional copies are not required. As an option, Respondent may submit one (1) electronic copy in a PDF format on either a CD or Flash Drive. 	
<i>Tab 8</i>	* Signature Page RFP Attachment D	
<i>Tab 9</i>	Proposal Checklist <ul style="list-style-type: none"> • RFP Attachment E 	
	One (1) Original, ten (10) Copies, and one (1) CD of entire proposal in PDF format.	

*** Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**

RFP EXHIBIT I

**SMALL BUSINESS ECONOMIC DEVELOPMENT
ADVOCACY (SBEDA) PROGRAM**

SBEDA Ordinance Compliance Provisions

A. Solicitation Response and Contract Requirements and Commitment

Respondent understands and agrees that the following provisions shall be requirements of this solicitation and the resulting contract, if awarded, and by submitting its Response, Respondent commits to comply with these requirements. In the absence of a waiver granted by the SBO, failure of a Prime Contractor to commit in its response, through fully-documented and signed SBO-promulgated Subcontractor/Supplier Utilization form, to satisfying the SBE subcontracting goal shall render its response NON-RESPONSIVE.

Waiver Request - A Respondent may request, for good cause, a full or partial Waiver of a **specified subcontracting goal** included in this solicitation by submitting the *Respondent Subcontracting Waiver Request* form (*which is available at <http://www.sanantonio.gov/edd/SmallBusiness>*) with its solicitation response. The Respondent's Waiver request must fully document subcontractor unavailability despite the Respondent's good faith efforts to comply with the goal. Such documentation shall include all good faith efforts made by Respondent including, but not limited to, which subcontractors were contacted (with phone numbers, e-mail addresses and mailing addresses, as applicable) and the method of contact. **Late Waiver requests will not be considered.**

Exception Request - A Respondent may, for good cause, request an Exception to the application of the SBEDA Program if the Respondent submits the *Exception to SBEDA Program Requirements Request* form (*available at <http://www.sanantonio.gov/edd/SmallBusiness>*) with its solicitation response. The Respondent's Exception request must fully document why: (1) the value of the contract is below the \$50,000 threshold for application of the SBEDA Program; or (2) no commercially-useful subcontracting opportunities exist within the contract scope of work; or (3) the type of contract is outside of the scope of the SBEDA Ordinance. **Late Exception Requests will not be considered.**

B. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this

section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

C. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization

goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY’s MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm’s beneficial participation in the CITY’s S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR’s and/or S/M/WBE firm’s performance and payment under CITY contracts due to the CITY’s imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

D. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;
3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the

applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

E. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 7. (e), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least 10% of its prime contract value to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR

submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in

compliance with Chapter 2251, Texas Government Code (the “Prompt Payment Act”) within ten days of receipt of payment from CITY. In the event of CONTRACTOR’s noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY’s audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;
4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

RFP EXHIBIT 2
INSURANCE REQUIREMENTS

If selected to provide the services described in this RFP, Respondent shall be required to comply with the insurance requirements set forth below:

INSURANCE

A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City’s Parks and Recreation Department, which shall be clearly labeled “WHEATLEY HEIGHTS SPORTS COMPLEX” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Parks and Recreation Department. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.

B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

C) A Respondent’s financial integrity is of interest to the City; therefore, subject to Respondent’s right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage

<p>4. Comprehensive Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles</p>	<p><u>C</u>ombined <u>S</u>ingle <u>L</u>imit for <u>B</u>odily <u>I</u>njury and <u>P</u>roperty <u>D</u>amage of \$1,000,000 per occurrence</p>
<p>5. Property Insurance: For physical damage to the property of Respondent, including improvements and betterment to the Licensed Premises, if applicable</p>	<p>Coverage for 100% of the replacement cost of Respondent's property.</p>
<p>6. Builders Risk (if applicable)</p>	<p>All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.</p>

D) Respondent agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Respondent herein, and provide a certificate of insurance and endorsement that names the Respondent and the CITY as additional insureds. Respondent shall provide the CITY with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Respondent shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

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

F) Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name ECAG, City and Bexar County, their officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City and County, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio or Bexar County where the City and County are additional insureds shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City and County.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

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

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

J) It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio or Bexar County for liability arising out of operations under the City's License Agreement or the County's Operating Agreement.

K) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City or County shall be limited to insurance coverage provided.

L) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

RFP EXHIBIT III
INDEMNIFICATION REQUIREMENTS

If selected to provide the services described in this RFP, Respondent shall be required to comply with the indemnification requirements set forth below:

LICENSE AGREEMENT
INDEMNIFICATION

RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT’S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

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

ARTICLE VIII – OPERATING AGREEMENT
INDEMNIFICATION

1. THE RESPONDENT SHALL DEFEND, PROTECT, INDEMNIFY AND HOLD BEXAR COUNTY AND ITS OFFICIALS, EMPLOYEES, REPRESENTATIVES, CONSULTANTS, AND AGENTS (COLLECTIVELY REFERRED TO AS “INDEMNITEES”) HARMLESS FROM, AND AGAINST, ANY AND ALL LIABILITIES, DAMAGES, SUITS, CLAIMS AND JUDGMENTS OF ANY NATURE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY’S FEES AND EXPENSES) ARISING FROM, OR IN CONNECTION WITH, THE SPORTS FACILITY INCLUDING INJURY TO, OR DEATH OF, A PERSON OR ANY DAMAGE TO

PROPERTY (INCLUDING LOSS OF USE) RESULTING FROM, ARISING OUT OF OR IN CONNECTION WITH: (I) ANY DEFAULT BY THE RESPONDENT UNDER THE OPERATING AGREEMENT; OR (II) THE USE OR OCCUPANCY OF THE SPORTS FACILITY UNDER THE OPERATING AGREEMENT ON OR AFTER THE COMMENCEMENT DATE; OR (III) THE NEGLIGENCE OR WILLFUL ACT OF THE RESPONDENT OR ITS CONTRACTORS, EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, CONSULTANTS, AGENTS, GUESTS OR INVITEES. THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT THE RIGHT OF THE COUNTY TO INDEMNIFICATION UNDER THIS ARTICLE VIII IS COMPLETELY INDEPENDENT AND SEPARATE FROM AND SHALL NOT LIMIT SUCH PARTY'S RIGHT TO SEEK REMEDIES AND RELIEF UNDER ARTICLE XIV OR UNDER APPLICABLE LAW AND NO QUALIFICATION TO OR LIMITATIONS ON THE RESPONDENT'S OBLIGATION TO INDEMNIFY ANY INDEMNITEE, AS PROVIDED HEREIN, SHALL AFFECT OR LIMIT THE RIGHTS OF ANY PERSON TO DAMAGES OR ANY OTHER RELIEF DUE TO A RESPONDENT EVENT OF DEFAULT OR OTHERWISE FOR DAMAGES OR LIABILITIES ARISING OUT OF OR IN CONNECTION WITH AN EVENT OF DEFAULT BY THE OPERATOR.

A. Indemnification Procedures

1. **If any Indemnatee shall discover or have actual notice of facts giving rise, or which may give rise, to a claim for indemnification under this Article VIII, or shall receive notice of any Action, with respect to any matter for which indemnification may be claimed, the Indemnatee shall, within twenty (20) days following service of process (or within such shorter time as may be necessary to give the RESPONDENT a reasonable opportunity to respond to such service of process) or within twenty (20) days after any other such notice, notify the RESPONDENT in writing thereof together with a statement of such information respecting such matter as the Indemnatee then has; it being understood and agreed that any failure or delay of the Indemnatee to so notify the RESPONDENT shall not relieve the RESPONDENT from liability hereunder except and solely to the extent that such failure or delay shall have adversely affected the RESPONDENT'S ability to defend against, settle, or satisfy any such Action. Following such notice, the RESPONDENT shall have the right, at its sole cost and expense, to contest or defend such Action through attorneys, accountants, and others of its own choosing (the choice of such attorneys, accountants, and others being subject to the approval of Indemnatee, such approval not to be unreasonably withheld) and in the event it elects to do so, it shall promptly notify the Indemnatee of such intent to contest or defend such Action. If within twenty (20) days following such notice from the Indemnatee (or within such shorter time as may be necessary to give the RESPONDENT a reasonable opportunity to respond to service of process or other judicial or administrative action), the Indemnatee has not received notice from the RESPONDENT that such Action will be contested or defended by the RESPONDENT, the Indemnatee shall have the right to: (i) authorize attorneys satisfactory to it to represent**

it in connection therewith; or (ii) subject to the approval of the RESPONDENT, which approval shall not be unreasonably withheld or delayed, at any time settle, compromise, or pay such Action, in either of which Events the Indemnatee shall be entitled to indemnification therefor subject to this Section 8.01.

2. In the event, and so long as, the RESPONDENT is actively contesting or defending against an Action as hereinabove provided, the Indemnatee shall cooperate with the RESPONDENT and its counsel in such contest or defense. Notwithstanding that the RESPONDENT is actively conducting such defense or contest, any Action may be settled, compromised or paid by the Indemnatee without the consent of the RESPONDENT; provided, however, that if such action is taken without the RESPONDENT'S consent, its indemnification obligations with respect to such claim shall thereby be nullified. Any such Action may be settled, compromised, or paid by the RESPONDENT without the Indemnatee's consent, so long as such settlement or compromise does not cause the Indemnatee to incur any present or future cost, expense, obligation or liability of any kind or nature, or require any admission or action or forbearance from action by Indemnatee.
3. If a conflict exists between the Indemnatee and the RESPONDENT with respect to any Action, the Indemnatee shall have the right to participate in the defense of such Action with separate counsel chosen by the Indemnatee, subject to the reasonable approval of the RESPONDENT, and paid by the RESPONDENT.

B. No Third Party Beneficiary. The provisions of this Article VIII are solely for the benefit of the COUNTY and the RESPONDENT and are not intended to create or grant any rights, contractual or otherwise, to any other person.

RFP EXHIBIT IV

MAPS OF WHEATLEY HEIGHTS SPORTS COMPLEX

Documents are posted as separate documents.

RFP EXHIBIT V

PHOTOGRAPHS OF WHEATLEY HEIGHTS SPORTS COMPLEX

Documents are posted as separate documents.

RFP EXHIBIT VI

LICENSE AGREEMENT WITH CITY OF SAN ANTONIO

Documents are posted as separate documents.

RFP EXHIBIT VII

OPERATING AGREEMENT WITH BEXAR COUNTY

Documents are posted as separate documents.