

AN ORDINANCE 2008-09-04-0764

**APPROVING A FUNDING AGREEMENT AND A LEASE AGREEMENT WITH THE SPORTS, OUTDOOR AND RECREATIONAL PARK, (SOAR) FOR THE EXPENDITURE OF UP TO \$6,200,000.00 FOR THE DEVELOPMENT AND OPERATION OF A REGIONAL SPORTSPLEX AND SPECIAL NEEDS PARK LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF WURZBACH PARKWAY AND THOUSAND OAKS IN COUNCIL DISTRICT 10, AN APPROVED 2007 PARK BOND PROJECT.**

\* \* \* \* \*

**WHEREAS**, this ordinance will authorize a Funding Agreement with the Sports, Outdoor and Recreational Park, (SOAR) a non-profit organization created by the Gordon Hartman Family Foundation, for the development of a regional sportsplex and a special needs park on approximately 96.19 acres of property; and

**WHEREAS**, the sportsplex will provide approximately 14 soccer fields with the capacity to host regional and state tournaments with associated public amenities and parking; and

**WHEREAS**, the special needs park will provide outdoor recreation for individuals with mental and physical disabilities including specialized recreational equipment; and

**WHEREAS**, under the terms of the Funding Agreement up to \$4,100,000.00 of City bond funds will be provided for property purchase costs and the balance of approximately \$2,100,000.00 will be reimbursed to SOAR for project design and construction costs; and

**WHEREAS**, \$5,000,000.00 will be provided from the Bexar County Venue Tax Program and SOAR will raise the remaining funds from public, corporate and individual donations; and

**WHEREAS**, the Funding Agreement will end upon completion of the construction project, which shall occur no later than July 1, 2010 and SOAR will retain ownership of the property until the completion of the construction project, but not later than July 1, 2010, at which time SOAR will convey the property to the City of San Antonio; and

**WHEREAS**, this ordinance will also authorize a Lease Agreement with SOAR for the operation and maintenance of the regional sportsplex and special needs park; **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 Funding Agreement and a Lease Agreement with the Sports, Outdoor and Recreational Park, (SOAR) for the expenditure of up to \$6,200,000.00 for the development and operation of a regional sportsplex and special needs park located at the northeast corner of the intersection of Wurzbach Parkway and Thousand Oaks in Council District 10, an approved 2007 Park Bond Project. A copy of the funding agreement is

attached hereto and incorporated herein for all purposes as **Attachment I**. The approved lease agreement form is attached to the funding agreement.

**SECTION 2.** A funding agreement has been awarded in the amount of \$6,200,000.00 to be reimbursed to Sports, Outdoor and Recreational Park for the Regional Sportsplex / Special Needs Park project from previously appropriated funding on Ordinance No. 2008-01-31-0066, dated January 31, 2008.

**SECTION 3.** The amount of \$6,200,000.00 was previously appropriated in SAP Fund 45099000, General Obligation Capital Projects, 40-00119, Regional Sportsplex / Special Needs Park, and shall be revised by increasing/decreasing the SAP WBS Elements as stated by the table below:

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN	PLAN VERSION 0 REVISION/ APPROPRIATION	REVISED PLAN VERSION 0
40-00119-01-03	Consultant Contractor Fees	5201170	Engineering Fees	\$686,061.00	-\$686,061.00	\$0.00
40-00119-01-07	Project Capital Administration Cost	5402010	Cap Prog Admin Cost	\$368,186.07	-\$368,186.07	\$0.00
40-00119-01-08	Design Enhancement	5201040	Fees to Prof Contractors	\$62,000.00	-\$62,000.00	\$0.00
40-00119-04-01	Environmental Capital Administrative Costs	5402010	Cap Prog Admin Cost	\$6,574.00	-\$6,574.00	\$0.00
40-00119-04-02	Environmental Costs	5201040	Fees to Prof Contractors	\$45,737.40	-\$45,737.40	\$0.00
40-00119-05-02	Construction Costs	5201140	Construction Cost	\$4,573,740.00	-\$2,473,740.00	\$2,100,000.00
40-00119-05-07	Project Contingency	5201140	Construction Cost	\$457,701.53	-\$457,701.53	\$0.00
40-00119-03-01-05	Acquisition	5209010	Land Acquisition Costs	\$0.00	\$4,100,000.00	\$4,100,000.00
			<b>TOTALS</b>	<b>\$6,200,000.00</b>	<b>\$0.00</b>	<b>\$6,200,000.00</b>

**SECTION 4.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 5.** This ordinance shall be effective on and after September 14, 2008.

PASSED AND APPROVED this 4<sup>th</sup> day of September, 2008.

ATTEST: *Leticia M. Vaca*  
City Clerk

*Phil Harberger*  
MAYOR  
**PHIL HARBERGER**

APPROVED AS TO FORM: *Hollis Young*  
for City Attorney



Request for  
**COUNCIL  
ACTION**



**Agenda Voting Results - 27**

<b>Name:</b>	6, 7, 9, 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 32A, 32B, 32D
<b>Date:</b>	09/04/2008
<b>Time:</b>	10:15:15 AM
<b>Vote Type:</b>	Motion to Approve
<b>Description:</b>	An Ordinance approving a Funding Agreement and a Lease Agreement with the Sports, Outdoor and Recreational Park, (SOAR) for the expenditure of up to \$6,200,000.00 for the development and operation of a regional sportsplex and special needs park located at the northeast corner of the intersection of Wurzbach Parkway and Thousand Oaks in Council District 10, an approved 2007 Park Bond Project. [Pat DiGiovanni, Deputy City Manager; Xavier Urrutia, Interim Director, Parks & Recreation]
<b>Result:</b>	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Sheila D. McNeil	District 2		x			x	
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
Lourdes Galvan	District 5		x				
Delicia Herrera	District 6		x				
Justin Rodriguez	District 7		x				
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

STATE OF TEXAS       §  
                                  §  
COUNTY OF BEXAR   §

**FUNDING AGREEMENT**

This AGREEMENT ("Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_ dated \_\_\_\_\_, and Sports, Outdoor and Recreation (Soar) Park (hereinafter referred to as "GRANTEE"), a Texas non-profit corporation, acting by and through its President, hereto duly authorized. CITY and GRANTEE are sometimes referred to herein collectively as the "Parties", and singularly as a "Party".

WHEREAS, CITY held a Bond Election on May 12, 2007 and received approval from the voters to fund a variety of Parks, Recreation, Open Space, and Athletics Improvements (Proposition 3 on the ballot); and

WHEREAS, among the Parks, Recreation, Open Space, and Athletics Improvements projects approved is a "Regional Sportsplex and Special Needs Park" (the "Project"); and

WHEREAS, the official brochure for the Bond Election described this project as follows: "Regional Sportsplex and Special Needs Park LF: Development of a soccer field complex and a special needs park.

WHEREAS, the total funds allocated for this Project out of the Bond Election is \$6,200,000.00 ("CITY Funds"); and

WHEREAS, the LF in the description is explained on the inside front page of the official brochure as "LF = Leverage Funding, meaning that CITY anticipates partnering with one or more non-city entities to share in the cost of completing the designated project. In such a scenario, CITY's share could be reduced if the designated project's scope is modified or its partner does not produce the full amount of funding promised or expected;" and

WHEREAS, CITY is bound to materially comply with the terms and conditions contained in the official brochure as presented to the voters; and

WHEREAS, CITY has identified GRANTEE as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure which is the development and operation of the Sportsplex and Special Needs Park in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, GRANTEE and CITY have identified a proposed location for the construction of the Project and GRANTEE has contractual rights to purchase the

approximate 96 acre tract of land depicted on Exhibit A ("Real Property"); and

WHEREAS, GRANTEE has secured additional public funding of \$5,000,000.00 for the Project from Bexar County through a special election called by the COUNTY, pursuant to Sections 334.103 and 334.252 of the Texas Local Government Code, and held on May 10, 2008, and the Parties acknowledge that there may need to be additional negotiations with Bexar County, to address the funding requirements of Bexar County; and

WHEREAS, the public benefit to be gained from the Project is the provision of recreational facilities, operated under non-profit regulations, available for the citizens of San Antonio and for regional and state soccer tournaments; and

WHEREAS, GRANTEE has engaged designers, engineers and professionals to assist in the development of the Project and has fronted such costs.

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

### **I. TERM**

1.01 The term of this AGREEMENT shall commence upon execution of the Agreement and continue until such time as construction of the Project is completed or for a period of two (2) years, whichever time period is shorter ("Term").

### **II. GENERAL RESPONSIBILITIES OF GRANTEE**

2.01 Provided GRANTEE receives the funding described in Section 6.01, GRANTEE hereby accepts full responsibility for the performance of all services and activities described in this AGREEMENT to complete construction of the Project by July 1, 2010 ("Construction Deadline"). The Project shall include, at a minimum, (1) the construction of a regional soccer park including 14 high quality soccer fields capable of hosting regional and state soccer tournament play and associated public amenities including parking, restrooms, and shaded areas, and (2) construction of a special needs park to provide outdoor recreation for people with mental and physical disabilities including specialized recreational equipment. If substantial completion of the Project is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, fire or other casualty, court injunction, necessary condemnation proceedings, interference by third parties, or any circumstances reasonably beyond GRANTEE's control, then the period of each such delay shall extend the Construction Deadline

2.02 Current budget estimates of the improvements and soft costs for the Project are \$4,100,000.00. The current budget for the acquisition of the Real Estate, design, development, construction, concessions, and contingencies is \$19,443,750.00 (the "Budget"). The preliminary budget for the Project is attached as Exhibit B. GRANTEE, through a combination of private fund raising and support from Bexar County, shall provide all necessary funding for the Project beyond CITY's commitment contained herein. In the event the scope of the project is reduced, CITY shall have the option of adjusting its commitment downward to keep CITY in the position of providing no more than 48% of the funding for the Project as further detailed below in Article V below.

2.03 Unless written notification by GRANTEE to the contrary is received and approved by CITY, Gordon V. Hartman shall be GRANTEE'S designated representative responsible for the management of this AGREEMENT.

2.04 The Director of the Capital Improvements Management Services ("CIMS Director") or his designee shall be responsible for the administration of this AGREEMENT on behalf of CITY.

2.05 Communications between CITY and GRANTEE shall be directed to the designated representatives of each as set forth in paragraphs numbered 2.03 and 2.04 hereinabove.

2.06 The plans for the project, attached hereto as Exhibit C, are hereby approved by CITY ("Initial Approved Plans"). GRANTEE shall not make any substantial changes to the Initial Approved Plans without the written approval of the City Manager or his/her designee ("Approved Changes"). The approval of the Initial Approved Plans or any Approved Changes given in this section does not relieve GRANTEE of the burden of obtaining all necessary governmental approvals, including those provided by CITY through its relevant development departments and relevant boards and commissions including the Historic and Design Review Commission. The Initial Approved Plans modified by any Approved Changes shall be considered the "Plans" for purposes of this AGREEMENT.

2.07 GRANTEE shall submit all future material changes to the plans to the CIMS Director for review and approval to ensure their compatibility with the Plans.

2.08 CITY shall have authority to inspect the Real Property throughout the construction process to ensure compliance with the Plans. GRANTEE shall cause its engineer to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. CITY shall have the right to withhold funding until such certifications are provided.

2.09 GRANTEE shall allow the City Manager or his/her designee to serve as a

liaison to GRANTEE'S Board of Directors. Such liaison shall have rights to receive notice of and attend all meetings of the Board of Directors and have full right of access to GRANTEE'S books and records.

### **III. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS**

3.01 GRANTEE warrants and represents that it will comply with all Federal, State and Local laws and regulations and will use all reasonable efforts to ensure said compliance by any and all contractors and subcontractors that may work on the Projects including but not limited to:

1. Chapter 252 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252 for all City Funds but not other funds collected from sources other than CITY.
2. Government Code chapter 2253, and 2258 regarding Prevailing Wage Rate, payment and performance bond and worker's compensation regulations required for certain Public Works Contracts for all City Funds but not other funds collected from sources other than CITY.
3. City of San Antonio Small Business Economic Development Advocacy Ordinance with regard to the subcontracting of the construction work required to be performed for the Project (Ordinance No. 2007-04-12-0396.) GRANTEE may obtain authoritative interpretations and guidance for such compliance from CITY's Department of Economic Development for all City Funds but not other funds collected from sources other than CITY.

3.02 The Parties acknowledge and agree that the first funding provided by CITY shall be payment for the costs of land acquisition for the Project in the approximate sum of \$4,100,000.00 and that there are no statutory bidding regulations which are applicable to this purchase.

3.03 Plan design must conform to Americans with Disabilities Act requirements.

### **IV. OWNERSHIP, USE OPERATIONS**

4.01 GRANTEE shall convey the Real Property in fee simple absolute to CITY on or before July 1, 2010. GRANTEE, CITY and Broadway National Bank shall enter into an Escrow Agreement on the date CITY funds the purchase price for the Real Property ("Escrow Agreement"). The form of the Escrow Agreement is attached hereto as Exhibit D. If the Real Property is not conveyed to CITY in fee simple absolute on or before July 1, 2010, CITY shall have the right to seek reimbursement from GRANTEE for all money paid to GRANTEE by CITY under the Funding Agreement. If the Real

Property is not conveyed to CITY in fee simple absolute on or before July 1, 2010, and GRANTEE does not reimburse CITY for all money paid to GRANTEE by CITY under the Funding Agreement then CITY shall be entitled to receive the funds held under Escrow Agreement to reimburse CITY for all money paid to GRANTEE by CITY under the Funding Agreement. After the conveyance of the Real Property to CITY, CITY shall own the Real Property in fee simple absolute after that time, provided however, at the closing of the Real Property, CITY and GRANTEE shall enter into a fifty (50) year lease agreement lease for the entirety of the Real Property to allow GRANTEE to continue to develop and operate the Sportsplex and Special Needs Park. CITY acknowledges that the vesting deed into CITY will be expressly subject to a right of repurchase in favor of Alamo Garden, Inc. established in the deed from such entity to GRANTEE. The repurchase price shall be no less than the full amount of the public funds expended on purchasing and developing the Real Property prior to such repurchase plus interest at the rate of three percent (3%) per annum. Any sums paid to City for the repurchase of the Real Property in excess of the CITY Funds and accrued interest shall be paid to the County for any public funds the County provided to the Project and the remainder shall be paid to GRANTEE. Upon conveyance of the Real Property, CITY shall be the sole owner of the Real Property and all permanent improvements constructed thereon. The form of the lease agreement is attached hereto as Exhibit E.

#### **V. FUNDING AND ASSISTANCE BY CITY**

5.01 CITY shall reimburse GRANTEE for all eligible expenses incurred hereunder. Notwithstanding any other provisions of this AGREEMENT, the total of all payments and other obligations made or incurred by CITY hereunder for the purchase of the Real Property and construction of the improvements relating to the Project shall not exceed the sum of \$6,200,000.00.

5.02 CITY shall not be obligated nor liable under this AGREEMENT to any party, other than GRANTEE, for payment of any monies.

5.03 The funding of this AGREEMENT shall occur in two phases: first phase shall be for acquisition of the Real Property ("Phase I"). CITY shall provide to the appropriate title company the necessary funds, not to exceed \$4,100,000.00, for the purchase of the Real Property. CITY shall have the right to examine all due diligence documentation and legal documents developed by GRANTEE in negotiating this purchase including any environmental assessments, title commitments and surveys of the Real Property and CITY shall have the right to withhold the funding in the event that CITY, in its sole discretion, is unsatisfied with the Real Property. If City fails to provide the funding for the purchase of the Real Property, then this AGREEMENT may be terminated by GRANTEE at its sole discretion with written notice to CITY. The second phase shall consist of reimbursements paid to GRANTEE for costs of construction of the Project ("Phase II"). The funding of Phase II shall be of such an amount that CITY'S

total funding under this AGREEMENT shall not exceed \$6,200,000.00.

5.04 It is further expressly understood and agreed by CITY and GRANTEE that CITY'S obligations under this AGREEMENT are conditioned on GRANTEE raising additional funds of \$6,000,000.00 through contributions or pledges from third parties or commitments from Bexar County and that CITY'S obligation to pay the funds under this AGREEMENT is limited to an amount not in excess of 48% of the total budget of the Project, or a total of \$6,200,000.00, whichever amount is less. Additionally, it is expressly understood and agreed by CITY and GRANTEE that this AGREEMENT in no way obligates CITY's General Fund monies or any other monies or credits of CITY.

#### **VI. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE**

6.01 GRANTEE agrees to maintain readily identifiable records that will provide accurate, current, separate, and complete disclosure of the status of any funds received pursuant to this AGREEMENT. GRANTEE further agrees:

- (A) That maintenance of said records shall be in compliance with all terms, provisions, and requirements of this AGREEMENT and with all generally accepted accounting practices; and
- (B) That GRANTEE's record system shall contain sufficient documentation to provide, in detail, full support and justification for each expenditure.

6.02 GRANTEE agrees to retain all books, records, documents, reports, written accounting policies and procedures and all other relevant materials (hereinafter "records") pertaining to activities pertinent to this AGREEMENT for a minimum of four (4) years from the completion of the Project.

6.03 In order to be reimbursed for work completed, GRANTEE shall submit to CITY a report indicating the amount of funds expended, the payee, the date paid, the purpose of the payment, and provide supporting documentation (i.e. copies of paid itemized invoices) as requested by CITY. Prior to payment from CITY, CITY will inspect the work completed to insure conformance with the Plans. For Phase I funding, CITY shall pay \$4,100,000.00 to GRANTEE or the appropriate title company for land acquisition as detailed above. For Phase II funding GRANTEE will be reimbursed for work completed until all CITY funds are expended. The funding for Phase II shall not be paid by CITY to GRANTEE until January, 2009.

6.04 CITY agrees to provide GRANTEE written notice regarding any expenditure CITY reasonably determines to be outside the permissible parameters of this AGREEMENT. Said notice will provide GRANTEE thirty (30) days from receipt of said

notice to cure the deficiency or refund to CITY any sum of money paid by CITY to GRANTEE determined to:

- (A) Have not been spent by GRANTEE strictly in accordance with the terms of this AGREEMENT; or
- (B) Not be supported by adequate documentation to fully justify the expenditure.

6.05 Unless CITY has questions concerning an expenditure as outlined in Section 6.05 of the Agreement, CITY agrees to provide payment to GRANTEE within twenty (20) working days of receipt of completed invoice as defined in Section 6.04.

6.06 Upon termination of this AGREEMENT, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in section 6.04 above as a result of any auditing or monitoring by CITY, GRANTEE shall refund such amount to CITY within thirty (30) working days of CITY's written request therefor wherein the amount disallowed or disapproved shall be specified.

## VII. ALLOWABLE EXPENDITURES

7.01 Upon preparation of a construction plan and budget by GRANTEE, GRANTEE shall submit said budget to CITY for approval of any costs to be paid from funds received hereunder. Costs shall be considered allowable only if so approved in GRANTEE'S construction budget, or otherwise approved by CITY in writing, and incurred directly and specifically in the performance of and in compliance with this AGREEMENT and with all city, state and federal laws; regulations and ordinances affecting GRANTEE's operations hereunder. Only the following categories of costs shall be considered allowable:

- Land Acquisition
- Architectural Contract
- Architectural Contingencies
- Engineer Contract
- Engineer Contingencies and testing
- Construction contract
- Construction contingencies

Expenditures of City Funds provided under this AGREEMENT shall only be allowed if incurred directly and specifically in the performance of and in compliance with this AGREEMENT and all applicable city, state and federal laws, regulations and/or ordinances.

7.02 The following shall not be considered allowable costs under this AGREEMENT:

- Personnel costs, salaries or wages paid directly by GRANTEE or by the Gordon Hartman Family Foundation or other similarly affiliated organization
- travel
- Costs or fees for consultant and/or professional services, except for those directly related to the projects
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings
- Advertising

7.03 Written requests for prior approval shall be GRANTEE'S responsibility and shall be made thirty (30) days from date necessary to permit a thorough review by CITY. Procurements and/or purchases which must be approved pursuant to the terms of this AGREEMENT shall be conducted entirely in accordance with all applicable terms, provisions and requirements hereof.

### **VIII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS**

8.01 GRANTEE further represents and warrants that:

- (A) All information, data or reports heretofore or hereafter provided to CITY is, shall be, and shall remain complete and accurate as of the date shown on the information, data, or report, and that since said date shown, shall not have undergone any significant change without written notice to CITY.
- (B) It is financially stable and capable of fulfilling its obligations under this AGREEMENT and that GRANTEE shall provide CITY immediate written notice of any adverse material change in the financial condition of GRANTEE that may materially and adversely effect its obligations hereunder.
- (C) No litigation or legal proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing agreement of GRANTEE.

## IX. ACCESSIBILITY OF RECORDS

9.01 At any time and as often as CITY may deem necessary, upon five (5) days written notice, GRANTEE shall make all of its records pertaining to this AGREEMENT available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

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

## X. MONITORING AND EVALUATION

10.01 GRANTEE agrees that CITY may carry out reasonable monitoring and evaluation activities so as to ensure compliance by GRANTEE with this AGREEMENT and with all other laws, regulations and ordinances related to the performance hereof.

## XI. INDEMNITY

11.01 GRANTEE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually or 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 bodily injury, death and property damage, made upon the city, directly or indirectly arising out of, resulting from or related to GRANTEE'S default under this AGREEMENT, including any acts or omissions of GRANTEE, any agent, officer, director, representative, employee, consultant or subcontractor of GRANTEE, and their respective officers, agents, employees, directors and representatives while in the exercise or performance of the rights or duties under this AGREEMENT, all without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the Parties under Texas law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY, AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND/OR REPRESENTATIVES OF CITY, UNDER THIS AGREEMENT. The provisions of this INDEMNITY are solely for the benefit

of the Parties and are not intended to create or grant any rights, contractual or otherwise, to any other person or entity. GRANTEE shall promptly advise CITY in writing of any claim or demand against CITY or GRANTEE known to GRANTEE related to or arising out of GRANTEE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at GRANTEE'S cost. CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving GRANTEE of any of its obligations under this paragraph.

11.02 It is the EXPRESS INTENT of the Parties to this AGREEMENT, that the INDEMNITY provided for in this Article XI, is an INDEMNITY extended by GRANTEE to INDEMNIFY, PROTECT and HOLD HARMLESS CITY from the consequences of CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of CITY is a CONTRIBUTORY CAUSE of the resultant injury, death or damage, and shall have no application when the negligent act of CITY is the sole cause of the resultant injury, death or damage. GRANTEE further AGREES TO DEFEND, AT ITS OWN EXPENSE, and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against CITY and its elected officials, employees, officers, directors and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

## XII. INSURANCE

12.01 GRANTEE shall require indemnification from the Contractor it hires and shall ensure and be responsible to confirm that all contractors performing any work authorized by this AGREEMENT have all commercially reasonable insurance in types and amounts that will adequately protect the Project, CITY, GRANTEE which must include at a minimum (1) Workers Compensation, (2) Commercial General Liability with endorsements for premises/operations, independent contractor's liability (if applicable), personal injury, contractual liability, broad form property damage liability and (3) Builder's Risk (if applicable).

## XIII. NONDISCRIMINATION

13.01 GRANTEE covenants that it, or 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, handicap or familial status, in employment practices or in the use of or admission to the Real Property, which said discrimination GRANTEE acknowledges is prohibited.

#### **XIV. CONFLICT OF INTEREST**

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

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

14.03 No member of CITY'S governing body or of its staff who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this AGREEMENT shall:

- (A) Participate in any decision relating to this AGREEMENT which may affect his or her personal interest or the interest of any corporation, partnership, or association in which he or she has a direct or indirect interest;
- (B) Have any direct or indirect interest in this AGREEMENT or the proceeds thereof.

#### **XV. POLITICAL ACTIVITY**

15.01 None of the activities performed hereunder shall involve, and no portion of the funds received hereunder shall be used, either directly or indirectly, for any political activity including, but not limited to, an activity to further the election or defeat of any candidate for public office or for any activity undertaken to influence the passage, defeat or final content of local, state or federal legislation.

#### **XVI. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL**

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

## **XVII. CONTRACTING**

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

17.02 CITY shall in no event be obligated to any third party, including any contractor of GRANTEE, for performance of or payment for work or services.

## **XVIII. CHANGES AND AMENDMENTS**

18.01 Except when the terms of this AGREEMENT expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by the City Manager or his/her designee after approval by appropriate ordinance passed by the City Council and GRANTEE.

18.02 It is understood and agreed by the Parties hereto that changes in local, state and federal rules, regulations or laws applicable hereto may occur during the Term of this AGREEMENT and that any such changes shall be incorporated into this AGREEMENT after notice to Grantee by City without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

## **XIX. ASSIGNMENTS**

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

## **XX. SEVERABILITY OF PROVISIONS**

20.01 If any clause or provision of this AGREEMENT is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this AGREEMENT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties that in lieu of each clause or provision of this AGREEMENT that is invalid,

illegal, or unenforceable, there be added as a part of the AGREEMENT a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

### **XXI. NON-WAIVER OF PERFORMANCE**

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

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

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

### **XXII. ENTIRE AGREEMENT**

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

### **XXIII. NOTICES**

23.01 For purposes of this AGREEMENT, all official communications and notices among the Parties shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, delivered personally at the following addresses to the addresses set forth below:

CITY: City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

And Director Capital Improvement Management Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

GRANTEE: Mr. Gordon V. Hartman  
Sports, Outdoor And Recreation (Soar) Park  
1202 W. Bitters, Bldg. 1, Suite 1200,  
San Antonio, Texas 78216

With Copies to:  
Mr. Ronald W. Hagauer  
1602 N. Loop 1604 W., Suite LL-102  
San Antonio TX 78248

Notice of change of address by either Party must be made in writing and mailed to the other Party's last known address within five (5) business days of such change.

#### **XXIV. PARTIES BOUND**

24.01 This AGREEMENT shall be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns, except as otherwise expressly provided herein.

#### **XXV. RELATIONSHIP OF PARTIES**

25.01 Nothing contained herein shall be deemed or construed by the Parties, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties.

**XXVI. TEXAS LAW TO APPLY**

26.01 This AGREEMENT shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the Parties created hereunder are performable in Bexar County, Texas.

**XXVII. GENDER**

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

**XXVIII. CAPTIONS**

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

**XXIX. LEGAL AUTHORITY**

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

29.02 The signer of this AGREEMENT for GRANTEE represents, warrants, assures and guarantees that he or she has full legal authority to execute this AGREEMENT on behalf of GRANTEE and to bind GRANTEE to all terms, performances and provisions herein contained.

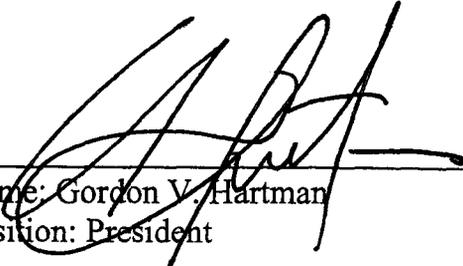
[signature page to follow]

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_ day of August, 2008.

**CITY OF SAN ANTONIO**

**SPORTS, OUTDOOR AND RECREATION  
(SOAR) PARK**

By: \_\_\_\_\_  
Sheryl Sculley  
City Manager

By:  \_\_\_\_\_  
Name: Gordon V. Hartman  
Position: President

ATTEST: \_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

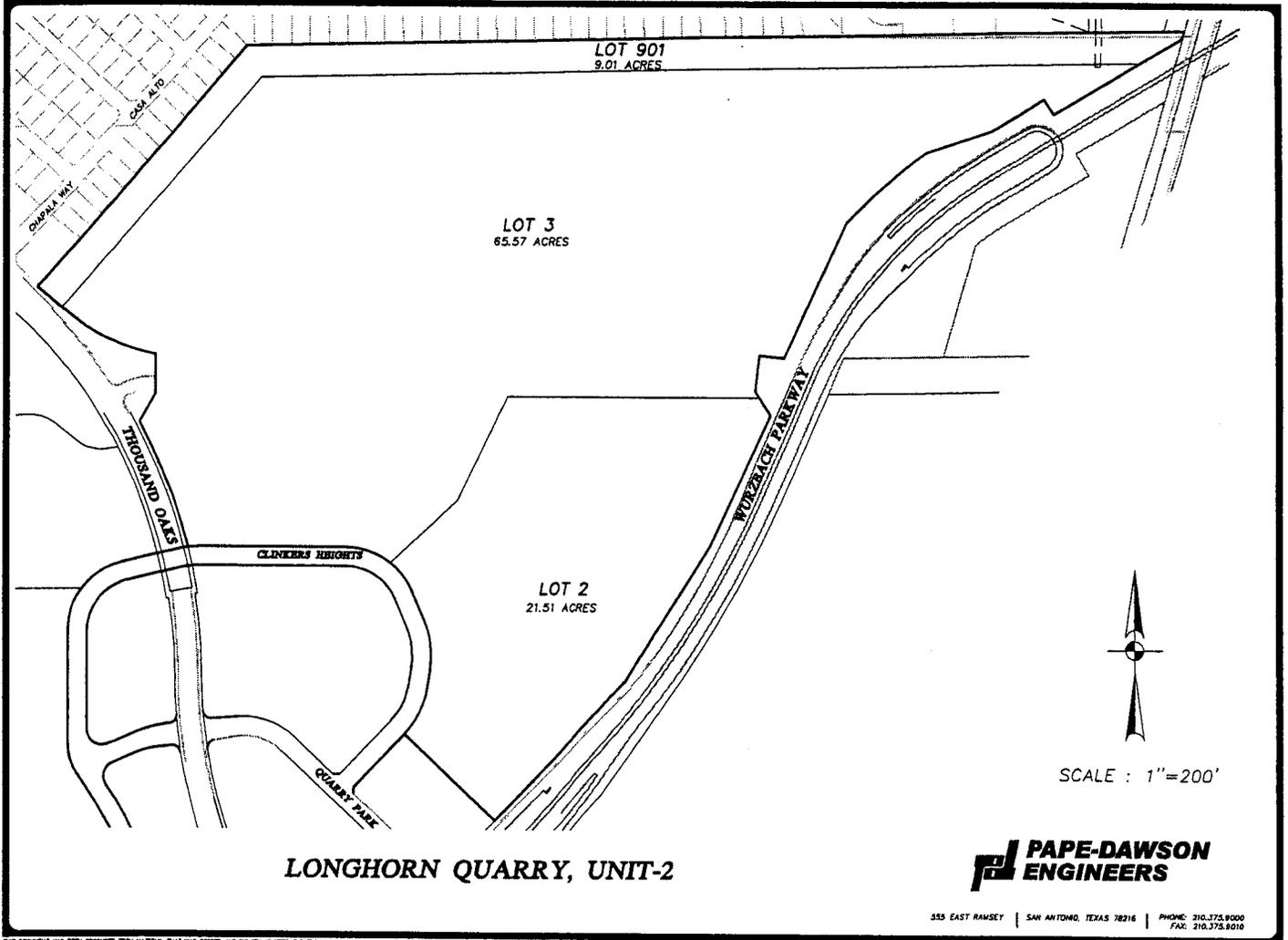
\_\_\_\_\_  
CITY ATTORNEY

**EXHIBIT A**  
**TO**  
**FUNDING AGREEMENT**

Property Description

As attached

Date: Aug 22, 2008, 11:14am User ID: JerryCarlo  
File: I:\3433\20\Design\20080821\_C25a\_P100217.dwg



**LONGHORN QUARRY, UNIT-2**

**EXHIBIT B**  
**TO**  
**FUNDING AGREEMENT**  
Preliminary Budget

As attached

## Projected Preliminary Budget

	Total per Item	City Funds
<b>Land Purchase</b>		
<b>TOTAL</b>	<b>\$4,100,000</b>	<b>\$4,100,000</b>

		City Funds
<b>Soft Cost</b>		
Engineering	\$151,000	
Control Management (Bitterblue)	\$200,000	
Geo/MEP	\$30,000	\$30,000
Upfront Cost (GHFF)	\$70,000	
CPS	\$50,000	\$50,000
Plat Fees (Minor Plat)	\$20,000	\$20,000
Bldg. Permit Fees	\$20,000	\$20,000
Legal Fees (SOAR)	\$75,000	
Arch - Multi Use Bldg.	\$25,000	\$15,000
Architecture	\$70,000	
Impact Fees	\$33,000	\$33,000
Temporary Fence/On Site Security	\$35,000	\$35,000
Fundraising Cost	\$60,000	\$60,000
Design Review (Dixie Watkins)	\$80,000	
Onsite - General Contractor (Malitz)	\$110,000	\$110,000
<b>SOFT COST TOTAL</b>	<b>\$1,029,000</b>	<b>\$373,000</b>

**Special Needs Park**

		<b>City Funds</b>
Perimeter Fencing (6' tall) 4100 linear feet	\$123,000	\$123,000
Perimeter Ornamental Fence at lake (4' tall) 2635 linear ft	\$65,000	\$65,000
Enclosed A/C Multi Use Pavillion w/Restrooms - 10,000 sq. ft.	\$700,000	\$700,000
Equipment, Tables, chairs, bleachers for Multi Purpose Pavillion	\$50,000	
Water Barge/Pier	\$250,000	
8000 sq. ft. Entry Building & Access Building	\$640,000	
Large Pavillion w/Restrooms at Lake	\$150,000	
Playscape - Large	\$250,000	\$250,000
Playscape - Smaller	\$100,000	\$100,000
Playscape - Soft Rubber Surface (Both) (20,000 sq. ft.)	\$200,000	
Playscape - Flatwork @ Soft Rubber Surface Location (20,000 sq. ft.)	\$80,000	
Waterline in Park	\$6,000	
Sewerline in Park	\$21,600	
Flatwork Pathways in Park (colored)	\$350,000	
*Flatwork Walk n Roll Pathway (colored) (12')	\$312,000	
Landscape - Trees/Flowers/Grass (all areas except Sanctuary)	\$350,000	
Irrigation (all areas except Sanctuary)	\$75,000	
Irrigation/Landscape - Sanctuary	\$250,000	
Water Wells (2)	\$60,000	
Pumps for Irrigation (3)	\$70,000	
48" Drainage Pipe	\$50,000	
(Shaded) 3 - Small Pavillions (only - no restrooms)	\$100,000	
(Shaded) 2 - Small Pavillions (w/ restrooms)	\$150,000	
Sunport Shades - All Areas	\$500,000	\$500,000
Restroom @ Walk n Roll Path	\$70,000	
Large Pavillion w/o Restrooms	\$115,000	
Lake Improvements (est.)	\$40,000	
Ampitheater Seating	\$150,000	
Ampitheater Stage/PA/Lights	\$100,000	
Rest Areas Along Lake	\$100,000	
Water Feature	\$100,000	

		<b>City Funds</b>
Sensory Village (6 Bldgs. Total 1500 sq. ft.)	\$150,000	
Sensory Village (Finish out 6x)	\$120,000	
Electronic Security - Computers	\$150,000	
3 Swing Areas w/Soft Rubber Surface (Includes Flatwork Cost)	\$75,000	
Baseball Field	\$75,000	
Island Bridge & Pier	\$200,000	
Lake Water/Light Features	\$40,000	
Sculpture of Hands	\$200,000	
Bike/Go Cart Track	\$100,000	
1600 sq. ft. Bike/Go Cart Equipment Storage Facility	\$150,000	
Bike/Go Cart Equipment	\$50,000	
Misting Stations (All Locations)	\$50,000	
Audio (Music) throughout park/PA	\$50,000	
Lights @ Pathway In & Along Lake Shor	\$150,000	
Fountain Features - see site plan	\$100,000	
6 "Care/Info" Stations	\$120,000	
Tile of Expression Stands/Stars in Walk/Roll Path	\$20,000	
Gardening Area	\$30,000	
Signage	\$20,000	
Water Barge	\$20,000	
Start Up/Maintenance Equipment/Picnic Table, etc.	\$40,000	
Furniture/Computers	\$40,000	
Benches	\$25,000	
Contingency	\$350,000	
Operating Fund Deficit (Yr 1)	\$500,000	
<b>SNP TOTAL</b>	<b>\$8,402,600</b>	<b>\$1,738,000</b>

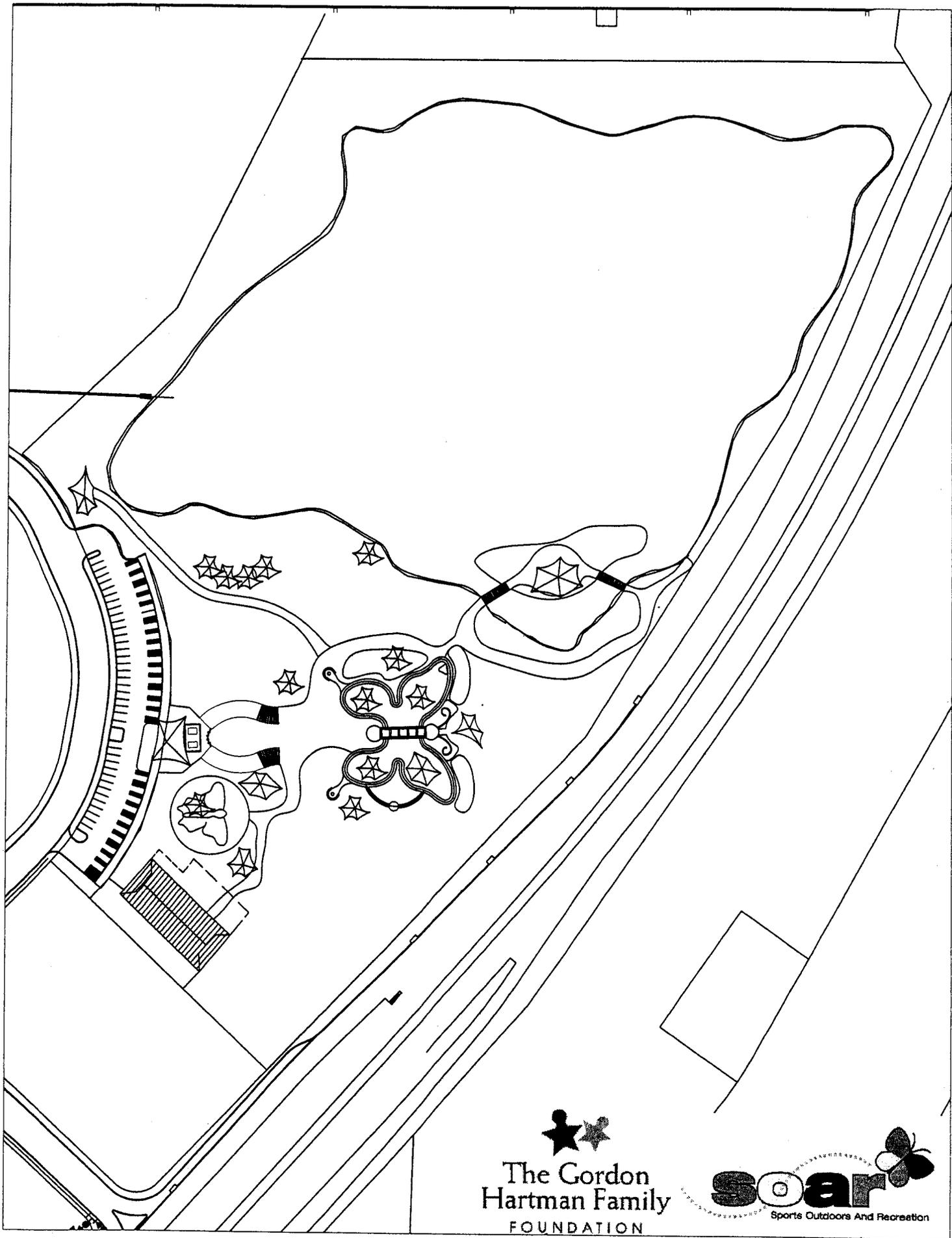
\*Savings of \$68,000 (\$1 per sq. ft.) if white (non-colored) concrete is used.

**Soccer Complex**

		<b>City Funds</b>
2 Parking Lots - Drainage, Landscape, Lights @ Parking Lot	\$125,000	
2 Parking Lots	\$550,000	
Fill & Grading	\$226,000	
Topsoil	\$450,000	
Grass/Rock Stadium Seating	\$90,000	
12' Flatwork Pathways (no color)	\$315,000	
Sewerlines	\$113,850	
Waterlines	\$52,900	
Sprig Fields	\$100,000	
Seed Outside Fields	\$10,000	
Grow In Cost	\$30,000	
Maintenance Equipment	\$330,000	
Field Equipment	\$65,000	
Irrigation - Fields & Outside of Field	\$375,000	
3200 In. ft. of Ornamental Fence (3200 In.ft. existing)	\$100,000	
2200 sq. ft. Controlled Entry Building	\$175,000	
Lighting 13 Fullsize Fields w/lights	\$980,000	
Signage	\$20,000	
Playscapes (2 areas) (\$50,000 ea.)	\$100,000	
3750 sq. ft. Metal Storage Building	\$185,000	
1480 sq. ft. Unmanned Vending Machine/Restroom Buildings	\$120,000	
2040 sq. ft. Unmanned Vending Machine/Restroom/Mechanical Bldg.	\$150,000	
Landscape - All Areas Inside Fence	\$50,000	
Drainage - Misc.	\$10,000	
Furniture/Computers at Office	\$20,000	
Contingency	\$250,000	
<b>SOCCER COMPLEX TOTAL</b>	<b>\$4,867,750</b>	<b>\$0</b>
<b>TOTAL</b>	<b>\$18,399,350</b>	<b>\$6,211,000</b>
<b>\$ RAISED/COMMITTED TO DATE</b>	<b>\$12,700,000</b>	<b>\$6,200,000</b>
<b>CURRENT DEFICIT</b>	<b>\$5,699,350</b>	<b>\$11,000</b>

**EXHIBIT C**  
**TO**  
**FUNDING AGREEMENT**  
Initial Approved Plans

As attached



  
The Gordon  
Hartman Family  
FOUNDATION

  
Sports Outdoors And Recreation

**EXHIBIT D**  
**TO**  
**FUNDING AGREEMENT**

Escrow Agreement

As attached

## ESCROW AGREEMENT

This Escrow Agreement ("this "Agreement") is executed to be effective as of this \_\_\_ day of September, 2008 by and among Sports, Outdoor And Recreation (Soar) Park (hereinafter referred to as "SOAR"), and CITY OF SAN ANTONIO (hereinafter referred to as "CITY"), and Broadway National Bank (hereinafter referred to as "Escrow Agent").

### WITNESSETH:

**Whereas**, CITY and SOAR entered into that certain Funding Agreement effective as of September \_\_, 2008 (the "Funding Agreement"), regarding the reimbursement by CITY of expenditures made by SOAR (in a sum not to exceed \$6,200,000.00) for (i) the purchase of 96 acres, more or less, of land in Bexar County, Texas, more particularly described on Exhibit A attached hereto and incorporated herein by reference (hereinafter referred to as the "Park Tract") in the approximate sum of \$4,100,000.00 and (i) engineering/professional fees and the costs to construct certain improvements on the Park Tract in the approximate sum of \$2,100,000.00;

**Whereas**, the Funding Agreement requires SOAR to convey the Park Tract in fee simple absolute to CITY on or before July 1, 2010 and if the Park Tract is not conveyed in fee simple absolute to CITY on or before July 1, 2010 then SOAR shall reimburse CITY for all money paid to SOAR under the Funding Agreement;

**Whereas**, CITY has required SOAR to escrow \$6,200,000.00 with Escrow Agent to secure the obligation of SOAR to reimburse CITY for all money paid to SOAR under the Funding Agreement if the Park Tract is not conveyed in fee simple absolute to CITY;

**Whereas**, CITY and SOAR now desire to enter into this Agreement to establish the terms and provisions upon which SOAR shall escrow money with Escrow Agent to secure the obligation of SOAR to reimburse CITY for all money paid to SOAR under the Funding Agreement if the Park Tract is not conveyed in fee simple absolute to CITY;

**Whereas**, CITY, SOAR and Escrow Agent hereto desire that an escrow account be established with Escrow Agent and that the Escrow Funds (as hereinafter defined) be held and distributed by Escrow Agent pursuant to the terms of this Agreement.

**Now, Therefore**, for and in consideration of the premises an mutual covenants and agreement contained herein, the payment of Ten and No/100 Dollars (\$10.00) by each of the parties to the others, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. Capitalized Terms. Capitalized terms used in this Agreement, to the extent not otherwise expressly defined herein, shall have the same meanings ascribed to such terms in the Funding Agreement.

2. Deposit of Escrow Funds. SOAR shall deposit funds in the form of cash, bonds or cash equivalent investments with Escrow Agent in the amount of \$6,200,000.00 ("Escrow Funds"). Escrow Agent shall hold the Escrow Funds and distribute the Escrow Funds in accordance with the terms of this Agreement. The interest earned on the Escrow Funds shall be deposited in non-taxable short-term money market funds interest-bearing account and shall be disbursed to SOAR or its designee no less than monthly.

3. Release of Escrow Funds to CITY. If the Park Tract is not conveyed in fee simple absolute to CITY on or before July 1, 2010 and SOAR has not reimbursed CITY for all money paid to SOAR under the Funding Agreement on or before ten (10) days after CITY has sent written notice to SOAR requesting reimbursement then CITY shall be entitled to draw on the Escrow Funds by delivering a written request ("Request") to Escrow Agent with a copy to SOAR. In this regard, unless SOAR objects to the Request by written notice delivered to the Escrow Agent and CITY within three (3) business days after Escrow Agent has confirmed with the SOAR that it has received such Request from CITY, portions of the Escrow Funds shall be released by Escrow Agent as directed by the Request. The Request shall detail the money paid to SOAR under the Funding Agreement. The only grounds for objection by SOAR shall be that it has conveyed the Park Tract in fee simple absolute to CITY.

4. Release of Escrow Funds to SOAR. Escrow Agent shall not release Escrow Funds to SOAR until such time as SOAR has conveyed the Park Tract in fee simple absolute to CITY. After conveyance of the Park Tract to CITY, the Escrow Funds shall be released to SOAR or its designee on or before ten (10) days after SOAR has sent written notice to Escrow Agent with a copy to CITY requesting such release. Provided however, if CITY objects to the request by written notice delivered to the Escrow Agent and SOAR within three (3) business days after CITY has received the copy of the request from SOAR, then the Escrow Funds shall not be released. The only grounds for objection by CITY shall be that the Park Tract has not be conveyed in fee simple absolute to CITY. If the Park Tract is conveyed in fee simple absolute to CITY after July 1, 2010 but before a Request is received by Escrow Agent then SOAR shall not be required to reimburse CITY for all money paid to SOAR under the Funding Agreement.

5. Exculpation of Escrow Agent. Escrow Agent shall be protected in acting in good faith upon any notice, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine and to be signed by the proper party or parties.

Escrow Agent shall not be liable for any error of judgment or for any mistake or law, or for anything which it may do or refrain from doing in connection herewith, except its own negligence or misconduct, and Escrow Agent shall have no duties to anyone except CITY and SOAR. In the event that there is an assignment or attachment of any interest in the Escrow Account or any controversy arises hereunder, or Escrow Agent is made a party to or intervenes in any litigation pertaining to the Escrow Account or the subject matter hereof, Escrow Agent shall be reimbursed by SOAR for all costs and expenses occasioned hereby, and SOAR hereby agrees to pay the same and to indemnify Escrow Agent against any loss, liability or expense incurred in any act or thing done by it hereunder, it being understood and agreed that Escrow Agent may interplead the subject of this escrow into any court of competent jurisdiction and the act of such interpleader shall immediately relieve Escrow Agent of its duties, liabilities and responsibilities hereunder. Escrow Agent agrees to perform its duties under this Agreement, subject to the foregoing.

6. Miscellaneous. (a) Notwithstanding anything contained in this Agreement to the contrary, CITY and SOAR hereby acknowledge and agree that all costs and expenses incurred by Escrow Agent in connection with this Agreement including, without limitation, all costs and expenses incurred by Escrow Agent in performing its duties under this Agreement and maintaining the Escrow Account, shall be borne by SOAR.

(b) All notices, demands, consents, statements, requests, reports and other communications required or permitted herein shall be delivered to the parties hereto by (a) United States registered or certified mail, return receipt requested, postage fully prepaid, (b) facsimile, or (c) by an independent, courier service; provided, however, that in the event such courier service is used, such service shall provided a receipt. All such communications shall be deemed received when deposited in the United States mail as provided above, sent by facsimile with confirmed receipt or deposited with such courier service, as applicable, and shall be addressed to the intended recipient at the following address or such other address as that party may specify in writing:

CITY: City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

With Copies to:  
Director Parks and Recreation  
City of San Antonio  
P.O. Box 839966

San Antonio, Texas 78283-3966  
And  
Director Capital Improvement Management Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

And  
Stephen Whitworth  
Assistant City Attorney  
P.O. Box 839966  
San Antonio, Texas 78283-3966

SOAR:  
Gordon V. Hartman  
Sports, Outdoor and Recreation (Soar) Park  
1202 W. Bitters, Bldg. 1, Suite 1200,  
San Antonio, Texas 78216

With Copy to:  
Mr. Ronald W. Hagauer  
1602 N. Loop 1604 W., Suite LL-102  
San Antonio TX 78248

ESCROW AGENT:  
Broadway National Bank  
1177 NE Loop 410  
San Antonio TX 78217

(c) This Agreement together with the Funding Agreement contains all the covenants, agreements and understandings between the parties and shall supersede all prior covenants, conditions, agreement and understandings between CITY, SOAR and Escrow Agent with respect to the establishment of the Escrow Account and all other matters contained in this Agreement. Without limiting the foregoing, if there is a conflict between the terms and provisions of the Funding Agreement and the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control.

(d) This Agreement may not be altered, amended, modified or waived in any respect unless the same shall be in writing and executed by all of the parties hereto.

(e) This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their respective heirs, legal representatives, successors and assigns.

(f) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.

(g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute but one instrument. Facsimile signatures shall be deemed original signatures for all purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and effective as of the date first stated above.

**CITY:**

**CITY OF SAN ANTONIO**

**SOAR:**

**SPORTS, OUTDOOR AND RECREATION  
(SOAR) PARK**

By: \_\_\_\_\_  
Sheryl Sculley  
City Manager

By: \_\_\_\_\_  
Name: Gordon V. Hartman  
Position: President

ATTEST: \_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY

**ESCROW AGENT:**

**BROADWAY NATIONAL BANK**

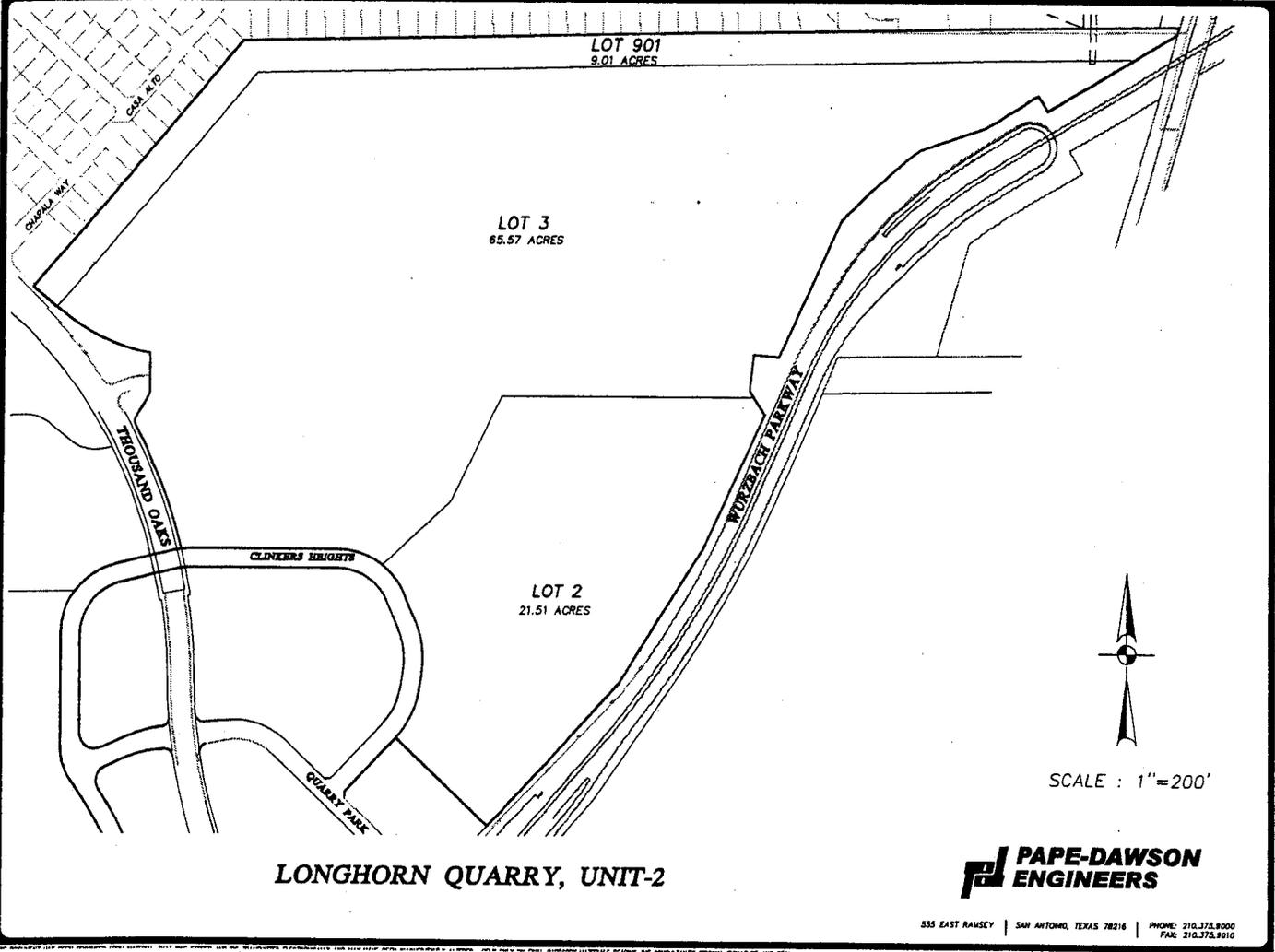
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**

Park Tract

Date: Aug 22, 2006, 11:14am User ID: JerryGarza  
File: c:\3623\20\Design\EX080821 COSA PROPERTY.dwg



**LONGHORN QUARRY, UNIT-2**

**PAPE-DAWSON  
ENGINEERS**

555 EAST RAUSEY | SAN ANTONIO, TEXAS 78216 | PHONE: 210.378.8000  
FAX: 210.378.8010

**EXHIBIT E**  
**TO**  
**FUNDING AGREEMENT**

Lease Agreement

As attached

**LEASE AGREEMENT BETWEEN THE CITY OF SAN ANTONIO AND SPORTS,  
OUTDOOR AND RECREATION (SOAR) PARK**

This Lease Agreement (hereinafter called "Lease Agreement") is made and entered into by the City of San Antonio, a Texas Municipal Corporation, hereinafter referred to as City, acting by and through its City Manager pursuant to Ordinance No. \_\_\_\_\_, passed and approved on August \_\_, 2008, and the Sports, Outdoor And Recreation (Soar) Park, hereinafter referred to as Tenant, a Texas non-profit corporation. City and Tenant are sometimes referred to herein collectively as the "Parties", and singularly as a "Party".

**RECITALS**

WHEREAS, City held a Bond Election on May 12, 2007 ("Bond Election") and received approval from the voters to fund a variety of Parks, Recreation, Open Space, and Athletics Improvements (Proposition 3 on the ballot); and

WHEREAS, among the Parks, Recreation, Open Space, and Athletics Improvements projects approved was a "Regional Sportsplex and Special Needs Park" (the "Project"); and

WHEREAS, the official brochure for the Bond Election described the Project as follows: "Regional Sportsplex and Special Needs Park LF: Development of a soccer field complex and a special needs park

WHEREAS, City is bound to comply with the terms and conditions contained in the official brochure for the Bond Election as presented to the voters; and

WHEREAS, City has identified Tenant as the appropriate party to contract with for the fulfillment of the public purpose identified in the official brochure for the Bond Election developing and operating the Project in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, Tenant and City have entered into a Funding Agreement dated September \_\_, 2008 ("City Funding Agreement") to provide funds for the purchase of the real property depicted in EXHIBIT "A" and construction of improvements thereon ; and

WHEREAS, Tenant and Bexar County have entered into a Grant and Development Agreement dated September \_\_, 2008 ("County Funding Agreement") to provide for the construction of improvements on the real property depicted in EXHIBIT "A"; and

WHEREAS, a special election called by Bexar County, pursuant to Sections 334.103 and 334.252 of the Texas Local Government Code, was held on May 10, 2008 and was approved by the voters; and the sales tax collected thereunder will be the source of funds for the County Funding Agreement; and

WHEREAS, Tenant and City have identified a proposed location for the construction of the Project and Tenant has contractual rights to purchase the real property depicted in EXHIBIT "A" which will be the subject property of this Lease Agreement; and

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

## I. TERM

1.1 The term of this Lease Agreement shall commence on the Effective Date and terminate fifty (50) years after the Effective Date ("Term") unless terminated earlier as provided herein.

## II. DEMISE OF LEASED PREMISES AND RENT

2.1 City, for and in consideration of the covenants and promises herein contained to be kept, performed and observed by Tenant, does hereby lease and demise to Tenant, and Tenant does hereby lease and accept from City for the Term, the real property owned by City and identified in EXHIBIT "A" attached hereto (hereinafter referred to as "Leased Premises").

2.2 Tenant has had full opportunity to examine the Leased Premises and agrees that no representations respecting the conditions of the Leased Premises and no promises to alter, repair or improve the Leased Premises, either before or after the execution hereof, have been made by City to Tenant. Tenant hereby accepts the Leased Premises in its present condition, AS IS, WHERE IS, WITH ALL FAULTS, as suitable for the purpose of conducting the Project.

## III. USE AND OPERATION

3.1 The Leased Premises shall be used by Tenant only for the following purposes and for no other purposes:

- Operation of a regional soccer park for amateur athletic tournaments, amateur league play and other athletic competitions along with practice fields for same;
- The sale of appropriate merchandise, food and beverages; and
- Operation of a special needs park.

3.2 The consumption, possession or sale of alcoholic beverages is prohibited on the Leased Premises during any activity primarily involving youths such as youth soccer tournaments and regular hours for the special needs park. The consumption, possession or sale of alcoholic beverages will be allowed for special events and after hour events held at the Leased Premises.

3.3 Tenant shall establish minimum hours and days of operation for the special needs park, such hours and days of operation to be subject to approval by City. Tenant shall be allowed to close the Leased Premises in the event of inclement weather, construction or repairs and special events. Tenant shall also establish written rules for public access privileging persons with special needs and their family members and care givers and provide such rules to City for City's review and comment.

3.4 Tenant shall hold its fields open for use, subject to reasonable fees, rules and regulations, by the general public and amateur athletic leagues for their use. Any arrangement with a third-party athletic organization which will restrict the use of the fields to one entity for a substantial period of time shall be subject to the written approval of City.

3.5 Tenant 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), as amended. Tenant covenants and agrees that it will comply with all the applicable terms and obligations contained therein, and, as part of its indemnification of City,

indemnify, hold harmless and defend City from all claims which might arise from Tenant's activities under this Lease Agreement. The special needs park will be constructed to make most of the activities and areas accessible and useable for a majority of the children and adults with special needs, provided, however, no person with special needs shall be refused admittance.

#### **IV. CHARGES TO PUBLIC FOR USE OF LEASED PREMISES**

4.1 Tenant shall have the right to set reasonable use fees for use of its soccer fields for practice, tournaments or competitions and shall charge such fees uniformly to all members of the public or leagues requesting to make use of the soccer fields.

4.2 Tenant shall adopt a policy allowing for the free use of its soccer fields by the general public during such times as they are not reserved for exclusive use. Tenant shall send a copy of the general public access policy to City for review and comments.

4.3 Tenant shall not charge an admission fee to individuals attending the special needs park but may charge a fee to hold an event at the special needs park.

4.4 Conditioned on the written approval of City, Tenant shall have the right to enter into use agreements with Northeast Independent School District and other school districts for (i) use of the Leased Premises by the students of Northeast Independent School District and other school districts and (ii) reciprocal parking rights with Northeast Independent School District.

#### **V. CONSIDERATION**

5.1 Tenant shall pay no rent to City for the lease and use of the Leased Premises. Tenant shall devote any revenue derived from the operation of the Project to the ongoing renovation, maintenance and operation of the Project.

5.2 Tenant shall keep full and accurate books and records showing all of the revenue and expenses of the Project, and City shall have the right through its representatives, and at all reasonable times, to inspect and audit the books and records for the Project. Tenant agrees that all such records and instruments are and will be made available to City within Bexar County for at least a two year period following the end of the Term.

#### **VI. IMPROVEMENTS**

6.1 After completion of the initial improvements to the Leased Premises as is generally set forth on EXHIBIT "B" ("Initial Improvements"), Tenant shall not have the right to make any major capital improvements which will involve a material change in the use of the Leased Premises without the written consent of City. Tenant shall have the right to make minor capital improvements to keep and maintain the Leased Premises in good working order.

#### **VII. FIXTURES, PERSONAL PROPERTY AND SIGNS**

7.1 Any trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property of Tenant removable without substantial damage to the Leased Premises shall remain the property of Tenant and City agrees that Tenant shall have the right, at any time, and from time to time, to remove any and all of its trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property which it may have stored or installed in

the Leased Premises, including but not limited to, counters, booths, shelving, mirrors, and other movable personal property. Tenant at its expense, shall immediately repair any damage occasioned to the Leased Premises by reason of the removal of any such trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property, and upon expiration or earlier termination of this Lease Agreement, for any reason, shall leave the Leased Premises in the same condition as immediately prior to such installation, or better in a good, neat and clean condition, free of debris and broom clean condition. All trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property installed in or attached to the Leased Premises by Tenant must be new or in good, serviceable and attractive condition when so installed or attached. If Tenant does not remove said trade fixtures, equipment, signs, furniture, furnishings, floor covering and other personal property promptly upon the termination of this Lease Agreement, City may effect such removal and make any repairs necessitated thereby. The cost therefor shall be immediately due and payable from Tenant hereunder. Tenant agrees that any such trade fixtures, equipment, signs, etc., not removed within thirty (30) days after the termination of this Lease Agreement shall become City's property without the necessity of legal action on City's part and to be disposed of by City at a private or public sale without notice or any liability whatsoever to Tenant. Further, Tenant will repair any damage caused by such removal and make any repairs necessitated thereby.

7.2 Tenant will be solely responsible for all costs associated with the permits, approvals, manufacture, installation and on-going maintenance of any and all signage.

7.3 No sign shall be placed on the Leased Premises which will in any manner cause structural damage or injury to the building or injury to any persons on or about the Leased Premises.

7.4 Whenever Tenant's signage is repaired, removed or replaced, Tenant agrees to restore the area(s) where signage existed to its original condition or better.

7.5 Except for Sponsorship Signage, any signage identifying the special needs park, the soccer complex or the facility as a whole shall prominently acknowledge the City and County sponsorship of the Leased Premises.

7.6 Tenant may sell advertisement, sponsorship and naming rights for the Project ("Sponsorship Signage"), provided however, GRANTEE, shall comply with naming parameters contained SECTION 10.03 of the County Funding Agreement. Any revenue derived from sales of advertisement, sponsorship and naming rights shall be used for ongoing construction, maintenance and operation of the Leased Premises, including the establishment or replenishment of reserve funds. No sale of sponsorship and naming rights shall give any third party any control over the use of the Premises.

## VIII. REPAIR AND MAINTENANCE

8.1 Tenant agrees, at Tenant's sole cost and expense, to maintain and keep the Leased Premises in good working order and repair and in good, clean, safe and sanitary condition (usual wear and tear, acts of God, casualty, or unavoidable accident, only excepted). Tenant shall not commit or permit any waste of said Leased Premises.

8.2 Tenant shall maintain the athletic fields to meet the minimum standards of the relevant national amateur athletic associations. Tenant will maintain the special needs park in a first class

standard for parks of its type.

## **IX. UTILITIES AND SECURITY SERVICES**

9.1 Tenant shall provide for and pay directly to the utility companies, all 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 Leased Premises. City shall not be liable to Tenant 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.

9.2 Tenant agrees to comply with all water use restrictions imposed by all applicable authorities including City, San Antonio Water System (SAWS) or Edward's Aquifer Authority (EAA).

## **X. LIENS**

10.1 If, because of any act or omission of Tenant or anyone claiming through or under Tenant, any valid mechanic's or other involuntary lien for the payment of money shall be filed against the Leased Premises, Tenant shall, at its expense, cause the same to be canceled and discharged of record or bonded against, within one hundred (100) days after the date of filing and receipt by Tenant and in any event remove such lien within six (6) months from the date of filing and receipt by Tenant. City shall have the right, at its own cost and expense, to initiate and prosecute any proceeding permitted by law for the purpose of obtaining an abatement or otherwise contesting the validity or amount of account relating to the non-payment or dispute of labor or material costs furnished in connection with the construction or subsequent repairs, modifications or judgments thereto.

## **XI. LAWS, ORDINANCES, RULES AND REGULATIONS**

11.1 Tenant covenants and agrees that Tenant and its employees will observe and comply with all laws of the United States of America, the State of Texas, and ordinances, orders, rules and regulations set by City which are applicable to the Leased Premises.

11.2 Subject to Tenant's right to conduct its business, Tenant shall not injure, or deface the Leased Premises, nor make any use thereof which is contrary to any law or ordinance, nor permit any act or thing to be done on the Leased Premises which may make void or voidable or increase the rates of any insurance covering the Leased Premises; nor cause or permit the omission of any excessive noise or odor from the Leased Premises by the operation of any instrument, apparatus, equipment therein, or other means which may, in City's judgment, be deemed offensive or disturbing in nature.

11.3 Tenant will not use or permit the use of the Leased Premises for partisan political activities, including City, County, State or Federal campaigns, unless Tenant establishes a policy whereby the Leased Premises will be made available under the same terms to any person requesting use of the Leased Premises for such purposes regardless of the person's political affiliations. Said policy must be reviewed and approved by City prior to the holding of any such partisan political activities although fund-raising events for the operation, restoration and

renovation of the Leased Premises held on the Leased Premises without the prior approval from City are allowable.

11.4 Tenant agrees to comply with the regulations or requirements of any insurance underwriter, inspection bureau, or similar agency, with respect to the Leased Premises.

## XII. INSURANCE

12.1 Within thirty (30) days of the Effective Date, Tenant shall furnish copies of all required endorsements and an original completed certificate(s) of insurance to City's Parks and Recreation Department, which shall be clearly labeled "Sports, Outdoor And Recreation (Soar) Park" 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. City will not accept a 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 City.

12.2 City reserves the right to review the insurance requirements of this Section during the Term 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 Lease Agreement. In no instance will City allow modification whereupon City may incur increased risk.

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

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	

- |  |   |
|--|---|
| 3. Comprehensive Automobile Liability*   | Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent |
| a. Owned/Leased Vehicles   |   |
| b. Non-owned Vehicles  |   |
| c. Hired Vehicles  |   |
| 4. Property Insurance: For physical damage to the property of Tenant, including improvements and betterment to the Licensed Premises, if applicable. | Coverage for a minimum of eighty percent (80%) of the replacement cost of Tenant's property.                |

\*If Applicable

12.4 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 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 or the underwriter of any such policies). Tenant 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. Tenant shall pay any costs incurred resulting from said changes.

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

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

- A. Name City and its officers, officials, employees, and elected representatives as additional insureds by endorsement, with respect to operations and activities of, or on behalf of, the named insured performed under contract with City, with the exception of the workers' compensation and professional liability policies;
- B. Provide for an endorsement that the "other insurance" clause shall not apply to City of San Antonio where City is an additional insured shown on the policy;
- C. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of City; and
- D. Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

12.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Tenant shall provide a replacement certificate of insurance and applicable endorsements to City.

12.7 If Tenant fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, City may obtain such insurance, and Tenant's shall reimburse City for such insurance; however, procuring of said insurance by City is an alternative to other remedies City may have, and is not the exclusive remedy for failure of Tenant to maintain said insurance or secure such endorsement.

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

12.9 It is agreed that Tenant's insurance shall be deemed primary with respect to any insurance or self insurance carried by City for liability arising out of operations under this Lease Agreement.

12.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Lease Agreement.

### **XIII. INDEMNITY**

**13.1 Tenant covenants and agrees to INDEMNIFY, DEFEND, and HOLD HARMLESS, City and the elected officials, employees, officers, directors, and representatives of 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 City directly or indirectly arising out of resulting from or related to Tenant's activities under this Lease Agreement, including any acts or omissions of Tenant, any agent, officer, director, representative, employee, consultant or subcontractor of Tenant, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this Lease 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 TENANT 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 CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

**13.2 The provisions of this INDEMNITY are solely for the benefit of the Parties and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Tenant shall notify City in writing within 72 hours of any claim or demand against City or Tenant known to Tenant related to or arising out of Tenant's activities under this Lease Agreement and shall see to the investigation and defense of such claim or demand at Tenant's cost. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Tenant of any of its obligations under this paragraph.**

#### **XIV. REPORTS**

14.1 Tenant shall inform the Director of Parks and Recreation Department, in writing, of Tenant's current officers and promptly notify the Director of Parks and Recreation Department, in writing, of any changes thereto. Annually, beginning on January 25, 2010 and each 25<sup>th</sup> day of January thereafter during the Term, Tenant will furnish to the Director of Parks and Recreation Department a report and financial statement including the following information:

- Gross receipts from concessions operation, advertising and cash donations for the previous calendar year;
- Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous calendar year;
- Certificate of insurance including endorsements (required year-round);
- Names, addresses, phone numbers and zip codes of all current board members and officers of Tenant;
- Number of tournaments and special events held in the previous calendar year (briefly describe); and
- Copy of the organization's most recent annual financial report.

14.2 Tenant shall allow the City Manager or his/her designee to serve as a liaison to Tenant's Board of Directors. Such liaison shall have rights to receive notice of and attend all meetings of the Board of Directors and have full right of access to Tenant's books and records. City Manager shall give notice to GRANTEE of the person appointed as his/her designee, and any changes thereto, according to the notice provision of Article XXIV below.

#### **XV. HOLDING OVER AND QUIET ENJOYMENT**

15.1 Should Tenant hold over the Leased Premises, or any part thereof, after the expiration of the Term, such holding over shall constitute and be construed as a lease from month to month only. The inclusion of the preceding sentence shall not be construed as City's consent for Tenant to hold over. CITY warrants that Tenant shall have peaceful possession and quiet enjoyment of the Leased Premises during the Term.

#### **XVI. SURRENDER**

16.1 Upon the expiration of the Term or termination of this Lease Agreement, Tenant shall surrender and deliver up the Leased Premises to City in good condition and repair, reasonable and ordinary wear and tear, damage by fire, casualty, taking by condemnation or act of public authority excepted.

#### **XVII. ASSIGNMENT AND SUBLEASE**

17.1 Tenant shall not sublease, assign, mortgage, or pledge this Lease Agreement or any part of the Leased Premises or any interest therein without first obtaining the written consent of City.

Any such action by Tenant without the written consent of City shall be null and void, and shall, at the option of City terminate the Lease Agreement.

### **XVIII. DEFAULT**

18.1 In addition to any other events of default specifically enumerated elsewhere in this Lease, to include, but not be limited to, the breach, default and violation of a covenant, it shall be an event of default if Tenant commits a default under the County Funding Agreement and the County Funding Agreement is terminated.

18.2 No default by either Party hereto shall result in a termination or limitation of any rights of such Party hereunder unless and until the other Party shall have notified the defaulting Party in writing of said default, and (i) the defaulting Party shall have failed to cure said default within sixty (60) days after the receipt of said written notice and (ii) if the default is such that it cannot be cured within sixty (60) days after the receipt of said written notice then the defaulting Party shall have failed to commence to cure said default within sixty (60) days after the receipt of said written notice and thereafter diligently proceed to cure such default.

### **XIX. TERMINATION AND OTHER REMEDIES**

19.1 Upon the occurrence of an event of default by Tenant as heretofore provided, City may, at its option, declare this Lease Agreement and all rights and interest created by it to be terminated, provided, however, City may not exercise such remedy without first passage of an ordinance by the City Council of the City of San Antonio authorizing the City Manager to terminate the Lease Agreement at a regular scheduled meeting for which City has provided Tenant written notice two (2) weeks in advance of such meeting. Upon City electing to terminate this Lease, this Lease shall cease and come to an end as if that were the day originally fixed herein for the expiration of the term hereof.

19.2 Upon termination of this Lease Agreement as provided in Section 19.1, Tenant shall quit and peacefully surrender the Leased Premises to City, and City, upon or at any time after such termination, may, without further notice, enter upon and re-enter the Leased Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Leased Premises.

19.3 Any termination of this Lease Agreement as provided in Section 19.1 shall not relieve Tenant from the payment of any sums that shall then be due and payable or become due and payable to City hereunder, or any claim for damages then or therefore accruing against Tenant hereunder, and any such sum or sums or claim for damages by any remedy provided for by law, or from recovering damages from Tenant for any default thereunder.

19.4 If City shall terminate this Lease and take possession of the Leased Premises, Tenant, and those holding under Tenant, shall forthwith remove their trade fixtures, equipment, signs, furniture, furnishings, other personal property and non-structural improvements (hereafter collectively "good and effects") from the Leased Premises. If Tenant or any claimant shall fail to effect the removal of the goods and effects within thirty (30) days after such termination, then Tenant agrees that any such property left shall become the property of City whereupon City may,

without liability to Tenant or those claiming under Tenant, remove such goods and effects and store the same for the account of Tenant or of the owner thereof at any place selected by City with all costs for said removal and storage to be borne by Tenant or, at City's option, City may retain or dispose of Tenant's goods and effects, without notice, at a private or public sale and without liability to Tenant or those claiming under Tenant.

19.5 All rights, options and remedies of City and Tenant contained in this Lease Agreement shall be cumulative of the other, and City and Tenant shall have the right to pursue any one or all of such remedies or any other remedy or relief available at law or in equity, whether or not stated in this Lease Agreement. No waiver by City or Tenant of a breach of any of the covenants, conditions, or restrictions of this Lease 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.

## **XX. CONDEMNATION**

20.1 In the event that the Leased Premises are taken, in whole or in part, by any governmental authority, then (i) Tenant may terminate and cancel this Lease Agreement by giving City notice in writing within sixty (60) days of Tenant's receipt of notice of the condemnation and said termination shall be effective upon the date that the condemning authority takes possession of the condemned property, and thereupon both Parties shall be relieved of any further obligation under this Lease Agreement or (ii) Tenant may continue this Lease Agreement and all rights, title, and interest under the Lease Agreement shall cease as to that portion of the Leased Premises so taken or transferred vests in the condemning authority.

## **XXI. ACCESS TO LEASED PREMISES**

21.1 Tenant agrees that City, its agents, and employees may so often as is reasonable and, to the extent practicable, upon not less than 24 hours advance notice, enter upon the Leased Premises during the Term for the purpose of maintaining or inspecting the same. In case of emergency, City shall give such notice, if any, as is reasonable under the circumstances. When entering the Leased Premises, City shall not unreasonably interfere with Tenant's use and enjoyment of the Leased Premises.

## **XXII. MISCELLANEOUS**

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

22.2 This Lease Agreement, together with the authorizing ordinance, constitutes the entire agreement between the Parties. No amendment, modification, or alteration of the terms of this Lease Agreement shall be binding unless the same is in writing, dated subsequent to the date

hereof and duly executed by the Parties.

22.3 Tenant 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 Leased Premises, or upon Tenant, or upon the business conducted on the Leased Premises, or upon any of Tenant's property used in connection therewith; and Tenant shall maintain in current status all federal, state and local laws and permits required for the operation of the business conducted by Tenant.

22.4 Any discrimination by Tenant or its agents or employees on account of race, color, sex, age, religion, handicap, or national origin, in employment practices or in the use of or admission to Leased Premises, is prohibited.

### XXIII. NO SUBSTANTIAL INTEREST

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

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

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

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

### XXIV. NOTICES

24.01 For purposes of this Lease Agreement, all official communications and notices among the Parties shall be deemed sufficient if in writing and either by (i) mailed, registered or certified mail, postage prepaid, (ii) hand delivery with proof of delivery or (iii) or by overnight courier to the addresses set forth below:

City: City Clerk  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

With Copies to:  
Director of Parks and Recreation

City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

And

Director Capital Improvement Management Services  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Tenant: Mr. Gordon V. Hartman  
Sports, Outdoor and Recreation (Soar) Park  
1202 W. Bitters, Bldg. 1, Suite 1200,  
San Antonio, Texas 78216

With Copies to:

Mr. Ronald W. Hagauer  
Attorney at Law  
1602 N. Loop 1604 W., Suite LL-102  
San Antonio TX 78248

Either Party may change the foregoing addresses by notice given pursuant to this paragraph.

#### **XXV. PARTIES BOUND**

25.1 This Lease Agreement shall be binding upon and inure to the benefit of the Parties, their respective legal representatives, successors and assigns.

#### **XXVI. APPROVAL OF CITY**

26.1 Whenever this Lease Agreement calls for approval by City, unless otherwise explained herein, such approval shall be evidenced by the written approval of the City Manager or his/her designee, unless City Council approval by charter, code or ordinance is required herein.

#### **XXVII. RELATIONSHIP OF PARTIES**

27.1 Nothing contained herein shall be deemed or construed by the Parties 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.

#### **XXVIII. TEXAS LAW TO APPLY**

28.1 This Lease 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.

#### **XXIX. GENDER**

29.1 Words of any gender used in this Lease 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.

**XXX. CAPTIONS**

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

**XXXI. AUTHORITY**

31.1 If Tenant is a corporation, the persons executing this Lease Agreement on behalf of Tenant hereby covenants and warrants that: Tenant is a duly constituted non-profit corporation qualified to do business in Texas and such person is duly authorized by the board of directors of such corporation to execute and deliver this Lease Agreement on behalf of the corporation.

**XXXII. FORCE MAJEURE.**

32.1 In the event Tenant shall be delayed or hindered or prevented from the performance of any obligation required under this Lease Agreement by reason of strikes, lockouts, inability to procure labor or materials, power failure, fire or other casualty, acts of God, weather-related delays impairing construction activities, restrictive governmental laws or regulations, riots, insurrection, war or any other reason not within the reasonable control of Tenant, then the performance of such obligation shall be excused for the period of such delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

**EXECUTED IN DUPLICATE ORIGINALS**, each of which shall have the full force and effect of an original this the \_\_\_ day of August, 2008 ("Effective Date").

**CITY OF SAN ANTONIO**

**SPORTS, OUTDOOR AND RECREATION  
(SOAR) PARK**

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

Sheryl Sculley

City Manager

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

Name: Gordon V. Hartman

Title: President

ATTEST: \_\_\_\_\_

CITY CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
CITY ATTORNEY



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

Agenda Item # 27  
 Council Meeting Date: 9/4/2008  
 RFCA Tracking No: R-3744

**DEPARTMENT:** Parks & Recreation

**DEPARTMENT HEAD:** Xavier Urrutia

**COUNCIL DISTRICT(S) IMPACTED:**  
 Council District 10

**SUBJECT:**  
 Funding and Lease Agreements for Regional Sportsplex and Special Needs Park

**SUMMARY:**

This ordinance authorizes the execution of a Funding Agreement with the Sports, Outdoor and Recreational Park, (SOAR) for the expenditure of up to \$6,200,000.00 for the development of a regional sportsplex and special needs park located at the northeast corner of the intersection of Wurzbach Parkway and Thousand Oaks in City Council District 10. This ordinance will also authorize a Lease Agreement with SOAR for the operation and maintenance of the regional sportsplex and special needs park.

**BACKGROUND INFORMATION:**

This ordinance will authorize a Funding Agreement with SOAR, a non-profit organization created by the Gordon Hartman Family Foundation, for the development of a regional sportsplex and a special needs park on approximately 96.19 acres of property. The estimated value of this property is \$11,343,750.00.

The sportsplex will provide approximately 14 soccer fields with the capacity to host regional and state tournaments with associated public amenities and parking. The special needs park will provide outdoor recreation for individuals with mental and physical disabilities including specialized recreational equipment. SOAR is being recommended as the designated entity to develop this community facility for residents and families. This project allows for the City to partner with a non-profit entity to construct a facility for public use.

On May 12, 2007, San Antonio citizens approved the 2007 Park Bond Program which included \$6,200,000.00 for a Regional Sportsplex and Special Needs Park. The total cost for this project is currently estimated at \$19,443,750.00. Under the terms of the Funding Agreement up to \$4,100,000.00 of City bond funds will be provided for property purchase costs and the balance of approximately \$2,100,000.00 will be reimbursed to SOAR for project design and construction costs. \$5,000,000.00 will be provided from the Bexar County Venue Tax Program and SOAR will raise the remaining funds from public, corporate and individual donations.

Funding Provider	Source	Funding Amount	Funding Designation
City of San	2007 Park Bond	\$4,100,000.00	Property acquisition costs

Antonio	Program		
City of San Antonio	2007 Park Bond Program	\$2,100,000.00	Project design and construction costs
Bexar County	Bexar County Venue Tax Program	\$5,000,000.00	Project construction costs
SOAR	Public, Corporate, Individual Donations	\$8,243,750.00	Project expenses not funded through City of San Antonio or Bexar County
	<b>PROJECT BUDGET</b>	<b>\$19,443,750.00</b>	

The Funding Agreement will end upon completion of the construction project, no later than July 1, 2010. SOAR will retain ownership of the property until the completion of the construction project, but not later than July 1, 2010, at which time SOAR will convey the property to the City.

This ordinance will also authorize a Lease Agreement with SOAR for the operation and maintenance of the regional sportsplex and special needs park. At the time of the conveyance to the City, SOAR and the City will enter into a 50 year Lease Agreement whereby the City will lease the property back to SOAR to operate and manage the sportsplex and special needs park. The Lease Agreement is contingent upon SOAR's completion of all development, construction, and conveyance of the property. SOAR will not pay rent; however, revenues from the premises will be devoted to the renovation, operation and maintenance of the facilities.

#### **ISSUE:**

Citizens approved \$6,200,000.00 within the 2007 Park Bond Program for the development of a regional sportsplex and special needs park. This proposed Funding Agreement will provide up to \$6,200,000.00 to the Sports, Outdoor and Recreational Park, as part of the funding to develop and operate this voter approved project. At the completion of the Funding Agreement, a 50 year Lease Agreement will commence for the operation and maintenance of the sportsplex and special needs park.

#### **ALTERNATIVES:**

Funds were approved in the 2007 Park Bond Program for development of this project. The recommended Funding and Lease Agreements allow the Sports, Outdoor and Recreational Park to develop, construct, and maintain the sportsplex and special needs park. The available alternative is for the City to purchase the property, design and construct the sportsplex and the special needs park, and operate and maintain these facilities. At a total project cost of approximately \$19,443,750.00, the City would have to find additional sources for the funding needed to complete the project or reduce the project scope.

#### **FISCAL IMPACT:**

The 2007 Park Bond Program includes \$6,200,000.00 in funding for the development of a regional sportsplex and special needs park. This project is listed and approved in the FY 2008-2013 Adopted Annual Capital Budget. Funds in the amount of \$6,200,000.00 were previously appropriated by City Council for this capital project through Ordinance 2008-01-31-0066. City funds will be utilized as follows:

\$4,100,000.00 for Land Acquisition  
 \$2,100,000.00 for Project Design and Construction Costs

SOAR will be responsible for all operation and maintenance costs associated with this project.

**RECOMMENDATION:**

Staff recommends approval of these Funding and Lease Agreements with the Sports, Outdoor and Recreational Park (SOAR) for the expenditure of up to \$6,200,000.00 for development of a sportsplex and special needs park.

The Discretionary Contracts Disclosure Form required by the Ethics ordinance is attached.

**ATTACHMENT(S):**

File Description	File Name
<a href="#">Discretionary Contract Form</a>	#3744 SOAR Discretionary Contracts Disclosure Form.pdf
<a href="#">Voting Results</a>	
<a href="#">Ordinance/Supplemental Documents</a>	200809040764.pdf

**DEPARTMENT HEAD AUTHORIZATIONS:**

Janet Martin Assistant Director Parks & Recreation  
Debbie Sittre Assistant Director Capital Improvements Management Services

**APPROVED FOR COUNCIL CONSIDERATION:**

Pat DiGiovanni Deputy City Manager