

AN ORDINANCE 2008-09-18-0836

**APPROVING THE EXECUTION OF A LICENSE AGREEMENT WITH THE CLASSICS ELITE SOCCER ACADEMY FOR 28.5 ACRES OUT OF MCALLISTER PARK LOCATED IN COUNCIL DISTRICT 9 WITH AN INITIAL FIVE-YEAR TERM BEGINNING NOVEMBER 1, 2008 AND WITH UP TO SEVEN, FIVE-YEAR RENEWAL OPTIONS FOR USE IN THE CONSTRUCTION AND OPERATION OF AMATEUR ATHLETICS FACILITIES FINANCED BY THE BEXAR COUNTY VENUE TAX PROGRAM.**

\* \* \* \* \*

**WHEREAS**, on May 10, 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; and

**WHEREAS**, Bexar County identified community projects to fund with this tax extension that would have a positive impact on tourism; and

**WHEREAS**, a portion of the motor vehicle tax has been dedicated to fund thirteen amateur sports facilities, nine of which will be developed on land owned by the City of San Antonio; and

**WHEREAS**, one of those facilities is for the Classics Elite Soccer Academy; and

**WHEREAS**, the Classics Elite Soccer Academy was selected by Bexar County to receive \$1.2 million from the venue tax for the development of a soccer facility in McAllister Park; and

**WHEREAS**, the Classics Elite Soccer Academy currently licenses land on Bitters Road from the City and their program served over 900 youth in 2007; and

**WHEREAS**, the Bexar County funds will provide \$1.2 million to develop five new full size soccer fields and facility amenities including paved parking; and

**WHEREAS**, these improvements will better serve the needs of the participants of the Classics Elite Soccer Academy program, as well as provide a facility suitable for regional tournaments; and

**WHEREAS**, the proposed license agreement will provide approximately 28.5 acres in McAllister Park; and

**WHEREAS**, the initial term of the license agreement is five years, with up to seven five year renewal options, subject to the approval of City Council; and

**WHEREAS**, the Classics Elite Soccer Academy will utilize the Bexar County funds to construct the facility, with the plans subject to the approval of the County and City; and

**WHEREAS**, as with other City sports license agreements, there will be no rent paid to the City, but, in consideration of the use of this land, Classics Elite Soccer Academy will maintain all fields and improvements; and

**WHEREAS**, other provisions of the license agreement include: a) all revenue will be used to offset facility operating and maintenance costs, b) all remaining funds will be placed by the licensee into a capital improvement and repair fund to be used for the maintenance, repair, refurbishment and replacement of the facility, and c) the Classics Elite Soccer Academy will allow the use of the facility by other amateur sports groups subject to their own use and will establish policies and fees for such use by others; and

**WHEREAS**, the Classics Elite Soccer Academy will receive Bexar County funding for design in 2008 and construction in mid-2009; **NOW THEREFORE:**

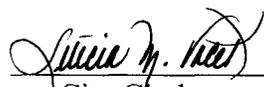
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

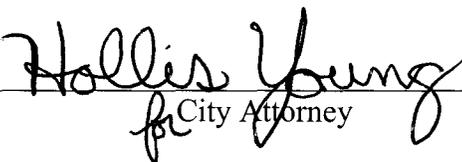
**SECTION 1.** The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute a License Agreement with the Classics Elite Soccer Academy for 28.5 acres out of McAllister Park located in Council District 9 with an initial five-year term beginning November 1, 2008 and with up to seven, five-year renewal options for use in the construction and operation of amateur athletics facilities financed by the Bexar County Venue Tax Program. A copy of the license agreement is attached hereto and incorporated herein for all purposes as **Attachment I**.

**SECTION 2.** This ordinance shall be effective on and after September 28, 2008.

PASSED AND APPROVED this 18<sup>th</sup> day of September, 2008.

  
M A Y O R  
PHIL HARDBERGER

ATTEST:   
City Clerk

APPROVED AS TO FORM:   
for City Attorney



Request for  
**COUNCIL  
ACTION**



**Agenda Voting Results - 43**


<b>Name:</b>	5, 6, 7, 8, 10, 12, 13, 14, 20, 23, 24, 25, 26, 27, 28, 29, 31A, 31B, 32, 33, 34A, 34B, 36A, 36B, 38, 43, 44, 45A, 45B, 45C, 45D, 45E, 45F, 45G
<b>Date:</b>	09/18/2008
<b>Time:</b>	09:23:29 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving the execution of a License Agreement with the Classics Elite Soccer Academy for 28.5 acres out of McAllister Park located in Council District 9 with an initial five-year term beginning November 1, 2008 and with up to seven, five-year renewal options for use in the construction and operation of amateur athletics facilities financed by the Bexar County Venue Tax Program. [A.J. Rodriguez, Deputy City Manager; Xavier Urrutia, Interim Director, Parks & Recreation]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				x
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x			x	
John G. Clamp	District 10		x				

**LICENSE AGREEMENT**  
**BEXAR COUNTY VENUE TAX PROJECTS**  
**CLASSICS ELITE SOCCER ACADEMY**

THIS LICENSE AGREEMENT (the "**Agreement**") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_ 200\_\_, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 200\_\_ (herein called "**CITY**"), and Classics Elite Soccer Academy d/b/a San Antonio Elite Youth Soccer Organization, a Texas non-profit corporation (herein called "**LICENSEE**");

**1. WITNESSETH:**

- 1.1 WHEREAS, **CITY** desires to provide amateur sports and recreational facilities for the use of the citizens of San Antonio and Bexar County; and
- 1.2 WHEREAS, **LICENSEE** is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this **Agreement**; and
- 1.3 WHEREAS, **CITY** owns McAllister Park; and
- 1.4 WHEREAS, a Bexar County Venue Tax Project election held May 10, 2008 was approved by the voters of Bexar County and the short term motor vehicle rental tax collected pursuant to Texas Local Government Code Section 334.103 will be a source of funds for **LICENSEE** for the design and construction of an amateur sports venue project; and
- 1.5 WHEREAS, **CITY** and **LICENSEE** desire to enter into a License **Agreement** which will allow for the construction and operation of an amateur sports facility and, in the event that **LICENSEE'S** rights under this Agreement cease earlier than forty (40) years from the date of this Agreement, **CITY** intends to enter into an agreement with an alternate amateur sports group for the operation of the improvements as anticipated by the Bexar County voters; and
- 1.6 WHEREAS, the License Agreement as approved through Ordinance #99271 dated June 3, 2004 and Amendment #1 dated June 7, 2007 gives **LICENSEE** priority use of 13.766 acres of Aviation Department Land ground space on Bitters Road for construction and maintenance of soccer fields and shall continue in effect as a separate agreement;

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

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

**2. APPOINTMENT AND RENT**

- 2.1 For so long as **LICENSEE** maintains its non-profit and 501(c)(3) status and remains in good standing with its governing body throughout the term of this **Agreement**, **CITY** hereby designates **LICENSEE** as the primary user and maintainer of certain land at

McAllister Park being part of N.C.B. 13733, San Antonio, Bexar County, and **LICENSEE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.

- 2.2 In consideration of the public benefit of derived from **LICENSEE'S** operations, **LICENSEE** shall not owe any rent under this agreement.

### 3. USE

- 3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **LICENSEE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LICENSEE** permission to enter and use the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein for the purposes set forth in Section 3.2 below. The Exhibit A attached for purposes of execution of this **Agreement** reflects the conceptual location and dimensions of the Premises. The final approved dimensions and acreage, to be determined as a part of the design process, will be subject to City's approval and a revised Exhibit A will be attached to this **Agreement**.
- 3.2 The Premises shall be occupied by **LICENSEE** for amateur sports and related activities. **LICENSEE** agrees and specifically understands that permission herein given does not grant to **LICENSEE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.3 **LICENSEE** shall allow the use of the Premises by other amateur sports groups, subject to the availability of the Premises based on **LICENSEE'S** use for its own practices, games, tournaments, maintenance, and other related uses. **LICENSEE** shall establish policies and fees associated with the use of the Premises by other amateur sports groups, and such policies and fees will be consistently and fairly applied to all other users. Fees established shall be reasonable, customary, and based on rates found at similar facilities for similar use. All fees collected from use by other amateur sports groups shall be used to offset **LICENSEE'S** cost of maintenance of the Premises. Information on the policies and fees shall be made available to the general public, either through **LICENSEE'S** website, publications, or other means of dissemination to the public. **LICENSEE** agrees to give priority consideration to regional tournaments and other events that will result in attendance by large numbers of citizens of **CITY**, Bexar County, or visitors outside of Bexar County.
- 3.4 Following final completion of the improvements, **CITY** shall have the right to use the Premises for **CITY** activities and events for up to ten (10) days in any calendar year during the term of this **Agreement** ("City Days"). **CITY'S** right to City Days shall be subject to the availability of the Premises based on **LICENSEE'S** use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups as outlined in Section 3.3 above. **CITY** shall be exempt from the payment to **LICENSEE** of any rent or fees for City Days. During City Days and County Days neither **CITY** nor County shall be bound

by any exclusivity contracts for concession sales entered into by **LICENSEE** with any concession suppliers.

- 3.5 **LICENSEE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LICENSEE** is called to any such violation, **LICENSEE** or those under its control will immediately desist from and correct such violation.
- 3.6 **LICENSEE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. **LICENSEE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the **CITY**, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LICENSEE'S** activities under this Agreement.

#### 4. TERM OF AGREEMENT

- 4.1 The term of this **Agreement** is five (5) years, beginning on November 1, 2008, which is hereafter referred to as the commencement date, and expiring on October 31, 2013, if not earlier terminated according to the terms hereof.
- 4.2 So long as **LICENSEE** is not then in default of any of the provisions of this **Agreement** or any agreements between Bexar County and **LICENSEE**, this **Agreement** may be extended for up to seven additional five (5) year renewal options, subject to the approval of City Council as evidenced by an Ordinance, for a total maximum term of this **Agreement** of forty (40) years.

#### 5. ACCEPTANCE AND CONDITIONS OF PREMISES

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

#### 6. LICENSEE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this **Agreement**, **LICENSEE** shall, at its sole expense, provide year round maintenance service of the Premises. The level of maintenance will be the more stringent of the maintenance standards required in the Operating Agreement between Bexar County and **LICENSEE** or the quality of maintenance service demonstrated in other **CITY**-owned fields and improvements. In

addition to the other obligations of **LICENSEE** set forth herein, **LICENSEE** shall render the following services and perform the following duties with regard to its maintenance of the Premises for **CITY** in a faithful, diligent, and efficient manner:

- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
  - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
  - 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep all areas of the Premises free from litter and debris, including following all practices and games;
  - 6.1.4 Seed and fertilize fields as required to sustain acceptable standards of playing conditions;
  - 6.1.5 Provide pest control services as needed;
  - 6.1.6 Level the fields with dirt/sand as needed to sustain acceptable standards of playing conditions;
  - 6.1.7 Maintain all buildings and structures, including but not limited to, concession structures, restrooms, storage units, signage, lighting fixtures, irrigation systems in good repair at all times, promptly making any needed repairs or replacements;
  - 6.1.8 Keep all improvements free of graffiti
  - 6.1.9 Provide such other maintenance tasks and chores as may be required to sustain the fields, parking areas, and all improvements at acceptable standards of use conditions. All structures and equipment that are vandalized must be cleared of debris and graffiti within five (5) days.
- 6.2. **LICENSEE** shall be responsible for making all capital repairs and/or improvements (including physical and functional obsolescence) necessary to maintain the Premises in a first class condition throughout the term of this **Agreement**.
- 6.3 Upon completion of the initial improvements, or at such earlier date as it may desire, **LICENSEE** shall establish a Capital Repair and Improvement Fund and deposit into such Capital Repair and Improvement Fund all net revenues remaining after payment of all usual and customary operating expenses and after funding any necessary contingency reserve funds (such contingency reserve funds not to exceed ten percent (10%) of **LICENSEE'S** total annual revenue). Revenues are hereby defined as all revenues and income of every nature and from whatever source derived by **LICENSEE** from the operation of the Premises (but excluding grants and donations for capital purposes or specific projects) including, but not limited to, rents, ticket sales, concessions, and other revenues received therefrom. The Capital Repair and Improvement Fund will be a funding source for the maintenance, repair, refurbishment and replacement of the improvements to the Premises including without limitation all furniture, fixtures and equipment. **LICENSEE** shall use its best faith effort to operate the Premises in a manner that results in the deposit of monies into the Capital Repair and Improvement Fund each year. **LICENSEE** shall maintain complete books and records reflecting the sources and uses of the Capital Repair and Improvement Fund, including

the manner in which **LICENSEE** has allocated revenues to the Capital Repair and Improvement Fund. **CITY** shall have the right to examine, inspect and audit such records as necessary to determine **LICENSEE'S** compliance with the requirement hereof. Lack of adequate funding in the Capital Repair and Improvement Fund shall not reduce or eliminate **LICENSEE'S** obligation to make necessary capital improvements and repairs. At the conclusion of the term of this **Agreement**, or any extended term, or upon the early termination of this **Agreement**, all funds remaining in the Capital Repair and Improvement Fund shall become the property of **CITY**.

- 6.4 **LICENSEE** shall promptly repair any damage to the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises, however, **LICENSEE** shall be obligated to rebuild or repair the Premises to the same or better condition as prior to any event of casualty.
- 6.5 No parking is allowed in any area other than the designated parking area shown as a parking lot in **EXHIBIT A** (if applicable). Parking on the fields is strictly prohibited and will be seen as a violation of this License **Agreement** and subject to default.
- 6.6 In carrying out the aforesaid maintenance responsibilities, **LICENSEE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

## 7. UTILITIES

- 7.1 **LICENSEE** shall provide for and pay directly to the utility companies, all utility company connection charges, including, but not limited to, the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, used in or on the Premises and **LICENSEE** shall furnish and install all electric light bulbs, tubes, and ballasts. **CITY** shall not be liable to **LICENSEE** in damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of **CITY**.
- 7.2 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **LICENSEE** agrees to follow and comply with the posted water restrictions, as may be modified from time to time, which currently include, but are not necessarily limited to:
- 7.2.1. **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.<sup>1</sup>, and only once a week.
- 7.2.2. **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball field may only be

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

watered during the hours of 3:00 a.m. to 8:00 a.m., and 8:00 p.m. to 10:00 p.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.

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

## **8. SCHEDULED MAINTENANCE**

- 8.1. **LICENSEE** agrees to formulate an annual maintenance program and to submit same in writing to the **CITY** no later than January 1 of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization, and other programmable field maintenance activities, as well as planned maintenance for other improvements. The maintenance program submitted to the **CITY** by **LICENSEE** shall be identical to, or more stringent than, the maintenance program set out in the Operating Agreement between Bexar County and **LICENSEE** with regard to comparable obligations. The **CITY** shall review said maintenance program and shall notify **LICENSEE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **LICENSEE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.
- 8.2. **LICENSEE** further agrees to notify **CITY** in writing two (2) weeks in advance of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **LICENSEE** from carrying out its planned maintenance schedule.

## **9. CITY'S RIGHT OF INSPECTIONS**

- 9.1. **CITY**, through its Parks and Recreation Director and/or his representative(s), shall have the right to inspect the Premises at any time.

## **10. CONCESSIONS**

- 10.1. **LICENSEE** shall, during its use of the Premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LICENSEE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LICENSEE**. **LICENSEE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder. **LICENSEE** shall have the right to enter into exclusive sales contracts with concession suppliers which will prohibit the sale of the products of other suppliers, subject however to the terms of Section 4.

## **11. IMPROVEMENTS**

- 11.1. **LICENSEE** may, subject to having first obtained the written approval of **CITY**, install and/or construct facilities and improvements suitable for amateur sports and recreational activities, said facilities and improvements to include, but not necessarily be limited to **the construction of five full size soccer fields, parking, and concession/restroom structures**. **LICENSEE'S** improvements must be completed on or before the Scheduled Completion Date as set forth in the Grant and Development Agreement between Bexar

County and **LICENSEE**. During any period of construction or installation, **LICENSEE**, its members, employees, agents, and contractors shall ensure that the performance of said construction or installation does not cause or result in damage to **CITY** property or adjoining property. In the event damage does occur, **LICENSEE** shall promptly make all repairs so as to restore the property to its condition prior to the damage. Improvements constructed or installed by **LICENSEE** shall be the property of **LICENSEE** during the term of this **Agreement**.

- 11.2. **LICENSEE** shall present, for review and written approval, all designs, plans, and specifications to the **CITY** and applicable **CITY** boards prior to commencing any construction or installation upon the Premises, including the initial improvements and any and all improvements during the term of this **Agreement**. While **CITY** may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by **LICENSEE**. **CITY** reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of fields and facilities so as to insure **LICENSEE'S** compliance with this **Agreement**.
- 11.3 **LICENSEE** must comply with the Preconstruction Milestones of the Grant and Development Agreement with Bexar County prior to commencement of the initial improvements to the Premises.
- 11.4 **LICENSEE** agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA, if required. A copy of said permits or clearances shall be provided to **CITY** prior to the start of any construction. **LICENSEE** covenants that it shall not bind, or attempt to bind, **CITY** for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the **CITY** against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to **LICENSEE** during the performance of any said construction and against any claim for injury to person or property.
- 11.5 **LICENSEE** shall provide to **CITY** copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.
- 11.6 Any improvements so installed by **LICENSEE** which can be removed without damage to the Premises may be removed at the sole expense of **LICENSEE** at the termination of this **Agreement** without payment therefore being made by **CITY**, except however, that equipment and improvements paid for by **CITY** or Bexar County shall not be removed. If the improvements are not so removable without said damage to the Premises or were paid for by **CITY** or Bexar County, then said improvements become the property of the **CITY**.
- 11.7 **LICENSEE** will enter into one or more agreement(s) with Bexar County regarding the funding of improvements and operation of the Premises ("County Agreements"). **LICENSEE** hereby agrees to notify **CITY** at least ten (10) days prior to an amendment to any County Agreements.

## 12. DEFAULTS AND TERMINATION RIGHTS

- 12.1. Default by **LICENSEE**: Any of the following events shall constitute default by **LICENSEE** under this **Agreement**:

- 12.1.1 **LICENSEE** shall apply for or consent to the appointment of a receiver, trustee, or liquidator of **LICENSEE** or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against **LICENSEE** in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating **LICENSEE** as bankrupt or insolvent or approving a petition seeking reorganization of **LICENSEE**, or appointing a receiver, trustee, or liquidator of **LICENSEE** or of all or a substantial part of its assets, and such order, judgment, or decree shall continue non-stayed and in effect for any period of sixty (60) consecutive days; or
- 12.1.2 **LICENSEE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **LICENSEE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LICENSEE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided so long as **LICENSEE** has commenced to cure such default and diligently pursues such cure to completion.
- 12.1.3. **LICENSEE** abandons all or any part of the Premises.
- 12.1.4 Bexar County ever declares **LICENSEE** in default of any County Agreements with **LICENSEE**.
- 12.1.5 **LICENSEE** fails to maintain its status as a 501(c)(3) non-profit entity.
- 12.2. Remedies of CITY: Upon the occurrence of an event of default by **LICENSEE** as specified in this **Agreement** hereof, **CITY** shall be entitled to terminate this **Agreement** and **CITY** shall have no further obligation hereunder.
- 12.3 Upon receipt by **LICENSEE** of notice of default from **CITY** or Bexar County, **LICENSEE** shall cease the expenditure of any funds contained in the Capital Repair and Improvement Fund, unless **LICENSEE** requires the use of a portion of the Fund to cure the default. In such case, **LICENSEE** shall submit to **CITY** and Bexar County, for their written approval, a request for expenditure from the Fund and shall provide a detailed description of the planned use of the Fund which would cure the default. In the event that the default is cured, **LICENSEE'S** right to expend monies contained in the Capital Repair and Improvement Fund, as outlined in Section 6.33 of this **Agreement**, shall be restored. In the event that the default is not cured and the **Agreement** is terminated by **CITY**, **LICENSEE** shall immediately transfer all funds contained in the Capital Repair and Improvement Fund to **CITY** for use for maintenance, repair, replacement, refurbishment of the Premises .
- 12.4. Default by CITY: **CITY** shall be in default under this **Agreement** if **CITY** fails to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LICENSEE** to **CITY**, or if such

default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that **CITY** has commenced to cure such default and diligently pursues such cure to completion.

- 12.5. **Remedies of LICENSEE:** Upon the occurrence of an event of default as specified in this **Agreement** hereof, **LICENSEE** shall be entitled to terminate this **Agreement** and shall have such other rights at law or equity to which it may be entitled.

### 13. INDEMNIFICATION

- 13.1 **LICENSEE** covenants and agrees to **FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS**, the City and the elected officials, employees, officers, directors, volunteers and representatives of the City, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the City directly or indirectly arising out of, resulting from or related to **LICENSEE'S** activities under this **Agreement**, including any acts or omissions of **LICENSEE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LICENSEE**, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this **Agreement**. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT LICENSEE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 13.2 The provisions of this **INDEMNITY** are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within twenty four (24) hours of any claim or demand against the **CITY** or **LICENSEE** known to **LICENSEE** related to or arising out of **LICENSEE'S** activities under this **Agreement** and shall see to the investigation and defense of such claim or demand at **LICENSEE'S** cost. The **CITY** shall have the right, at its option and at its own expense, to participate in such defense without relieving **GRANTEE** of any of its obligations under this paragraph.

### 14. INSURANCE REQUIREMENTS

- 14.1 Prior to the commencement of any work under this License, **LICENSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "NAME OF ORGANIZATION" in the Description of Operations block of the Certificate.

The original 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 Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title 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 License 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.

14.2 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract 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 License. In no instance will CITY allow modification whereupon CITY may incur increased risk.

14.3 LICENSEE'S financial integrity is of interest to the CITY; therefore, subject to LICENSEE'S right to maintain reasonable deductibles in such amounts as are approved by the CITY, LICENSEE shall obtain and maintain in full force and effect for the duration of this License, and any extension hereof, at LICENSEE'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted 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:

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

Property Insurance: For physical damage to the property of Licensee, including improvements and betterment to the Licensed Premises, if applicable.

Builders Risk (if applicable)

equivalent

Coverage for 100% of the replacement cost of Licensee's property.

All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

- 14.4 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the **CITY**, 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). **LICENSEE** 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. **LICENSEE** shall pay any costs incurred resulting from said changes.

City of San Antonio

Attn: Parks and Recreation Department/Contract Services

P.O. Box 839966

San Antonio, Texas 78283-3966

- 14.5 **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- A. Name the **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
  - B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
  - C. Workers' compensation and employers' liability policies will provide a waiver of

subrogation in favor of the **CITY**; and

- D. Provide thirty (30) calendar days 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 written notice for nonpayment of premium.
- 14.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **LICENSEE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LICENSEE'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 contract.
- 14.7 In addition to any other remedies the **CITY** may have upon **LICENSEE'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 **LICENSEE** to stop work hereunder, and/or withhold any payment(s) which become due to **LICENSEE** hereunder until **LICENSEE** demonstrates compliance with the requirements hereof.
- 14.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LICENSEE** may be held responsible for payments of damages to persons or property resulting from **LICENSEE'S** or its subcontractors' performance of the work covered under this License.
- 14.9 It is agreed that **LICENSEE'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.
- 14.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this License.

## 15. REPORTS AND RECORDS

- 15.1 Commencing upon completion of the initial improvements, **LICENSEE** shall provide to **CITY** a duplicate copy of the annual report that it provides to Bexar County's Citizens Oversight Committee ("Annual Report"). In addition, **CITY** shall have the right to attend any meetings that **LICENSEE** may have with the Citizens Oversight Committee regarding the Annual Report. The Annual Report to **CITY** shall be submitted to **CITY** on the same day that the Report is submitted to Bexar County.
- 15.2 To the extent that this information is not included in the Annual Report, **LICENSEE** shall provide to **CITY**, at the same time the Annual Report is provided, the following information:
- 15.2.1 List of current officers, including addresses, telephone numbers and, if available, e-mail addresses;
- 15.2.2 Accounting of the Capital Repair and Improvement Fund, as defined in Section 6.3 above, including detail regarding all funds deposited on a monthly basis and withdrawals for repairs and improvements, accompanied by copies of each monthly

bank statement for the Capital Repair and Improvement Fund bank account for the previous year.

15.2.3 Number of participants in **LICENSEE'S** programs and teams, and ages;

15.2.4 **LICENSEE'S** by-laws and, unless previously provided to **CITY**, its articles of incorporation,

- 15.3 Throughout the term of this **Agreement** and any extensions hereof, **LICENSEE** shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Such financial records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to **CITY** inspection, review, and audit following reasonable notification of intent to inspect.
- 15.4 **CITY** reserves the right to conduct, or cause to be conducted, a review and/or audit of **LICENSEE'S** records at any and all times deemed necessary by **CITY** provided, however, an audit will be conducted no more often than one time per year. **CITY** staff, a Certified Public Accountant (CPA), or other auditors as designated by **CITY**, may perform such audits and/or reviews. **CITY** reserves the right to determine the scope of every audit and/or review. In accordance herewith, **LICENSEE** agrees to make available to **CITY** all accounting records.

## 16. SIGNS

- 16.1 **LICENSEE** hereby agrees not to install or display any permanent sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the **CITY**. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. For purposes of this Agreement, temporary signs shall be defined as any sign or banner that is placed on the Premises before the game begins, and removed at the conclusion of the game. Signs which advertise businesses, sponsors, products, services, logos, or events not available upon the Premises must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. **LICENSEE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LICENSEE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor. **CITY** hereby acknowledges that **LICENSEE** shall display signage that acknowledges the contribution of Bexar County to the development and construction of the Premises with such signage to be permanently installed in a prominent location agreed to by Bexar County Commissioners Court and **CITY**.

## 17. ASSIGNMENT

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

## 18. RELATIONSHIP OF PARTIES

- 18.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto create a relationship other than the relationship of **LICENSOR** and **LICENSEE**.

## 19. CONFLICT OF INTEREST

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

## 20. SEPARABILITY

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

## 21. NOTICES

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

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

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

or to such other address as may have been designated in writing by the **CITY** from time

to time. Notices to **LICENSEE** shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to **LICENSEE** at:

**Marcos Barros, President  
Classics Elite Youth Soccer Academy  
14018 Sage Bluff  
San Antonio, Texas 78216**

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

## **22. TEXAS LAW TO APPLY**

- 22.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

## **23. GENDER**

- 23.1 Words of any gender used in this **Agreement** shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

## **24. NON-DISCRIMINATION**

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

## **25. CAPTIONS**

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

## **26. HOLDING OVER**

- 26.1 Should **LICENSEE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License Agreement, or any extension thereof, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding Agreement continuing in effect. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for **LICENSEE** to hold over.

## **27. ENTIRE AGREEMENT/AMENDMENT**

- 27.1 This **Agreement**, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with **CITY** being expressly waived by **LICENSEE**.
- 27.2 No amendment, modification or alteration of the terms of this **Agreement** shall be

binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

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

**28. AUTHORITY**

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

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_ day of \_\_\_\_\_ 200\_.

**CITY:**

**CITY OF SAN ANTONIO**, a Texas  
Municipal Corporation

\_\_\_\_\_  
Sheryl Sculley  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**LICENSEE:**

**Classics Elite Soccer Academy**, a Texas  
Non-profit Corporation

By: MARCO BARRETT

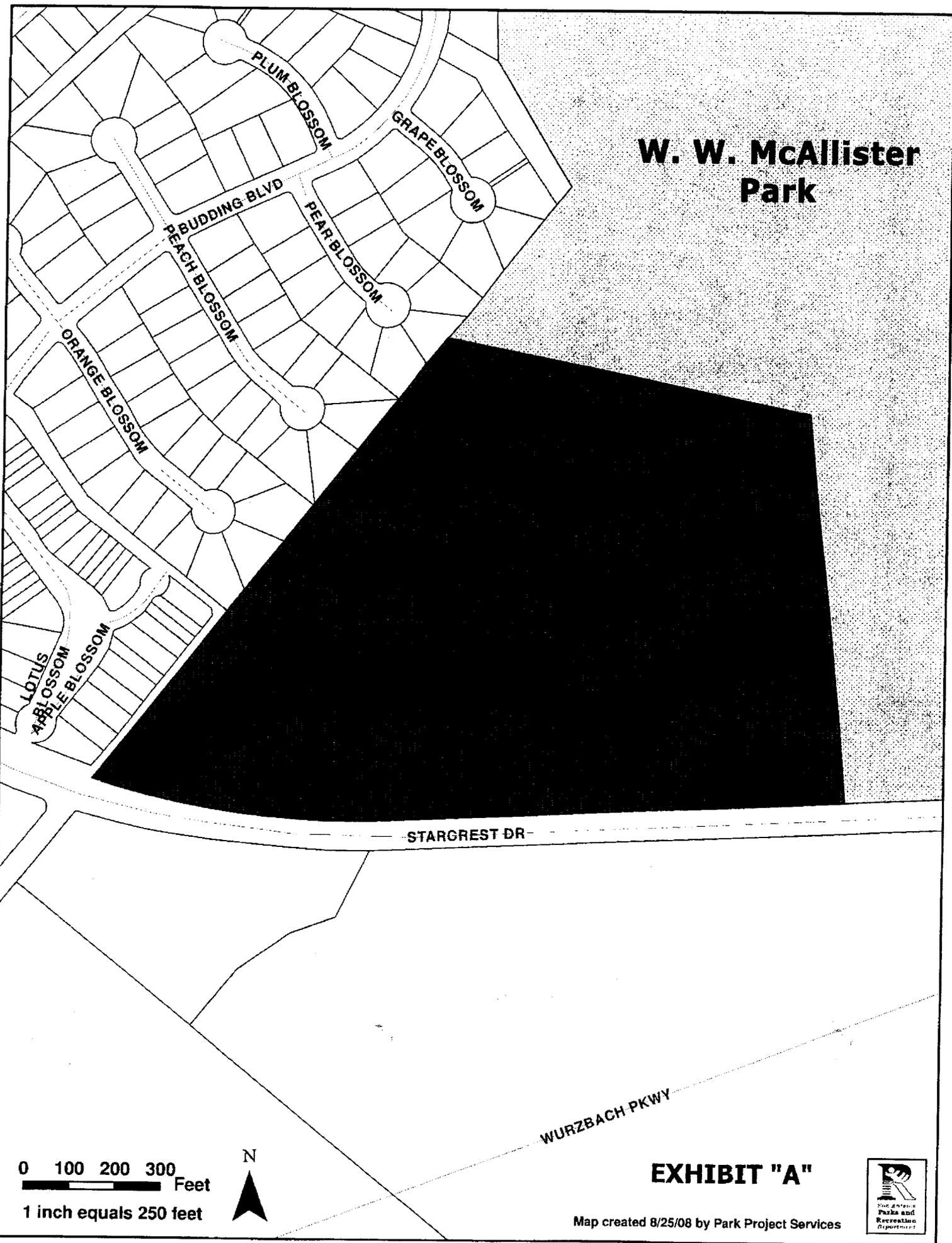
Title: PRESIDENT

CLASSICS ELITE  
SOCCER ACADEMY

APPROVED AS TO FORM: \_\_\_\_\_

City Attorney

# W. W. McAllister Park



## EXHIBIT "A"

Map created 8/25/08 by Park Project Services





**CITY OF SAN ANTONIO**  
**Request for Council Action**

Agenda Item # 43  
Council Meeting Date: 9/18/2008  
RFCA Tracking No: R-3891

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**DEPARTMENT:** Parks & Recreation

**DEPARTMENT HEAD:** Xavier Urrutia

**COUNCIL DISTRICT(S) IMPACTED:**  
Council District 9

**SUBJECT:**  
License Agreement with Classics Elite Soccer Academy

**SUMMARY:**

This ordinance authorizes the execution of a License Agreement with the Classics Elite Soccer Academy at McAllister Park located in City Council District 9. Approval of the License Agreement will be for an initial five year term beginning November 1, 2008 and ending on October 31, 2013, with up to seven five year renewal options, subject to City Council approval.

**BACKGROUND INFORMATION:**

On May 10, 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. Bexar County identified community projects to fund with this tax extension that would have a positive impact on tourism. A portion of the motor vehicle tax has been dedicated to fund thirteen amateur sports facilities, nine of which will be developed on land owned by the City of San Antonio. One of those facilities is for the Classics Elite Soccer Academy.

The Classics Elite Soccer Academy was selected by Bexar County to receive \$1.2 million from the venue tax for the development of a soccer facility in McAllister Park. The Classics Elite Soccer Academy currently licenses land on Bitters Road from the City and their program served over 900 youth in 2007. The Bexar County funds will provide \$1.2 million to develop five new full size soccer fields and facility amenities including paved parking. These improvements will better serve the needs of the participants of the Classics Elite Soccer Academy program, as well as provide a facility suitable for regional tournaments.

The proposed license agreement will be separate from an existing license agreement between the City and San Antonio Elite Soccer Academy for 13.766 acres of Aviation Department land on Bitters Road, which expires in 2014. The proposed license agreement will provide approximately 28.5 acres in McAllister Park. The initial term of the license agreement is five years, with up to seven five year renewal options, subject to the approval of City Council. The Classics Elite Soccer Academy will utilize the Bexar County funds to construct the facility, with the plans subject to the approval of the County and City.

As with other City sports license agreements, there will be no rent paid to the City, but, in consideration of the use of this land, Classics Elite Soccer Academy will maintain all fields and improvements. Other provisions of the license agreement include: a) all revenue will be used to offset facility operating and maintenance costs, b) all remaining funds will be placed by the licensee into a capital improvement and repair fund to be used for the maintenance, repair, refurbishment and replacement of the facility, and c) the Classics Elite Soccer Academy will allow the use of the facility by other amateur sports groups subject to their own use and will establish policies and fees for such use by others.

The Classics Elite Soccer Academy will receive Bexar County funding for design in 2008 and construction in mid-2009.

**ISSUE:**

This ordinance authorizes the execution of a License Agreement with the Classics Elite Soccer Academy at McAllister Park. The agreement will be for an initial five year term beginning November 1, 2008 and ending on October 31, 2013, with up to seven five year renewal options, subject to City Council approval.

This action is consistent with the City policy to facilitate the use of parks for athletic and recreational activities by the citizens of San Antonio.

**ALTERNATIVES:**

In this particular case, Bexar County selected Classics Elite Soccer Academy to receive \$1.2 million from the Bexar County Venue Tax Program for the development of a soccer facility in McAllister Park. Not entering into this license agreement would result in development of additional amenities not occurring. No City funds have been identified nor secured to make improvements to increase amateur sports facilities.

**FISCAL IMPACT:**

This action requires no General Fund commitment.

**RECOMMENDATION:**

Staff recommends approval of this License Agreement with the Classics Elite Soccer Academy at McAllister Park for an initial five year term beginning November 1, 2008 and ending on October 31, 2013, with up to seven five year renewal options, subject to City Council approval.

The Discretionary Contracts Disclosure Form required by the Ethics ordinance is attached.

**ATTACHMENT(S):**

File Description

[Classics Elite Soccer Academy Discretionary Contracts Disclosure Form](#)

[License Agreement](#)

File Name

Classics Elite Soccer Academy Discretionary Contracts Disclosure Form.pdf

#3891 Classics Elite Soccer Academy License Agreement.pdf

[Voting Results](#)

[Ordinance/Supplemental Documents](#)

200809180836.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Janet Martin Assistant Director Parks & Recreation

**APPROVED FOR COUNCIL CONSIDERATION:**

A.J. Rodriguez Deputy City Manager