SW/vv
08/20/15
Item #21

AN ORDINANCE 2015-08-20-0716

AUTHORIZING A LICENSE AGREEMENT WITH BORN AGAIN SPORTS, INC. FOR USE, MAINTENANCE, AND OPERATION OF A BASEBALL COMPLEX AT SOUTHSIDE LIONS PARK FOR AN INITIAL FIVE YEAR TERM; NO CITY FUNDS ARE ASSOCIATED WITH THIS ACTION.

* * * * *

WHEREAS, in 2008, Bexar County voters approved an extension of the 1999 hotel occupancy and short term motor vehicle rental tax, referred to as the visitor or venue tax; and

WHEREAS, approximately $3.3 million from the venue tax was provided for the development of a baseball complex in Southside Lions Park which consists of seven baseball fields, paved parking, and concession and restroom structures; and

WHEREAS, these improvements were constructed to better serve youth recreational needs of southeast San Antonio as well as provide a facility suitable for regional tournaments; and

WHEREAS, the tenant who previously operated the baseball complex retired this past Spring, and the City utilized a discretionary public process to select a new tenant for the use, maintenance, and operation of the baseball complex; and

WHEREAS, the City issued a Request for Qualifications (RFQ) titled "License of Sports Fields at Southside Lions Park" (RFQ 15-066) on June 12, 2015, with a submission deadline of July 13, 2015; and

WHEREAS, five proposal responses were received, which were scored on July 30, 2015; and

WHEREAS, the scoring identified three finalists which the evaluation committee agreed to interview for final scoring on August 5, 2015; and

WHEREAS, the evaluation committee consisted of representatives from the Parks and Recreation Department, Office of the Bexar County Manager, Bexar County Community Venues Program, and the Finance Department, Purchasing Division who assisted with solicitation process guidelines; and

WHEREAS, the proposals were evaluated based on the firm's background, qualifications, experience, the proposed operating and maintenance plans, and the operating budget; and

WHEREAS, the evaluation of each proposal response was based on a total of 100 points - 30 points allotted for experience, background, qualifications; 25 points allotted for proposed operating and staffing plan; 30 points allotted for proposed maintenance and improvements plan; and 15 points allotted for respondent's operating budget and planned revenue; and

WHEREAS, as the RFQ was limited to responses from non-profit entities, the Local Preference and Veteran-Owned Small Business Preference programs were not applicable; and

WHEREAS, additionally, the City's Small Business Economic Development Advocacy Program (SBEDA) does not apply and was not part of the scoring model; and

WHEREAS, after evaluation committee review and discussion, scores were finalized and the aggregate scores were presented to the committee; and

WHEREAS, Born Again Sports, Inc. received the highest ranking and was recommended for award by the evaluation committee; and

WHEREAS, the License Agreement shall have a five (5) year term which shall commence immediately upon execution by the parties; and

WHEREAS, three additional five-year renewals may be exercised with City Council approval; and

WHEREAS, consistent with other City Sports License Agreements, there will be no rent paid to the City; however, as consideration for use of the land, Born Again Sports, Inc. will have full maintenance responsibility of the facility; and

WHEREAS, other standard provisions include the tenant's retention of all revenue for the purpose of offsetting the cost of facility operation and maintenance including utilities, establishment of a capital improvement and repair fund, and use of the facility by other amateur sports groups subject to the tenant's own schedule and fees and policies; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee, is authorized to execute a License Agreement with Born Again Sports, Inc. for use, maintenance, and operation of a baseball complex consisting of seven fields at Southside Lions Park for an initial five year term. A copy of the License Agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I.**

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 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.

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SECTION 3. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 20th day of August, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

for Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

for Martha G. Sepeda, Acting City Attorney

Agenda Item:	**21 (in consent vote: 4, 5, 6, 7, 8, 11, 12, 13, 14, 16, 17, 18, 20, 21)**
Date:	08/20/2015
Time:	09:11:45 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a License Agreement with Born Again Sports, Inc. for use, maintenance, and operation of a baseball complex at Southside Lions Park for an initial five year term; no City funds are associated with this action. [Xavier D. Urrutia, Interim Assistant City Manager; Janet A. Martin, Acting Director, Parks & Recreation]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		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			x	
Cris Medina	District 7		x				x
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

SPORTS LICENSE AGREEMENT
BEXAR COUNTY TAX VENUE PROJECTS
BORN AGAIN SPORTS, INC.

This License Agreement (the "Agreement") is made and entered into as of the _____ day of _____, 20____, 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 _____, 20____ ("City"), and BORN AGAIN SPORTS, INC., a Texas non-profit corporation ("Licensee");

1. WITNESSETH:

1.1 WHEREAS, City desires to provide amateur sports and recreational facilities for the use of the citizens of San Antonio and Bexar County; and

1.2 WHEREAS, in 2008 voters approved a Bexar County Venue Tax Project (BCVTP) that provided funding for various amateur sports organizations to develop or expand sports complexes to serve local teams and enhance tourism; and

1.3 WHEREAS, in instances where these projects are located on City of san Antonio owned land, the City entered into license agreements with the sports organizations to provide use of the land; and

1.4 WHEREAS, under the terms of these agreements, the sports organizations assumed responsibility for the operation and maintenance of the complexes in lieu of rent to the City; and

1.5 WHEREAS, City owns Southside Lions Park; and

1.6 WHEREAS, Licensee is a 501(c)(3) no-profit and covenants and agrees to maintain such status throughout the term of this Agreement; and

1.7 WHEREAS, Born Again Sports, Inc. was jointly selected by a proposal evaluation committee in made up of representatives from the City and Bexar County in response to a public solicitation for Request for Qualifications; **NOW, THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:
THAT, for and in consideration of the mutual benefits to City and Licensee and the observance of the terms and conditions set forth hereinafter, the parties hereto agree to the following:

2. APPOINTMENT AND RENT

2.1 For so long as Licensee maintains its non-profit and 501(c)(3) status and remains in good standing with its governing body throughout the term of this Agreement, City hereby designates Licensee as the primary user and maintainer of certain land at Southside Lions Park being part of N.C.B. 10832, San Antonio, Bexar County, and Licensee hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.

2.2 In consideration of the public benefit derived from Licensee's operations, Licensee shall not owe any rent under this agreement.

3. APPOINTMENT

3.1 City, for an in consideration of the mutual benefits to City and Licensee and the observance of the terms and conditions set forth hereinafter, hereby grants to Licensee permission to enter and use the Premises described in Exhibit A which is attached hereto and incorporated by reference herein for the purposes set forth in Section 3.2 below.

3.2 The Premises shall be occupied by Licensee for amateur sports and related activities. Licensee agrees and specifically understands that permission herein given does not grant to Licensee any interest or estate in the Premises by is a mere personal privilege to do certain acts of a temporary nature upon the Premises, and that City retains dominion, possession and control of the Premises, including access thereto at all times. City reserves the reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.

3.3 Licensee shall allow the use of the Premises by other amateur sports groups, subject to the availability of the Premises based on Licensee's use for its own practices, games, tournaments, maintenance and other related uses. Licensee shall establish policies and fees associated with the use of the Premises by other amateur sports groups, and such polices and fees will be consistently and fairly applied to all other users. Fees established shall be reasonable customary and based on rates found at similar facilities for similar use. All fees collected from use by other amateur sports groups shall be used to offset Licensee's cost of maintenance of the Premises. Information on the policies and frees shall be made available to the general public, either through Licensee's website, publications, or the means of dissemination to the public. Licensee agrees to give priority consideration to regional tournaments and other events that will result in attendance by large numbers of citizens of City, Bexar County, or other visitors outside of Bexar County.

3.4 City shall have the right to use the Premises for City activities and events for up to ten (10) days in any calendar year during the term of this agreement ("City Days"). City's right to City Days shall be subject to the availability of the Premises based on Licensee's use for its own practices, games, tournaments, maintenance, and other related uses, as well as previously scheduled use by other amateur sports groups as outlined in Section 3.3 above. City shall use its best efforts to avoid any damage to the Premises, and any damage caused as a result of City's use shall be promptly repaired by City, at City's expense. During City Days and County Days, neither City nor County shall be bound by any exclusivity contracts for concession sales entered into by Licensee with any concession suppliers.

3.5 Licensee agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of Licensee is called to any such violation, Licensee or those under its control will immediately desist from and correct such violation.

3.6 Licensee shall facilitate the unimpeded access of Highland Hawks Pop Warner Football Association (Highland Hawks), or future licensee of the area currently licensed by Highland Hawks, to their premises during their licensed period of use and at other times as needed for maintenance purposes, the shared parking area adjacent to the Highland Hawks premises, as shown on Exhibit A. Further, users of and visitors to the Highland Hawks premises shall not be required to pay any fee for access to or use of the shared parking area.

4. TERM OF AGREEMENT

4.1 The term of this Agreement is five (5) years, beginning upon the date of execution, and expiring on September 30, 2020, if not terminated earlier according to the terms hereof.

4.2 So long as Licensee is not then in default of any of the provisions of this Agreement or any agreements between Bexar County and Licensee, this agreement may be extended for up to three additional five (5) year renewal options, subject to the approval of City Council as evidenced by an Ordinance, for a total maximum term of this agreement of twenty (20) years.

5. ACCEPTANCE AND CONDITIONS OF PREMISES

5.1 Licensee has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. Licensee's taking possession of the Premises shall be conclusive evidence of Licensee's acceptance thereof in good satisfactory order in its present condition **AS IS, WHERE IS AND WITH ALL FAULTS** as suitable for the purpose for which it is licensed. City specifically disclaims any warrant of suitability for intended commercial purposes of Licensee.

5.2 Licensee agrees that no representations respecting the condition of the Premises and no promises to decorate, alter repair, or improve the Premises, either before or after the execution hereof, have been made by City or its agents to Licensee unless the same are contained herein or made a part hereof by specific reference herein.

6. LICENSEE'S MAINTENNACE OBLIGATIONS AND DUTIES

6.1 general Maintenance; during the term of this Agreement, Licensee shall, at its sole expense, provide year round maintenance service of the Premises. The level of maintenance will be the more stringent of the maintenance standards required in the Operating agreement between Bexar County and Licensee or the quality of maintenance service demonstrated in other City-owned fields and improvements. In additional to the other obligations of Licensee se forth herein, Licensee shall render the following services and perform the following duties with regard to its maintenance of the Premises for City in a faithful, diligent, and efficient manner:

6.1.1 Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;

6.1.2 Grass must be mowed and trimmed up to the fence lines and all fencing is to be cleared of all debris and foliage;

6.1.3 At a minimum, provide weekly trash pickup and removal service and keep all areas of the Premises free from litter and debris, including following all practices and games;

6.1.4 Seed and fertilize fields as required to sustain acceptable standards of playing conditions;

6.1.6 Provide pest control services as needed;

6.1.7 Maintain all buildings and structures, including by not limited to, concession structures, restrooms, storage units, signage, lighting fixtures, irrigation systems in good repair at all times, promptly making any needed repairs or replacements;

6.1.8 Keep all improvements free of graffiti

6.1.9 Provide such other maintenance tasks and chores as may be required to sustain the fields, parking areas, and all improvements at acceptable standards of use conditions. All structures and equipment that are vandalized must be cleared of debris and graffiti within five (5) days.

6.2 Licensee shall be responsible for making all capital repairs and/or improvements (including physical and functional obsolescence) necessary to maintain the Premises in a first class condition throughout the term of this Agreement.

6.3 Licensee shall establish a Capital Repair and Improvement Fund and deposit into such Capital Repair and Improvement Fund all net revenues remaining after payment of all usual and customary operating expenses and after funding any necessary contingency reserve funds (such contingency reserve funds not to exceed ten percent (10%) of Licensee's total annual revenue). Revenues are hereby defined as all revenues and income of every nature and from whatever source derived by Licensee from the operation of the Premises (but excluding grants and donations for capital purposes or specific projects) including, but not limited to, rents, ticket sales, concessions, and other revenues received therefrom, Licensee shall use its best faith effort to operate the Premises in a manner that results in the deposit of monies into the capital repair and Improvement Fund each year. The Capital Repair and Improvement Fund will be a funding source for the maintenance, repair, refurbishment and replacement of the improvements to the Premises including without limitation all furniture, fixtures and equipment. Licensee shall maintain complete books and records reflecting the sources and uses of the Capital Repair and Improvement Fund, including the manner in which Licensee has allocated revenues to the Capital Repair and improvement Fund. City shall have the right to examine, inspect and audit such records as necessary to determine Licensee's compliance with the requirement hereof. Lack of adequate funding in the Capital Repair and Improvement Fund shall not reduce or eliminate Licensee's obligation to make necessary capital improvements and repairs. At the conclusion of the term of this Agreement, or any extended term, or upon the early termination of this Agreement, all funds remaining in the Capital repair and Improvement Fund shall become the property of City.

6.4 Licensee shall promptly repair any damage to the Premises. Notwithstanding any contrary provisions herein contained, should the Premises be damaged by fire, tornado or other casualty, City shall be under no obligation to rebuild or repair the Premises, however, Licensee shall be obligated to rebuild or repair the Premises to the same or better condition as prior to any event of casualty.

6.5 No parking is allowed in any area other than the designated parking area shown as a parking lot in Exhibit A. Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.

6.6 In carrying out the aforestated maintenance responsibilities, Licensee agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

7. UTILITIES

7.1 Licensee shall provide for and pay directly to the utility companies, all utility company connection charges, including by not limited to, the cost of installing a separate electric meter, telephone lines and connections and any cable/satellite television connection fees, and all charges incurred for heat, gas, electricity, water, sewer, garbage collection, telephone, cable/satellite TV, or any other utility services, used in or on the Premises and Licensee shall furnish and install all electric light bulbs, tubes and ballasts. City shall not be liable to Licensee in damages or otherwise if sad services are interrupted or terminated because of necessary repairs, installations, improvements or any cause beyond the control of City.

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

7.2.1 Stage 1 Aquifer level reaches 650 mean sea level feet: Ball field may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 12:00 a.m.[1], and only once per week.

7.2.2 or a Licensee Water Use Plan, which has been pre-approved by SAWS.

8. SCHEDULED MAINTENANCE

8.1 If requested by City, Licensee agrees to provide City a copy of its annual maintenance program and to submit same in writing to City within thirty (30) days after receipt of City's request.

8.2 Licensee further agrees to notify City in writing, two (2) weeks in advance of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes Licensee from carrying out its planned maintenance schedule.

9. CITY'S RIGHT OF INSPECTIONS

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

10. CONCESSIONS

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

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

other suppliers, subject however to the terms of Section 4 of this Agreement.

11. IMPROVEMENTS

11.1 Licensee may, subject to having first obtained the written approval of City, install and/or construct facilities and improvements suitable for amateur sports and recreational activities. During any period of construction or installation, Licensee, its members, employees, agents, and contractors shall ensure that the performance of said construction or installation does not cause or result in damage to City property or adjoining property. In the event damage does occur, Licensee shall promptly make all repairs so as to restore the property to its condition prior to the damage. Improvements constructed or installed by Licensee shall be the property of Licensee during the term of this agreement.

11.2 Licensee shall present, for City review and written approval, all designs, plans, and specifications to the City and applicable City boards prior to commencing any construction or installation upon the Premises, including any and all improvements during the term of this Agreement. While City may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by Licensee. City reserves the right to enter the Premises at any time to inspect construction progress and/or to determine the condition of fields and facilities so as to insure Licensee's compliance with this Agreement.

11.3 THIS SECTION INTENTIONALLY LEFT BLANK

11.4 Licensee agrees that it shall obtain any and all plans, approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulatory agencies, including FAA, if required. A copy of said permits or clearances shall be provided to City prior to the start of any construction. Licensee covenants that it shall not bind, or attempt to bind, City for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless City against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to Licensee during the performance of any said construction and against any claim for injury to person or property.

11.5 Licensee shall provide to City copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.

11.6 Any improvements so installed by Licensee which can be removed without damage to the Premises may be removed at the sole expense of Licensee at the termination of this Agreement without payment therefore being made by City, except however, that equipment and improvements paid for by City or Bexar County shall not be removed. If the improvements are not so removable without said damage to the Premises or were paid for by City or Bexar County, then said improvements become the property of the City.

11.7 Licensee will enter into one or more agreement(s) with Bexar County regarding the funding of improvements and operation of the Premises ("County Agreements"). Licensee hereby agrees to notify City at least ten (10) days prior to an amendment to any County Agreements.

11.8 THIS SECTION INTENTIONALLY LEFT BLANK

12. DEFAULTS AND TERMINATION RIGHTS

12.1 Default by Licensee: Any of the following events shall constitute default by Licensee under this

Agreement:

12.1.1 Licensee shall apply for or consent to the appointment of a receiver, trustee, or liquidator of Licensee or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or audit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against Licensee in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating Licensee as bankrupt or insolvent or approving a petition seeking reorganization of Licensee or of all or a substantial part of its assets, and such order, judgment, or decree shall continue non-stayed and in effect for any period of sixty (60) consecutive days; or

12.1.2 Licensee shall fail to keep, observe, or perform any material covenant, agreement, term, or provisions of this Agreement to be kept, observed, or performed by Licensee, and such default shall continue for a period of thirty (30) days after notice thereof by City to Licensee, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided so long as Licensee has commenced to cure such default and diligently pursues cure to completion; or

12.1.3 Licensee abandons all or any apart of the Premises; or

12.1.4 Bexar County ever declares Licensee in default of any County Agreements with Licensee; or

12.1.5 Licensee fails to maintain its status as a 501(c)(3) non-profit entity.

12.2 Remedies of City: Upon the occurrence of an event of default by Licensee as specified in this Agreement hereof, City shall be entitled to terminate this Agreement and City shall have no further obligation hereunder.

12.3 Upon receipt by Licensee of notice of default from City or Bexar County, Licensee shall cease the expenditure of any funds contained in the Capital Repair and Improvement Fund, unless Licensee requires the use of a portion of the Fund to cure the default. In such case, Licensee shall submit to City and Bexar County, for their written approval, a request for expenditure from the Fund and shall provide a detailed description of the planned use of the Fund which would cure the default. In the event that the default is cured, Licensee's right to expend monies contained in the Capital Repair and Improvement Fund, as outlined in Section 6.33 of this Agreement, shall be restored. In the event that the default is not cured and the Agreement is terminated by City, Licensee shall immediately transfer all funds contained in the Capital Repair and Improvement Fund to City to use for maintenance, repair, replacement, refurbishment of the Premises.

12.4 Default by City: City shall be in default under this Agreement if City fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by City, and such default shall continue for a period of thirty (30) days after notice thereof by Licensee to City, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that City has c0mmenced to cure such default and diligently pursues such cure to completion.

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

13. INDEMNIFICATION

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

13.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Licensee shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or Licensee known to Licensee related to or arising out of Licensee's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at Licensee's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving Licensee of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by Licensee in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. Licensee shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If Licensee fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and Licensee shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation - In any and all claims against any party indemnified hereunder by any employee of Licensee, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Licensee or any subcontractor under worker's compensation or other employee benefit acts.

14. INSURANCE

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

14.2 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.

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

TYPE	AMOUNTS
1. Workers' Compensation* 2. Employers' Liability*	Statutory $500,000/$500,000/$500,000
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. Sexual Abuse/Molestation g. Damage to property rented by 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 g. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicle c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

5. Property Insurance: For physical damage to the property of LESSEE, including improvements and betterment to the Leased Premises	Coverage for replacement value with a minimum co-insurance factor of eighty percent (80%) of the cost of Contractor's property

*If applicable.

14.4 Licensee agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of Licensee herein, and provide a certificate of insurance and endorsement that name Licensee and City as additional insureds. Licensee shall provide 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.

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

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

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

14.6.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured 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;

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

14.6.3 Workers' compensation and employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and

14.6.4 Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance

notice for nonpayment of premium.

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

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

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

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

14.11 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 City shall be limited to insurance coverage provided.

14.12 Licensee and any subcontractors are responsible for all damage to their own equipment and/or property.

15. REPORTS AND RECORDS

15.1 Within sixty (60) days following the end of Licensee's fiscal year of each year licensee shall provide to City an annual report that shall include the following:

15.1.1 Copies of all inspection reports completed by Bexar County or their designee in the previous calendar year and provided to Licensee and all reports submitted to Bexar County by Licensee during the previous calendar year;

15.1.2 Accounting of the Capital Repair and Improvement Fund, as defined in Section 6.3 of this Agreement, including detail regarding all funds deposited on a monthly basis and withdrawals for repairs and improvements, accompanied by copies of each monthly bank statement for the Capital Repair and Improvement Fund bank account for the previous calendar year;

15.1.3 List of current officers including address, telephone number and e-mail address;

15.1.4 Number of participants in Licensee's programs, including age range;

15.1.5 Any modifications to Licensee's by-laws and/or articles of incorporation.

15.2 If requested by City, Licensee will provide an accounting of its revenue and expenditures for one

or more of its fiscal years in a form acceptable to City; such accounting to be provided within fifteen (15) days after receipt of a written request from City.

15.3 Throughout the term of this agreement and any extensions hereof, Licensee shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted auditing standards. Such financial records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to City inspection, review, and audit following reasonable notification of intent to inspect.

15.4 City reserves the right to conduct, or cause to be conducted, a review and/or audit of Licensee's records at any and all times deemed necessary by City provided, however, an audit will be conducted not more often than once time per year. City staff, a Certified Public Accountant (CPA), or other auditors as designated by City, may perform such audits and/or reviews. City reserves the right to determine the scope of every audit and/or review. In accordance herewith, Licensee agrees to make available to City all accounting records.

16. SIGNS

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

17. ASSIGNMENT

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

18. RELATIONSHIP OF PARTIES

18.1 Licensee acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined therein, from having a financial interest in any contract with the City or any City agency such as City-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the City or in the sale to the City of land, material, supplies, or services, if any of the following individual(s) or

entities is a party to the contract or sale: a City officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

18.2 Licensee warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City or any of its agencies such as City-owned utilities.

19. SEVERABILITY

19.1 The parties 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, 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 required or appropriate under this Agreement shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio – Parks and Recreation Department
Contract Services Division
P O Box 839966
San Antonio TX 78283

or to such other address as may have been designated in writing by City from time to time. Notices to League shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to Licensee at:

Born Again Sports, Inc.
Vance V. Penn, President/CEO
6135 Donely Place
San Antonio, Texas 78247

or at such other addresses on file with the City Clerk or the Parks and Recreation Department as Licensee may from time to time provide to City in writing.

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 As a party to this contract, League 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 basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

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 pat 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 filed 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 is in writing, dated subsequent to the date hereof and duly executed by the parties.

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 _____2015.

City:
City of San Antonio, a Texas Municipal Corporation
Parks and Recreation Department

By: _____
Janet A. Martin, Acting Director

Licensee: Born Again Sports, Inc.
a Texas Non-Profit Corporation

By: _____
Vance V. Penn, President/CEO

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A

SOUTHSIDE LIONS PARK SPORTS COMPLEX

"Premises" **= Approximately 31.6 acres consisting of seven (7) baseball fields, concession building and one (1) parking lot**

LEGEND

Premises

CITY OF SAN ANTONIO
PARKS & RECREATION