

AN ORDINANCE

2012-05-31-0393

AUTHORIZING THE EXECUTION OF A SOFTBALL LEASE AND MANAGEMENT AGREEMENT WITH THE SAN ANTONIO AMATEUR SOFTBALL ASSOCIATION, A TEXAS NON-PROFIT ORGANIZATION, FOR THE OPERATION, MANAGEMENT AND MAINTENANCE OF THREE SOFTBALL COMPLEXES AND APPROVAL OF ASSOCIATED CHANGES TO THE MUNICIPAL CODE.

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WHEREAS, as part of the Parks and Recreation Department's presentation to City Council on its FY 2012 proposed operating budget the department recommended contracting with a third party to provide the adult softball program; and

WHEREAS, an RFP was issued in January 2012 and only one response was received and a selection committee including representatives from the Parks and Recreation Department, Convention Sports and Entertainment Facilities Department, and UTSA's Campus Recreation Division reviewed and recommended accepting the response from the San Antonio Amateur Softball Association (SAASA); and

WHEREAS, adult softball league fees will remain at their current level in FY 2012; and

WHEREAS, the complexes will also be available to the public through SAASA for use on a reservation basis and at the time of transition existing field reservations and their associated revenue will be transferred to SAASA; and

WHEREAS, the 18 filled impacted part-time positions will be afforded the opportunity to interview with SAASA as well as other part-time and temporary recreation positions within the department; and

WHEREAS, this agreement will be awarded in compliance with the Small Business Economic Development Advocacy Program; and

WHEREAS, the City's Goal Setting Committee established a Small Business Enterprise (SBE) subcontracting goal requiring that 3% of the work associated with this contract be completed by a certified small business enterprise located within the San Antonio Metropolitan Statistical Areas. SAASA proposed SBE subcontractor participation of 3% which meets the established goal; and

WHEREAS, in connection with this action, provisions related to City fees associated with league and reservation use of these complexes in Chapter 22 of the City Code will be deleted; **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 Softball Lease and Management Agreement with the San Antonio Amateur Softball Association, a Texas non-profit organization, for the operation, management and maintenance of three softball complexes. A copy of the lease and management agreement in substantially final form is attached hereto as **Attachment I**.

SECTION 2. The City Code of the City of San Antonio is hereby amended as follows:

- Subsection 22-7(2)(d) "Class A fields daily rental" is hereby deleted.
- Subsection 22-16 is hereby amended and renumbered to read as follows:

"22-16 Participation Fees for City Athletic Leagues

(a)The following participation fees for city athletic leagues are hereby established:

League	Team Entry Fee
Youth softball	Three hundred fifty dollars (\$350.00)
Adult kickball	Two hundred eighty-five dollars (\$285.00)

(b) There is hereby established a gate admission fee of one dollar (\$1.00) per person."

SECTION 3. Funds generated by this ordinance will be deposited into Fund 11001000, Internal Order 226000000469 and General Ledger 4407911.

SECTION 4. Funding in the amount of \$90,500.00 for this ordinance is available in Fund 11001000, Cost Center 2601010001 and General Ledger 5201040, as part of the Fiscal Year 2012 Budget.

SECTION 5. Payment in the amount of \$90,500.00 is authorized to the San Antonio Amateur Softball Association and should be encumbered with a purchase order.

SECTION 6. 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.

SW/vv
05/31/12
Item #23

SECTION 7. This ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

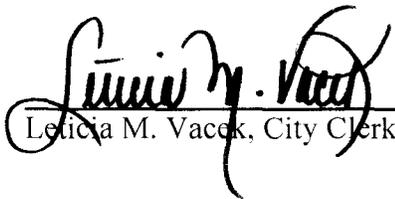
PASSED AND APPROVED this 31st day of May, 2012.



M A Y O R

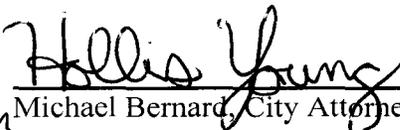
Julián Castro

ATTEST:

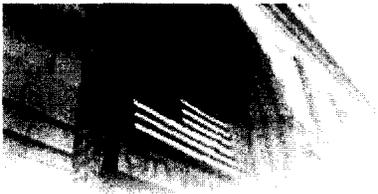


Leticia M. Vaccck, City Clerk

APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**

City of San Antonio



Agenda Voting Results - 23

Name:	6, 7, 9A, 9B, 10, 12, 13, 14, 15, 17A, 17B, 18, 19, 22, 23, 24, 25A, 25B						
Date:	05/31/2012						
Time:	09:50:47 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing the execution of a Softball Lease and Management Agreement with the San Antonio Amateur Softball Association, a Texas non-profit organization, for the operation, management and maintenance of three softball complexes and approval of associated changes to the municipal code. [Ed Belmares, Assistant City Manager; Xavier Urrutia , Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Leticia Ozuna	District 3		x			x	
Rey Saldaña	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

SOFTBALL LEASE AND MANAGEMENT AGREEMENT

This Softball Lease and Management Agreement (“Agreement”) is made and entered into by and between the CITY OF SAN ANTONIO, a Texas Municipal Corporation ("City"), acting herein through its City Manager, or her designated representative, pursuant to Ordinance No. 2012-05-31-0393 passed and approved by the City Council on May 31, 2012, and SAN ANTONIO AMATEUR SOFTBALL ASSOCIATION, a Texas non-profit corporation (“SAASA”).

1. BACKGROUND

- 1.1 WHEREAS, City desires to provide high quality and affordable recreational opportunities for its citizens; and
- 1.2 WHEREAS, City is the owner of softball complexes at Kennedy, San Pedro Springs and Lady Bird Johnson Parks; and
- 1.3 WHEREAS, SAASA desires to assume responsibility for the operation, management and maintenance of the softball complexes and adult softball league activities at Kennedy, San Pedro Springs and Lady Bird Johnson Parks; and

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That, for and in consideration of the mutual benefits to City and SAASA and the observance of the terms and conditions set forth in this Agreement, the parties agree to the following:

2. PREMISES

2.1 City leases to SAASA, and SAASA accepts from City the real property owned by the City and listed below (“Complexes” or “Premises”):

- 2.1.1 Koger Stokes Softball Complex located in San Pedro Springs at 611 W. Myrtle (“Koger Stokes”)
- 2.1.2 Kennedy Softball Complex located in Kennedy Park at 3101 W. Roselawn (“Kennedy”)
- 2.1.3 Alva Jo Fischer Softball Complex located in Lady Bird Johnson Park at 10700 Nacogdoches (“Alva Jo Fischer”)

2.2 The Complexes shall include the perimeter fencing and all land and improvements within the perimeter fencing.

2.3 SAASA and its program participants and invitees shall have the non-exclusive right to use the parking lots adjacent to the Complexes for purposes of vehicle parking.

3. TERM

3.1 The term of this Agreement is for a seven (7) year period beginning on July 1, 2012 (“Commencement Date”) and ending on June 30, 2019, unless terminated sooner according to conditions herein.

3.2 So long as SAASA is not then in default of this Lease and subject to the consent of the parties and approval by the City of San Antonio City Council through the passage of an ordinance, this Agreement may be extended for an additional three (3) year term, to begin immediately following the

initial seven (7) year term. The terms and provisions for the renewal term will be agreed to by the parties and may differ from the terms and provisions during the initial term of the Lease Agreement.

4. USE

4.1 The Complexes will be used by SAASA for the operation of adult softball league activities, tournaments, and use by the public through reservation.

4.2 SAASA agrees not to use the Complexes for any purpose which violates any valid and applicable law, regulation, or ordinance of the United States, State of Texas, or City of San Antonio.

4.3 SAASA and any subcontractors are responsible for all damage or loss to their own equipment.

5. ACCEPTANCE AND CONDITION OF PREMISES

5.1 SAASA has had full opportunity to examine the Complexes 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. SAASA's taking possession of the Complexes shall be conclusive evidence of SAASA's acceptance thereof in good order and satisfactory condition, and SAASA hereby accepts the Complexes in their present AS IS, WHERE IS, WITH ALL FAULTS CONDITION as suitable for the purpose for which leased. SAASA accepts the Complexes with the full knowledge, understanding and agreement that City disclaims any warranty of suitability for SAASA's intended purposes.

5.2 SAASA agrees that no representations respecting the condition of the Complexes and no promises to decorate, alter, repair, or improve the Complexes, either before or after the execution of this Agreement, have been made by City or its agents.

6. ADULT SOFTBALL LEAGUES

6.1 SAASA shall be responsible for all activities associated with facilitating and operating at least a spring, summer and fall adult softball program each year, including associated tournaments, including marketing, organizing, registering, and collecting fees and paying all costs associated with the planning, implementation, maintenance and operation of the program. The adult softball leagues will be offered in the name and for the benefit of the City of San Antonio and SAASA.

6.2 SAASA will offer at least 125 leagues during each year of the term of this Agreement.

6.3 SAASA shall provide all staff necessary for league activities and a representative of SAASA must be present at the Complexes during all league and tournament activities.

7. RESERVATION OF COMPLEXES

7.1 SAASA will offer the Complexes and fields within the Complexes on a reservation basis to the public for adult and youth softball activities, including tournaments, at times not being utilized for softball league activities or maintenance.

7.2 SAASA shall provide all staff necessary for reservation activities and a representative of SAASA must be present at the Complexes during all reservation activities.

7.3 SAASA shall prepare the Complexes in advance for reservation use, including marking the fields.

7.4 SAASA will develop a web-site and include and maintain current information regarding the availability of the complexes for reservation use.

8. UMPIRE SERVICES

8.1 SAASA shall be a member in good standing of the Amateur Softball Association of America (ASA) at all times during the term of this Agreement and will abide by ASA regulations and policies.

8.2 SAASA shall provide ASA registered umpires for all league games and tournaments (a minimum of two per game).

8.3 SAASA shall provide ASA registered umpires for reservation use, based on the ASA established cost for umpire services. If requested by the reserving party; however, reserving parties may arrange for their own umpire services if they so desire.

8.4 If requested by City, SAASA shall provide ASA registered umpires for City Days, as defined in Section 10.

9. FEES

9.1 SAASA shall collect and retain all fees and other revenue associated with the use of the Complexes for adult softball leagues and reservation use. This revenue is to be used by SAASA to offset costs associated with the operation, maintenance, and future improvements.

9.2 Adult Softball Leagues

9.2.1 The following fees will be applicable during the following league seasons:

League Season	League Fee	Per Participant Fee
Fall 2012	\$400	\$11
Spring 2013	\$420	\$11
Summer 2013	\$420	\$11
Gate Admission Fee – Spectators	\$1	
Gat Admission Fee – Players	\$1.00	

9.2.2 The Summer 2012 league will be implemented through a cooperative effort of City and SAASA. City will: a) complete the registration process, b) begin the league activities on June 4, 2012, c) provide all staff necessary for league operations up to and including June 30, 2012, d) provide all complex maintenance up to and including June 30, 2012, and e).with City staff, equipment and materials, provide field maintenance at the Complexes through the end of the Summer 2012 league season. Field maintenance shall be defined as including, but not limited to, weekly mowing (weather conditions allowing) and filling cracks as needed. On July 1, 2012 (the Commencement Date), SAASA will assume all responsibilities for the Summer 2012 league season, including staff, operations and maintenance, as outlined in this Softball Lease and Management Agreement, with the exception of the field maintenance during the Summer 2012 league season. The Summer 2012 Season is scheduled to begin on June 4 and end on August 13 but may be

extended due to rain-outs. SAASA shall demonstrate to City its progress toward assuming field maintenance responsibilities after the end of the Summer 2012 season by: a) not later than July 23, 2012 SAASA will provide a written report to City outlining its plan to assume field maintenance responsibilities upon the end of the Summer League Season, including staff to be hired and equipment to be purchased (including effective dates) or the date on which subcontracted services will commence, and b) not later than August 6, 2012 SAASA will provide written confirmation to City that SAASA will assume all field maintenance responsibilities upon the end of the Summer League Season. SAASA shall have the right to shadow Parks and Recreation field maintenance staff through the end of the Summer 2012 league season.

9.2.3 During the Summer 2012 registration process, the City will collect a fee of \$400 per team and \$11 per participant. To offset City costs for staff, umpires, and softball organization team fees to be incurred by City during the month of June 2012, City will withhold \$33,800 from the registration fees and pay SAASA \$90,500 on July 2, 2012 for costs associated with the Summer 2012 league beginning on July 1, 2012 (SAASA Portion). If for any reason SAASA fails to conduct the Summer 2012 league beginning on July 1, 2012, SAASA will refund to City all, or the portion requested by City, of the SAASA Portion within fifteen (15) days after request by City.

9.2.4 Future increases in all adult softball fees (after the Summer 2013 season) shall be subject to the approval of City. Increases up to but not exceeding 5% in any year may be approved by the Parks and Recreation Director. Increases over 5% will require the approval of the City Council, as evidenced by the passage of an ordinance.

9.3 Reservation Fees

9.3.1 The following fee, and only these fees, will be applicable for adult reservation use during the first calendar year of the term of this Agreement:

Reservation Use	Time Period	Fee
Per Field	12 hours	\$215
Per Field	Each additional hour	\$20

9.3.2 Future increases in all adult reservation fees (after the first year of the term of this Agreement) shall be subject to the approval of City. Increases up to but not exceeding 5% in any year may be approved by the Director of Parks and Recreation. Increases over 5% will require the approval of the City Council, as evidenced by the passage of an ordinance.

9.3.3 In addition to the fees shown above, SAASA may require security provided by San Antonio Park Police for adult reservations after 5:00 p.m. and may charge a fee consistent with the fee charged by the San Antonio Park Police.

9.3.4 The following fees, and only these fees, will be applicable for youth reservation use during the first and second years of the term of this Agreement:

Reservation Use	Time Period	Fee
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Per Field	12 hours	\$190
Per Field	Each additional hour	\$20

- 9.3.5 Future increases in all youth reservation fees (after the first and second years of the term of this Agreement) shall be subject to the approval of City. Increases up to but not exceeding 3% in any year may be approved by the Director of Parks and Recreation. Increases over 3% will require the approval of the City Council, as evidenced by the passage of an ordinance.
- 9.3.6 City will continue to accept reservations for the Complexes for adult and youth use through June 30, 2012. On or before the Commencement Date of this Agreement, City will provide to SAASA a list of all reservations scheduled to occur from the July 1, 2012 Commencement Date and thereafter. SAASA agrees that it will honor all of these reservations at the rate in effect prior to July 1, 2012 and not charge the reservation user any additional fees. Within fifteen (15) calendar days following the Commencement Date of this Agreement, City will pay SAASA an amount equal to all fees collected for reservations scheduled to occur on or after the Commencement Date.
- 9.3.7 SAASA will follow the reservation payment policy in effect at the time of the Commencement of this Agreement. This policy is to require payment from the reserving party not later than the Monday prior to the first day of the reservation. If a party requests a reservation for a day that has an unpaid reservation by another party, the first reserving party will be asked to make payment at that time or release their reservation. During the term of this Agreement, SAASA may propose to the Parks and Recreation Department an alternative payment policy and/or a cancellation policy for City's review and approval.

10. CITY RIGHTS

- 10.1 City's Director of Parks and Recreation, or his designee, shall have the right to be an ex-officio non-voting member of SAASA's Board of Directors.
- 10.2 City reserves the right to utilize each Complex for up to ten (10) full day uses each year during the term of this Agreement ("City Days"). City will coordinate with SAASA in advance to reserve the Complexes, will pay no rental fee, and SAASA will prepare the Complexes for City's use. City shall have the right to provide gatekeepers, groundskeepers, umpires and other staff or services associated with City's use, or City may request that SAASA provide the staff or services and City will reimburse SAASA for its costs. City may assign its City Days to other organizations or groups. City and its assigns will follow use policies established by SAASA for all Complex users.
- 10.3 In addition the City Days described in 10.2 above, City will utilize the Complexes for its Girls Fastpitch Softball program during the Summer 2012 and Fall 2012 league seasons. City's use will be on Monday through Thursday evenings at Koger Stokes beginning at 6:30 p.m., Monday and Tuesday evenings at Kennedy beginning at 6:30 p.m. and Monday evenings at Alva Jo Fischer beginning at 6:30 p.m. City's rights and responsibilities are: a) collect and retain all league fees, b) retain any gate admission fees collected, c) prepare the fields for play by dragging and striping, d) provide gatekeepers, groundskeepers and other staff as City deems appropriate, e) pick up trash associated with its use, f) request that SAASA provide at City's cost Umpires as desired by City under the provisions of the current Softball Umpire Agreement between SAASA and City, and g) utilize City staff to limit participants and spectators from bringing food and beverages into the Complexes. SAASA rights and responsibilities are:

a) SAASA will maintain the Complexes, except for the City's field maintenance responsibilities during the Summer 2012 season described in 9.2.2 above, and provide janitorial services as needed for the Complexes to be clean at the beginning of City's use, as outlined in this Softball Lease and Management Agreement, and b) SAASA may sell concessions during City's times of use of the Complexes. Beginning in 2013, use of the Complexes by the City for its Girls Fastpitch Softball League program will be subject to the agreement of the parties, as determined at least sixty (60) days in advance of the beginning of each league season.

10.4 City shall have the right at reasonable times to make inspections of the Complexes.

10.5 City is a party to a joint use agreement with Edgewood Independent School District ("EISD") whereby EISD has exclusive use of Kennedy for four hours per day during school days and hours and SAASA shall be responsible for ensuring that this use continues through the term of this Softball Lease and Management Agreement. In addition, EISD has been utilizing Kennedy until 5:30 p.m. on Mondays and Tuesdays and until 6:15 on Wednesdays and Fridays on school days and SAASA shall allow for EISD's continued use of Kennedy during these hours and any changes will be subject to the prior approval of City, through its Parks and Recreation Director.

10.6 City leases Lady Bird Johnson Park from CPS Energy and the term of that lease ends in 2029. In the event that the CPS/City lease is terminated prior to that date, Alva Jo Fischer will be deleted from this Agreement.

10.7 City shall have the right during the term of this Agreement to delete one or more Complexes from this Agreement. In this event or events, City will provide one year prior written notice to SAASA. City and SAASA will negotiate an amendment to the Agreement based on business points acceptable to both parties, which will be subject to City Council approval.

11. CAPITAL REPAIR AND IMPROVEMENT FUND

11.1 At the end of each calendar year during the term of this Agreement, SAASA shall calculate the amount of total revenue that exceeds the amount of total expenditures for the previous calendar year, or portion thereof, ("Net Revenue"). On or before March 1 of each year SAASA shall deposit the amount that is 50% of Net Revenue less \$10,000 into a Capital Repair/Capital Improvement Account, which shall be interest bearing and established at a reputable financial institution in San Antonio, Texas ("Account").

11.2 Funds deposited in the Account, along with earned interest, may be utilized only for capital repairs and/or capital improvements at the Complexes which have been approved by City in advance and in writing.

11.3 Any funds remaining in the Account upon termination of this Agreement will become the property of the City.

12. BUDGETS, REPORTING AND RECORDKEEPING

12.1 Budget Report: On or before October 1 of each year SAASA will provide to City its proposed budget for the following calendar year. The budget will reflect SAASA's proposed revenue and expenditures, broken down and detailed by categories. The budget shall be subject to the review and approval of City.

12.2 Actual Revenue/Expenditure Report: On or before March 1 of each year SAASA shall provide to City a report reflecting SAASA's actual revenues and expenditures for the previous calendar year, broken down and detailed by categories. In addition, SAASA shall provide the City with a copy of its bank statement for the Account, showing the deposit of funds required in 11.1 above. The report of actual revenues and expenditures shall be subject to the review and approval of City.

12.3 Activity Report: On or before March 1 of each year SAASA shall provide to City a report reflecting league and reservation activity for the previous calendar year. The league activities reported are to include number of leagues, teams and individual participants, broken down by the spring, summer and fall league seasons. The reservation activities reported are to reflect the number of reservations, both by adult groups or organizations and youth groups or organizations.

12.4 City shall have the right to review and/or audit SAASA's records, including financial, operational, and maintenance records.

12.5 Financial Report: On or before April 1 of each year SAASA shall provide to City an annual financial statement ("Annual Financial Statement") for the previous calendar year, reviewed by an independent Certified Public Accountant in accordance with Generally Accepted Accounting Principals, and reflecting revenues and expenditures for that period.

12.6 If at any time during the term of this Agreement SAASA establishes a fiscal year which is different than the calendar year, the reporting schedule outlined in this Section may be modified by the Parties.

12.7 SAASA agrees to respond promptly and appropriately to all complaints regarding its league and reservation activities as well as issues related to the maintenance of the Complexes. SAASA will keep records of all complaints received and the action taken and, if requested by City, will provide copies of these records to City for its review.

12.8 SAASA shall maintain in the City of San Antonio, Texas, all books, information, and records fully and accurately reflecting its operations in accordance with an accepted basis of accounting standards consistently applied. All such books, information, and records, together with any other documentation necessary for verification of SAASA's compliance with the terms of this Agreement, shall be preserved in Bexar County, Texas, for at least five (5) years and shall be made available to City, upon request. City, at its sole cost and expense, shall have the right as often as may be reasonably necessary to conduct an audit, examine and make copies, excerpts, or transcripts from said books, information, records, and documentation.

12.9 SAASA agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and their ownership, access and retention.

13. EMPLOYMENT

13.1 SAASA shall provide an opportunity to all staff whose names are included in the list of employees provided to SAASA by City's Parks and Recreation Department to interview for employment with SAASA but SAASA shall not be obligated to offer employment to any City employees.

14. FURNITURE, FIXTURES, AND EQUIPMENT

14.1 Except as outlined in this section, SAASA shall be responsible for providing all furniture, fixtures and equipment necessary for the operation and maintenance of the Complexes. Tables, chairs, desks and other miscellaneous furniture currently in the LBJ Building, as defined in 16.1 below, and the score booths at the Complexes shall remain in place for the use of SAASA. SAASA acknowledges that this furniture remains the property of the City and cannot be relocated, sold, donated, or destroyed without the prior written approval of City. Within fifteen (15) calendar days of the Commencement Date, City and SAASA will create an inventory of the furniture to remain at the LBJ Building and score booths.

15. MAINTENANCE AND UTILITIES

15.1 SAASA, at its sole cost and expense, shall be responsible for operating and maintaining the Complexes: a) in good, safe, clean, and attractive condition; and b) in a condition that is as good or

better than the condition at the Commencement Date. City shall have no responsibility for, nor incur costs associated with, the operation or maintenance of the Complexes.

15.2 SAASA hereby assumes all responsibilities and costs associated with the year round repair and maintenance of the Complexes, including but not limited to; fields, bleachers, scoreboards, fences, backstops, concession buildings and other structures, lighting and dugouts.

15.3 Maintenance of the fields shall be consistent with or exceed City maintenance levels prior to the Commencement Date, which include: 1) Turf: mow weekly; fertilize, aerate, pest treatment and weed control bi-annually; and seed annually; and 2) Fields: new clay and sandy loam annually; cracks and low spots filled as needed; and dragged daily when in use.

15.4 SAASA is responsible for any improvements, including capital improvements, needed at the Complexes during the term of this Agreement in order to keep the Complexes in a condition as good as or better than the condition at the Commencement Date.

15.5 City will provide electricity and water/sewer services (Utility Services) to the Complexes from the Commencement Date through September 30, 2013. Effective October 1, 2013 SAASA will assume responsibility for payment of the Utility Services for the Complexes.

15.5.1 Kennedy: This Complex currently has separate Utility Service meters and City and SAASA will coordinate with City and the utility providers to transfer the Kennedy meters from the City to SAASA effective October 1, 2013.

15.5.2 Koger Stokes: City will be responsible for the installation of meters and/or submeters that allow for the separation of Utility Services from those serving other areas of San Pedro Springs Park. SAASA will coordinate with City and the utility providers to transfer the meters from the City to SAASA effective October 1, 2013.

15.5.3 Alva Jo Fischer:

15.5.3.1 Electrical Service: This Complex currently has a separate electrical meter and SAASA will coordinate with City and CPS to transfer the meter(s) from the City to SAASA effective October 1, 2013.

15.5.3.2 Water/Sewer Service: This Complex is served by the same meter that serves other areas of Lady Bird Johnson Park. City will be responsible for the installation of a flow meter that will measure water usage for the Alva Jo Fischer Complex. Effective October 1, 2013 SAASA shall pay City for its use of water/sewer services at Alva Jo Fischer based on the readings from the flowmeter. City will calculate the cost of water/sewer based on SAWS rates then in effect and provide SAASA with an invoice for the cost of its usage on a quarterly basis. SAASA shall pay the invoiced amount in full within twenty (20) days after receipt of City's invoice

15.6 At all times during the term of this Agreement SAASA shall use electricity and water in a manner, amount and frequency that is consistent with conservation efforts and comply with City's Conservation Ordinance.

15.7 Other than provided above, SAASA shall be responsible for all utilities serving the Complexes and shall pay directly to the utility companies, including telephones and internet connections.

16. USE OF BUILDING AT LBJ PARK

16.1 During the term of this Agreement SAASA may have exclusive use of the building located in Lady Bird Johnson Park adjacent to Alva Jo Fischer, as shown on Exhibit B ("LBJ Building"), for administrative and storage purposes. SAASA will pay no rent but will be responsible for the repair and maintenance of the LBJ Building.

16.2 Within thirty (30) days after the Commencement Date, City and SAASA will coordinate and implement the transfer of the electrical services from the City to SAASA and SAASA will be responsible for payment of all electrical services beginning on the date of transfer.

16.3 No smoking is allowed in the LBJ Building and no alcohol may be brought into or consumed in or outside the LBJ Building.

16.4 SAASA shall not make any modifications or improvements to the LBJ Building without the prior written approval of City.

16.5 City leases Lady Bird Johnson Park from CPS Energy and the term of that lease ends in 2029. In the event that the CPS/City lease is terminated prior to that date, SAASA's use of the LBJ Building will be terminated.

17. RESERVED

18. IMPROVEMENTS

18.1 SAASA may not, without the prior written approval of City, construct, or allow to be constructed, any permanent improvements of a material nature to the Complexes or make or allow to be made any permanent alternations to the structures within the Complexes ("Improvements") without the prior written approval of: a) the Director of Parks and Recreation or his designee, b) any necessary departments, boards and/or commissions of the City, including, but not limited to, Historic and Design Review Commission, c) all other approvals required and necessary, including, but not limited to, the Texas Historic Commission, and d) with regard to Alva Jo Fischer, the approval of CPS Energy. All required permits and licenses shall be the responsibility of SAASA and SAASA shall not commence any Improvements until all necessary and required permits and approvals have been secured.

18.2 The approval by the City of any plans and specifications refers only to the conformity of such plans and specifications to the general architectural plans. Such plans and specifications are not approved for architectural or engineering design and the City, by approving such plans and specifications, assumes no liability or responsibility therefore or for any defect in any structure constructed from such plans and specifications.

18.3 It is expressly understood and agreed that any and all machinery, equipment, and items of personal property of whatever nature owned by SAASA and at any time placed or maintained by the SAASA on any part of the Complexes shall be and remain the property of the SAASA; provided, however, that all Improvements constructed and all attached fixtures, alterations, additions, or improvements made upon the Complexes shall become the property of the City from and after the time that such improvements are made and shall remain the property of the City after the termination of this Agreement.

18.4 City shall not be responsible or liable for, and SAASA covenants that will not bind or attempt to bind, the City for payment of any money in connection with any Improvements to the Complexes.

18.5 During any periods of time that Improvements are occurring within the Leased Premises, SAASA's contractors will be required to secure Builder's Risk insurance, if requested by City, and provide City with a certificate of insurance evidencing such coverage.

18.6 City shall not have any responsibility for making any capital repairs or capital improvements to the Complexes.

19. SBEDA

19.1 The City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the City. The SBEDA Ordinance Compliance Provisions contained in the attached Exhibit C of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein and in Exhibit C, terms used in the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

19.2 SAASA shall be considered “Contractor” or “Prime Contractor”, as described in Exhibit C.

20. TAXES AND LICENSES

20.1 SAASA shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees which are now or may hereafter be levied upon the Complexes, or upon SAASA, or upon the business conducted on the Complexes, or upon any of SAASA’s property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits required for the operation of the business conducted by SAASA. Failure to comply with the foregoing provisions shall constitute grounds for termination of this Agreement by the City.

21. ASSIGNMENT AND SUBLETTING

21.1 SAASA shall not assign this Agreement, or allow same to be assigned by operation of law or otherwise, or sublet/subcontract the Complexes or any part thereof without the prior written consent of City which may be given only by or pursuant to an ordinance enacted by the City Council of San Antonio, Texas. Any assignment or subletting by SAASA without such permission shall constitute grounds for termination of this Agreement by the City.

21.2 Without the prior written consent of SAASA, City shall have the right to transfer and assign, in whole or in part, any of its rights and obligations under this Agreement and in the property referred to herein; and, to the extent that such assignee assumes City’s obligations hereunder, City shall, by virtue of such assignment, be released from such obligation.

21.3 The receipt by the City of consideration from an assignee or occupant of the Complexes shall not be deemed a waiver of the covenant in this Agreement against assignment, and/or an acceptance of the assignee, or occupant as a Lessee, or a release of the SAASA from further observance or performance by SAASA of the covenants contained in this Agreement. No provision of this Agreement shall be deemed to have been waived by the City unless such waiver is in writing and signed by the City.

22. LIENS PROHIBITED

22.1 SAASA shall not suffer or permit any mechanics liens or other liens to be filed against the fee title of the Complexes, LBJ Building, or any buildings or improvements within the Complexes by reason of any work, labor, services, or materials supplied or claimed to have been supplied to SAASA or to anyone holding the Complexes or any part thereof through or under this Agreement.

22.2 If any mechanics' liens or materialmen's liens shall be recorded against the Complexes, LBJ Building, or any improvements thereon, SAASA shall cause the same to be removed within thirty (30) days after such liens are recorded, or, in the alternative, if SAASA in good faith desires to contest the same, SAASA shall be privileged to do so, but in such case, SAASA hereby agrees to indemnify and save the City harmless from all liability for damages occasioned thereby and shall, in the event of a judgment of foreclosure on said mechanics' lien, cause the same to be discharged and removed prior to the execution of such judgment, such damages to include all costs of court and attorneys' fees.

23. INDEMNIFICATION

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

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

24. INSURANCE REQUIREMENTS

24.1 Prior to the commencement of any work under this Agreement, SAASA shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Parks and Recreation Department, which shall be clearly labeled "Softball Lease and Management Agreement" 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. The 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 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.

24.2 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 whereby City may incur increased risk.

24.3 SAASA's financial integrity is of interest to the City; therefore, subject to SAASA's right to maintain reasonable deductibles in such amounts as are approved by the City, SAASA shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at SAASA's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, 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. Damage to property rented by you	For <u>Bodily Injury</u> and <u>Property Damage</u> 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	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence

* if applicable

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

24.5 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 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). SAASA 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. SAASA 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

24.6 SAASA agrees 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 City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City.
- 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.

24.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, SAASA shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend SAASA'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.

24.8 In addition to any other remedies the City may have upon SAASA'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 SAASA to stop work hereunder, and/or withhold any payment(s) which become due to SAASA hereunder until SAASA demonstrates compliance with the requirements hereof.

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

24.10 It is agreed that SAASA'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.

24.11 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 the City shall be limited to insurance coverage provided.

24.12 SAASA and any Subcontractors are responsible for all damage to their own equipment and/or property.

25. DEFAULT AND REMEDIES

25.1 The following events shall be deemed to be events of default by SAASA under this Agreement:

A. SAASA, or its assigns, sublessees, or successors in interest, shall cease to exist;

B. SAASA shall fail to pay to the City any money due and owing as provided for in this Agreement and such failure shall continue for a period of ten (10) days.

C. SAASA shall fail to comply with any term, provision or covenant of this Agreement, other than the payment of money, and shall not cure such failure within thirty (30) days after written notice thereof to SAASA, unless SAASA has undertaken to effect such cure within such thirty (30) day period and is diligently prosecuting the same to completion.

D. SAASA initiates any construction or improvement(s) without prior written approval of City.

25.2 Upon the occurrence of an event of default as heretofore provided and after compliance with the procedures set forth herein, the City may declare this Agreement and all rights and interests created by it to be terminated, may seek any and all damages occasioned by the SAASA's default hereunder, or may seek any other remedies available at law or in equity.

25.3 Upon the City's election to terminate this Agreement, the City, its agent or attorney, may take possession of the Complexes and SAASA shall make good any deficiency. Any termination of this Agreement as herein provided shall not relieve the SAASA from the payment of any sum or sums that shall then be due and payable to the City hereunder, or any claim for damages then or theretofore accruing against SAASA hereunder, and any such termination shall not prevent the City from enforcing the payment of any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from SAASA or any default thereunder. All rights, options and remedies of the City contained in this Agreement shall be construed and held to be cumulative and no one of them shall be exclusive of the other, and the City shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or at equity, whether or not stated in this Agreement. No waiver by the City of a breach of any of the covenants, conditions, or restrictions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other covenant, condition, or restriction herein contained.

25.4 SAASA shall have the right, within thirty (30) days after the termination of this Agreement, whether such termination be by the expiration of the term or an earlier termination under any provision of this Agreement, to remove from the Complexes all of its furniture, fixtures, equipment and furnishings and other property which are the property of SAASA, and with respect to any damage caused thereby, it shall have the obligation to restore the Complexes to its condition prior to such removal, and provided that, if any of SAASA's property remains in or on the Complexes after ninety (90) days following termination of this Agreement and no renewal agreement has been executed, such property as remains thereon shall be deemed to have become the property of the City and may be disposed of as the City sees fit, without liability to account to SAASA for the proceeds of any sale thereof.

26. SIGNS

26.1 SAASA shall not construct or erect signs on or about the Leased Premises without the prior written consent of the Director, Parks and Recreation Department, or his designee.

26.2 Signage on field fencing advertising businesses, products or services must be placed facing inward. Signage on the Complexes other than field fencing signage must not be legible from the

entrance or street. No signage within the Complexes may advertise, depict or promote political campaigns, religious affiliations, alcohol or tobacco use or sexually oriented businesses.

27. RELATIONSHIP OF PARTIES

27.1 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationships between the parties hereto other than that of landlord and Lessee.

28. SEPARABILITY

28.1 If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the term of this Lease, then and in that event it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added as a part of this Lease 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.

29. NOTICES

29.1 Notices to City required or appropriate under this Lease shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, or hand delivered, addressed to:

City of San Antonio
Department of Parks and Recreation
Contract Services Division
114 West Commerce, 11th Floor
San Antonio, Texas 78205

or to such other address as may have been designated in writing by City from time to time.

Notices to SAASA shall be deemed sufficient if in writing and mailed, Registered or Certified mail, Postage Prepaid, or hand delivered, addressed to:

San Antonio Amateur Softball Association
131 Harriman Place
San Antonio, Texas 78204

Or at such other address as SAASA may provide from time to time in writing to City.

30. ENTIRE AGREEMENT/AMENDMENT

30.1 This Agreement, together with its attachments and the authorizing ordinance or ordinances, in writing, constitutes the entire agreement between the parties, any other written or parole agreement with City being expressly waived by SAASA. 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 hereto be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

31. TEXAS LAW TO APPLY

31.1 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.

32. GENDER

32.1 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.

33. PARTIES BOUND

33.1 If there shall be more than one party designated as Lessee in this Agreement, they shall each be bound jointly and severally hereunder.

33.2 The covenants and agreements herein contained shall insure to the benefit of and be binding upon the parties hereto; their respective heirs, legal representatives, successors, and such assigns as have been approved by City.

34. CAPTIONS

34.1 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.

35. CONFLICT OF INTEREST

35.1 SAASA 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.

36. AUTHORITY

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

CITY:

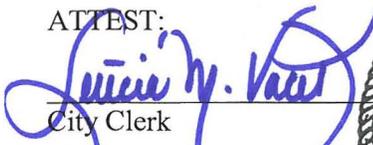
SAASA:

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

By: 
Sheryl Sculley, City Manager

By: 
Cruz G. Olivarri

Title: President

ATTEST:

City Clerk



APPROVED AS TO FORM

City Attorney

A handwritten signature in black ink, appearing to be "A. K. P. M.", written over a horizontal line.

RE: ordinance 2012-05-31-0393; 5/31/2012

**EXHIBIT A
COMPLEXES**



	Exhibit A - Koger Stokes
	San Pedro Park - 611 W. Myrtle
	Printed: Apr 26, 2012

The City of San Antonio does not guarantee the accuracy, adequacy, completeness or usefulness of any information. The City does not warrant the completeness, timeliness, or positional, thematic, and attribute accuracy of the GIS data. The GIS data, cartographic products, and associated applications are not legal representations of the depicted data. Information shown on these maps is derived from public records that are constantly undergoing revision. Under no circumstances should GIS-derived products be used for final design purposes. The City provides this information on an "as is" basis without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, and assumes no responsibility for anyone's use of the information.

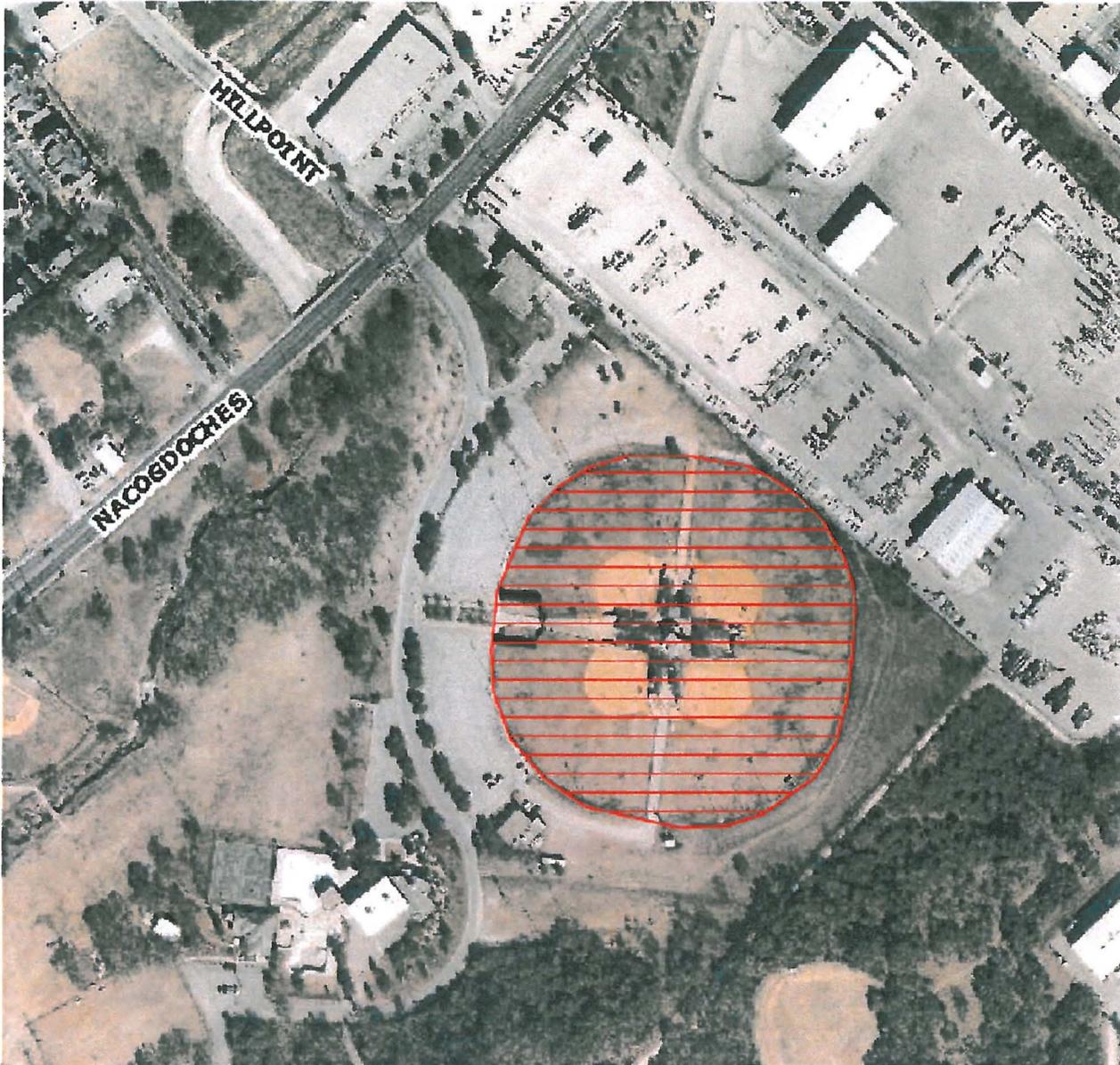
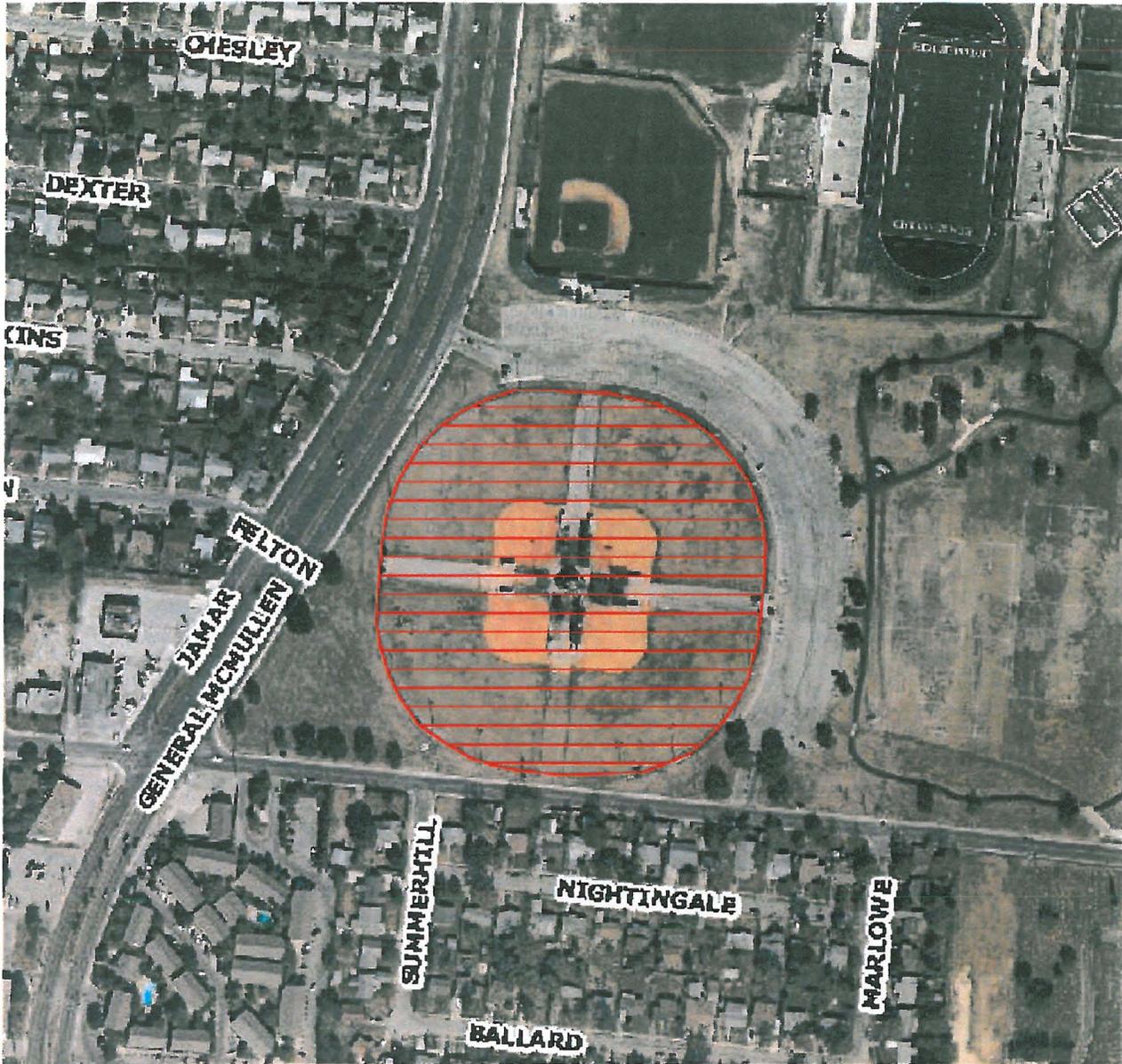


Exhibit A - Alva Jo Fischer

LBJ Park - 10700 Nacogdoches

Printed: Apr 26, 2012

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N

Exhibit A - Kennedy

Kennedy Park - 3101 W. Roselawn

Printed: Apr 26, 2012

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EXHIBIT B
LBJ BUILDING



N



Exhibit B - LBJ Building

LBJ Park - 10700 Nacogdoches

Printed: Apr 26, 2012

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EXHIBIT C
SBEDA REQUIREMENTS

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as “SBEDA” or “the SBEDA Program”), which is posted on the City’s Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise (“S/M/WBE”) Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or “Certified” – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and

paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the CONTRACTOR’s or Respondent’s intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent’s commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office’s directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor’s posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as “business categories.”

Minority/Women Business Enterprise (M/WBE) – firm that is certified as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City’s M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term “MBE” as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this Agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

SBE Subcontracting Program – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified SBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions wherein there have been ongoing disparities in the utilization of available SBE Subcontractors.

When specified by the GSC, the SBE Subcontracting Plan or Good Faith Efforts plan submitted by CONTRACTOR may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed

scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for SBE firms.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract Agreement and any contract modification Agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract Agreement which states the CONTRACTOR’s commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract Agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR’s Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the IEDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term “WBE” as used in this Agreement is not inclusive of MBEs.

C. SBEDA Program Compliance – General Provisions

As CONTRACTOR acknowledges that the terms of the CITY’s SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY’s SBEDA Policy & Procedure Manual are in furtherance of the CITY’s efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR’s scope of work as referenced in the CITY’s formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR’s utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;
2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any

CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;
4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.
5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.
6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years, or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years, or as required by state law, following the final determination of litigation, whichever is later.
7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward

attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiative to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. CONTRACTOR agrees to subcontract at least 3% of its prime contract value to certified SBE firms headquartered or have a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for SBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

F. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector

subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

G. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

H. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;
2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;
3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and
5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;
2. Withholding of funds;
3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;
4. Refusal to accept a response or proposal; and
5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

SOFTBALL LEASE AND MANAGEMENT AGREEMENT

AMENDMENT NO. 1

This Amendment No. 1 ("Amendment") to the Softball Lease and Management Agreement ("Agreement") is by and between the City of San Antonio, a Texas municipal corporation ("City"), acting by and through its City Manager or her designee, pursuant to Ordinance No. 2012-09-20-0750 passed and approved on September 20, 2012, and San Antonio Amateur Softball Association, Inc., a Texas non-profit organization ("SAASA").

WHEREAS, pursuant to Ordinance No. 2012-05-31-0393, passed and approved on May 31, 2012, City and SAASA entered into a Softball Lease and Management Agreement for Alva Jo Fischer, Kennedy Park, and Koger Stokes Softball Complexes; and

WHEREAS, City and SAASA now mutually desire to amend the Agreement to make administrative corrections of the Agreement to address use of the Kennedy Complex by Edgewood ISD and sponsorship opportunities for all Complexes, and

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, City and SAASA agree as follows:

1. ARTICLE 10 CITY RIGHTS IS MODIFIED AS FOLLOWS.

The second sentence of 10.5 shall be deleted and replaced with the following:

In addition, EISD has been utilizing Kennedy until 5:30 p.m. on Mondays and Tuesdays and until 6:15 p.m. on Wednesdays through Fridays on school days and SAASA shall allow for EISD's continued use of Kennedy during these hours and any changes will be subject to the prior approval of City, through its Parks and Recreation Director.

2. ARTICLE 17 SPONSORSHIPS IS ADDED AS FOLLOWS:

17. SPONSORSHIPS

17.1 SAASA shall have the right to enter into sponsorship agreements that provide benefits to its programs, activities or obligations under the terms of this Agreement, subject to the prior written approval of City through its Director of Parks and Recreation.

17.2 All promotional materials and signage acknowledging the sponsorship relationship are subject to the prior written approval of City through its Director of Parks and Recreation. In the event that an approved sponsorship relationship is with an entity that sells or distributes alcoholic beverages, related signage must be fully covered during use of the Complexes for youth activities.

Except as modified herein, all terms and conditions contained in the Contract entered into under the authority of Ordinance No. 2012-05-31-0393 shall remain in full force and effect.

EXECUTED on this 31st day of October, 2012

CITY:

SAASA:

City of San Antonio, a Texas
Municipal corporation

By: [Signature]
City Manager *N*

By: [Signature]
Cruz Olivarri
President

Attest: [Signature]
City Clerk



Approved as to Form: [Signature]

RE: ordinance 2012-09-20-0750; 9/20/2012