SW/vv
03/12/15
Item #20

AN ORDINANCE 2015-03-12-0195

AUTHORIZING THE SUBMISSION OF A GRANT APPLICATION AND THE ACCEPTANCE OF UP TO $1,000,000.00 UPON AWARD FROM THE TEXAS PARKS & WILDLIFE DEPARTMENT FOR THE FUNDING OF A NEW BASEBALL FIELD AND ASSOCIATED AMENITIES AT THE EASTSIDE BOYS & GIRLS CLUB IN MARTIN LUTHER KING PARK IN COUNCIL DISTRICT 2 AND AUTHORIZING A FUNDING AGREEMENT WITH THE BOYS & GIRLS CLUBS OF SAN ANTONIO IN THE AMOUNT OF THE AWARD.

* * * * *

WHEREAS, the Texas Parks and Wildlife Department (TPWD) released a special call for applications for the Urban Outdoor Recreation Grant with applications due on March 31, 2015, which requires a dollar for dollar match up to $1,000,000.00; and

WHEREAS, the TPWD will be considering grant requests at their annual meeting in August 2015;

WHEREAS, funding would become available in the Fall of 2015; and

WHEREAS, if awarded, the grant period is three years with optional extensions if requested; and

WHEREAS, the Eastside Boys & Girls Clubs has been approached by the Cal Ripkin Foundation to build a new baseball field for use by the public and local little leagues; and

WHEREAS, this project will include a walking loop, a multi-purpose field and other on-site amenities; and

WHEREAS, the Cal Ripkin Foundation has committed $700,000.00 to the Boys & Girls Clubs of San Antonio for the match required by TPWD for the grant proposal; and

WHEREAS, the remaining funds will be raised by the Boys & Girls Clubs of San Antonio to fulfill the match requirement; and

WHEREAS, the complex will be built on the leased premises of the Boys & Girls Clubs of San Antonio and they will assume all associated maintenance and operating costs; and

WHEREAS, upon execution of the funding agreement with the Boys & Girls Clubs of San Antonio, the Small Business Economic Development Advocacy (SBEDA) Program compliance will be followed, which requires contracts to be reviewed by a Goal Setting Committee to establish a requirement and/or incentive unique to the particular contract in an effort to maximize the amount of small, minority, and women-owned business participation on the contract; **NOW THEREFORE:**

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03/12/15
Item #20

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 submit a grant application and accept up to $1,000,000.00 upon award from the Texas Parks and Wildlife Department (TPWD) for the funding of a new baseball field and associated amenities at the Eastside Boys & Girls Clubs in Martin Luther King Park in Council District 2. A copy of said application is on file with the Parks and Recreation Department.

SECTION 2. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is further authorized to execute any and all necessary documents to effectuate said application and acceptance.

SECTION 3. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is authorized to execute a funding agreement with the Boys & Girls Clubs of San Antonio in the amount of the award. A copy of the funding agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

SECTION 4. Upon approval of this ordinance, a new fund and internal order number will be created. A final budget will be provided upon the award of the grant, upon which the above sum will be appropriated from the Texas Park and Wildlife Department.

SECTION 5. 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 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 6. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

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

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**20 (in consent vote: 7, 8, 9, 10, 11, 12, 14, 17, 18B, 19A, 19B, 20, 21, 22, 24, 25, 26, 28, 30, 31)**
Date:	03/12/2015
Time:	10:06:53 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing the submission of a grant application and the acceptance of up to $1,000,000.00 upon award from the Texas Parks & Wildlife Department for the funding of a new baseball field and associated amenities at the Eastside Boys & Girls Club in Martin Luther King Park in Council District 2 and authorizing a funding agreement with the Boys & Girls Clubs of San Antonio in the amount of the award [Gloria Hurtado, Assistant City Manager; Xavier D. Urrutia, Director, Parks & Recreation]
Result:	Passed

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

ATTACHMENT I

STATE OF TEXAS §
§ **FUNDING AGREEMENT –**
COUNTY OF BEXAR § **BOYS & GIRLS CLUBS OF SAN ANOTNIO**

This Agreement ("Agreement") is hereby made and entered into by and between the City of San Antonio ("City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, 2015 and Boys & Girls Clubs of San Antonio, ("Grantee"), a Texas non-profit corporation, acting by and through its President/CEO, hereto duly authorized.

WITNESSETH:

WHEREAS, City and Grantee have had a successful relationship through a Lease Agreement since 1975 that resulted in renovation and improvements to City-owned facilities at MLK Park at the Eastside Boys & Girls Club; and

WHEREAS, City wishes to continue to offer and expand sports and recreational programs and opportunities to the community at public parks; and

WHEREAS, City and Grantee desire further expansion of City-owned sports facilities at MLK Park at the Eastside Boys & Girls Club; and

WHEREAS, the state of Texas, through its Parks and Wildlife Department ("TPWD") maes certain grant funding available to municipalities through its Urban Outdoor Recreation Grant as part of the Local Park Grant Program for which City has applied for grants in a cumulative amount of up to $1,000,000 for the addition of a new baseball field and associated amenities at MLK Park at the Eastside Boys & Girls Club; and

WHEREAS, Grantee has been approached by the Cal Ripkin Foundation to build a new baseball field at the the Eastside Boys & Girls Club for use by the public and little leagues; and

WHEREAS, the Cal Ripkin Foundation has already committeed $700,000 to Grantee for the match required by TPWD for the Urban Outdoor Recreation Grant; and

WHEREAS, Grantee will raise the remaining funds to fulfill the match requirement;

WHEREAS, Grantee will serve as manager for the completion of the planned addition of a new baseball field and associated amenities at MLK Park at the Eastside Boys & Girls Club

NOW THEREFORE, the parties hereto ("Parties") severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

1.01 This Agreement shall continue in full force and effect from the date of execution by the Parties, as defined in Section 2 below, has been completed.

1.02 In the event that the Texas Parks and Wildife Department terminates the TPWD Grant due to non-complaince with grant regulations, this Agreement will

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terminate. In the event tof such termination, City and Grantee will not be responsible for providing any additional funding for the completion of the is Project.

II. GENERAL RESPONSIBILITIES

2.01 Provided Grantee receives the funding described in Section 6.01, Grantee shall perform the services and activities described in this Agreement. The funds provided for under this Agreement shall only be used for the project design and construction of a baseball field and related amenities at Martin Luther King Park at the Eastside Boys & Girls Club.

2.02 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's President/CEO shall be Grantee's designated representative responsible for the administration of this Agreement on behalf of Grantee.

2.03 The Parks and Recreation Director ("Director") or his designee, is responsible for the administration of this Agreement on behalf of City.

2.04 Communications between City and Grantee shall be directed to the designated representatives of each as set forth in Sections 2.02 and 2.03 hereinabove.

III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS

3.01 Grantee agrees to manage and implement all portions of the planned construction of a baseball field and associated amenities at Eastside Boys & Girls Club in Martin Luther King Park.

3.02 Grantee warrants and represents that it will comply with all Federal, State and Local laws and regulations applicable to Grantee, and to Grantee's use of City Funds.

3.03 To the extent applicable, Grantee agrees to abide by the following laws in its expenditures of City Funds:

(A) Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.

(B) Government Code provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).

Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that is construction contractor submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of CIMS.

IV. LEGAL AUTHORITY

4.01 Grantee represents, warrants, assures, and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement and to perform the responsibilities herein required.

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4.02 Grantee represents, warrants, assures and guarantees that the undersigned has full legal authority to execute this Agreement on behalf of Grantee and to bind Grantee to all terms, performances and provisions herein contained.

V. PERFORMANCE BY GRANTEE

5.01 Grantee, in accordance and compliance with the terms, provisions and requirements of this Agreement, shall contract with a design consultant for plans associated with the project.

VI. FUNDING AND ASSISTANCE BY CITY

6.01 In consideration of Grantee's performance of all services and activities set forth in this Agreement, City agrees to reimburse Grantee for all Eligible Expenses (as defined in Section 8.01) incurred hereunder. Notwithstanding any other provisions of this Agreement, the total of all payments and other obligations made or incurred by City shall not exceed $1,000,000,000.

6.02 City shall not be obligated nor liable under this Agreement to any party, other than Grantee, for payment of any monies or provision of any goods or services.

6.03 City will be responsible for all reporting required by TPWD for the TPWD Grant and Grantee agrees to promptly provide any clarification requested and/or documentation needed by City to submit such reports.

VII. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

7.01 Grantee understands and agrees that it shall maintain a numbered account for the receipt and disbursement of all funds received pursuant to this Agreement and further agrees that all checks and withdrawals from such account shall have itemized documentation in support of the use of such City funds.

7.02 Grantee agrees to maintain records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this Agreement. Grantee further agrees:

(A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this Agreement and with all generally accepted accounting practices; and

(B) That Grantee's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

7.03 Grantee agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials ("Records") pertaining to activities pertinent to this Agreement for a minimum of four (4) years after the termination of this Agreement.

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7.04 In order to be reimbursed for Eligible Expenses, Grantee shall submit to City a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation, in such detail as City may request, including but not necessarily limited to, a copy of the paid invoice(s).

7.05 City agrees to provide Grantee written notice regarding any expenditure the City reasonably determines to be outside the permissible parameters of this Agreement. Grantee shall have thirty (30) days from receipt of such notice to cure the deficiency or, in the event that payment has been made to Grantee, refund to the City those funds, determined to:

(A) Have not been spent by Grantee strictly in accordance with the terms of this Agreement; or

(B) Not be supported by adequate documentation to fully justify the expenditure.

7.06 Unless City has questions concerning an expenditure by Grantee, City agrees to provide payment to Grantee within thirty (30) calendar days of receipt of a request for reimbursement as defined above.

7.07 Upon termination of this Agreement, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by City, Grantee shall refund such amount to City within thirty (30) calendar days of City's written request therefore wherein the amount disallowed or disapproved shall be specified.

VIII. ALLOWABLE EXPENDITURES AND OWNERSHIP OF PROPERTY

8.01 Grantee may use the funds provided under the terms of this Agreement for the costs of Basic Services, as defined in the Standard Form of Agreement Between Owner and Architect _____ ("Architect") dated _____ related to the construction of a baseball field and associated amenities at Eastside Boys & Girls Club at Martin Luther King Park ("Eligible Expenses"). Expenditures of the funds by Grantee provided under this Agreement shall only be allowed if incurred directly and specifically in the performance of and in compliance with this Agreement and all applicable city, state and federal laws, regulations and/or ordinances.

8.02 The following shall not be considered Eligible Expenses under this Agreement:

(D) Personnel costs, salaries or wages paid directly by Grantee, except as allowed by 8.01 above
(E) Travel or mileage
(F) Costs or fees associated with attendance at meetings, seminars, or conferences

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8.03 Procurements and/or purchases which must be approved pursuant to the terms of this Agreement shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

IX. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

9.01 Grantee further represents and warrants that as of the date hereof:

(A) All information, data or reports heretofore or hereafter provided to City is, shall be, and shall remain complete and accurate in all material respects as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to City.

(B) It is financially stable and capable of fulfilling its obligations under this Agreement and that Grantee shall provide City immediate written notice of any adverse material change in the financial condition of Grantee that may materially and adversely effect its obligations hereunder.

(C) No litigation or proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.

(D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

X. ACCESSIBILITY OF RECORDS

10.01 At any time during normal business hours and as often as City may deem necessary, upon three (3) days written notice, Grantee shall make all of its records pertaining to this Agreement available to City or any of its authorized representatives, and shall permit City or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

10.02 Grantee agrees and represents that it will cooperate with City, at no charge to the City, to satisfy, to the extent required by law, any and all requests for information received by City under the Texas Public Information Act or related laws pertaining to this Agreement.

XI. MONITORING AND EVALUATION

11.01 Grantee agrees that City may carry out reasonable monitoring and evaluation activities, and Grantee shall provide reasonable access to City for such activities, so as to ensure compliance by Grantee with this Agreement and with all other laws, regulations and ordinances related to the performance hereof.

XII. INDEMNIFICATION

12.01 Grantee covenants and agrees to FULLY INDEMNIFY, DEFEND, and HOLD HARMLESS, the City and the elected officials, employees, officers, directors,

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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 Grantee's activities under this Agreement, including any acts or omissions of Grantee, any agent, officer, director, representative, employee, or Grantee consultant or subcontractor of Grantee, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of City, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT GRANTEE 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.

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

XIII. INSURANCE

13.01 Grantee agrees to obtain all insurance coverages (except for professional liability insurance) with minimum limits of not less than those limits delineated in Section 13.04 (Insurance table) and provide a Certificate of Insurance and Endorsement that names the City as an additional insured. Grantee shall cause the Architect to obtain professional liability insurance with the minimum limited delineated in Section 13.04.

13.02 Prior to the commencement of any work under this Agreement, Grantee and Architect 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 **"Baseball Field at Eastside Boys & Girls Club"** 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.

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

13.04 Grantee's and Architect's financial integrity is of interest to the City; therefore, subject to Grantee's and Architect's right to maintain reasonable deductibles in such amounts as are approved by the City. Grantee and, with respect to the professional and liability policy only, Architect shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Grantee's and Architect's sole expense, insurance coverage written on an occurrence basis, unless othewise indicated, 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 below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented to you	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 f. $100,000
4. Business 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
5. Professional Liability Insurance (claims made form)	$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services. Architect shall provide coverage for an additional 12 months after the completion date of the contract.

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

13.06 as they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto 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). Grantee and Architect 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. Grantee and Architect shall pay any costs incurred resulting from said changes.

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

13.07 Grantee and Architect (to the extent the same applies to professional liability insurance) agree that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, 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;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the Grantee is an additional insured shown on the policy;

- Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City.

- 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 notice for nonpayment of premium.

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

13.09 In addition to any other remedies the City may have upon Grantee's failure to provide and maintain any insurance or policy endorsements to the extent and witin the time herine required, the City shall have the right to order Grantee to stop work hereunder, and/or withhold any payment(s) which become due to Grantee hereunder until Grantee demonstrates compliance with the requirements hereof.

13.10 Nothing herein contained shall be construed as limiting in any way the extent to which Grantee may be held responsible for payments of damages to persons or property resulting from Grantee's and Architect's or its subcontractors' performance of the work covered under this Agreement, subject to the limitations set forth in Section 29 hereof.

13.11 It is agreed that Grantee's and Architect's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

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

XIV. COMPLIANCE WITH SMALL, MINORITY AND WOMAN-OWNED BUSINESS ENTERPRISES POLICY, NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

14.01 Grantee is hereby advised that it is the policy of the City of San Antonio that Small, Minority or Woman-owned Business Enterprises (SMWBE) shall have the maximum practical opportunity to participate in the performance of public contracts. In all events, Grantee shall comply with the City's Small Business Economic Development Advocacy Program, contained in San Antonio Ordinance No. 2007-04-12-0396, and the amendments thereto in connection with the award of the construction contract(s). Said ordinances are incorporated herein for all purposes, as if fully set forth herein. Grantee agrees that Grantee will not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age or disability. Grantee further agrees that Grantee will abide by all applicable terms and provisions of City's Non-Discrimination Policy, City's Small, Business Economic Development Advocacy (SBEDA) Policy and City's Equal Opportunity Affirmative Action Policy, these policies being available in City's Department of Economic Development, Division of Internal Review and the City Clerk's Office in connection with the Parking Facility.

14.02 Grantee agrees to comply with any and all SBEDA goals assigned to this Agreement aas outlined in Exhibit A.

14.03 Grantee agrees that if material deficiencies in any aspect of its SMWBE utilization plan as set out in its project are found or if Grantee does not meet the SMWBE goals as specified by the City's Department of Economic Development, whichever is less, as a result of a review or investigation conducted by City's Department of Economic Development, Grantee will be required to submit a written report to City's Department of Economic Development. Grantee will also be required to submit a supplemental Good Faith Effort Plan (GFEP) indicating efforts to resolve any deficiencies.

XV. NONDISCRIMINATION

15.01 As a party to this contract, Grantee understands and agrees to comply with the *Non-Discrimination Policy* of the City of san Antonio contained in Chapter 2, article X of the City Code and further, shall not discriminate on the baisis of race, color, religion, national origin, sex, sexual orientation, gender identiy, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

XVI. CONFLICT OF INTEREST

16.01 Grantee covenants that neither it nor any member of its governing body or of its staff presently has any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Grantee further covenants that in the performance of this Agreement, no persons having such interest shall be employed or appointed as a member of its governing body or of its staff.

16.02 Grantee further covenants that no member of its governing body or of its staff shall possess any interest in, or use their position for, a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with which they have family, business, or other ties.

16.03 No member of City's governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this Agreement shall:

(A) Participate in any decision relating to this Agreement which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;

(B) Have any direct or indirect interest in this Agreement or the proceeds thereof.

XVII. POLITICAL ACTIVITY

17.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for

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public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

XVIII. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

18.01 All finished or unfinished reports, documents, data, studies, surveys, charts, drawings, maps, models, photographs, designs, plans, schedules, or other appended documentation to any proposal or contract, and any responses, inquiries, correspondence and related material submitted by Grantee, shall, upon receipt, become the property of City.

XIX. CONTRACTING

19.01 Any work or services contracted hereunder shall be contracted only by written contract or agreement and, unless specific waiver is granted in writing by City, shall be subject by its terms to each and every provision of this Agreement. Compliance by contractors with this Agreement shall be the responsibility of Grantee. Grantee is responsible to ensure that all permits required for the activities under this AGREEMENT are obtained.

19.02 City shall in no event be obligated to any third party, including any sub-contractor of Grantee, for performance of or payment for work or services.

XX. CHANGES AND AMENDMENTS

20.01 Except when the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both City and Grantee under authority granted by formal action of the Parties' respective governing bodies.

20.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the term of this Agreement and that any such changes shall be automatically incorporated into this Agreement without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

XXI. ASSIGNMENTS

21.01 Grantee shall not transfer, pledge or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of City. Any attempt at transfer, pledge or other assignment shall be void *ab initio* and shall confer no rights upon any third person.

XXII. SEVERABILITY OF PROVISIONS

22.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not

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affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXIII. DEFAULT

23.01 Upon default by Grantee in the performance of its obligations hereunder, City shall give Grantee notice of the same and Grantee shall have 30 days following receipt of written notice of default from City (or such reasonably longer time as may be necessary provided Grantee commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If Grantee fails to timely cure such default, City may pursue all remedies available in law or at equity and/or other rights City may have in this Agreement; provided that it is expressly agreed that neither Party hereto shall have the right to seek consequential or punitive damages against the other for any default under this Agreement.

23.02 Upon default by City in the performance of its obligations hereunder Grantee shall give City notice of the same and City shall have 30 days following receipt of written notice of default from Grantee (or such reasonably longer time as may be necessary provided City commences the cure within 30 days and continuously and diligently pursues the cure to completion) to cure such default. If City fails to timely cure such default, Grantee may pursue all remedies available in law or equity and/or other rights Grantee may have in this Agreement, subject to the limitations set forth in Section 23.01.

XXIV. NON-WAIVER OF PERFORMANCE

24.01 No waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the Party to be charged.

24.02 No act or omission of either Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to either Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

24.03 No representative or agent of City may waive the effect of the provisions of this Article without formal action from the City Council.

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XXV. ENTIRE AGREEMENT

25.01 This Agreement constitutes the final and entire agreement between the Parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the Parties hereto unless same is in writing, dated subsequent to the date hereof and duly executed by the Parties.

XXVI. NOTICES

26.01 For purposes of this Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and shall be (1) mailed, registered or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

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

Grantee: President/CEO
Boys and Girls Clubs of San Antonio
600 S.W. 19th Street
San Antonio, Texas 78207

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

XXVII. PARTIES BOUND

27.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns, except as otherwise expressly provided herein.

XXVIII. RELATIONSHIP OF PARTIES

28.01 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 venturers or any other similar such relationship between the Parties hereto.

XXIX. DESIGN DEFECTS

29.01 City acknowledges that Grantee shall have no liability for design defects and City's only recourse for design defects shall be against the Architect, provided however, Grantee shall

reasonably cooperate with City at no material cost to Grantee, to pursue the correction of such defects. This provision shall survive termination of this Agreement.

XXX. TEXAS LAW TO APPLY

30.01 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.

XXXI. GENDER

31.01 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.

XXXII. CAPTIONS

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

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

CITY OF SAN ANTONIO

By: _____
Sheryl Sculley
City Manager

Date: _____

ATTEST: _____
City Clerk

BOYS AND GIRLS CLUBS OF SAN ANTONIO

By: _____
Agnie Mock
CEO

Date: _____

Date: _____

APPROVED AS TO FORM:

_____
City Attorney

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Exhibit A

SBEDA GOALS

HOLD PENDING DETERMINATION BY GOAL SETTING COMMITTEE

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