

AN ORDINANCE      2008-10-02-0891

**APPROVING TWO FIELD USE AND MAINTENANCE LICENSE AGREEMENTS FOR SHARED USE OF COLT FIELD AT SOUTHSIDE LIONS PARK IN COUNCIL DISTRICT 3 BY HIGHLAND HAWKS POP WARNER FOOTBALL ASSOCIATION AND THE SAN ANTONIO INDEPENDENT SCHOOL DISTRICT FOR FIVE YEAR TERMS BEGINNING ON OCTOBER 1, 2008 AND ENDING ON SEPTEMBER 30, 2013.**

\*            \*            \*            \*            \*

**WHEREAS**, the Highland Hawks Pop Warner Football Association has been a licensee at Southside Lions Park for over seven years, providing organized sports activities for area youth; and

**WHEREAS**, the San Antonio Independent School District (Highlands High School) has been sharing and coordinating use of Colt Field with the Highland Hawks Pop Warner Football Association since 2005; and

**WHEREAS**, under the terms of the proposed Licenses, the Highland Hawks Pop Warner Football Association will have priority use of the fields on the dates identified in a use schedule submitted annually to the Parks and Recreation Department; and

**WHEREAS**, the San Antonio Independent School District will be limited to use of Colt Field for football practice only during school hours on weekdays and will be required to coordinate their use schedule with the Highland Hawks Pop Warner Football Association; and

**WHEREAS**, the Highland Hawks Pop Warner Football Association will have sole permission to operate concessions with proceeds benefiting their program; and

**WHEREAS**, both licensees are jointly responsible for maintenance of the fields and premises during the term of their agreements; **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 Field Use and Maintenance License Agreements for shared use of Colt Field at Southside Lions Park in Council District 3 with Highland Hawks Pop Warner Football Association and the San Antonio Independent School District for five year terms beginning on October 1, 2008 and ending on September 30, 2013. Copies of these license agreements are attached hereto and incorporated herein for all purposes as **Attachments I and II.**

**SECTION 2.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the

SW/mgc  
10/02/08  
Item # 27

City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 3.** This ordinance shall be effective on and after October 12, 2008.

PASSED AND APPROVED this 2<sup>nd</sup> day of October, 2008.

ATTEST:

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

  
M A Y O R  
PHIL HARDBERGER

APPROVED AS TO FORM:

  
\_\_\_\_\_  
for City Attorney



Request for  
**COUNCIL  
ACTION**



**Agenda Voting Results - 27**


<b>Name:</b>	5, 6, 8, 11, 13, 14, 15, 16, 18, 20, 23, 24, 25, 27, 28, 30B
<b>Date:</b>	10/02/2008
<b>Time:</b>	10:40:42 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving two Field Use and Maintenance License Agreements for shared use of Colt Field at Southside Lions Park in Council District 3 by Highland Hawks Pop Warner Football Association and the San Antonio Independent School District for five year terms beginning on October 1, 2008 and ending on September 30, 2013. [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			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				
John G. Clamp	District 10		x				

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT  
HIGHLAND HAWKS POP WARNER FOOTBALL ASSOCIATION**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called "**CITY**"), and **HIGHLAND HAWKS POP WARNER FOOTBALL ASSOCIATION**, a Texas non-profit corporation (herein called "**LEAGUE**");

**PREAMBLE**

The **CITY** licenses park property to Leagues that operate under nationally organized sports groups. Leagues are granted priority use of the park property and **CITY** waives fees that are normally charged to reserve sports fields. In exchange, Leagues agree to make improvements, promptly repair any damages to the premises, provide use schedules, and submit annual reports of their activities. Leagues are permitted to sell concessions and establish fees to help offset the cost of maintaining their licensed areas.

**1. WITNESSETH:**

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

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

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

**2. APPOINTMENT**

- 2.1 For so long as **LEAGUE** maintains its non-profit and 501(c)(3) status and operates a nationally organized sports league, **CITY** hereby designates **LEAGUE** as the primary user and maintainer of approximately ± 2 acres that encompasses the "Colt Football Field" as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Southside Lions Park being part of NCB 10833, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "**Director**"), and **LEAGUE** may, from time to time, add

other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

### 3. USE OF FIELDS BY LEAGUE

3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein.

3.1.1 **League's** use of the licensed area in **EXHIBIT A** shall be limited to the dates of June 1<sup>st</sup> through January 15<sup>th</sup> of the License Years designated in Section 4.1 of this **License Agreement**.

3.1.2 During the use period defined in 3.1.1 **LEAGUE** agrees to coordinate use of said fields with Highlands High School (hereinafter called "SCHOOL"). Said use coordination is intended to allow SCHOOL to use the field for practice only not to interfere with **LEAGUE's** priority use. SCHOOL shall request dates of use that fall outside the normal practice times that would be expected by a school. **LEAGUE** shall not unreasonably withhold its permission for said use. SCHOOL's license agreement is attached as **Exhibit B** to this agreement to ensure that **LEAGUE** is aware of the rights granted to SCHOOL.

3.1.3 During the dates of August 1<sup>st</sup> through January 15<sup>th</sup> of each License Year **LEAGUE** agrees to coordinate use of the parking lot with the Southeast Pony League or any league under license with City for the adjacent baseball fields. Said use coordination is intended to allow the Southeast Pony League to have Play Off or All Star games.

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

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

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

- 3.3 **CITY** does not guarantee any actions by San Antonio Independent School District ("District") contained herein. District has agreed that **LEAGUE** may schedule the use of SCHOOL property during Hawks football season. **LEAGUE** shall schedule such events through SCHOOL in advance. The following conditions apply to scheduled use of District and SCHOOL property:
- 3.3.1 **LEAGUE** shall have permission to schedule one (1) game day per season for all league divisions at Alamo Stadium. Events at Alamo Stadium must be scheduled in advance through Arturo Gonzales, Assistant Athletic Director – San Antonio Independent School District, at (210) 735-9331 extension 110.
- 3.1.1.1 **LEAGUE** must complete any scheduled games by 3:00 p.m. on game date;
- 3.3.1.2 **LEAGUE** shall have no concession rights at Alamo Stadium but concession stand(s) will be open during scheduled games;
- 3.3.1.3 **LEAGUE** shall have the right to charge admission to scheduled games at Alamo Stadium.
- 3.3.2 With prior authorization from SCHOOL, **LEAGUE** shall have permission to schedule a date and time to take league photos at Alamo Stadium.
- 3.3.3 **LEAGUE** shall have permission to schedule practices and games at SCHOOL's football field with prior authorization from SCHOOL. Practices and games at SCHOOL's football field must be scheduled in advance through Juan Hinojosa, Head Coach – Highland Hills High School, at (210) 837-5305.
- 3.3.3.1 **LEAGUE** shall remove and dispose of all trash from SCHOOL's football field following each scheduled event.
- 3.4 The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.5 **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws; ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.6 **LEAGUE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time.

**LEAGUE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the City, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LEAGUE's** activities under this contract.

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

#### 4. TERM OF AGREEMENT

- 4.1 The term of this **Agreement** is five (5) years, beginning on October 1, 2008, which is hereafter referred to as the commencement date, and expiring on September 30, 2013, if not earlier terminated according to the terms hereof.
- 4.2 Before the expiration date of this **Agreement**, **LEAGUE** must submit a letter to the **Director** requesting continued utilization of the property.

#### 5. ACCEPTANCE AND CONDITIONS OF PREMISES

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.
- 5.3 **LEAGUE** acknowledges that the Premises are situated on top of an unpermitted landfill and that any activities that it undertakes under this Field Use and Maintenance agreement shall be in full compliance with all state and federal environmental regulations related to landfills. This **Agreement** does not confer any right to **LEAGUE** to build any structures on the Premises.
- 5.4 Premises are shared by **SCHOOL** during **LEAGUE's** use period. No later than the final date of **LEAGUE's** use period as designated in Section 3.1.1 of this Agreement, **LEAGUE** shall schedule a meeting at the Premises and invite **SCHOOL** and Parks and Recreation staff in order to account for damages which occurred during **LEAGUE's** use period and to ensure that field(s), concession stand, and other improvements are turned over in satisfactory condition to **SCHOOL**.

## 6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 **General Maintenance:** Each year, during the term of this **Agreement**, **LEAGUE** shall, at its sole expense, provide year round maintenance service in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields. In Section 6 of Exhibit B, **SCHOOL** agrees to mow only the playing field area at Colt Football Field during their use period (August 1<sup>st</sup> – May 31<sup>st</sup>) of each License Year. As primary user of the licensed area as illustrated in Exhibit A, **LEAGUE** shall be responsible for resumption of mowing the playing field area from June 1<sup>st</sup> – July 31<sup>st</sup> of each License Year. In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed licensed area, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
  - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
  - 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris;
  - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
  - 6.1.5 Provide ant control services as frequently as required to control these pests;
  - 6.1.6 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
  - 6.1.7 Maintain the fields/courts as required to sustain acceptable standards of playing conditions;
  - 6.1.8 Maintain concession building and repair as needed (if applicable);
  - 6.1.9 Storage buildings must be maintained, painted, and kept in good general condition (if applicable);
  - 6.1.10 Maintain and repair bleachers as needed; bleachers are not to be removed from the Premises (if applicable);
  - 6.1.11 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises (if applicable);
  - 6.1.12 Any lighting (if applicable) that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**; and
  - 6.1.13 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions: All structures and equipment that is vandalized must be cleared of debris and graffiti or repairs shall be made within 5 days.
- 6.2 **LEAGUE** shall promptly repair any damage to the Premises. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises through the Parks Reservation System. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.

6.3 No parking is allowed in any area (including area adjacent to concession stand) other than the designated parking area shown as a parking lot in **EXHIBIT A**. Parking on the fields is strictly prohibited and will be seen as a violation of this License **Agreement** and subject to default.

6.3.1 **LEAGUE** is responsible for maintaining the parking area located within the licensed premises.

6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

## 7. UTILITIES

7.1 **LEAGUE** currently shares CPS Energy account with Southeast Pony Baseball league for use of one (1) lighted field. **LEAGUE** shall promptly reimburse the Southeast Pony Baseball league for monthly electric utility charges incurred during **LEAGUE's** use period throughout the term of this **Agreement**.

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

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

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

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

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

## 8. SCHEDULED FIELD MAINTENANCE

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

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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.

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

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

### 9. CITY'S RIGHT OF INSPECTIONS

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

### 10. CONCESSIONS

- 10.1 **LEAGUE** shall, during the designated months of use of the Premises, being from **June 1<sup>st</sup> through January 15<sup>th</sup>** of each **License Year**, as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it from August 1<sup>st</sup> through December 31<sup>st</sup> of each License year as designated in Section 4.1 of this **Agreement**. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 10.2 **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

### 11. DEFAULTS AND TERMINATION RIGHTS

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

**Agreement** to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that **CITY** has commenced to cure such default.

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

## 12. INDEMNIFICATION

12.1 **LEAGUE** covenants and agrees to **FULLY INDEMNIFY, 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 **LEAGUE'S** activities under this **Agreement**, including any acts or omissions of **LEAGUE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LEAGUE**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **Agreement**. 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 LEAGUE 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.**

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

## 13. INSURANCE REQUIREMENTS

13.1 Prior to the commencement of any work under this Contract, **LEAGUE** 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 "Highland Hawks Pop Warner Football" 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 **Agreement** until such certificate and endorsements have been received and approved by the **CITY's** Parks and Recreation Department. No officer or employee, other than the **CITY's** Risk Manager, shall have authority to waive this requirement.

13.2 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 contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

13.3 **LEAGUE's** financial integrity is of interest to the **CITY**; therefore, subject to **LEAGUE's** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **LEAGUE** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **LEAGUE's** sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and 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
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	
3. Comprehensive Automobile Liability*	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	
c. Hired Vehicles	
4. Property Insurance: For physical damage to the property of <b>LEAGUE</b> , including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of <b>LEAGUE'S</b> property.

\*If Applicable

- 13.4 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). **LEAGUE** 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. **LEAGUE** shall pay any costs incurred resulting from said changes.

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

- 13.5 **LEAGUE** 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.
- 13.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **LEAGUE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LEAGUE'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.
- 13.7 If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **Agreement**; however, procuring of said insurance by the **CITY** is an alternative to other remedies the **CITY** may have, and is not the exclusive remedy for failure of **LEAGUE** to maintain said insurance or secure such endorsement. In addition to any other remedies the **CITY** may have upon

**LEAGUE's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LEAGUE** to stop work hereunder, and/or withhold any payment(s) which become due to **LEAGUE** hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.

- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LEAGUE** may be held responsible for payments of damages to persons or property resulting from **LEAGUE's** or its subcontractors' performance of the work covered under this **Agreement**.
- 13.9 It is agreed that **LEAGUE's** insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

#### **14. REPORTS**

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

## 15. SIGNS

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

## 16. ASSIGNMENT

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

## 17. RELATIONSHIP OF PARTIES

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

## 18. CONFLICT OF INTEREST

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

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

## 19. SEPARABILITY

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

## 20. NOTICES

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

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

San Antonio Independent School District  
Art Gonzales, Asst. Athletic Director  
110 Tuleta  
San Antonio, Texas 78212

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

**Ms. Michelle Martinez, President**  
**Highland Hawks Pop Warner Association**  
**PO Box 23237**  
**San Antonio, Texas 78223**

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

## 21. TEXAS LAW TO APPLY

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

## 22. GENDER

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

### 23. NON-DISCRIMINATION

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

### 24. CAPTIONS

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

### 25. HOLDING OVER

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

### 26. ENTIRE AGREEMENT/AMENDMENT

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

**27. AUTHORITY**

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

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**LICENSOR:**

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

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

ATTEST:

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

**LICENSEE:**

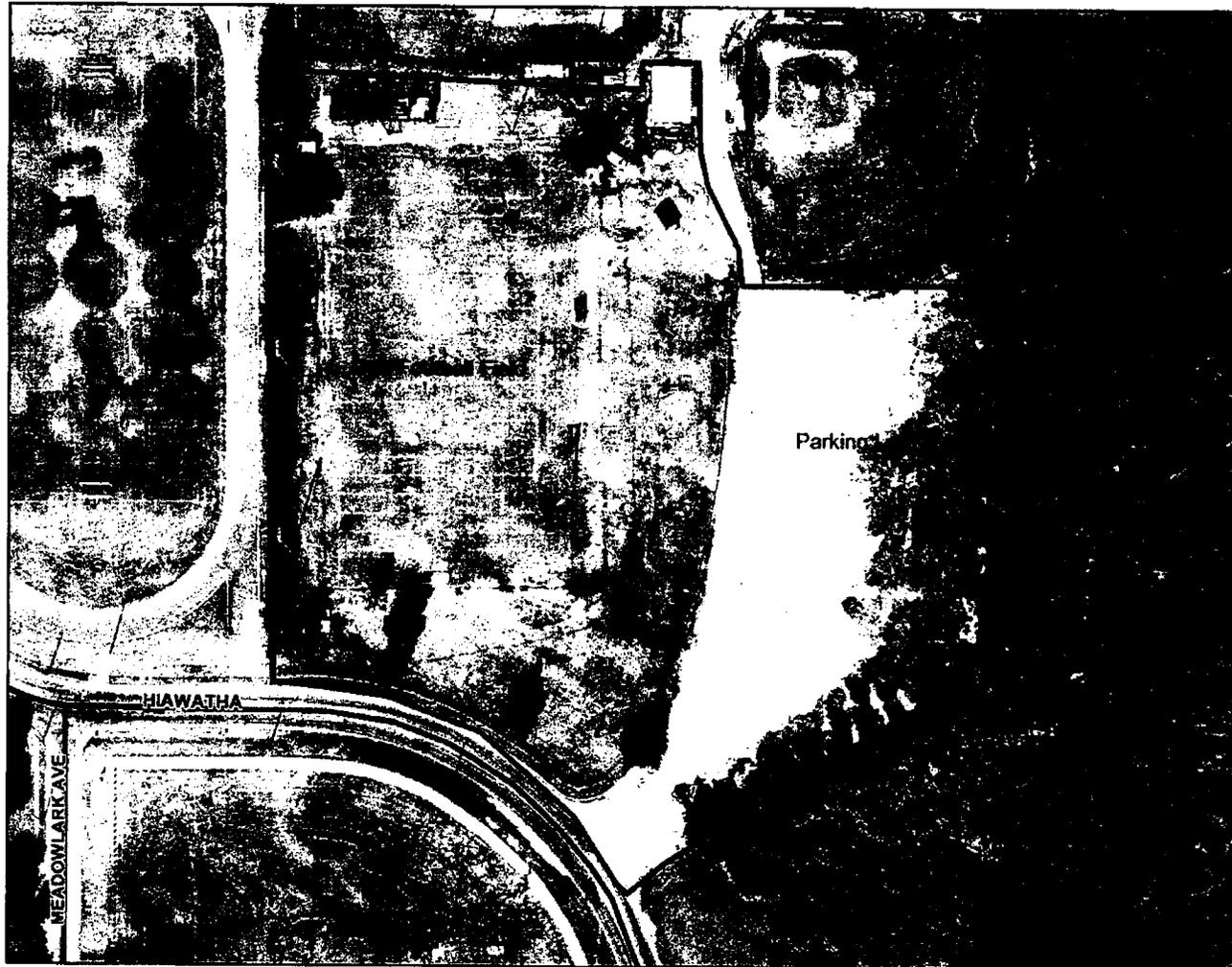
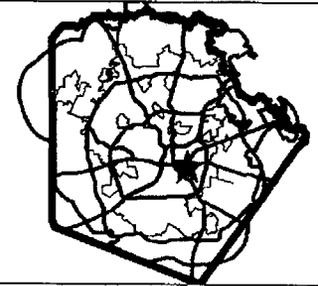
**HIGHLAND HAWKS POP WARNER  
FOOTBALL ASSOCIATION**, a Texas Non-  
profit Corporation

By: Michelle Martinez

Title: president

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney

# Highland Hawks Licensed Area - Exhibit A



## Legend

- SA International Airport
- Lakes
- Military Bases
- Incorporated Towns
- San Antonio City Limits
- Bexar County Line
- Bexar Streets
- SA East

0 160 320 480 ft.

Map center: 2146768, 13688650



Scale: 1:1,650

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Notes: Red polygon = Licensed Area

EXHIBIT A

**EXHIBIT B**

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT  
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called "**CITY**"), and **SAN ANTONIO INDEPENDENT DISTRICT'S HIGHLANDS HIGH SCHOOL**, a Texas educational institution (herein called "**SCHOOL**");

**PREAMBLE**

The **CITY** licenses park property to School Districts that require additional practice fields for their sports teams. School Districts are granted the use of the park property and **CITY** waives fees that are normally charged to reserve sports fields. In exchange, School Districts agree to make improvements, promptly repair any damages to the premises, provide use schedules, and submit annual reports of their activities.

**1. WITNESSETH:**

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

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

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

**2. APPOINTMENT**

For so long as **SCHOOL** maintains its sports programs, **CITY** hereby designates **SCHOOL** as co-user pursuant to paragraph 3.1 and maintainer of City-owned property known as the Colt Football Field as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Southside Lions Park, being part of N.C.B. 10833, San Antonio, Bexar County, and **SCHOOL** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.

## EXHIBIT B

- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "Director"), and **SCHOOL** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

### **3. USE OF FIELDS BY SCHOOL**

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

3.1.1 **SCHOOL'S** use of said field in **EXHIBIT A** shall be limited to the dates of August 1<sup>st</sup> through May 31<sup>st</sup> of the License Years designated in Section 4.1 of this Agreement for the purpose of football and soccer practice only, and;

3.1.2 **SCHOOL** agrees that the Highland Hawks Pop Warner Football (hereafter called "Hawks") league will have priority use of the field from the dates of August 1 through January 15 of the License Years designated in Section 4.1 of this Agreement.

3.1.3 During the use period defined in 3.1.1. **SCHOOL** agrees to coordinate use of said fields with Hawks. Said use coordination is intended to allow **SCHOOL** to use the field for practice and shall not interfere with Hawks' priority use. **SCHOOL** shall request dates of use that fall outside the normal practice times that would be expected by a school. Hawks shall not unreasonably withhold its permission for said use. Hawks' license agreement is attached as Exhibit B to this agreement to ensure that **SCHOOL** is aware of the rights granted to Hawks.

- 3.2 Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **SCHOOL** priority use of such Premises from January 16 through the end of the school term upon submission of a written use schedule by **SCHOOL** to the Director. At those times during which **SCHOOL** has not scheduled the use of said Premises, such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **SCHOOL** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.

3.2.1 Prior to August 1<sup>st</sup> of each License Year, **SCHOOL** shall submit to **CITY** a schedule of dates and times for use of above referenced Premises for practice dates with the following restrictions:

3.2.1.1 Football and soccer practices may be scheduled during morning and afternoon hours on weekdays;

3.2.1.2 Prior written approval must be obtained from Hawks prior to scheduling practices on Saturdays and after school hours; and

## EXHIBIT B

3.2.1.3 Practices on Sundays are prohibited.

3.2.2 At those times in which **SCHOOL** is not utilizing above referenced Premises for practice, **CITY** shall coordinate use of said Premises through its Field Reservation Service.

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

3.4 **SCHOOL** agrees that its students 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 **SCHOOL** is called to any such violation, **SCHOOL** or those under its control will immediately desist from and correct such violation.

3.5 **SCHOOL** 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. **SCHOOL** 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 **SCHOOL's** activities under this contract.

3.6 **SCHOOL** has no authority to establish fees and charges or to collect and retain such fees and charges without the prior written approval of the Director. **SCHOOL** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

3.7 **CITY** does not guarantee any actions by San Antonio Independent School District ("District") contained herein. District has agreed that Hawks may schedule the use of **SCHOOL** property during Hawks football season. Hawks shall schedule such events through **SCHOOL** in advance. The following conditions apply to scheduled use of San Antonio Independent School District and **SCHOOL** property:

3.7.1 Hawks shall have permission to schedule one (1) game day per season for all league divisions at Alamo Stadium;

3.7.1.1 Hawks must complete any scheduled games by 3:00 p.m. on game date;

3.7.1.2 Hawks shall have no concession rights at Alamo Stadium but concession stand(s) will be open during scheduled games;

## EXHIBIT B

- 3.7.1.3 Hawks shall have the right to charge admission to scheduled games at Alamo Stadium.
- 3.7.2 With prior authorization from **SCHOOL**, Hawks shall have permission to schedule a date and time to take league photos at Alamo Stadium.
- 3.7.3 Hawks shall have permission to schedule practices and games at **SCHOOL's** football field with prior authorization from **SCHOOL**.
  - 3.7.3.1 Hawks shall remove and dispose of all trash from **SCHOOL's** football field following each scheduled event.
- 3.8 **SCHOOL is hereby prohibited from using these Premises for any other reason than for football or soccer practice as stated in Section 3.1.1. Any other use of this field will result in termination of this License Agreement.**

### **4. TERM OF AGREEMENT**

- 4.1 The term of this Agreement is five (5) years, beginning on October 1, 2008, which is hereafter referred to as the commencement date, and expiring on September 30, 2013, if not earlier terminated according to the terms hereof.
- 4.2 Ninety (90) days prior to the expiration date of this Agreement, **SCHOOL** must submit a letter to the Director requesting continued utilization of the property.

### **5. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 5.1 **SCHOOL** 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. **SCHOOL'S** taking possession of the Premises shall be conclusive evidence of **SCHOOL'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 SCHOOL**.
- 5.2 **SCHOOL** 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 **SCHOOL** unless the same are contained herein or made a part hereof by specific reference herein.
- 5.3 **SCHOOL** acknowledges that the Premises are situated on top of an unpermitted landfill and that any activities that it undertakes under this Field Use and Maintenance agreement shall be in full compliance with all state and federal environmental regulations related to landfills. This **Agreement** does not confer any right to **SCHOOL** to build any structures on the Premises.

## EXHIBIT B

- 5.4 Premises are shared by Hawks from August 1<sup>st</sup> through January 15<sup>th</sup> of each License Year. No later than the final date of **SCHOOL**'s use period as designated in Section 3.1.1 of this Agreement, **SCHOOL** shall schedule a meeting at the Premises and invite Hawks and Parks and Recreation staff in order to account for damages which occurred during **SCHOOL**'s use period and to ensure that field(s) and other improvements are returned to **CITY** in satisfactory condition.

### **6. SCHOOL'S MAINTENANCE OBLIGATIONS AND DUTIES**

- 6.1 General Maintenance: During the term of this Agreement, **SCHOOL** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields), during the **SCHOOL'S** term of each License Year. In addition to the other obligations of **SCHOOL** set forth herein, **SCHOOL** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed Colt Football Field for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered and playing field mowed to sustain acceptable standards of use conditions;
  - 6.1.2 Stripe/mark the soccer and football field boundaries;
  - 6.1.3 Ensure the field is free from litter and debris following all practices;
  - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
  - 6.1.5 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
- 6.2 **SCHOOL** shall promptly repair any damage to the Premises caused by the use of the Premises by **SCHOOL** or those persons under its control. **SCHOOL** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 The use of the parking lot is not allowed by **SCHOOL** for game purposes. Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **SCHOOL** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

### **7. UTILITIES**

- 7.1 **SCHOOL** is not allowed use of the lights on the field and, as such, is not required to reimburse **CITY** for the cost of electricity. **CITY** will pay the cost of water utilities. During the designated usage term, **SCHOOL** will be responsible for performing regular field irrigation and watering in a conservative, non-wasteful manner.

## EXHIBIT B

7.1.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **SCHOOL** 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:

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

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

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

### **8. SCHEDULED FIELD MAINTENANCE**

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

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

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

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

### **10. CONCESSIONS**

10.1 As this License Agreement pertains to the use of the Premises for practice only, **SCHOOL** shall have no right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items.

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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.

## EXHIBIT B

### 11. DEFAULTS AND TERMINATION RIGHTS

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

### 12. INSURANCE REQUIREMENTS

- 12.1 Prior to the commencement of any work under this Contract, **SCHOOL** 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 "Highlands High School" 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 **Agreement** until such certificate and endorsements have been received and approved by the **CITY**'s Parks and Recreation Department. No officer or employee, other than the **CITY**'s Risk Manager, shall have authority to

**EXHIBIT B**

waive this requirement.

12.2 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 contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

12.3 **SCHOOL's** financial integrity is of interest to the **CITY**; therefore, subject to **SCHOOL's** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **SCHOOL** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **SCHOOL'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
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
3. Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4. Property Insurance: For physical damage to the property of <b>LEAGUE</b> , including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of <b>LEAGUE'S</b> property.

\*If Applicable

12.4 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). **SCHOOL** 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. **SCHOOL** shall pay any costs incurred resulting from said changes.

## EXHIBIT B

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

- 12.5 **SCHOOL** 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.
- 12.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **SCHOOL** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **SCHOOL**'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.
- 12.7 If **SCHOOL** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **Agreement**; however, procuring of said insurance by the **CITY** is an alternative to other remedies the **CITY** may have, and is not the exclusive remedy for failure of **SCHOOL** to maintain said insurance or secure such endorsement. In addition to any other remedies the **CITY** may have upon **SCHOOL**'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 **SCHOOL** to stop work hereunder, and/or withhold any payment(s) which become due to **SCHOOL** hereunder until **SCHOOL** demonstrates compliance with the requirements hereof.
- 12.8 Nothing herein contained shall be construed as limiting in any way the extent to which **SCHOOL** may be held responsible for payments of damages to persons or property resulting from **SCHOOL**'s or its subcontractors' performance of the work covered under this **Agreement**.

## **EXHIBIT B**

- 12.9 It is agreed that **SCHOOL's** insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract
- 12.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

### **13. REPORTS**

- 13.1 **SCHOOL** shall inform the Director, in writing, of its current contacts of the **SCHOOL** and promptly advise said Director, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this Agreement, **SCHOOL** will furnish to the Director a report and financial statement including the following information:
- 13.1.1 Number of participants in **SCHOOL'S** teams, and ages;
- 13.1.2 Certificate of insurance including endorsements (required year-round);
- 13.1.3 Names and phone numbers of current contacts of **SCHOOL**;
- 13.1.4 Starting and ending date and month of each school term and/or seasons;

### **14. SIGNS**

- 14.1 **SCHOOL** hereby agrees not to install or display any permanent or temporary sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the **CITY** through the Director.

### **15. ASSIGNMENT**

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

### **16. RELATIONSHIP OF PARTIES**

- 16.1 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.

### **17. CONFLICT OF INTEREST**

- 17.1 **SCHOOL** 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,

## **EXHIBIT B**

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.

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

### **18. SEPARABILITY**

- 18.1 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.

### **19. NOTICES**

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

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

Highland Hawks Pop Warner Football Assn.  
Michelle Martinez, President  
P.O. Box 23237  
San Antonio, Texas 78223

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

**Arturo Gonzales, Assistant Athletic Director  
San Antonio Independent School District  
110 Tuleta  
San Antonio, Texas 78212**

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

## EXHIBIT B

### 20. TEXAS LAW TO APPLY

- 20.1 **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.**

### 21. GENDER

- 21.1 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.

### 22. NON-DISCRIMINATION

- 22.1 **SCHOOL** 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 **SCHOOL** acknowledges is prohibited.

### 23. CAPTIONS

- 23.1 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.

### 24. HOLDING OVER

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

### 25. ENTIRE AGREEMENT/AMENDMENT

- 25.1 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 **SCHOOL**.
- 25.2. 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.
- 25.3 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.

**EXHIBIT B**

**26. AUTHORITY**

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

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_ day of \_\_\_\_\_ 2008.

**LICENSOR:**

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

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

**ATTEST:**

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

**LICENSEE:**

**SAN ANTONIO INDEPENDENT SCHOOL  
DISTRICT**

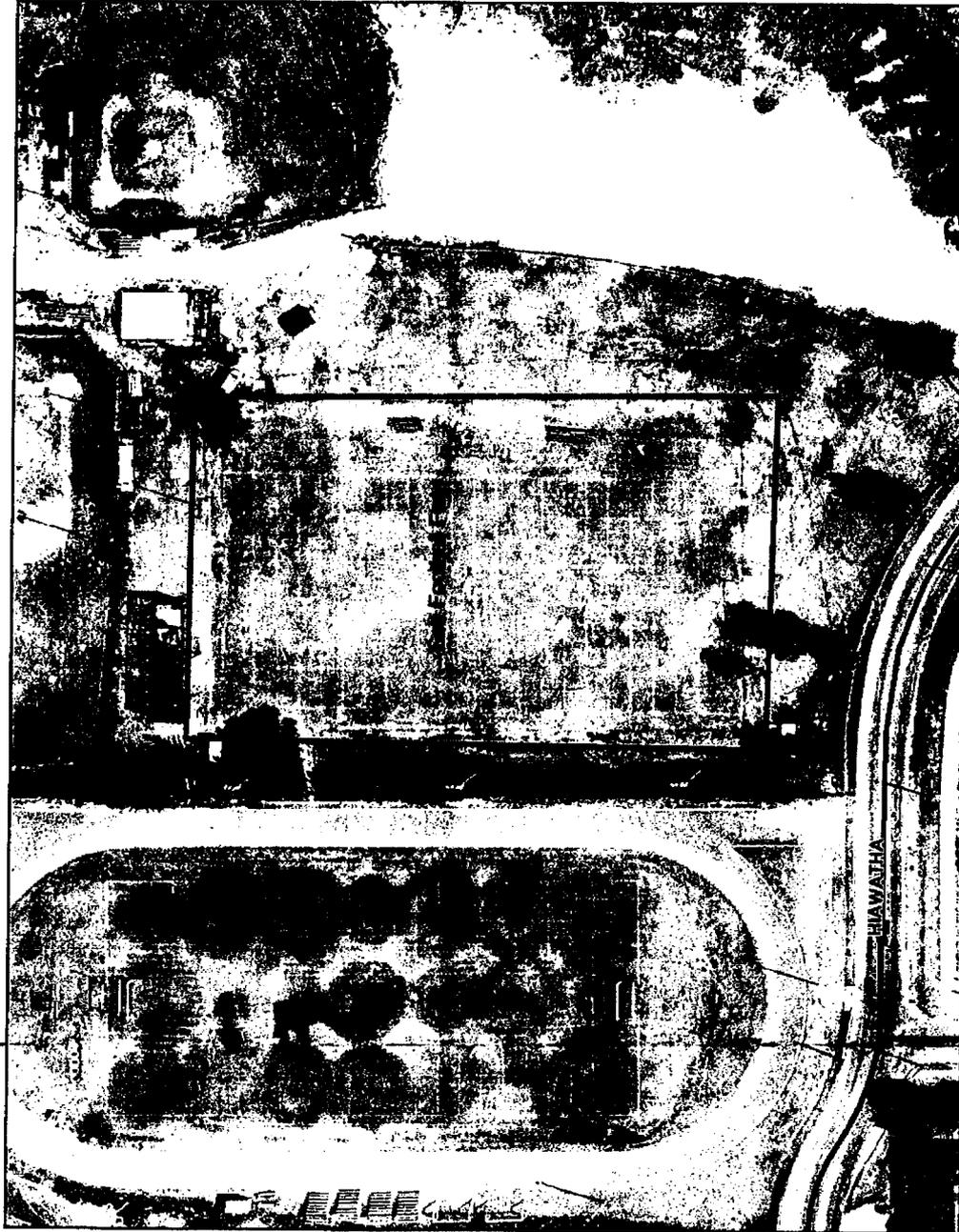
By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney

EXHIBIT B

Highlands High School Licensed Area - Exhibit A



**Legend**

- SA International Airport
- Lakes
- Military Bases
- Incorporated Towns
- San Antonio City Limits
- Bexar County Line
- Bexar Streets
- SA East

Map center: 2146600, 13688739

Scale: 1:1,380



This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Notes: Red Polygon = Licensed Area

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT  
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called "**CITY**"), and **SAN ANTONIO INDEPENDENT DISTRICT'S HIGHLANDS HIGH SCHOOL**, a Texas educational institution (herein called "**SCHOOL**");

**PREAMBLE**

The **CITY** licenses park property to School Districts that require additional practice fields for their sports teams. School Districts are granted the use of the park property and **CITY** waives fees that are normally charged to reserve sports fields. In exchange, School Districts agree to make improvements, promptly repair any damages to the premises, provide use schedules, and submit annual reports of their activities.

**1. WITNESSETH:**

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

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

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

**2. APPOINTMENT**

- 2.1 For so long as **SCHOOL** maintains its sports programs, **CITY** hereby designates **SCHOOL** as co-user pursuant to paragraph 3.1 and maintainer of City-owned property known as the Colt Football Field as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Southside Lions Park, being part of N.C.B. 10833, San Antonio, Bexar County, and **SCHOOL** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.

- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "Director"), and **SCHOOL** may, from time to time, add other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

### 3. USE OF FIELDS BY SCHOOL

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

3.1.1 **SCHOOL'S** use of said field in **EXHIBIT A** shall be limited to the dates of August 1<sup>st</sup> through May 31<sup>st</sup> of the License Years designated in Section 4.1 of this Agreement for the purpose of football and soccer practice only, and;

3.1.2 **SCHOOL** agrees that the Highland Hawks Pop Warner Football (hereafter called "Hawks") league will have priority use of the field from the dates of August 1 through January 15 of the License Years designated in Section 4.1 of this Agreement.

3.1.3 During the use period defined in 3.1.1. **SCHOOL** agrees to coordinate use of said fields with Hawks. Said use coordination is intended to allow **SCHOOL** to use the field for practice and shall not interfere with Hawks' priority use. **SCHOOL** shall request dates of use that fall outside the normal practice times that would be expected by a school. Hawks shall not unreasonably withhold its permission for said use. Hawks' license agreement is attached as Exhibit B to this agreement to ensure that **SCHOOL** is aware of the rights granted to Hawks.

- 3.2 Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **SCHOOL** priority use of such Premises from January 16 through the end of the school term upon submission of a written use schedule by **SCHOOL** to the Director. At those times during which **SCHOOL** has not scheduled the use of said Premises, such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **SCHOOL** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.

3.2.1 Prior to August 1<sup>st</sup> of each License Year, **SCHOOL** shall submit to **CITY** a schedule of dates and times for use of above referenced Premises for practice dates with the following restrictions:

3.2.1.1 Football and soccer practices may be scheduled during morning and afternoon hours on weekdays;

3.2.1.2 Prior written approval must be obtained from Hawks prior to scheduling practices on Saturdays and after school hours; and

3.2.1.3 Practices on Sundays are prohibited.

3.2.2 At those times in which **SCHOOL** is not utilizing above referenced Premises for practice, **CITY** shall coordinate use of said Premises through its Field Reservation Service.

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

3.4 **SCHOOL** agrees that its students 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 **SCHOOL** is called to any such violation, **SCHOOL** or those under its control will immediately desist from and correct such violation.

3.5 **SCHOOL** 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. **SCHOOL** 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 **SCHOOL's** activities under this contract.

3.6 **SCHOOL** has no authority to establish fees and charges or to collect and retain such fees and charges without the prior written approval of the Director. **SCHOOL** shall not charge or attempt to charge any general public user of the Premises as may occur pursuant to paragraph 3.2 hereinbefore.

3.7 **CITY** does not guarantee any actions by San Antonio Independent School District ("District") contained herein. District has agreed that Hawks may schedule the use of **SCHOOL** property during Hawks football season. Hawks shall schedule such events through **SCHOOL** in advance. The following conditions apply to scheduled use of San Antonio Independent School District and **SCHOOL** property:

3.7.1 Hawks shall have permission to schedule one (1) game day per season for all-league divisions at Alamo Stadium;

3.7.1.1 Hawks must complete any scheduled games by 3:00 p.m. on game date;

3.7.1.2 Hawks shall have no concession rights at Alamo Stadium but concession stand(s) will be open during scheduled games;

3.7.1.3 Hawks shall have the right to charge admission to scheduled games at Alamo Stadium.

3.7.2 With prior authorization from **SCHOOL**, Hawks shall have permission to schedule a date and time to take league photos at Alamo Stadium.

3.7.3 Hawks shall have permission to schedule practices and games at **SCHOOL's** football field with prior authorization from **SCHOOL**.

3.7.3.1 Hawks shall remove and dispose of all trash from **SCHOOL's** football field following each scheduled event.

3.8 **SCHOOL is hereby prohibited from using these Premises for any other reason than for football or soccer practice as stated in Section 3.1.1. Any other use of this field will result in termination of this License Agreement.**

#### 4. TERM OF AGREEMENT

4.1 The term of this Agreement is five (5) years, beginning on October 1, 2008, which is hereafter referred to as the commencement date, and expiring on September 30, 2013, if not earlier terminated according to the terms hereof.

4.2 Ninety (90) days prior to the expiration date of this Agreement, **SCHOOL** must submit a letter to the Director requesting continued utilization of the property.

#### 5. ACCEPTANCE AND CONDITIONS OF PREMISES

5.1 **SCHOOL** 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. **SCHOOL'S** taking possession of the Premises shall be conclusive evidence of **SCHOOL'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 SCHOOL**.

5.2 **SCHOOL** 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 **SCHOOL** unless the same are contained herein or made a part hereof by specific reference herein.

5.3 **SCHOOL** acknowledges that the Premises are situated on top of an unpermitted landfill and that any activities that it undertakes under this Field Use and Maintenance agreement shall be in full compliance with all state and federal environmental regulations related to landfills. This **Agreement** does not confer any right to **SCHOOL** to build any structures on the Premises.

- 5.4 Premises are shared by Hawks from August 1<sup>st</sup> through January 15<sup>th</sup> of each License Year. No later than the final date of **SCHOOL**'s use period as designated in Section 3.1.1 of this Agreement, **SCHOOL** shall schedule a meeting at the Premises and invite Hawks and Parks and Recreation staff in order to account for damages which occurred during **SCHOOL**'s use period and to ensure that field(s) and other improvements are returned to **CITY** in satisfactory condition.

## 6. SCHOOL'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 General Maintenance: During the term of this Agreement, **SCHOOL** shall, at its sole expense, provide maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields), during the **SCHOOL'S** term of each License Year. In addition to the other obligations of **SCHOOL** set forth herein, **SCHOOL** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed Colt Football Field for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered and playing field mowed to sustain acceptable standards of use conditions;
  - 6.1.2 Stripe/mark the soccer and football field boundaries;
  - 6.1.3 Ensure the field is free from litter and debris following all practices;
  - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
  - 6.1.5 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
- 6.2 **SCHOOL** shall promptly repair any damage to the Premises caused by the use of the Premises by **SCHOOL** or those persons under its control. **SCHOOL** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the Premises.
- 6.3 The use of the parking lot is not allowed by **SCHOOL** for game purposes. Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 6.4 In carrying out the aforesaid maintenance responsibilities, **SCHOOL** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

## 7. UTILITIES

- 7.1 **SCHOOL** is not allowed use of the lights on the field and, as such, is not required to reimburse **CITY** for the cost of electricity. **CITY** will pay the cost of water utilities. During the designated usage term, **SCHOOL** will be responsible for performing regular field irrigation and watering in a conservative, non-wasteful manner.

7.1.1 During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **SCHOOL** 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:

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

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

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

## 8. SCHEDULED FIELD MAINTENANCE

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

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

## 9. CITY'S RIGHT OF INSPECTIONS

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

## 10. CONCESSIONS

10.1 As this License Agreement pertains to the use of the Premises for practice only, **SCHOOL** shall have no right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items.

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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.

## 11. DEFAULTS AND TERMINATION RIGHTS

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

## 12. INSURANCE REQUIREMENTS

- 12.1 Prior to the commencement of any work under this Contract, **SCHOOL** 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 "Highlands High School" 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 **Agreement** until such certificate and endorsements have been received and approved by the **CITY**'s Parks and Recreation Department. No officer or employee, other than the **CITY**'s Risk Manager, shall have authority to

waive this requirement.

12.2 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 contract. In no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.

12.3 **SCHOOL's** financial integrity is of interest to the **CITY**; therefore, subject to **SCHOOL's** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **SCHOOL** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **SCHOOL'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
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
3. Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4. Property Insurance: For physical damage to the property of <b>LEAGUE</b> , including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of <b>LEAGUE'S</b> property.

\*If Applicable

12.4 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). **SCHOOL** 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. **SCHOOL** shall pay any costs incurred resulting from said changes.

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

- 12.5 **SCHOOL** 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.
- 12.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **SCHOOL** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **SCHOOL**'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.
- 12.7 If **SCHOOL** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **Agreement**; however, procuring of said insurance by the **CITY** is an alternative to other remedies the **CITY** may have, and is not the exclusive remedy for failure of **SCHOOL** to maintain said insurance or secure such endorsement. In addition to any other remedies the **CITY** may have upon **SCHOOL**'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 **SCHOOL** to stop work hereunder, and/or withhold any payment(s) which become due to **SCHOOL** hereunder until **SCHOOL** demonstrates compliance with the requirements hereof.
- 12.8 Nothing herein contained shall be construed as limiting in any way the extent to which **SCHOOL** may be held responsible for payments of damages to persons or property resulting from **SCHOOL**'s or its subcontractors' performance of the work covered under this **Agreement**.

- 12.9 It is agreed that **SCHOOL's** insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract
- 12.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

### 13. REPORTS

- 13.1 **SCHOOL** shall inform the Director, in writing, of its current contacts of the **SCHOOL** and promptly advise said Director, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this Agreement, **SCHOOL** will furnish to the Director a report and financial statement including the following information:
- 13.1.1 Number of participants in **SCHOOL'S** teams, and ages;
- 13.1.2 Certificate of insurance including endorsements (required year-round);
- 13.1.3 Names and phone numbers of current contacts of **SCHOOL**;
- 13.1.4 Starting and ending date and month of each school term and/or seasons;

### 14. SIGNS

- 14.1 **SCHOOL** hereby agrees not to install or display any permanent or temporary sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the **CITY** through the Director.

### 15. ASSIGNMENT

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

### 16. RELATIONSHIP OF PARTIES

- 16.1 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.

### 17. CONFLICT OF INTEREST

- 17.1 **SCHOOL** 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.

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

### 18. SEPARABILITY

- 18.1 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.

### 19. NOTICES

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

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

Highland Hawks Pop Warner Football Assn.  
Michelle Martinez, President  
P.O. Box 23237  
San Antonio, Texas 78223

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

**Arturo Gonzales, Assistant Athletic Director  
San Antonio Independent School District  
110 Tuleta  
San Antonio, Texas 78212**

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

## 20. TEXAS LAW TO APPLY

- 20.1 **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.**

## 21. GENDER

- 21.1 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.

## 22. NON-DISCRIMINATION

- 22.1 **SCHOOL** 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 **SCHOOL** acknowledges is prohibited.

## 23. CAPTIONS

- 23.1 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.

## 24. HOLDING OVER

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

## 25. ENTIRE AGREEMENT/AMENDMENT

- 25.1 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 **SCHOOL**.
- 25.2. 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.
- 25.3 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.

**26. AUTHORITY**

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

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

**LICENSOR:**

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

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

ATTEST:

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

**LICENSEE:**

**SAN ANTONIO INDEPENDENT SCHOOL  
DISTRICT**

By: \_\_\_\_\_

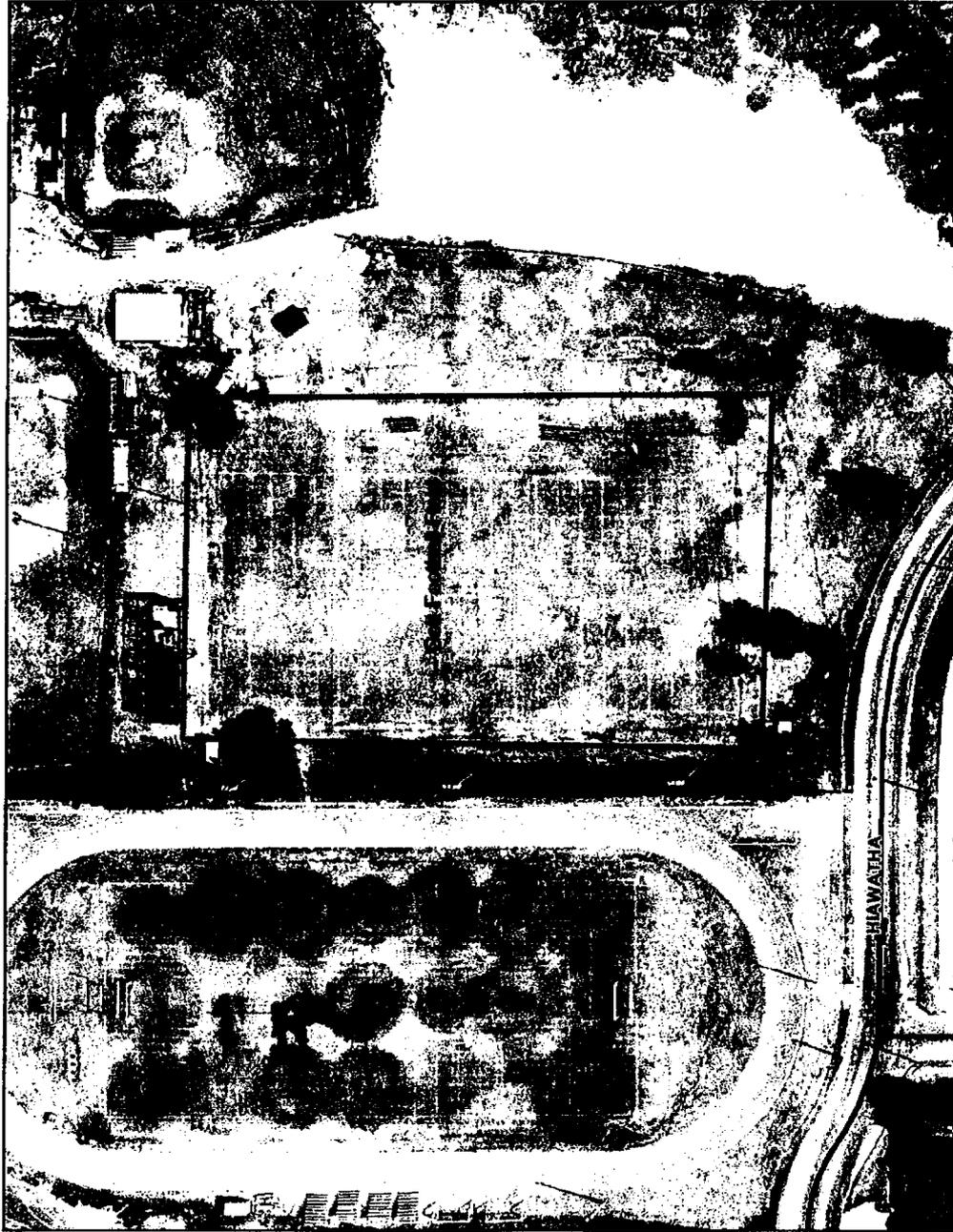
Title: \_\_\_\_\_

*Mel Maza*  
*Executive Director of Athletics*

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney

EXHIBIT A

Highlands High School Licensed Area - Exhibit A



- Legend**
- SA International Airport
  - ▣ Lakes
  - ▣ Military Bases
  - ▣ Incorporated Towns
  - ▣ San Antonio City Limits
  - ▣ Bexar County Line
  - ▣ Bexar Streets
  - ▣ SA East

Scale: 1:1,380



Map center: 2146600, 13688739

Notes: Red Polygon = Licensed Area

0 130 260 390 ft.

This map is a user generated static output from an internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

**EXHIBIT B**

**FIELD USE AND MAINTENANCE LICENSE AGREEMENT  
HIGHLAND HAWKS POP WARNER FOOTBALL ASSOCIATION**

THIS FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 2008 (herein called "**CITY**"), and **HIGHLAND HAWKS POP WARNER FOOTBALL ASSOCIATION**, a Texas non-profit corporation (herein called "**LEAGUE**");

**PREAMBLE**

The **CITY** licenses park property to Leagues that operate under nationally organized sports groups. Leagues are granted priority use of the park property and **CITY** waives fees that are normally charged to reserve sports fields. In exchange, Leagues agree to make improvements, promptly repair any damages to the premises, provide use schedules, and submit annual reports of their activities. Leagues are permitted to sell concessions and establish fees to help offset the cost of maintaining their licensed areas.

**1. WITNESSETH:**

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

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

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

**2. APPOINTMENT**

- 2.1 For so long as **LEAGUE** maintains its non-profit and 501(c)(3) status and operates a nationally organized sports league, **CITY** hereby designates **LEAGUE** as the primary user and maintainer of approximately ± 2 acres that encompasses the "Colt Football Field" as outlined in **EXHIBIT A** attached hereto, during the term stated below in Article 4.1, at Southside Lions Park being part of NCB 10833, San Antonio, Bexar County, and **LEAGUE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "**Director**"), and **LEAGUE** may, from time to time, add

## EXHIBIT B

other fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the program.

### 3. USE OF FIELDS BY LEAGUE

- 3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **LEAGUE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **LEAGUE** permission to enter and use, without payment of **CITY'S** established field use fee, the Premises described in **EXHIBIT A** which is attached hereto and incorporated by reference herein.
- 3.1.1 **League's** use of the licensed area in **EXHIBIT A** shall be limited to the dates of June 1<sup>st</sup> through January 15<sup>th</sup> of the License Years designated in Section 4.1 of this **License Agreement**.
- 3.1.2 During the use period defined in 3.1.1 **LEAGUE** agrees to coordinate use of said fields with Highlands High School (hereinafter called "SCHOOL"). Said use coordination is intended to allow SCHOOL to use the field for practice only not to interfere with **LEAGUE's** priority use. SCHOOL shall request dates of use that fall outside the normal practice times that would be expected by a school. **LEAGUE** shall not unreasonably withhold its permission for said use. SCHOOL's license agreement is attached as **Exhibit B** to this agreement to ensure that **LEAGUE** is aware of the rights granted to SCHOOL.
- 3.1.3 During the dates of August 1<sup>st</sup> through January 15th of each License Year **LEAGUE** agrees to coordinate use of the parking lot with the Southeast Pony League or any league under license with City for the adjacent baseball fields. Said use coordination is intended to allow the Southeast Pony League to have Play Off or All Star games.
- 3.2 Although permission to enter and use herein above cited Premises is not exclusive, **CITY** shall give **LEAGUE** priority use of such Premises upon submission of a written use schedule by **LEAGUE** to the Director. At those times during which **LEAGUE** has not scheduled the use of said Premises and facilities, with the exception of any building(s) containing **LEAGUE** equipment and **LEAGUE**-operated concession stand(s), such Premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the Premises with **LEAGUE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.
- 3.2.1 Prior to August 1<sup>st</sup> of each License Year, **LEAGUE** shall submit to **CITY** a schedule of dates and times for use of above referenced fields. Said schedule must include any and all practice and game dates. Prior to October 31<sup>st</sup> of each License Year, **LEAGUE** shall submit to a **CITY** a Playoff/Bowl Game (or its equivalent) schedule of dates and times for use of above referenced fields. Said Playoff/Bowl Game schedule must include any and all practice and game dates.
- 3.2.2 At those times in which **LEAGUE** is not utilizing above referenced fields for practice or game play, **CITY** shall coordinate use of said fields through its Field Reservation Service.

## EXHIBIT B

- 3.3 **CITY** does not guarantee any actions by San Antonio Independent School District ("District") contained herein. District has agreed that **LEAGUE** may schedule the use of SCHOOL property during Hawks football season. **LEAGUE** shall schedule such events through SCHOOL in advance. The following conditions apply to scheduled use of District and SCHOOL property:
- 3.3.1 **LEAGUE** shall have permission to schedule one (1) game day per season for all league divisions at Alamo Stadium. Events at Alamo Stadium must be scheduled in advance through Arturo Gonzales, Assistant Athletic Director – San Antonio Independent School District, at (210) 735-9331 extension 110.
- 3.1.1.1 **LEAGUE** must complete any scheduled games by 3:00 p.m. on game date;
- 3.3.1.2 **LEAGUE** shall have no concession rights at Alamo Stadium but concession stand(s) will be open during scheduled games;
- 3.3.1.3 **LEAGUE** shall have the right to charge admission to scheduled games at Alamo Stadium.
- 3.3.2 With prior authorization from SCHOOL, **LEAGUE** shall have permission to schedule a date and time to take league photos at Alamo Stadium.
- 3.3.3 **LEAGUE** shall have permission to schedule practices and games at SCHOOL's football field with prior authorization from SCHOOL. Practices and games at SCHOOL's football field must be scheduled in advance through Juan Hinojosa, Head Coach – Highland Hills High School, at (210) 837-5305.
- 3.3.3.1 **LEAGUE** shall remove and dispose of all trash from SCHOOL's football field following each scheduled event.
- 3.4 The Premises shall be occupied by **LEAGUE** for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. **LEAGUE** agrees and specifically understands that permission herein given does not grant to **LEAGUE** any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.5 **LEAGUE** agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of **LEAGUE** is called to any such violation, **LEAGUE** or those under its control will immediately desist from and correct such violation.
- 3.6 **LEAGUE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time.

## EXHIBIT B

**LEAGUE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the City, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LEAGUE's** activities under this contract.

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

### **4. TERM OF AGREEMENT**

- 4.1 The term of this **Agreement** is five (5) years, beginning on October 1, 2008, which is hereafter referred to as the commencement date, and expiring on September 30, 2013, if not earlier terminated according to the terms hereof.
- 4.2 Before the expiration date of this **Agreement**, **LEAGUE** must submit a letter to the **Director** requesting continued utilization of the property.

### **5. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 5.1 **LEAGUE** has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. **LEAGUE'S** taking possession of the Premises shall be conclusive evidence of **LEAGUE'S** acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which licensed. **CITY** specifically disclaims any warranty of suitability for **intended commercial purposes of LEAGUE**.
- 5.2 **LEAGUE** agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution hereof, have been made by **CITY** or its agents to **LEAGUE** unless the same are contained herein or made a part hereof by specific reference herein.
- 5.3 **LEAGUE** acknowledges that the Premises are situated on top of an unpermitted landfill and that any activities that it undertakes under this Field Use and Maintenance agreement shall be in full compliance with all state and federal environmental regulations related to landfills. This **Agreement** does not confer any right to **LEAGUE** to build any structures on the Premises.
- 5.4 Premises are shared by **SCHOOL** during **LEAGUE's** use period. No later than the final date of **LEAGUE's** use period as designated in Section 3.1.1 of this Agreement, **LEAGUE** shall schedule a meeting at the Premises and invite **SCHOOL** and Parks and Recreation staff in order to account for damages which occurred during **LEAGUE's** use period and to ensure that field(s), concession stand, and other improvements are turned over in satisfactory condition to **SCHOOL**.

## EXHIBIT B

### **6. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES**

- 6.1 **General Maintenance:** Each year, during the term of this **Agreement**, **LEAGUE** shall, at its sole expense, provide year round maintenance service in no event less than the quality of maintenance service demonstrated in other **CITY**-owned fields. In Section 6 of Exhibit B, **SCHOOL** agrees to mow only the playing field area at Colt Football Field during their use period (August 1<sup>st</sup> – May 31<sup>st</sup>) of each License Year. As primary user of the licensed area as illustrated in Exhibit A, **LEAGUE** shall be responsible for resumption of mowing the playing field area from June 1<sup>st</sup> – July 31<sup>st</sup> of each License Year. In addition to the other obligations of **LEAGUE** set forth herein, **LEAGUE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed licensed area, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:
- 6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
  - 6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;
  - 6.1.3 At a minimum, provide weekly trash pickup and removal service and keep the field, concession and parking areas free from litter and debris;
  - 6.1.4 Seed and fertilize the field as required to sustain acceptable standards of playing conditions;
  - 6.1.5 Provide ant control services as frequently as required to control these pests;
  - 6.1.6 Level the field with dirt/sand as needed to sustain acceptable standards of playing conditions;
  - 6.1.7 Maintain the fields/courts as required to sustain acceptable standards of playing conditions;
  - 6.1.8 Maintain concession building and repair as needed (if applicable);
  - 6.1.9 Storage buildings must be maintained, painted, and kept in good general condition (if applicable);
  - 6.1.10 Maintain and repair bleachers as needed; bleachers are not to be removed from the Premises (if applicable);
  - 6.1.11 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises (if applicable);
  - 6.1.12 Any lighting (if applicable) that benefits the licensed fields must be maintained, kept in working order, and replaced by the **LEAGUE**; and
  - 6.1.13 Provide such other maintenance tasks and chores as may be required to sustain the field, adjacent concession, and parking areas at acceptable standards of use conditions. All structures and equipment that is vandalized must be cleared of debris and graffiti or repairs shall be made within 5 days.
- 6.2 **LEAGUE** shall promptly repair any damage to the Premises. **LEAGUE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the Premises through the Parks Reservation System. 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.

## EXHIBIT B

6.3 No parking is allowed in any area (including area adjacent to concession stand) other than the designated parking area shown as a parking lot in **EXHIBIT A**. Parking on the fields is strictly prohibited and will be seen as a violation of this License **Agreement** and subject to default.

6.3.1 **LEAGUE** is responsible for maintaining the parking area located within the licensed premises.

6.4 In carrying out the aforesaid maintenance responsibilities, **LEAGUE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

### 7. UTILITIES

7.1 **LEAGUE** currently shares CPS Energy account with Southeast Pony Baseball league for use of one (1) lighted field. **LEAGUE** shall promptly reimburse the Southeast Pony Baseball league for monthly electric utility charges incurred during **LEAGUE's** use period throughout the term of this **Agreement**.

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

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

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

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

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

### 8. SCHEDULED FIELD MAINTENANCE

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

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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.

## EXHIBIT B

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

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

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

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

### **10. CONCESSIONS**

- 10.1 **LEAGUE** shall, during the designated months of use of the Premises, being from **June 1<sup>st</sup> through January 15<sup>th</sup>** of each **License Year**, as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. **LEAGUE** shall have the exclusive use of any concession stand(s) erected by it upon the Premises as well as stocks of items supplied by it from August 1<sup>st</sup> through December 31<sup>st</sup> of each License year as designated in Section 4.1 of this **Agreement**. No fee for the right to operate said concessions shall be payable to **CITY**; provided however, that all profits generated thereby shall be applied to the operation of **LEAGUE**. **LEAGUE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 10.2 **LEAGUE'S** concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 3.2.

### **11. DEFAULTS AND TERMINATION RIGHTS**

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

## EXHIBIT B

**Agreement** to be kept, observed, or performed by **CITY**, and such default shall continue for a period of thirty (30) days after notice thereof by **LEAGUE** to **CITY**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that **CITY** has commenced to cure such default.

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

### 12. INDEMNIFICATION

- 12.1 **LEAGUE** covenants and agrees to **FULLY INDEMNIFY, 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 **LEAGUE'S** activities under this **Agreement**, including any acts or omissions of **LEAGUE**, any agent, officer, director, representative, employee, consultant or subcontractor of **LEAGUE**, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this **Agreement**. 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 LEAGUE 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.**

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

### 13. INSURANCE REQUIREMENTS

- 13.1 Prior to the commencement of any work under this Contract, **LEAGUE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the **CITY's** Parks and Recreation Department, which

**EXHIBIT B**

shall be clearly labeled "Highland Hawks Pop Warner Football" 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 Agreement until such certificate and endorsements have been received and approved by the CITY's Parks and Recreation Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.

13.2 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 contract. In no instance will CITY allow modification whereupon CITY may incur increased risk.

13.3 LEAGUE's financial integrity is of interest to the CITY; therefore, subject to LEAGUE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, LEAGUE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at LEAGUE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and 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
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Broad Form Contractual Liability d. Products/completed operations e. Broad form property damage, to include fire legal liability f. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
3. Comprehensive Automobile Liability* a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
4. Property Insurance: For physical damage to the property of LEAGUE, including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of LEAGUE'S property.

\*If Applicable

## EXHIBIT B

13.4 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). **LEAGUE** 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. **LEAGUE** shall pay any costs incurred resulting from said changes.

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

- 13.5 **LEAGUE** 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.
- 13.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, **LEAGUE** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **LEAGUE**'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.
- 13.7 If **LEAGUE** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the **CITY** may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the **Agreement**; however, procuring of said insurance by the **CITY** is an alternative to other remedies the **CITY** may have, and is not the exclusive remedy for failure of **LEAGUE** to maintain said insurance or secure such endorsement. In addition to any other remedies the **CITY** may have upon

## EXHIBIT B

**LEAGUE's** failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the **CITY** shall have the right to order **LEAGUE** to stop work hereunder, and/or withhold any payment(s) which become due to **LEAGUE** hereunder until **LEAGUE** demonstrates compliance with the requirements hereof.

- 13.8 Nothing herein contained shall be construed as limiting in any way the extent to which **LEAGUE** may be held responsible for payments of damages to persons or property resulting from **LEAGUE's** or its subcontractors' performance of the work covered under this **Agreement**.
- 13.9 It is agreed that **LEAGUE's** insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.
- 13.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

### **14. REPORTS**

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

## EXHIBIT B

### 15. SIGNS

15.1 **LEAGUE** 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** through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. 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. **LEAGUE** agrees it will not install any signs that advertise or promote alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. **LEAGUE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs. 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.

### 16. ASSIGNMENT

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

### 17. RELATIONSHIP OF PARTIES

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

### 18. CONFLICT OF INTEREST

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

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

## EXHIBIT B

### 19. SEPARABILITY

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

### 20. NOTICES

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

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

San Antonio Independent School District  
Art Gonzales, Asst. Athletic Director  
110 Tuleta  
San Antonio, Texas 78212

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

**Ms. Michelle Martinez, President**  
**Highland Hawks Pop Warner Association**  
**PO Box 23237**  
**San Antonio, Texas 78223**

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

### 21. TEXAS LAW TO APPLY

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

### 22. GENDER

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

## EXHIBIT B

### **23. NON-DISCRIMINATION**

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

### **24. CAPTIONS**

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

### **25. HOLDING OVER**

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

### **26. ENTIRE AGREEMENT/AMENDMENT**

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

**EXHIBIT B**

**27. AUTHORITY**

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

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_\_ day of \_\_\_\_\_ 2008.

**LICENSOR:**

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

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

ATTEST:

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

**LICENSEE:**

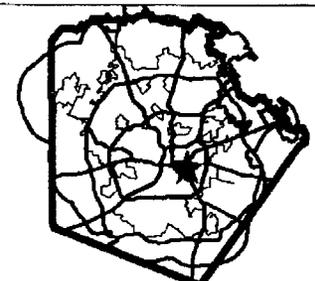
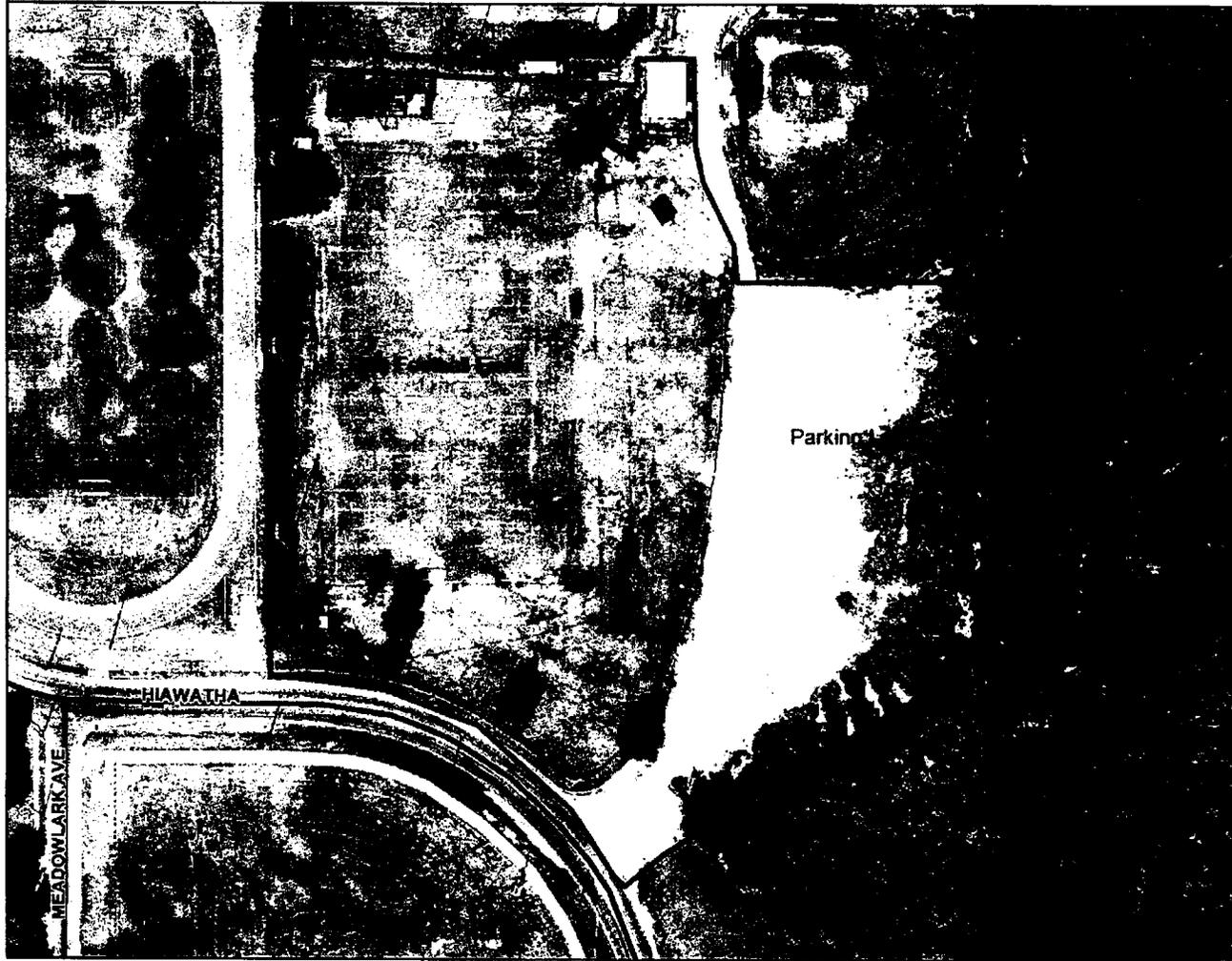
**HIGHLAND HAWKS POP WARNER**  
**FOOTBALL ASSOCIATION**, a Texas Non-  
profit Corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney

# Highland Hawks Licensed Area - Exhibit A



## Legend

- SA International Airport
- Lakes
- Military Bases
- Incorporated Towns
- San Antonio City Limits
- Bexar County Line
- Bexar Streets
- SA East

0 160 320 480 ft.

Map center: 2146768, 13688650



Scale: 1:1,650

This map is a user generated static output from an Internet mapping site and is for general reference only. Data layers that appear on this map may or may not be accurate, current, or otherwise reliable. THIS MAP IS NOT TO BE USED FOR NAVIGATION.

Notes: Red polygon = Licensed Area

EXHIBIT B



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

Agenda Item # 27  
Council Meeting Date: 10/2/2008  
RFCA Tracking No: R-3908

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**DEPARTMENT:** Parks & Recreation

**DEPARTMENT HEAD:** Xavier Urrutia

**COUNCIL DISTRICT(S) IMPACTED:**  
Council District 3

**SUBJECT:**  
License Agreements with Sports Organization and School District

**SUMMARY:**

This ordinance authorizes the execution of two Field Use and Maintenance License Agreements with Highland Hawks Pop Warner Football Association and the San Antonio Independent School District for shared use of Colt Field at Southside Lions Park in City Council District 3. Each agreement will consist of a five year term beginning on October 1, 2008 and ending on September 30, 2013.

**BACKGROUND INFORMATION:**

The Highland Hawks Pop Warner Association has been a licensee at Southside Lions Park for over seven years, providing organized sports activities for area youth. San Antonio Independent School District (Highlands High School) has been sharing and coordinating use of Colt Field with the Highland Hawks Pop Warner Association since 2005. The term of the Highland Hawks Pop Warner Association's License Agreement ended in April 2003 and has continued on a month-to-month basis as allowed by the License Agreement.

Under the terms of the proposed Licenses, the Highland Hawks Pop Warner Football Association will have priority use of the fields on the dates identified in a use schedule submitted annually to the Parks and Recreation Department. San Antonio Independent School District will be limited to use of Colt Field for football practice only during school hours on weekdays and will be required to coordinate their use schedule with the Highland Hawks Pop Warner Football Association. The San Antonio Independent School District will permit Highland Hawks Pop Warner Football Association to schedule games at Highlands High School and one game day per season at Alamo Stadium.

Highland Hawks Pop Warner Football Association will have sole permission to operate concessions with proceeds benefiting their program. Both licensees are jointly responsible for maintenance of the fields and premises during the term of their agreements.

**ISSUE:**

This ordinance authorizes the execution of two Field Use and Maintenance License

Agreements, each for a five year term beginning October 1, 2008 and ending on September 30, 2013. 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:**

License Agreements allow priority use of sports fields in return for their maintenance, creating a cost savings for the City. The available alternative is to require the organizations to reserve the field through the reservation office; however, the City would be responsible for the maintenance of the fields and the organizations would be subject to available scheduling dates.

**FISCAL IMPACT:**

There is no fiscal impact to the General Fund.

**RECOMMENDATION:**

Staff recommends approval of these License Agreements with Highland Hawks Pop Warner Football Association and the San Antonio Independent School District for shared use of Colt Field at Southside Lions Park.

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

**ATTACHMENT(S):**

File Description	File Name
<a href="#">Highland Hawks Pop Warner Football Association Field Use and Maintenance License Agreement</a>	Highland Hawks Pop Warner Football Association Field and Use Maintenance License Agreement.pdf
<a href="#">Highland Hawks Discretionary Contracts Disclosure Form</a>	Highland Hawks Discretionary Contracts Disclosure Form.pdf
<a href="#">San Antonio Independent School District Field Use and Maintenance License Agreement</a>	San Antonio Independent School District Field Use and Maintenance License Agreement.pdf
<a href="#">San Antonio Independent School District Discretionary Contracts Disclosure Form</a>	San Antonio Independent School District Discretionary Contracts Disclosure Form.pdf
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplemental Documents</a>	200810020891.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Xavier Urrutia Director (Interim) Parks & Recreation

**APPROVED FOR COUNCIL CONSIDERATION:**

A.J. Rodriguez Deputy City Manager