SW/vv
03/12/15
Item #15B

AN ORDINANCE 2015-03-12-0188

AUTHORIZING THE EXECUTION OF A 20 YEAR RENT FREE GROUND LEASE OF AN APPROXIMATELY 1.979 ACRE PARCEL LOCATED AT 829 NOGALITOS STREET FROM THE BOYS AND GIRLS CLUBS OF SAN ANTONIO AND A 20 YEAR RENT FREE LEASE-BACK OF THE SAME PROPERTY TO THE BOYS AND GIRLS CLUBS OF SAN ANTONIO FOR THE CONSTRUCTION AND OPERATION OF A RECREATIONAL FACILITY.

* * * * *

WHEREAS, on May 12, 2012, San Antonio voters approved the 2012-2017 Bond Program, consisting of five propositions totaling $596 million; and

WHEREAS, the Bond Program funds will be used on various capital improvement projects, to address community infrastructure needs and improve the overall quality of life in San Antonio; and

WHEREAS, as part of that program, $1,850,000.00 in Parks, Recreation and Open Space Improvements General Obligation Bond funds was approved for the development of a recreational facility in the Lone Star neighborhood; and

WHEREAS, project design is anticipated to begin in upon execution of the Funding Agreement and construction, is expected to be completed by December 2016; and

WHEREAS, in order to provide funding needed for non-City owned facilities as approved by the voters in the 2012-2017 Bond Program, the City is required to have a long-term interest in the property, therefore, a ground lease is being proposed as the means to fulfilling that requirement and will be at no cost to the City; and

WHEREAS, the Boys and Girls Clubs of San Antonio is a non-profit organization which originally opened as the Boys Club in San Antonio in 1939 on Dolorosa Street; and

WHEREAS, after over 30 years in operation, girls were invited to become members of the club in 1975 and the name was officially changed in 1991 to The Boys and Girls Clubs of San Antonio (TBGC-SA); and

WHEREAS, the mission of the TBGC-SA is to enhance the educational, social, and moral development of San Antonio's youth ages 6-18, especially those most disadvantaged by providing a fun, safe place full of age appropriate activities and opportunities; and

WHEREAS, today, TBGC-SA serves more than 8,800 Club members annually, and operates five branch locations and two project units in the City of San Antonio; and

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WHEREAS, additionally, TBGC-SA operates on-site programs in 43 locations in Harlandale, Judson and San Antonio Independent School Districts; and

WHEREAS, TBGC-SA has committed to meeting these goals; **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 Department of Transportation and Capital Improvements or his designee, is authorized to execute a 20 year rent free ground lease of an approximately 1.979 acre parcel located at 829 Nogalitos Street from the Boys and Girls Clubs of San Antonio and a 20 year rent free lease-back of the same property to the Boys and Girls Clubs of San Antonio for construction and operation of a recreational facility. A copy of the ground lease and lease back, in substantially final form, are attached hereto and incorporated herein for all purposes as **Attachment I and II**.

SECTION 2. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 12th day of March, 2015.

Ivy R. Taylor

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Hollis Young
for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**15B (in consent vote: 15A, 15B)**
Date:	03/12/2015
Time:	10:14:54 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the execution of a 20 year rent free ground lease of an approximately 1.979 acre parcel located at 829 Nogalitos Street from the Boys and Girls Clubs of San Antonio and a 20 year rent free lease-back of the same property to the Boys and Girls Clubs of San Antonio for construction and operation of a recreational facility.
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				
Alan Warrick	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				x
Shirley Gonzales	District 5		x			x	
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Ground Lease

Lone Star Recreational Facility
829 Nogalitos, San Antonio, TX 78204

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Authorizing Ordinance:

Sublease That certain Sublease agreement by and between The City of San Antonio and the Boys and Girls Clubs of San Antonio, Inc. coterminous with this Ground Lease Agreement ("Lease" or "lease"). The Boys and Girls Clubs of San Antonio, Inc. is the Landlord under the Lease and the Subtenant under the Sublease. The City is the Tenant under both the Sublease and Ground Lease agreements.

Landlord: **The Boys and Girls Clubs of San Antonio, Inc.**

Landlord's Address: 600 S.W. 19th Street, San Antonio, TX 78207

Address for Rent Payment: 600 S.W. 19th Street, San Antonio, TX 78207

Tenant: City of San Antonio

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

Premises: A parcel containing approximately 1.979 acres of

	gross area located at 829 Nogalitos, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A,** which is incorporated herein for all purposes.
Permitted Use:	Community recreational facility
Lease Commencement Date:	The effective date of the Authorizing Ordinance
Initial Term:	Until the expiration of 20 years from the Lease Commencement Date
Initial Term Annual Rent:	In consideration of Tenants financial support for the construction of the improvements, there will be no rent.

Background:

In 2012, the City of San Antonio (City) held a Bond Election and received voter approval to fund a variety of Parks, Recreation & Open Space Improvements pursuant to such bonds. Among the Parks, Recreation & Open Space Improvements projects approved is the "Lone Star Recreational Facility" project, described in the official bond brochure as "Lone Star Recreational Center LF: Development of a recreation facility in the Lone Star neighborhood that may include land acquisition." The City must comply with official brochure terms and conditions including fulfillment of a public purpose in accordance with all applicable laws of public funding and authorizing instruments for the public funding. The City identified the The Boys and Girls Clubs of San Antonio, Inc. as the appropriate party to partner with. The City has committed funding for the construction of a recreation facility which will be provided to The Boys and Girls Clubs of San Antonio, Inc. according to the terms of a funding agreement separate from this ground lease. The public benefit to be provided is recreational facilities, operated under non-profit regulations, available to the citizens of San Antonio.

1. Demise of Premises.

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord under the terms of this Lease. Tenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements, rights, and privileges of Landlord, existing now or at any time during the lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Landlord as owner of the Premises by the closing of any street, sidewalk, or alley.

2. Lease Term.

2.01. The Term is as stated above.

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

3. Rent.

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

4. Taxes.

Payment by Landlord

4.01. Landlord must pay and discharge all taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the lease term, whether belonging to Landlord or to Tenant. Landlord must pay all the taxes, charges, and assessments directly to the public officer charged with their collection not fewer than 15 days before delinquency. Landlord hereby indemnifies Tenant and holds it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments. Landlord may, in good faith at its own expense, contest taxes, charges, and assessments. However, it must pay the contested amount, plus any penalties and interest imposed, if and when finally determined to be due.

5. Utilities.

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

6. Use of Premises.

Permitted Use of Premises

6.01. Following final completion of the improvements, Tenant 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")**. Tenant's right to City Days shall be subject to the availability of the Premises based on Landlord'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 the Funding Agreement. Tenant shall not be charged additional rent or fees for City Days. Tenant shall use its best efforts to avoid any damage to the Premises, and any damage caused as a result of Tenant's use shall be promptly repaired by Tenant, at Tenant's expense. Tenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing. Tenant must not use or store, or permit to be used or stored, on the Premises any hazardous or toxic substances or materials.

Prohibited Use

6.02. Tenant must not use or permit the Premises to be used for any activity violating any applicable local, state, or federal law, rule, or regulation.

7. Construction by Tenant.

7.01. Tenant shall have the right to make improvements to the Premises with the prior written approval of Landlord.

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

8. Repairs, Maintenance, and Restoration.

Landlord's Duty to Maintain and Repair

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

Damage or Destruction

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

9. Mechanic's Liens.

Tenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Tenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Tenant must either cause it to be removed, or if Tenant in good faith wishes to contest the lien, take timely action

to do so at Tenant's sole expense. If Tenant contests the lien, Tenant must indemnify Landlord and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Tenant loses the contest, Tenant must cause the lien to be discharged and removed before any judgment is executed.

10. Condemnation.

Parties' Interests

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

Total Taking—Termination

10.02. If the entire Premises are taken or so transferred, this lease and all of the rights, titles, and interests under it ceases on the date that title to the Premises vests in the condemning authority. Tenant shall receive a portion of the proceeds of the condemnation award sufficient to repay the pro rate share of the bond funds provided by Tenant for construction of the improvements.

Partial Taking—Termination

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

Partial Taking

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

11. Insurance

Tenant is a self insured. Landlord shall maintain the insurance policies required under the Sublease.

12. Default and Remedies.

Termination on Default

12.01. If Tenant defaults in performing any obligation arising out of this lease and does not correct the default within 60 days after receipt of written notice to Tenant, Landlord may terminate this lease, provided however, Landlord may not terminate this lease during any period in which there is outstanding debt owed by Tenant for bonds issued for the financing of the construction of improvements on the Premises.

12.02. If Landlord defaults in performing any obligation arising out of this lease and does not correct the default within 60 days after receipt of written notice to Landlord, Tenant may terminate this lease. Any such termination for Landlord default during any period in which there is outstanding debt owed by Tenant for bonds issued for the financing of the construction of improvements on the Premises shall result in Landlord owing Tenant an amount equal to the such outstanding debt.

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

Subleases Not Affected
12.04. Landlord's exercising any remedy does not affect the existence of subleases entered into according to this lease.

13. General Protective Provisions.

Right of Entry and Inspection
13.01. Tenant must permit Landlord or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Tenant is complying with this lease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

No Partnership or Joint Venture
13.02. The relationship between Landlord and Tenant is at all times solely that of landlord and tenant, not that of partners or a joint venturers.

Force Majeure
13.03. If constructing the building, curing any default (other than failure to pay rent, insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

Release of Landlord

13.04. If Landlord sells or transfers all or part of the Premises and as a part of the transaction assigns its interest in this lease, of the effective date of the assignment, Landlord has no further liability under this lease, except with respect to matters that have accrued and are unsatisfied as of that date. Landlord's covenants and obligations under this lease will bind Landlord and its successors and assigns only during their respective, successive periods of ownership of the fee.

Joint and Several Liability
13.05. If the Lease names more than one Tenant or Landlord; the obligations of all Tenants and Landlords are joint and several.

14. Prohibited Interests in Contracts

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

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

Tenant's Warranties
14.02. Tenant warrants and certifies as follows:

(i) Tenant and its officers, employees and agents are neither officers nor employees of the City.

(ii) Tenant has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

City's Reliance is Reasonable
14.03. Tenant acknowledges that City's reliance on the above warranties and certifications is reasonable.

15. Miscellaneous.

Rights and Remedies Cumulative

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

Time of Essence

15.02. Time is of the essence under this Lease.

Yielding Up

15.03. Tenant will, upon expiration or termination, yield up the Premises peacefully to Landlord, in good order, condition, and repair, reasonable use and wear excepted.

Applicable Law

15.04. This Agreement is entered into in San Antonio, Bexar County, State of Texas. **The Construction Of This Lease And The Rights, Remedies, And Obligations Arising Thereunder Are Governed By The Laws Of The State Of Texas.** But the Texas conflicts of law rules must not cause the application of the laws of a jurisdiction other than Texas. The obligations performable hereunder by both parties are performable in San Antonio, Bexar County, Texas.

Severability

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

Successors

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

Integration

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

Modification

15.08. This Lease may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries

15.09. This Lease benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

Notices

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

Captions

15.11. Paragraph captions in this Lease are for ease of reference only and do not affect the interpretation hereof.

Counterparts

15.12. This Lease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Lease, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

Further Assurances

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

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

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

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

By: _____
Mike Frisbie, P.E.,
City Engineer/ Director, TCI

By: Angie Mock
Angie Mock
CEO

Date: _____

Date: 3/4/15

By: _____
Luis De La Torre
Board Chairman

Date: 03/04/15

APPROVED AS TO FORM

_____
CITY ATTORNEY

Date: _____

Attest:

_____
City Clerk

Sublease
Lone Star Recreational Center

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Authorizing Ordinance:

Lease:	That certain Lease agreement by and between The City of San Antonio and the Boys and Girls Clubs of San Antonio, Inc. ("Lease") coterminous with this Sublease Agreement ("Sublease"). The Boys and Girls Clubs of San Antonio, Inc. is the Landlord under the Lease and the Subtenant under the Sublease. The City is the Tenant in both the Lease and Sublease agreements.
Tenant:	City of San Antonio
Landlord's Address:	P.O. Box 839966, San Antonio, Texas 78283-3966
Address for Rent Payment:	P.O. Box 839966, San Antonio, Texas 78283-3966

Subtenant:	**The Boys and Girls Clubs of San Antonio, Inc. (the Subtenant is the same entity as the Landlord in the underlying Lease)**
Subtenant's Address:	600 S.W. 19th Street, San Antonio, TX 78207
Premises:	A parcel containing approximately 1.979 acres of gross area located at 829 Nogalitos, San Antonio, Bexar County, Texas, more particularly described on **Exhibit A,** which is incorporated herein for all purposes.
Permitted Use:	Community recreational facility ("Facility").
Sublease Commencement Date:	The effective date of the Authorizing Ordinance
Term:	Until the expiration of 20 years from the Lease Commencement Date
Rent:	In consideration of Subtenant's construction and operation of the Facility, there will be no rent.
Construction Completion Date:	September of 2016.

Background:

In 2012, the City of San Antonio (City) held a Bond Election and received voter approval to fund a variety of Parks, Recreation & Open Space Improvements pursuant to such bonds. Among the Parks, Recreation & Open Space Improvements projects approved is the "Lone Star Recreational Facility" project, described in the official bond brochure as "Lone Star Recreational Center LF: Development of a recreation facility in the Lone Star neighborhood that may include land acquisition." The City must comply with official brochure terms and conditions including fulfillment of a public purpose in accordance with all applicable laws of public funding and authorizing instruments for the public funding. The City identified the The Boys and Girls Clubs of San Antonio, Inc. as the appropriate party to partner with. The City has committed funding for the construction of a recreation facility which will be provided to The Boys and Girls Clubs of San Antonio according to the terms of a funding agreement separate from this ground lease. The public benefit to be provided is recreational facilities, operated under non-profit regulations, available to the citizens of San Antonio.

1. Demise of Premises.

Tenant subleases the Premises to Subtenant and Subtenant subleases the Premises from Tenant under the terms of this Sublease. Subtenant is to have and hold the Premises, together with all rights, privileges, easements, appurtenances, and immunities belonging to or in any way appertaining to them. The foregoing includes easements, rights, and privileges of Subtenant, existing now or at any time during the Lease term, in, to, or under adjacent streets, sidewalks, alleys, party walls, and property contiguous to the Premises and reversions that may later accrue to Tenant by the closing of any street, sidewalk, or alley.

2. Sublease Term.

2.01. The Term is as stated above.

Termination
2.02. This Sublease terminates without further notice when the Term expires.

3. Rent.

3.01. In consideration of Subtenant's construction and operation of theFacility, there will be no rent.

4. Taxes.

Payment by Subtenant
4.01. Subtenant must pay and discharge all taxes, general and special assessments, and other charges of-any kind levied on or assessed against the Premises and all interests in the Premises and all improvements and other property on them during the Sublease term. Subtenant hereby indemnifies Tenant and holds it harmless from all loss, cost, liability, or expense arising from or relating to such taxes, charges, and assessments.

5. Utilities.

Subtenant must pay or cause to be paid all charges for water, heat, gas, electricity, sewers, and all other utilities used on the Premises throughout the Sublease term, including any connection fees.

6. Use of Premises.

Permitted Use of Premises
6.01. Subtenant may use the Premises only for the Permitted Use, unless Landlord otherwise consents in writing.

Prohibited Use Of Premises

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

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

7. Construction by Subtenant.

7.01. Conditions

General Conditions: Subtenant may erect, maintain, alter, remodel, reconstruct, rebuild, replace, and remove buildings and other improvements on the Premises and may change the contour of the Premises, subject to the following:

a. Subtenant bears the cost of the work.

b. Subtenant keeps the Premises free of mechanics' and material men's liens.

c. Except for routine maintenance of existing buildings and improvement, Subtenant notifies Tenant, before work begins, of the time work will begin and the general nature of the work.

d. Subtenant has secured Tenant's approval of all plans in the manner provided for later in this Sublease.

Specific Conditions: Subtenant may construct a minimum 20,000 square foot multi-function recreation center, the total cost of the Facility is estimated to be $3,800,000.00. Construction costs are to be paid by Subtenant in the amount of approximately $2,000,000.00 and Tenant in the amount of up to $1,792,000.00. Subtenant has committed to raising its share of the funds necessary to construct the Facility and agreed to fund on-going operations, once completed. This Sublease is subject to the Funding Agreement entered into between Subtenant and Tenant. Subtenant shall provide evidence to Tenant that $2,000,000.00 in project funds have been expensed prior to the receipt of any City funding under the Funding Agreement. In the event the scope of the project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly.

Beginning Construction

7.03. Subtenant expects to begin construction of the Facility not later than the Construction Commencement Date of September 2015 or after all necessary permits and other authorizations are issued, whichever is later.

Tenant's Approval of Plans

7.04. The following rules govern Tenant's approving construction, additions, and alterations of buildings or other improvements on the Premises:

a. Written Approval Required. No building or other improvement may be constructed on the Premises unless the plans, specifications, and proposed location of the building or other improvement have received Tenant's written approval. All buildings or other improvements must comply with the approved plans, specifications, and proposed location. No material addition to or alteration of any building or structure erected on the Premises may be begun until plans and specifications covering the exterior of the proposed addition or alteration have been first submitted to and approved by Tenant.

b. Submission of Plans. Subtenant must, at its own expense, engage a licensed architect or engineer to prepare plans and specifications for constructing the Facility or for constructing any other buildings or improvements or additions or alterations to any buildings or, improvements that require Tenant's approval under subparagraph a above. Subtenant must submit three copies of detailed working drawings, plans, and specifications for all improvements for Tenant's approval within 30 days after this Sublease is executed, but not later than 30 days before construction is to begin. If Subtenant wishes to construct any other buildings or improvements or make any additions or alterations to buildings or improvements for which Tenant's approval is required under Subsection (a) above, Subtenant must submit copies of detailed working drawings, plans, and specifications for Tenant's approval before the project begins.

c. Tenant's Approval. Tenant will promptly review and approve all plans submitted to it or note in writing any required changes or corrections. Subtenant must comply with changes or corrections required by Tenant, and Subtenant must resubmit plans showing the changes and corrections within 15 days after the corrections or changes have been noted. Minor changes in work or materials not affecting the general character of the building project may be made at any time without Tenant's approval, but a copy of the altered plans and specifications must be furnished to Tenant.

d. Exception to Tenant's Approval. The following items do not require submission to, and approval by, Tenant:

i. Minor repairs and alterations necessary to maintain existing structures and improvements in a useful state of repair and operation.

ii. Changes and alterations required by an authorized public official with authority or jurisdiction over the buildings or improvements to comply with legal requirements.

e. Effect of Approval. Tenant's approval of any plans and specifications applies only to the conformity of the plans and specifications to the general architectural plan for the Premises. It does not excuse Subtenant from any governmental permits, licenses, or other requirements of general applicability, including adherence to City adopted building/construction codes. Further, Tenant's approval does not constitute approval of the architectural or engineering design. By approving the plans and specifications, Tenant assumes no liability or responsibility for the architectural or engineering design or for any defect in any building or improvement constructed from the plans or specifications.

Ownership of Buildings, Improvements, and Fixtures
7.05. Any buildings, improvements, additions, alterations, and fixtures (except furniture and trade fixtures) constructed, placed, or maintained on any part of the Premises during the Sublease term become part of the real property of the Premises and must remain on the Premises when the Sublease terminates.

Right to Remove Improvements
7.06. Subtenant may, at any time while it occupies the Premises, or within a reasonable time thereafter, remove any furniture, machinery, equipment, or other trade fixtures owned or placed by Subtenant in, under, or on the Premises. Before the Sublease terminates, Subtenant must repair any damage to any buildings or improvements on the Premises resulting from removal. Any such items not removed by termination become Landlord's property.

8. Encumbrance of Leasehold Estate.

8.01. Subtenant may not encumber its leasehold interest.

9. Repairs, Maintenance, and Restoration.

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

Damage or Destruction
9.02. If any building or improvement constructed on the Premises is damaged or destroyed by fire or any other casualty, regardless of the extent of the damage or destruction, Subtenant must, within one year from the date of the damage or destruction, begin to repair, reconstruct, or replace the damaged or destroyed building or improvement at its own cost. Subtenant must pursue the repair,

reconstruction, or replacement with reasonable diligence and restore the building to substantially the condition it was in before the casualty. However, if beginning or completing this restoration is prevented or delayed by war, civil commotion, acts of God, strikes, fire or other casualty, or any other reason beyond Subtenant's control, the time for beginning or completing the restoration (or both) will automatically be extended for the period of each such delay.

10. Mechanic's Liens.

Subtenant must not cause or permit any mechanic's or other liens to be filed against the fee of the Premises or against Subtenant's leasehold interest (excluding any leasehold mortgage). If such a lien is recorded, Subtenant must either cause it to be removed, or if Subtenant in good faith wishes to contest the lien, take timely action to do so at Subtenant's sole expense. If Subtenant contests the lien, Subtenant must indemnify Tenant and hold it harmless from all loss, cost, liability, or expense arising from the lien contest. If Subtenant loses the contest, Subtenant must cause the lien to be discharged and removed before any judgment is executed.

11. Condemnation.

The rights of the parties with regard to condemnation are wholly determined by the provisions contained in the Lease.

12. Insurance

Allocation of Claims

12.01. Tenant disclaims any employee, agent, or invitee relationship with any person whose presence on the Premises is through Subtenant. Any and all claims resulting from any obligation for which Subtenant may be held liable under any workers' compensation, unemployment compensation, disability benefits, similar statutory scheme, or common law negligence is the sole obligation and responsibility of Subtenant.

Required Insurance

12.02. Subtenant must provide and maintain in full force and effect with respect to the Premises from the Commencement Date of this Sublease and for the duration of this Sublease and any extensions thereof, insurance coverage written on an occurrence form, by companies authorized and admitted to do business in the State of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to Tenant, in the following types and amounts:

Type:	Amount:
1. Worker's Compensation	Statutory, with a Waiver of subrogation in favor of Landlord

2. Employer's Liability	$500,000/$500,000/$500,000 with a Waiver of Subrogation in favor of Landlord
3. Commercial General Public Liability Insurance to include (but not be limited to coverage for) coverage for the following:	For Bodily Injury, Death, and Property Damage of $1,000,000 per occurrence; $2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
(a) Premises/Operations	
(b) Independent Contractors	
(c) Products/Completed Operations	
(d) Contractual Liability	
(e) Personal Injury Liability	
(f) Broad-Form Property Damage, to include Fire Legal Liability	Coverage for replacement cost of Tenant's improvements
(g) Host Liquor Liability Insurance, if alcoholic beverages are served on the Premises	
(f) Liquor Legal Liability Insurance, if alcoholic beverages are sold on the Premises	
4. Business Automobile Liability to include coverage for:	Combined Single Limit for Bodily Injury, Death, and Property Damage of $1,000,000.00 per occurrence
(a.) Owned/Leased Automobiles	
(b.) Non-owned Automobiles	
(c) Hired Automobiles	
5. Property Insurance for physical damage to the property of the Subtenant, including improvements and betterments	Coverage for replacement cost of Tenant's improvements.

Required Clauses

12.04. Each insurance policy required by this Lease must contain the following clauses:

> "This insurance is not canceled, limited in scope or coverage, or non-renewed until after 30 days' prior written notice has been given to:
>
> (a) City Clerk, City of San Antonio
> City Hall/2nd Floor
> P. O. Box 839966

San Antonio, Texas 78283-3966
Attention: Risk Manager

and

(b) Parks & Recreation Department
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966
Attention: Director

"The insurance provided by Subtenant is primary to any insurance or self-insurance maintained by the City of San Antonio."

"Any insurance or self-insurance maintained by the City of San Antonio applies in excess of, and does not contribute with, insurance provided by this policy."

Each insurance policy required by this Sublease, excepting policies for Workers' Compensation and Employer's Liability, must contain the following clause:

"The City of San Antonio, its officials, employees, representatives and volunteers are added as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under this Sublease with the City of San Antonio."

Required Deliveries
12.05. Subtenant must require its insurance carrier(s) to deliver to Tenant's Risk Manager and City Clerk, upon request and without expense, copies of policies and endorsements pertinent to the limits required by Tenant. Tenant may request changes in policy terms, conditions, limitations, or exclusions (except where established by law). If Tenant does so and the changes would increase premiums, Tenant will provide 30 days' prior notice to Subtenant and an opportunity to discuss the changes. If Tenant still wants the changes after discussion, Subtenant must make the changes and pay the cost thereof.

Additional Insurance for Improvement Work
12.06. Throughout the time period of any construction activity on the Premises, Subtenant shall provide Builder's Risk Insurance Coverage, Worker's Compensation and Employer's Liability Insurance Coverage, Professional Liability Insurance Coverage and any other liability or other insurance coverage in the amounts and types of coverage approved by Tenant's Risk Manager, covering all risks of physical loss during the term of any construction contract and until work is accepted by the City of San Antonio. Subtenant must procure and maintain the insurance, as well as other insurance coverage enumerated above, in full force and effect during such construction. Also, payment and performance

bonds naming Tenant as indemnitee must be provided by Subtenant or its contractors or subcontractors. If the construction is minor, Subtenant may send a written request to the City's Director of Transportation and Capital Improvements to waive the requirements in this Section.

Certificates
12.07. Prior to the Commencement Date, Subtenant must deliver certificates to Tenant's Risk Manager and the City Clerk from Subtenant's insurance carrier, reflecting all required insurance coverage. All endorsements and certificates must be signed by an authorized representative of the insurance company and must include the signatory's company affiliation and title. If requested by Tenant, Subtenant must send Tenant documentation acceptable to Tenant that confirms that the individual signing the endorsements and certificates is authorized to do so by the insurance company.

Address for Delivery
12.08. The Notices and Certificates of Insurance must be provided to the same addresses as the notices of cancelation.

Liability Not Limited
12.09. Nothing herein contained limits in any way Subtenant's liability for damages to persons or property resulting from Subtenant's activities or the activities of Subtenant's agents, employees, sublessees, or invitees under this Sublease.

Waiver of Claims Against Tenant
12.10. Subtenant waives all claims against Tenant for injury to persons or property on or about the Premises, whether or not caused by Tenant's negligence.

13. Indemnification

13.01. These definitions apply to the indemnity provisions of thisSublease:

13.01.01. "Indemnified Claims" mean all loss, cost, liability, or expense, directly or indirectly arising out of acts or omissions of any person other than an Indemnitee that give rise to assertions of Indemnitee liability under this Contract, whether or not the person is a party to this Sublease. Indemnified Claims include attorneys' fees and court costs and include claims arising from property damage and from personal or bodily injury, including death.

13.01.02. "Indemnitees" means the City of San Antonio and its elected officials, officers, employees, agents, and other representatives, collectively, against whom an Indemnified Claim has been asserted.

13.01.03. "Indemnitor" means Subtenant.

13.02. Indemnitor must indemnify Indemnitees, individually and collectively, from all Indemnified Claims.

13.03. If an Indemnitee is finally adjudged to be solely negligent or grossly negligent, in whole or in part, Indemnitor need not further indemnify the so-adjudged Indemnitee from its sole or gross negligence. But despite allegations of Indemnitee negligence, Indemnitor must nevertheless defend all Indemnitees until final adjudication. Indemnitor may not recover sums previously spent defending or otherwise indemnifying the Indemnitee who has been adjudged to be solely negligent and must continue to indemnify other Indemnitees.

13.04. There are no third-party beneficiaries of this indemnity other than the category of people and entities included within the definition of Indemnitees.

13.05. Indemnitor must promptly advise the City of San Antonio in writing of any Indemnified Claim and must, at its own cost, investigate and defend the Indemnified Claim. Whether or not the City of San Antonio is an Indemnitee as to a particular Indemnified Claim, the City of San Antonio may require Indemnitor to replace the counsel Indemnitor has hired to defend Indemnitees. The City may also require Indemnitor to hire specific-named counsel for so long as the named counsel's hourly rates do not exceed the usual and customary charges for counsel handling sophisticated and complex litigation in the locale where the suit is pending. No such actions release or impair Indemnitor's obligations under this indemnity paragraph, including its obligation to pay for the counsel selected by City. Regardless of who selects the counsel, the counsel's clients are Indemnitees, not Indemnitor.

13.06. In addition to the indemnity required under this Contract, each Indemnitee may, at its own expense, participate in its defense by counsel of its choosing without relieving or impairing Indemnitor's obligations under this indemnity paragraph.

13.07. Indemnitor may not settle any Indemnified Claim without the consent of the City of San Antonio, whether or not the City is an Indemnitee as to the particular Indemnified Claim, unless (A) the settlement will be fully funded by Indemnitor and (B) the proposed settlement does not contain an admission of liability or wrongdoing by any Indemnitee. The City's withholding its consent as allowed in the preceding sentence does not release or impair Indemnitor's obligations of this indemnity paragraph. Even if the City of San Antonio is not an Indemnitee as to a particular Indemnified Claim, Indemnitor must give City at least 20 days advance written notice of the details of a proposed settlement before

it becomes binding. Any settlement purporting to bind an Indemnitee must first be approved by City Council.

13.08. Nothing in this Contract waives governmental immunity or other defenses of Indemnitees under applicable law.

13.09. If, for whatever reason, a court refuses to enforce this indemnity as written, and only in that case, the parties must contribute to any Indemnified Claim 5% by the Indemnitees and 95% by the Indemnitor. Indemnitor need look only to the City of San Antonio for Indemnitees' 5% if the City of San Antonio is an Indemnified Party as to a particular Indemnified Claim.

14. Assignment and Subletting

Consent Required

14.01. Any attempt at transfer, assignment, or subletting of Subtenant's rights, duties, and obligations hereunder, without the Tenant's prior written consent, is void and, at Tenants option, will terminate the Sublease.

15. Default and Remedies.

Termination on Default

15.01. If Subtenant defaults in performing any obligation arising out of this Sublease and does not correct the default in a reasonable time but in no case longer than 30 days after receipt of written notice to Tenant, Tenant may terminate this Sublease. Tenant or its agent or attorney may resume possession of the Premises and relet them for the remainder of the term. Upon any such early termination Subtenant shall, at Tenant's option, owe to Tenant any amount sufficient to repay any outstanding indebtedness used to finance the construction of improvements on the Premises.

Other Remedies

15.02. Termination of this Sublease does not relieve Subtenant from paying (A) money owing to Tenant under the Sublease at the time of termination, or (B) any claim for damages against Subtenant under this Sublease. Termination does not prevent Tenant from enforcing payment by any remedy provided for by law or from recovering from Subtenant for any default. Tenant's rights, options, and remedies under this Sublease are cumulative, and no one of them is exclusive of the other. Tenant may pursue any or all such remedies or any other remedy or relief provided by law, whether or not stated in this lease. No waiver by Tenant of a breach of any covenant or condition of this Sublease is a waiver of any succeeding or preceding breach of the same or any other covenant or condition of this Sublease.

16. General Protective Provisions.

Right of Entry and Inspection

16.01. Subtenant must permit Tenant or its agents, representatives, or employees to enter the Premises to (A) inspect, (B) determine whether Subtenant is complying with this Sublease, (C) maintain, repair, or alter the Premises, or (D) show the Premises to prospective tenants, purchasers, mortgagees, or beneficiaries under trust deeds.

No Partnership or Joint Venture

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

Force Majeure

16.03. If constructing the building, curing any default (other than failure to pay rent, insurance premiums, or taxes), or performing any other obligation is delayed by war; civil commotion; act of God; fire or other casualty; or any other circumstance beyond the control of the party obligated to perform, each party so delayed is excused from performance during the delay period.

Joint and Several Liability

16.04. If the Lease names more than one Tenant or Landlord; the obligations of all Tenants and Landlords are joint and several.

17. Prohibited Interests in Contracts

Prohibited Interest

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

(i) a City officer or employee;

(ii) his parent, child or spouse;

(iii) a business entity in which the officer or employee, or his parent, child or spouse owns (i) 10% or more of the voting stock or shares of the business entity, or (ii) 10% or more of the fair market value of the business entity;

(iv) a business entity in which any individual or entity above listed is a (i) subcontractor on a City contract, (ii) a partner, or (iii) a parent or subsidiary business entity.

18.08. This Sublease may not be changed orally but only by a written agreement, signed by the party against whom enforcement of any modification is sought. No such modification, express or implied, affects the right of the modifying party to require observance of either (i) any other term or (ii) the same term or condition as it applies on a subsequent or previous occasion.

Third Party Beneficiaries
18.09. This Sublease benefits only the parties hereto and their successors and permitted assigns. There are no third party beneficiaries.

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

Captions
18.11. Paragraph captions in this Subease are for ease of reference only and do not affect the interpretation hereof.

Counterparts
18.12. This Sublease may be executed in multiple counterparts, each of which is an original, whether or not all parties sign the same document. Regardless of the number of counterparts, they constitute only one agreement. In making proof of this Sublease, it is not be necessary to produce or account for more counterparts than are necessary to show execution by or on behalf of all parties.

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

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

By: _____
Mike Frisbie, P.E.,
City Engineer/ Director, TCI

By: Angie Mock
Angie Mock
CEO

Date: _____

Date: 3/4/15

By: _____
Luis De La Torre
Board Chairman

Date: 03/04/15

APPROVED AS TO FORM

_____
CITY ATTORNEY

Date: _____

Attest:

_____
City Clerk