

AN ORDINANCE **2010-01-14-0024**

AUTHORIZING A LICENSE AGREEMENT WITH THE MISSIONS BASEBALL CARE FOUNDATION FOR THE USE OF APPROXIMATELY 60.40 ACRES OF LAND ADJACENT TO HWY. 151, BETWEEN CALLAGHAN RD. AND ACME RD., IN CITY COUNCIL DISTRICT 6 FOR AN INITIAL TERM OF FIVE YEARS, WITH SEVEN FIVE-YEAR RENEWAL OPTIONS, FOR THE DEVELOPMENT AND OPERATION OF AN ATHLETIC FACILITIES COMPLEX FINANCED BY THE BEXAR COUNTY VENUE TAX PROJECTS ELECTION HELD IN MAY 2008.

* * * * *

WHEREAS, on May 10, 2008, Bexar County voters approved an extension of the 1999 hotel occupancy and short term motor vehicle rental tax and Bexar County identified community projects to fund with this tax extension that would have a positive impact on tourism; and

WHEREAS, a portion of the motor vehicle tax has been dedicated to fund thirteen amateur sports facilities, eight of which will be developed on land owned by the City of San Antonio and one such facility will be developed by the Missions Baseball Care Foundation ("Foundation"); and

WHEREAS, the Foundation was selected by Bexar County to receive \$4 million from the venue tax for the development of baseball fields, parking, and other support facilities and amenities; and

WHEREAS, as with other City sports license agreements, the Foundation will pay no rent to the City, but it will maintain all fields and improvements, all revenue will be used to offset facility operating and maintenance costs, the Foundation will allow for the use of the facility by amateur sports groups and the City will be allowed to use the facility rent-free for up to ten days per year; and

WHEREAS, in order to ensure that the facility can be self-sufficient and generate enough annual operating funds to support the ongoing operations and maintenance, the Foundation requested that alcohol be allowed to be sold and advertised at the facility since it will be used primarily by adults and, although this facility will be utilized primarily for amateur athletics, the Foundation requested the flexibility to also host semi-professional and professional teams and activities at the facility; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Lease Agreement with the Missions Baseball Care Foundation for the use of approximately 60.40 acres of land adjacent to Hwy. 151, between Callaghan Rd. and Acme Rd., for an initial term of five (5) years commencing January 1, 2010, with seven (7) five-(5) year automatic renewal options, are authorized and approved.

SECTION 2. The City manager or her designee is authorized to execute such a Lease Agreement with the Foundation. A copy of the Lease Agreement, previously executed by the Foundation, is attached to this Ordinance as Exhibit I.

SECTION 3. The Convention, Sports and Entertainment Facilities Department will record an in-kind transaction for the services authorized by this Ordinance.

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall be effective immediately upon the passage of eight (8) affirmative votes. If it is not passed by (8) affirmative votes, this Ordinance shall be effective on and after the tenth day after passage.

PASSED AND APPROVED this 14th day of January, 2010.


M A Y O R
JULIÁN CASTRO

ATTEST:

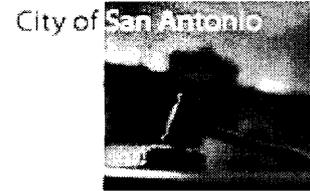

City Clerk

APPROVED AS TO FORM:


for City Attorney



Request for
COUNCIL
ACTION



Agenda Voting Results - 26

Name:	6, 7, 8, 9, 11, 12, 13, 14, 16A, 16B, 16C, 19A, 19C, 19D, 19E, 19G, 21A, 21B, 22, 23, 24, 26, 27A, 27B, 28, 29						
Date:	01/14/2010						
Time:	10:03:25 AM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing a license agreement with the Missions Baseball Care Foundation for the use of approximately 60.40 acres of land adjacent to Hwy. 151, between Callaghan Rd. and Acme Rd., in City Council District 6, for a five-year term commencing January 1, 2010 with automatic renewal options, for the development and operation of an athletic facilities complex financed by the Bexar County Venue Tax Projects election held in May 2008. [A.J. Rodriguez, Deputy City Manager; Michael J. Sawaya, Director, Convention, Sports & Entertainment Facilities]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				x
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

Exhibit
I

LICENSE AGREEMENT

**BEXAR COUNTY VENUE TAX PROJECTS
MISSIONS BASEBALL CARE FOUNDATION**

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 (herein called "**CITY**"), acting by and through its City Manager or her designee, pursuant to Ordinance No. _____, dated _____, 20__, and the **MISSIONS BASEBALL CARE FOUNDATION**, a Texas 501(c)(3) non-profit corporation (herein called "**LICENSEE**"), herein referred to as "Parties".

I. WITNESSETH:

- 1.1 WHEREAS, funds from the Bexar County Venue Tax Project election approved by voters on May 10, 2008 are available for the design and construction of a Sports Venue Project; and
- 1.2 WHEREAS, **LICENSEE** desires to undertake a Sports Venue Project consisting of the design, construction, operation and maintenance of a sports facility (the "Project") and seeks to enter into this **Agreement** with **CITY** for the use of **CITY**-owned real property as the site of the Project; and
- 1.3 WHEREAS, **CITY** desires to provide approximately 60.40 acres of **CITY**-owned property located along State Hwy. 151 Access Rd. between Old U.S. Hwy. 90 West, S. Callaghan Rd., and S. Acme Rd. for the use and enjoyment of the citizens of San Antonio and Bexar County so long as **LICENSEE** maintains its non-profit status for the duration of this **Agreement** and operates the facility in accordance with the terms and conditions of this **Agreement** and its agreements with Bexar County ("County Agreements"); and
- 1.4 **CITY** and **LICENSEE** desire to enter into an **Agreement** which will allow for the construction and operation of a sports facility, and in the event **LICENSEE'S** rights under this **Agreement** cease earlier than forty (40) years from the date of this **Agreement**, **CITY** intends to enter into an agreement with an alternate sports group for the operation of the improvements as anticipated by the Bexar County voters.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

THAT, for and in consideration of the mutual benefits and the observance of the terms and conditions set forth, the Parties hereto agree to the following:

II. APPOINTMENT AND RENT

- 2.1 For so long as **LICENSEE** maintains a non-profit 501(c)(3) status and remains in good standing with any applicable governing bodies throughout the term of this **Agreement**,

CITY hereby designates **LICENSEE** as the primary user and maintainer of approximately 60.40 acres being part of NCB 11379 BLK 5 LOT W. IRR OF TR-7 (21.8765 AC), W. IRR OF TR-8 (14.83 AC), BLK 6 LOT N.W. IRR OF TR-8B (23.543AC), San Antonio, Bexar County, and **LICENSEE** hereby accepts and acknowledges such designation and agrees to perform such services and duties as required hereinafter.

- 2.2 In consideration of the public benefit derived from **LICENSEE'S** activities under this **Agreement** and the improvements made to **CITY'S** real property, **LICENSEE** shall not owe any rent under this **Agreement**.

III. USE

- 3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **LICENSEE** and the observance of the terms and conditions set forth hereinafter, 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 youth and adult athletic programs and other related activities. **LICENSEE** agrees and specifically understands that permission herein given does not grant to **LICENSEE** any interest or estate in the Premises, but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that **CITY** retains dominion, possession and control of the Premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 3.3 **LICENSEE** shall allow the use of the Premises by other 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 sports groups, and such policies 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 sports groups shall be used to offset **LICENSEE'S** cost of maintenance of the Premises. Information on the policies and fees shall be made available to the general public, either through **LICENSEE'S** website, publications, or other 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 San Antonio, Bexar County, or visitors outside of Bexar County.
- 3.4 Following final completion of the improvements, **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 sports groups as outlined in Section 3.3 above. **CITY** shall be exempt from the payment to **LICENSEE** of any rent or fees for **CITY** Days. **CITY** shall not be bound by any exclusive contracts for concession sales during **CITY** Days. **CITY** shall pay to **LICENSEE** the costs associated with its **CITY** Days, including utilities, janitorial services, traffic control and security, if needed. The Parties shall mutually agree to the costs for any such services that are to be provided by **LICENSEE** prior to any **CITY** Day.

- 3.5 **LICENSEE** acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. **LICENSEE** covenants and agrees that it will comply with all the terms and obligations contained therein, and, as part of its indemnification of the **CITY**, indemnify, hold harmless and defend **CITY** from all claims which might arise from **LICENSEE'S** activities under this Agreement.

IV. TERM OF AGREEMENT

- 4.1 The term of this **Agreement** is five (5) years, beginning on _____, 20____, which is hereafter referred to as the Commencement Date, and expiring on _____, 20____, if not earlier terminated according to the terms hereof.
- 4.2 So long as **LICENSEE** is not in material default of this **Agreement** or any County Agreements associated with the Project, this **Agreement** shall automatically renew for up to seven additional five (5) year periods, for a total maximum term of forty (40) years.
- 4.2.1 Renewals under this **Agreement** shall not require any action from **CITY**. However, **LICENSEE** shall notify **CITY** no later than thirty (30) days prior to the expiration of a five (5) year term to certify compliance with the terms and conditions stated herein and compliance with County Agreements associated with the Project.
- 4.2.2 Should **LICENSEE** be found to be in default by **CITY** prior to the renewal date, **LICENSEE** shall have an opportunity to cure where such opportunity is provided by Article XI. Should **LICENSEE** fail to cure such curable default prior to the date of renewal or should **LICENSEE** default in a manner that is not provided an opportunity to cure under Article XI, this **Agreement** shall terminate in accordance with Article XI, Section 11.2
- 4.3 Should **LICENSEE** determine within one (1) year from the Commencement Date and prior to the start of any site work or construction, that it is unable to undertake the Project with the funding made available through the Bexar County Venue Tax Project and motor vehicle rental tax, **LICENSEE** shall have the right to terminate this **Agreement** effective thirty (30) days following written notification to **CITY**.

V. 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 warranty 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.

VI. LICENSEE'S MAINTENANCE OBLIGATIONS AND DUTIES

- 6.1 During the term of this **Agreement**, **LICENSEE** shall diligently and efficiently provide continuous maintenance and repair of the Premises at its sole cost and expense (including labor, materials and equipment).
- 6.2 **LICENSEE** shall be solely responsible for making any and 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**. Any repairs, improvements and/or alterations must be in accordance with any County Agreements associated with this Project.
- 6.3 **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 and as may be required by any County Agreement associated with the Project.

VII. UTILITIES

- 7.1 **CITY** shall not be responsible for **LICENSEE'S** utility needs or requirements. **LICENSEE** shall be responsible for any and all utility costs associated with the Premises and shall pay directly to the utility companies, all utility costs, utility company connection charges, including, but 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 said services are interrupted

or terminated because of necessary repairs, installations, improvements or any cause beyond the control of **CITY**.

VIII. CITY'S RIGHT OF INSPECTIONS

- 8.1 **CITY**, through its Director of Convention, Sports and Entertainment Facilities and/or his representative(s), shall have the right to inspect the Premises at any time.
- 8.2 The inspection right specified in Section 8.1 is in addition to any of **CITY'S** rights to inspect or permit the construction activities or any other inspection rights under **CITY'S** police powers.

IX. CONCESSIONS

- 9.1 **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, alcoholic beverages to the extent permitted by applicable state and local laws, and similar consumable items. The decision to serve or refuse service of alcoholic beverages to any individual shall be the sole responsibility of **LICENSEE**. **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 sales contracts with concession suppliers which will prohibit the sale of the products of other suppliers, subject however to the terms of section 3.4.

X. IMPROVEMENTS

- 10.1 **LICENSEE** may install and/or construct facilities and improvements including but not necessarily limited to sports fields, concession and restroom facilities, parking areas, and other related improvements. **LICENSEE'S** improvements must be completed in accordance with any County Agreement. 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**. Upon termination or expiration of this **Agreement** all improvements shall become the property of **CITY**.
- 10.2 **LICENSEE** shall present, for 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 the initial improvements and 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 in progress and/or to determine the condition of fields and facilities so as to insure **LICENSEE'S** compliance with this **Agreement**.

- 10.3 **LICENSEE** must comply with the agreed upon preconstruction schedule and/or milestones of any County Agreements prior to commencement of the initial improvements to the Premises.
- 10.4 **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 regulator 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 the **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.
- 10.5 **LICENSEE** shall provide to **CITY** copies of all environmental studies and reports completed in conjunction with the development and construction of improvements.
- 10.6 Any fixtures purchased and installed by **LICENSEE** which can be removed without damage to the Premises may be removed at the sole expense of **LICENSEE** at the termination or expiration of this **Agreement** without payment therefore being made to **CITY**, except however, that equipment and improvements paid for by **CITY** or Bexar County shall not be removed. If the fixtures are not removable without said damage to the Premises or were paid for by **CITY** or Bexar County, then said fixtures become the property of the **CITY**.
- 10.7 **LICENSEE** hereby agrees to notify **CITY** at least thirty (30) days prior to any proposed amendments to any County Agreements pertaining to the Premises or use of the Premises.

XI. DEFAULTS AND TERMINATION RIGHTS

- 11.1 Default by **LICENSEE**: Any of the following events shall constitute default by **LICENSEE** under this **Agreement**:
- 11.1.1 **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 admit 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 appointing a receiver, trustee, or liquidator 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

11.1.2 **LICENSEE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **LICENSEE**, and such default shall continue for a period of ten (10) days after notice thereof by **CITY** to **LICENSEE**, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided so long as **LICENSEE** has commenced to cure such default and diligently pursues such cure to completion.

11.1.3 **LICENSEE** abandons all or any part of the Premises.

11.1.4 Bexar County ever declares **LICENSEE** in default of any County Agreement with **LICENSEE**.

11.1.5 **LICENSEE** fails to maintain its status as a 501(c)(3) non-profit entity.

11.2 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. **CITY** shall provide **LICENSEE** with written notice of termination a minimum of thirty (30) days prior to the termination date stated in the notice.

11.3 If **LICENSEE** is determined by Bexar County to be in default of any County Agreements, **LICENSEE** shall automatically be determined to be in default of this **Agreement**, and if **LICENSEE** does not cure such default(s) with Bexar County and Bexar County terminates any of its County Agreements with **LICENSEE**, this **Agreement** shall automatically terminate as to **LICENSEE**.

11.4 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 commenced to cure such default and diligently pursues such cure to completion.

11.5 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.

XII. INDEMNIFICATION

- 12.1 **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.**
- 12.2 The provisions of this **INDEMNITY** are solely for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. **LICENSEE** shall advise the **CITY** in writing within twenty four (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.

XIII. INSURANCE REQUIREMENTS

- 13.1 Prior to the commencement of any work under this **Agreement**, **LICENSEE** shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the **CITY'S** Convention Sports and Entertainment Facilities Department, which shall be clearly labeled "Missions Baseball Care Foundation" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the

CITY. The **CITY** shall have no duty to pay or perform under this **Agreement** until such certificate and endorsements have been received and approved by the **CITY'S** Convention Sports and Entertainment Facilities Department. No officer or employee, other than the **CITY'S** Risk Manager, shall have authority to waive this requirement.

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

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

TYPE	AMOUNT
Workers' Compensation and Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Contractual Liability d. Products/Completed Operations e. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence, \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage
Comprehensive Automobile Liability a. Owned/Leased Vehicles b. Non-owned Vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
Property Insurance: For physical damage to the property of LICENSEE , including improvements and betterment to the Premises, if applicable.	Coverage for 100% of the replacement cost of LICENSEE'S property.

Builders Risk (if applicable)

All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.

- 13.4 The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the **CITY**, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). **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: Convention Sports and Entertainment Facilities Department
P.O. Box 1809
San Antonio, Texas 78296-1809

- 13.5 **LICENSEE** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- 13.5.1 Name the **CITY** and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- 13.5.2 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;
- 13.5.3 Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the **CITY**; and
- 13.5.4 Provide thirty (30) calendar days advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium. 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 **LICENSEE'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 13.6 In addition to any other remedies the **CITY** may have upon **LICENSEE'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.

- 13.7 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** and the County Agreements.
- 13.8 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**.
- 13.9 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this **Agreement**.
- 13.10 **LICENSEE** and any subcontractors are responsible for all damage to their own equipment and/or personal property.

XIV. REPORTS AND RECORDS

- 14.1 Commencing upon completion of the initial improvements and upon the request by **CITY**, or a **CITY** designated representative, **LICENSEE** shall provide to **CITY** a duplicate copy of any requested annual report that it provides to the Bexar County's Citizens Oversight Committee ("Annual Report"). In addition, **CITY** shall have the right to attend any meetings that **LICENSEE** may have with the Citizens Oversight Committee regarding the Annual Report. The Annual Report to **CITY** shall be submitted to **CITY** on the same day that the Report is submitted to Bexar County.
- 14.2 To the extent that this information is not included in the Annual Report, **LICENSEE** shall provide to **CITY**, upon request, the following information:
- 14.2.1 List of current officers, including addresses, telephone numbers and, if available, e-mail addresses;
- 14.2.2 Number of participants in **LICENSEE'S** programs and teams, and ages;
- 14.2.3 **LICENSEE'S** by-laws and, unless previously provided to **CITY**, its articles of incorporation,
- 14.3 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 accounting practices. 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.

- 14.4 **CITY** reserves the right to conduct, or cause to be conducted, a review and/or audit of **LICENSEE'S** records, as they pertain to this **Agreement**, at any and all times deemed necessary by **CITY** provided, however, an audit will be conducted no more often than one 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.

XV. SIGNS

- 15.1 **LICENSEE** hereby acknowledges **CITY'S** advertising policy, attached hereto as **Exhibit B**, and agrees to abide by it, except that **CITY** hereby acknowledges that **LICENSEE** may display signage advertising, displaying or promoting alcohol use or its products, as allowed by this Section 15.1. **CITY'S** policies shall be considered by **LICENSEE** when determining the placement of any signage on the Premises. **LICENSEE** agrees not to install or display any permanent sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the **CITY**. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the **CITY** as long as standard design of the sign has been approved in advance. For purposes of this **Agreement**, temporary signs shall be defined as any sign or banner that is placed on the Premises before a game or event begins, and removed at the conclusion of the game or event. **LICENSEE** agrees it will not install any signs that advertise or promote tobacco use or sexually oriented businesses or any other subject matter inappropriate for sports activities. Permanent signs advertising, displaying or promoting alcohol use or products are subject to the prior written approval of **CITY**, through its Director of the Convention Sports and Entertainment Facilities Department. If such permanent signs are approved by **CITY**, **CITY** retains the right to require that they be covered during games or events which include participants under the age of 21. Temporary signs advertising, displaying or promoting alcohol use or products may not be displayed within the Premises during games or events which include participants under the age of 21. **LICENSEE** further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized **CITY** authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor. **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**.

XVI. ASSIGNMENT

- 16.1 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.

XVII. RELATIONSHIP OF PARTIES

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

XVIII. CONFLICT OF INTEREST

- 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.

XIX. SEPARABILITY

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

XX. 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
Convention, Sports and entertainment
Facilities Department
P.O. Box 1809
San Antonio, Texas 78296-1809

City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966

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

Burl Yarbrough, President
Missions Baseball Care Foundation
5757 W. U.S. Highway 90
San Antonio, Texas 78227-4105

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

XXI. 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.**

XXII. 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.

XXIII. NON-DISCRIMINATION

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

XXIV. 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**.

XXV. HOLDING OVER

- 25.1 Should **LICENSEE** hold over the Premises, or any part thereof, after the expiration or termination of the term of this **Agreement**, or any extension thereof, 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 **Agreement** continuing in effect. The inclusion of the preceding sentence shall not be construed as **CITY'S** consent for **LICENSEE** to hold over.

XXVI. 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 **LICENSEE**.
- 26.2 No amendment, modification or alteration of the terms of this **Agreement** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the Parties hereto.
- 26.3 It is understood that the Charter of the **CITY** requires that all contracts with the **CITY** be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

XXVII. AUTHORITY

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

XXVIII. MISCELLANEOUS

- 28.1 **LICENSEE**, its officers, agents, servants, employees, contractors, subcontractors, licensees and any other person whom **LICENSEE** controls or has the right to control, agree to promptly comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United States of America, the State of Texas, the City of San Antonio, including portions of the City of San Antonio Charter and City Code, Bexar County, and their respective agencies, departments, authorities or commissions which may either directly or indirectly affect **LICENSEE** or its use of the Premises, business conducted therein, and operations in connection with this **Agreement**. Such compliance shall also refer to the (i) the cleanliness and safety of the Premises and (ii) all **CITY** and County environmental ordinances and State and Federal environmental laws, orders, directives, rules, and regulations.
- 28.2 Under no circumstances shall any **CITY** funds or **CITY**-controlled funds, including, but not limited to, **CITY'S** General Fund or Hotel-Motel Fund, ever be used directly for or related to this **Agreement**. This includes, but is not limited to, maintenance and repair costs, and capital repairs.

IN WITNESS WHEREOF, we have affirmed our signatures this _____ day of _____
20____.

CITY:

CITY OF SAN ANTONIO, a Texas
Municipal Corporation

Sheryl Sculley
City Manager

ATTEST:

City Clerk

LICENSEE:

MISSIONS BASEBALL CARE
FOUNDATION, a Texas Non-Profit
Corporation

By: Burl Yarbrough
Title: PRESIDENT

APPROVED AS TO FORM: _____
City Attorney

Exhibit A

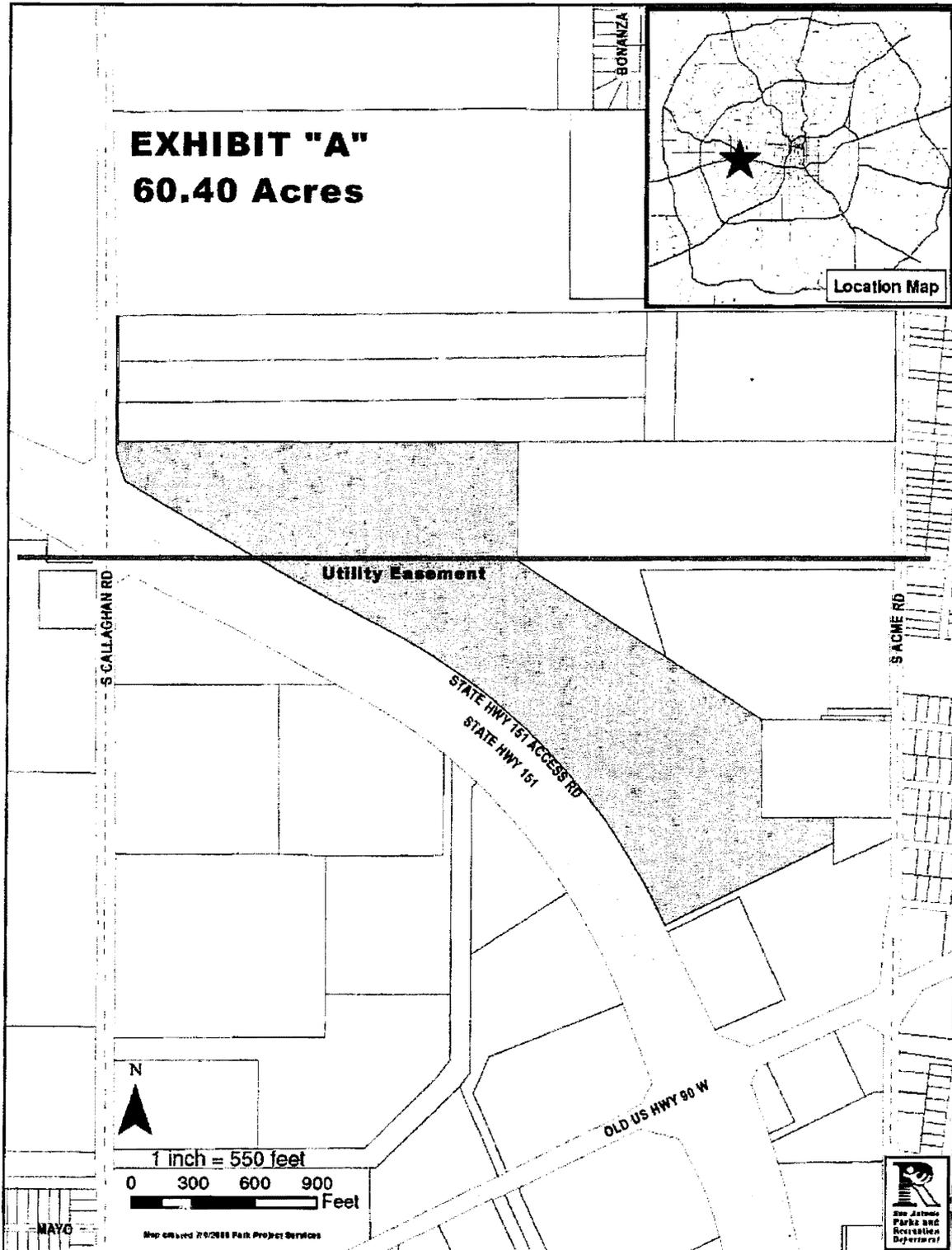


Exhibit B

CITY OF SAN ANTONIO ADVERTISING GUIDELINES FOR COMMERCIAL ADVERTISING VENUES

DEFINITIONS

“Commercial Advertising” includes advertisements that:

- a. have as its singular purpose the promotion of a product for sale or a service for hire;
- b. does not convey, whether expressly or implied, intentionally or unintentionally, by inference or innuendo, any message regarding any political, public service, social or public issue or viewpoint of any person or entity, or any message specifically prohibited by this Policy; and
- c. would not cause the **CITY’S** public property, if posted individually or in combination with other like advertisements, to become a public forum for the dissemination and/or discussion of political, public service, social or public issues or viewpoints.

“Non-Commercial Advertising” includes any advertisement that:

- a. does not have as its singular purpose the promotion of a product for sale or a service for hire;
- b. attempts to convey, individually or in combination with a commercial advertisement or a prohibited advertisement, messages regarding political, public service, social or public issues or viewpoints of any person or entity.

PURPOSE

The City of San Antonio (“**CITY**”) recognizes that there are many opportunities and potential benefits to be gained by the **CITY** from commercial advertising. Likewise, access to the **CITY’S** facilities and the parties who utilize those facilities is a valuable commodity to advertisers. In keeping with the criteria outlined within this Policy, the **CITY** supports, in principle, commercial advertising for the purpose of generating revenue to support **CITY** programs and services and offset related costs, or fund those that otherwise would not be affordable. The **CITY** enacts this Policy for the purposes of:

1. designating specific **CITY** facilities as non-public forums for first-amendment purposes, at which only Commercial Advertising will be accepted and in which Non-Commercial Advertising is prohibited (“Commercial Advertising Venues”);
2. ensuring that advertising standards are consistent and that the **CITY’S** public image is positively maintained;

3. serving as a guide for determining permissible advertising for placement in **CITY**-owned Commercial Advertising Venues; and
4. ensuring consistency in decisions to accept or decline related commercial advertising requests.

This Policy applies to all paid display advertising in **CITY**-owned Commercial Advertising Venues which include, but are not limited to, the following:

1. The **San Antonio International Airport**, including all property and improvements located thereon;
2. The **Henry B. Gonzalez Convention Center**, including its common areas, meeting rooms and any signage located thereon;
3. The **Alamodome**, including its common areas, private areas and any signage located thereon; and
4. The **Missions Baseball Care Foundation Bexar County Venue Tax Project**, including all property and improvements located thereon.

GENERAL STANDARDS

All advertising material displayed in a **CITY**-owned Commercial Advertising Venue will be reviewed and must conform to all applicable governmental laws and regulations and to these standards and policies. The basic principles of Commercial Advertising acceptance by the **CITY** are: (1) advertising should be honest and in good taste; and (2) claims should be substantiated and qualifying information about the attributes or use of a product should be disclosed whenever qualifying information is required to avoid misleading consumers. In order to determine the acceptability of advertising material, the **CITY** has the right to investigate the advertiser and the accuracy of all statements and claims made in advertising copy, including requiring the advertiser to have substantiation or documentation providing a reasonable basis for the claims.

The **CITY** reserves the right to:

1. accept or reasonably reject, at any time, advertising for any product or service submitted for display in its Commercial Advertising Venues;
2. require elimination or revision of any material in advertising copy which violates: the **CITY'S** standards, policies or guidelines; federal, state or local laws or regulations, or; is otherwise contrary to the public interest;
3. require revision of any advertising matter to meet emergency circumstances or situations of unusual significance; and

4. reject any advertising that is or might be injurious or prejudicial to the interests of the public, the **CITY** or honest advertising and reputable business in general.

CONTENT REGULATIONS

Advertising to be placed in Commercial Advertising Venues is subject to the following Advertising Content Regulations:

Advertisers may include only commercial material which is lawful and of the highest possible standards of excellence and in this regard Advertisers will ensure that the following conditions are observed with respect to all advertising. There shall be:

1. no material that may violate any rights of any person, firm or corporation;
2. no false, unsubstantiated or unwarranted claims for any product or service, or testimonials that cannot be authenticated;
3. no advertising of any habit-forming drugs, tobacco products, adult-only entertainment, sexually-oriented businesses, firearms or firearm ammunition;
4. no material constituting or relating to a lottery, a contest of any kind in which the public is unfairly treated or any enterprise, service, or product which would tend to encourage, aid, abet, assist, facilitate or promote illegal or legal gambling, except that Advertisers may accept advertising from the official state lottery of the state of Texas;
5. no advertising for a product or service which is illegal per se or has no legal use;
6. no appeal or solicitation for funds or solicitation of volunteer efforts (e.g., "give your time");
7. no advertisement which is in whole or part defamatory, obscene, profane, vulgar, repulsive or offensive, either in theme or in treatment, or that describes or depicts repellantly any internal bodily functions or symptomatic results of internal conditions, or refers to matters that are not considered socially acceptable topics;
8. no false or ambiguous statements or representations that may be misleading to the audience;
9. no advertisement that includes any element of intellectual property without the owner's consent to such use, including but not limited to music master, mechanical, performance and synchronization rights or gives rise to any other colorable claim of infringement, misappropriation or other form of unfair competition;
10. no disparagement or libel of specific competitors or competitive products;
11. no advertisement that is or may be injurious or prejudicial to the interests of the public, or honest advertising and reputable business in general;

12. no advertisement of adult-only entertainment or sexually-oriented businesses;
13. no advocacy advertisement that supports or opposes a candidate, issue or cause; (e.g., political or issue-oriented); however, advertisements that advocate non-issue oriented messages (e.g., get a colon cancer check-up soon) are permissible on a case by case basis. The **CITY** will not accept commercial advertising that consists, in whole or in part, of political advocacy or issue-oriented advertising. All advertisements submitted by or on behalf of advocacy organizations that also engage in consumer-oriented activities, such as the sale of goods and services must be submitted for approval in a timely fashion to ensure that the advertisements are not "advocacy-oriented";
14. no advertising for products that contain distilled liquor or spirits, regardless of the percentage of alcohol, or advertising for non-alcoholic products containing the name of a distilled product or a distiller or company associated with hard liquor is not acceptable. While these products frequently have a legitimate business purpose independent of the hard liquor brand, they invariably promote the hard liquor brand as well. Therefore, Jack Daniels Barbecue Sauce would not be acceptable both because it contains hard liquor (before cooking) and because it serves as a device to promote Jack Daniels brand whiskey. Johnnie Walker clothing would not be acceptable because while it exists both as a chain of retail stores and a line of clothing, it also serves as a means of promoting hard liquor products, unless approved by the Director;
15. no advertising which supports or opposes a religion, denomination, religious creed, tenet or belief;
16. no advertisements promoting 1-900 numbers, massage parlors, sanitary products, non-prescription erectile dysfunction treatments, birth control products, devices or methods, or remedies for sexually transmitted diseases;
17. no advertisements promoting tattoo parlors, pawn shops, or check cashing businesses; and
18. no advertisement shall be permitted that promotes or depicts violence or anti-social behavior or presents a danger of causing riot, disorder or other threat to public safety, peace or order;

In addition to these restrictions the following regulations shall apply in the following specific situations:

1. Advertisements for pharmaceutical products (including NDA products) that are subject to U.S. Food and Drug Administration (FDA) oversight must comply with FDA regulations regarding advertising and promotion;
2. In the case of trade association or institutional advertisements (e.g., Office of National Drug Control Policy), the **CITY** requires not only that the name of the sponsor be clearly disclosed, but that the words "Paid for by" or "Sponsored by" be used. This also applies to advertisements purchased by public service organizations or governmental or quasi-governmental organizations;

3. Advertisements may not represent a product or service which presents a conflict of interest with any policy, objective or mandate of the **CITY**, including these guidelines;
4. Advertisements may not be placed by a firm awaiting approval from the City of San Antonio City Council on any matter unrelated to these guidelines, a firm which operates in an industry regulated by the **CITY** or a firm with a pending lawsuit against the **CITY**;
5. The advertisement of a product or service does not act as the **CITY'S** endorsement of any such product or service over another.

The **CITY** recognizes that in some cases the **CITY** will have to exercise judgment in situations as to which the application of the Policy may be ambiguous, or as to which it does not fully cover or even contemplate. In these cases, the **CITY** will look to the intended affect of this Policy and act in accordance with its spirit. The **CITY** reserves the right to amend and/or revise the foregoing Content Regulations, as it deems necessary, and as social norms within the San Antonio, Bexar County, Texas community may dictate.