

AN ORDINANCE **2010-02-18-0147**

AUTHORIZING TWO FUNDING AGREEMENTS WITH EASTSIDE CHRISTIAN ACTION GROUP FOR THE EXPENDITURE OF UP TO \$860,500.00 FOR THE DESIGN AND CONSTRUCTION OF AN OUTDOOR PUBLIC GATHERING VENUE TO BE LOCATED NORTH OF SALADO CREEK IN MARTIN LUTHER KING PARK, A 2007 PARK BOND PROJECT, AND FOR THE CONSTRUCTION, PURCHASE AND INSTALLATION OF ADDITIONAL SPECTATOR SEATING WITHIN THEIR LICENSED PREMISES AT MARTIN LUTHER KING PARK AND THE WHEATLEY HEIGHTS AREA, A CERTIFICATES OF OBLIGATION FUNDED PROJECT, LOCATED IN COUNCIL DISTRICT 2.

* * * * *

WHEREAS, Bexar County voters in May 2008 as part of the Bexar County Venue Tax Program awarded the Eastside Christian Action Group (ECAG) \$7,500,000.00 for development of a sports complex in Martin Luther King Park and in the Wheatley Heights area; and

WHEREAS, pursuant to Ordinance 2009-06-18-0532, ECAG entered into a License Agreement with the City to develop and maintain approximately 170 acres in Martin Luther King Park and in the Wheatley Heights area; and

WHEREAS, a Funding Agreement in the amount of \$650,000.00 in Certificates of Obligation Funds will allow the City to partner with ECAG to increase visitor and spectator capacity at ECAG's proposed sports stadium and in other City-approved locations within ECAG's licensed premises by providing for the construction, purchase and installation of seating within ECAG's proposed sports complex; and

WHEREAS, a separate Funding Agreement in the amount of \$210,500.00 in 2007 Park Bond Funds will allow the City to partner with ECAG to design and construct an outdoor public gathering venue, such as an amphitheater or pavilion, to be located north of Salado Creek in Martin Luther King Park for entertainment and community events; and

WHEREAS, the venue will be available for public use and ECAG will be responsible for operation of the facility; and

WHEREAS, the Funding Agreements are for twenty-five year terms and will expire in February 2035; and

WHEREAS, ECAG accepts full responsibility to manage and provide all of the activities and services necessary to complete these projects; **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 hereby authorized to execute two Funding Agreements with Eastside Christian Action Group for the expenditure of up to \$860,500.00 for the design and construction of an outdoor public gathering venue to be located north of Salado Creek in Martin Luther King Park and for the construction, purchase and installation of additional spectator seating within their licensed premises at Martin Luther King Park and the Wheatley Heights area. A copy of the Funding Agreements are attached hereto and incorporated herein for all purposes as **Attachment I and II.**

SECTION 2. The budget in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 26-00470, M.L. King Park, shall be revised by increasing\decreasing the SAP WBS Elements as follows:

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION 0 (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
26-00470-01-04	Consultant Contingency	5402010	Cap Prog Admin Costs	\$0.00	\$24.30	\$24.30
26-00470-04-01	Environmental Cap Admin Costs	5201140	Construction Costs	-\$230,794.99	\$230,794.99	\$0.00
26-00470-04-01	Environmental Cap Admin Costs	5402010	Cap Prog Admin Costs	\$1,672.54	-\$1,655.17	\$17.37
26-00470-04-02	Environmental Costs	5201040	Fees to Prof Cont	\$1,700.00	-\$1,437.00	\$263.00
26-00470-05-02-01	City Construction	5201140	Construction Costs	\$161,000.00	\$49,585.73	\$210,585.73
26-00470-05-01	Advertising /Printing	5201150	Advertising Costs	\$3,000.00	-\$3,000.00	\$0.00
26-00470-01-03	Consultant Contract Fees	5201170	Engineering Costs	\$30,000.00	-\$30,000.00	\$0.00
26-00470-01-07	Cap Program Admin Cost	5402010	Cap Prog Admin Costs	\$37,741.31	\$1,287.15	\$39,028.46
26-00470-05-06	Material Testing	5201040	Fees to Prof Cont	\$5,000.00	-\$5,000.00	\$0.00
26-00470-05-07	Project Contingency	5201140	Construction Costs	\$240,600.00	-\$240,600.00	\$0.00
			TOTALS	\$249,918.86	\$0.00	\$249,918.86

SECTION 3. The budget in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 26-00573, MLK/Wheatley Heights Sportsplex, shall be revised by increasing\decreasing the SAP WBS Elements as follows:

WBS NO.	WBS NAME	G/L	G/L NAME	CURRENT PLAN VERSION 0 (Optional)	PLAN VERSION 0 REVISION/ Appropriation	REVISED PLAN VERSION 0 (Optional)
26-00573-01-02	Design Cost	5201040	Fees to Pro.	\$58,500.00	-\$58,500.00	\$0.00
26-00573-05-02	Construction Costs	5201140	Construction Costs	\$585,000.00	\$65,000.00	\$650,000.00
26-00573-05-04	Adminstration Charge	5402010	Cap. Admin Cost	\$6,500.00	-\$6,500.00	\$0.00
			TOTALS	\$650,000.00	\$0.00	\$650,000.00

SECTION 4. The amount of \$210,500.00 in SAP Fund 45099000, General Obligation Capital Projects, SAP Project Definition 26-00470, M.L. King Park, is authorized to be encumbered and made payable to Eastside Christian Action Group for reimbursement of design and construction costs.

SW/mgc
02/18/10
Item # 31

SECTION 5. The amount of \$650,000.00 in SAP Fund 43099000, Certificates of Obligation Capital Projects, SAP Project Definition 26-00573, MLK/Wheatley Heights Sportsplex, is authorized to be encumbered and made payable to Eastside Christian Action Group for reimbursement of design and construction costs.

SECTION 6. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 7. This ordinance shall become effective immediately upon passage by eight (8) or more affirmative votes of the entire City Council; otherwise, said effective date shall be ten (10) days from the date of passage hereof.

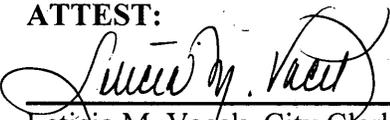
PASSED AND APPROVED this 18th day of February, 2010.



M A Y O R

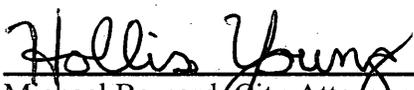
Julián Castro

ATTEST:

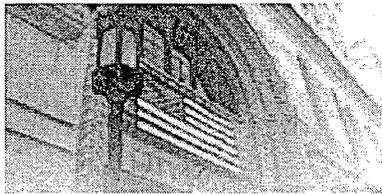


Leticia M. Vacek, City Clerk

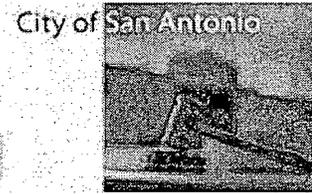
APPROVED AS TO FORM:



for Michael Bernard, City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 31

Name:	31						
Date:	02/18/2010						
Time:	04:24:48 PM						
Vote Type:	Motion to Approve						
Description:	An Ordinance authorizing two Funding Agreements with Eastside Christian Action Group for the expenditure of up to \$860,500.00 for the design and construction of an outdoor public gathering venue to be located north of Salado Creek in Martin Luther King Park, a 2007 Park Bond Project, and for the construction, purchase and installation of additional spectator seating within their licensed premises at Martin Luther King Park and the Wheatley Heights area, a Certificates of Obligation Funded Project, located in Council District 2. [Sharon De La Garza, Assistant City Manager; Xavier Urrutia, Director, Parks & Recreation]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x			x	
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodríguez	District 7	x					
W. Reed Williams	District 8		x				
Elisa Chan	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 Eastside Christian Action Group (hereinafter referred to as "GRANTEE"), a Texas Non-profit Corporation, acting by and through its officers, hereto duly authorized.

WHEREAS, a Bexar County Venue Tax Project election held May 10, 2008 was approved by the voters of Bexar County and the short term motor vehicle rental tax collected pursuant to Texas Local Government Code Section 334.103 will be a source of funds for GRANTEE for the design and construction of an amateur sports venue project; and

WHEREAS, CITY and GRANTEE entered into a License Agreement for development of a sports complex funded through the Bexar County Venue Tax program on CITY-owned property in portions of Martin Luther King Park and the Wheatley Heights flood buyout property pursuant to Ordinance No. 2009-06-18-0532, passed and approved by the City Council of the City of San Antonio on June 18, 2009; and

WHEREAS, CITY and GRANTEE wish to supplement planned improvements to the sports complex in order to further benefit the residents and visitors of the City of San Antonio; and

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 an improvement project at "M.L. King Park"; and

WHEREAS, the official brochure for the Bond Election described this project as follows: "M.L. King Park \$250,000: Development of the park north of Salado Creek to include a group pavilion and parking lot"; and

WHEREAS, as of the date of this Agreement, an amount of up to \$210,500 in 2007 Park Bond Funds is available to GRANTEE for the design and construction of an outdoor public gathering venue such as an amphitheater or pavilion to be located north of Salado Creek within GRANTEE'S licensed area at Martin Luther King Park. City will pay \$39,500 directly to the

Capital Improvement Management Services ("CIMS") Department for construction management services.

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

WHEREAS, the CITY has identified GRANTEE as the appropriate party to contract with for the fulfillment of the public purpose identified in the official bond brochure in accordance with all applicable laws of public funding and the authorizing instruments for the public funding; and

WHEREAS, CITY is the fee simple owner of the proposed location for the construction of the Project ("Real Property"); 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.

NOW THEREFORE, the Parties hereto 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 by the City Manager or designee and continue for twenty-five (25) years.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided GRANTEE receives the funding described in this AGREEMENT, GRANTEE hereby accepts full responsibility for the performance of all services and activities described in this AGREEMENT to complete the construction of the project by March 31, 2012. The project shall include the design and construction of improvements to include, at a minimum, construction of an outdoor public gathering venue such as a pavilion or amphitheater ("Project") within GRANTEE'S sports complex in Martin Luther King Park located north of Salado Creek and shall be utilized as a public venue for entertainment and community activities.

2.02 GRANTEE shall provide all necessary funding for the Project beyond the CITY'S commitment contained herein and provide evidence to CITY that all Project funds have been secured. In the event the scope of the Project is adjusted downward, the CITY shall have the option of adjusting its commitment downward accordingly.

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

2.04 The Director of the Capital Improvements Management Services ("CIMS") or his designee shall be responsible for the administration of this AGREEMENT on behalf of CITY until the completion of the Project; thereafter, the Director of the Parks and Recreation Department 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 GRANTEE shall provide to CITY their plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of CITY, acting in its capacity as grantor under this AGREEMENT. After approval by CITY, GRANTEE shall not make any substantial changes to the Plans without the prior written approval of CITY. The approvals given in this Section do 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, Texas Historical Commission, United States Army Corp of Engineers, Texas Parks and Wildlife, and Texas Commission on Environmental Quality (Article 9102).

2.07 GRANTEE shall be responsible for assessing and addressing all archaeological and environmental issues related to the Project. GRANTEE shall prepare and submit archaeological and environmental reports to CIMS in accordance with federal, state and local requirements. GRANTEE shall coordinate with CIMS to determine which environmental impacts require assessment and coordination with regulatory agencies.

2.07.01 The Project shall require cultural resources compliance under the Texas Antiquities Code. GRANTEE shall be required to obtain cultural resources clearance through Texas Historical Commission.

2.07.02 GRANTEE shall conduct a Phase I Environmental Site Assessment (ESA) and, if necessary, a Phase II Subsurface Investigation to identify and delineate the extent of potential contamination. GRANTEE shall be required to perform abatement of any contaminated areas prior to or during construction of the Project.

2.07.03 GRANTEE shall provide regulatory documentation to CIMS confirming that regulatory agencies concur with the findings and conclusions of archaeological and environmental reports.

2.08 GRANTEE shall submit all future changes to the CIMS Director or his designee for review and approval to ensure their compatibility with the Plans.

2.09 CITY shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. GRANTEE shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in

compliance with the Plans. GRANTEE shall submit said certification to the CIMS Director or his designee at the completion of the Project construction. CITY shall have the right to withhold funding until such certifications are provided.

2.10 Beginning on January 31, 2011, and on each succeeding January 31 throughout the term of the AGREEMENT, GRANTEE shall provide to CITY an annual report ("Annual Report"). The Annual Report shall include the following information with regard to the Project:

- 2.10.01 Description of all activities that occurred during the previous calendar year that utilized the Project, including activity dates, estimated attendance, days and hours that the Project is open to the general public, and the rules and regulations for use.
- 2.10.02 Evidence of insurance coverages, with CITY as additional insured, as outlined in Section 12 below.
- 2.10.03 Description of all maintenance activities for the Project, including routine, capital, and any deferred maintenance, for the previous calendar year and planned maintenance activities for the upcoming calendar year.

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 Project.

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

1. Chapter 252 and 2254 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.
2. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to CITY prior to the start of construction).
3. Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that is construction contractor submit certified payrolls to the CITY on a weekly basis utilizing the form required by the Wage and Hour office of CIMS.
4. City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No. 2007-04-12-0396.) GRANTEE may obtain authoritative interpretations and guidance for such compliance from the CITY'S Department of Economic Development (207-3900)

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of GRANTEE.

IV. OWNERSHIP, USE OPERATIONS

4.01 CITY hereby acknowledges that it is the fee simple owner of Martin Luther King Park, located at 3503 Martin Luther King Drive, San Antonio, Texas, the tract of land on which GRANTEE intends to construct the Project, and will continue to be the fee simple owner during the term of this AGREEMENT. GRANTEE shall not encumber the property where the Project is built without the prior written approval of CITY.

4.02 GRANTEE hereby acknowledges that it will construct the Project in a manner consistent with use by the general public. GRANTEE hereby agrees that the operating hours of the facility will facilitate frequent use by the general public and that the scheduling of use, rules and regulations, and other operational practices will not unreasonably limit access by the general public to use and enjoy the Project Improvements. Further, GRANTEE shall not employ, nor allow others to employ, discriminatory practices in the use of the Project Improvements. Except for special events, no admission fees shall be charged to the general public for the use of the Project facility. GRANTEE hereby agrees that the programs and use described above will continue for the term of this AGREEMENT.

4.03 GRANTEE shall be responsible for the operation of the Project facility and all associated costs will be the responsibility of GRANTEE.

4.04 The Project Improvements shall be used for the benefit of the public through use of the Project during the entire term of the Lease and the term of the Bonds in connection therewith. GRANTEE may charge reasonable and customary fees for the rental of the outdoor public gathering venue for special events. GRANTEE shall be required to obtain approval from CITY, through its Director of the Parks and Recreation Department, for the establishment and increase of rental fees.

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 shall not exceed the sum of \$210,500 plus the sum of \$39,500 that City shall pay directly to CIMS for construction oversight, for total funding by City of \$250,000.

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

5.03 Funding shall consist of reimbursements paid to GRANTEE for design and construction costs of the Project, not to exceed \$210,500 and \$39,500 to be provided to CIMS. GRANTEE'S reimbursable design costs shall not exceed twenty percent (20%) of \$210,500.

5.04 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 Projects. Records will be retained by GRANTEE in an electronic format and GRANTEE will forward the records to CITY at the end of the four year period.

6.03 In order to be reimbursed for work completed, GRANTEE shall submit to the 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 the CITY. Prior to reimbursement, CITY will have the right to inspect work completed to ensure conformance with the approved Plans.

6.04 All requests for reimbursement shall be submitted through the CITY'S Program Management Portal ("Portal"). GRANTEE shall sign a Business Level Agreement and ensure that all of its employees or representatives utilizing the Portal sign and comply with an Individual User Agreement. Such requests for reimbursement shall be completed on the Portal and/or utilizing forms and instructions approved by CIMS. Prior to the initial request for reimbursement, GRANTEE must submit a schedule of values for payment to be approved by CIMS, which approval shall not be unreasonably withheld, conditioned, or delayed. Any changes to the schedule of values once approved will be processed and approved as task orders through the portal.

6.05 CITY agrees to provide GRANTEE written notice regarding any expenditure the 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 the 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.

6.06 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) working days of receipt of completed invoice as defined above.

6.07 Upon termination of this AGREEMENT, should any expense or charge be subsequently disallowed or disapproved using the same criteria as set out in Section 6 as a result of any auditing or monitoring by CITY, GRANTEE shall refund such amount to CITY within thirty (30) working days of CITY'S written request therefore 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 in advance 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:

- Construction contract
- Construction contingencies
- Design contract
- Design contingencies

Expenditures of the 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 other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by GRANTEE'S General Contractor and shown on the approved Plans
- 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 proceedings are presently pending or to GRANTEE'S knowledge, threatened against GRANTEE.
 - (D) None of the provisions contained herein contravene or in any way conflict with the authority under which GRANTEE is doing business or with the provisions of any existing indenture or agreement of GRANTEE.

IX. ACCESSIBILITY OF RECORDS

9.01 At any time and as often as CITY may deem necessary, upon three (3) days written notice, GRANTEE shall make all of its records pertaining to this AGREEMENT available to CITY or any of its authorized representatives, and shall permit CITY or any of its authorized representatives to audit, examine, and make excerpts and/or copies of same.

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

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 GRANTEE shall provide reasonable access to CITY related to such activities, and with all other laws, regulations and ordinances related to the performance hereof.

XI. INDEMNIFICATION

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

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

XII. INSURANCE

12.01 Contractor agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 12.04 (Insurance table) from each vendor subcontracted by Contractor and provide a Certificate of Insurance and Endorsement that names the Contractor, GRANTEE, and the CITY as an additional insured.

12.02 Prior to the commencement of any work under this AGREEMENT, GRANTEE shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the CITY'S Parks and Recreation Department and Capital Improvements Management Services (CIMS) Department, which shall be clearly labeled "M.L. King Park Bond Project" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's phone number, and be mailed, with

copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this License until such certificate and endorsements have been received and approved by the CITY'S Parks and Recreation Department. No officer or employee, other than the CITY'S Risk Manager, shall have authority to waive this requirement.

12.03 The CITY reserves the right to review the insurance requirements of this Article during the effective period of this contract 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 License. In no instance will CITY allow modification whereupon CITY may incur increased risk.

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

TYPE	AMOUNT
1. Workers' Compensation	Statutory
2. Employers Liability	\$500,000/\$500,000/\$500,000
3. Commercial General Liability (Broad Form) Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact - sufficiently broad to cover disposal liability.	\$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent in umbrella or excess liability coverage
5. Builders Risk	100% of value of construction cost.

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

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

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

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

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

20.08 In addition to any other remedies the CITY may have upon GRANTEE'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time required in this AGREEMENT, the CITY shall have the right to order GRANTEE to stop work hereunder, and/or withhold any payment(s) which become due to GRANTEE hereunder until GRANTEE demonstrates compliance with the requirements hereof.

20.09 Nothing contained in this AGREEMENT shall be construed as limiting in any way the extent to which GRANTEE may be held responsible for payments of damages to persons or property resulting from GRANTEE'S or its subcontractors' performance of the work covered under this License.

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

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

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

20.13 Workers' Compensation Insurance Coverage.

(a) Definitions:

- (1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
 - (2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.
 - (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code,

Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.

- (c) The contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- (d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- (e) The contractor shall obtain from each person providing services on a project, and provide to the City:
 - (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) The contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.
- (h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Division, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being

provided for all employees of the person providing services on the project, for the duration of the project;

- (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.
- (j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Division's section of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

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 premises, 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 local, state and federal permits and approvals required for the activities under this AGREEMENT are obtained.

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

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 both CITY and GRANTEE under authority granted by formal action of the Parties' respective governing bodies.

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 automatically incorporated into this AGREEMENT without written amendment hereto, and shall become a part hereof as of the effective date of the rule, regulation or law.

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

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 hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this AGREEMENT shall be deemed to exist or to bind the Parties hereto unless same 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, to the addresses set forth below:

CITY: Director Capital Improvements Management
City of San Antonio
P.O. Box 839966
San Antonio, Texas 78283-3966

With Copies to:

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

Grantee: Frank Dunn, Project Manager
Eastside Christian Action Group
4526 Walzem Road
San Antonio, Texas 78218

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 heirs, executors, administrators, legal representatives, 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 hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the Parties hereto.

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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

CITY OF SAN ANTONIO

EASTSIDE CHRISTIAN ACTION GROUP

By: _____
Sheryl Sculley
City Manager

By: 

Frank Dunn
Executive Director

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

STATE OF TEXAS §
 §
COUNTY OF BEXAR § **FUNDING AGREEMENT**

This Agreement is hereby made and entered into by and between the CITY OF SAN ANTONIO ("City"), a Texas municipal corporation, acting by and through its City Manager pursuant to Ordinance No. _____ dated _____, and Eastside Christian Action Group ("Grantee"), a Texas Non-profit Corporation, acting by and through its officers, hereto duly authorized.

WHEREAS, a Bexar County Venue Tax Project election held May 10, 2008 was approved by the voters of Bexar County and the short term motor vehicle rental tax collected pursuant to Texas Local Government Code Section 334.103 will be a source of funds for Grantee for the construction of an amateur sports venue project; and

WHEREAS, City and Grantee entered into a License Agreement for development of a sports complex funded through the Bexar County Venue Tax program on City-owned property in portions of Martin Luther King Park and the Wheatley Heights flood buyout property ("Licensed Premises") pursuant to Ordinance No. 2009-06-18-0532, passed and approved by the City Council of the City of San Antonio on June 18, 2009; and

WHEREAS, City and Grantee wish to supplement planned improvements to the sports complex in order to further benefit the residents and visitors of the City of San Antonio; and

WHEREAS, on September 17, 2009, the City approved the FY2010 Capital Budget which included Certificates of Obligation funds to support improvements to the planned sports complex at the Licensed Premises and these Certificate of Obligation funds are now available; and

WHEREAS, Grantee hereby accepts the funding offered by CITY as well as the responsibilities and duties necessary to fully implement and manage the Project;

NOW THEREFORE, the Parties hereto 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 by the City Manager or designee and continue for twenty five (25) years.

II. GENERAL RESPONSIBILITIES OF GRANTEE

2.01 Provided Grantee receives the funding described in this Agreement, Grantee hereby accepts full responsibility for the performance of all services and activities described in this Agreement to complete the construction of the Project as defined below by the end of the term specified in Section 1.01. The Project shall include the construction, purchase and installation of spectator seating at the proposed sports stadium and other City-approved areas to be constructed within Grantee's Licensed Premises ("Project").

2.02 Current budget estimates of the Project are \$650,000.00. Grantee shall provide all necessary funding for the Project beyond the City's commitment and provide evidence to City that all Project funds have been secured. In the event the scope of the Project is adjusted downward, the City shall have the option of adjusting its commitment downward accordingly.

2.03 Unless written notification by Grantee to the contrary is received and approved by City, Grantee's Executive Director shall be Grantee designated representative responsible for the management of this Agreement.

2.04 The Director of the Parks and Recreation Department 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 Grantee shall provide to City their plans and specifications for the Project ("Plans") and such Plans shall be subject to the review and approval of City, acting in its capacity as grantor under this Agreement. After approval by City, Grantee shall not make any substantial changes to the Plans without the prior written approval of City. The approvals given in this Section do 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, and the State of Texas Commission on Environmental Quality (Article 9102).

2.07 Grantee shall submit all future changes to the Director of the Parks and Recreation Department or his designee for review and approval to ensure their compatibility with the Plans.

2.08 City shall have authority to inspect the Project throughout the construction process to ensure compliance with the Plans. Grantee shall cause its design professional to provide periodic certifications of construction certifying that construction has been conducted in compliance with the Plans. Grantee shall submit said certification to the Director of the Parks and Recreation Department or his designee at the completion of the Project construction. City shall have the right to withhold funding until such certifications are provided.

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 Project.

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

1. Chapter 252 and 2254 of the Texas Local Government Code, or other competitive contracting processes allowed for as express exceptions to Chapter 252.
2. Government Code provisions regarding performance and payment bonds on certain Public Works contracts (copies of required bonds must be provided to City prior to the start of construction).
3. Government Code chapter 2258 and Ordinance No. 71312 regarding Prevailing Wage Rate regulations required for certain Public Works Contracts, including ensuring that is construction contractor submit certified payrolls to the City on a weekly basis utilizing the form required by the Wage and Hour office of the Capital Improvements Management Services Department.
4. City of San Antonio Small Business Economic Development Advocacy Ordinance (Ordinance No. 2007-04-12-0396.) Grantee may obtain authoritative interpretations and guidance for such compliance from the City's Department of Economic Development (207-3900)

3.03 Plans must conform to Americans with Disabilities Act requirements and must be approved by the Texas Department of Licensing and Regulation before construction may begin. Inspections and final approval shall be the responsibility of Grantee.

IV. FUNDING AND ASSISTANCE BY CITY

4.01 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 shall not exceed the sum of \$650,000.

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

4.03 Funding shall consist of reimbursements paid to Grantee for construction, purchase and installation of spectator seating at the proposed sports stadium and other City-approved areas within Grantee's Licensed Premises, not to exceed \$650,000.

V. RECEIPT, DISBURSEMENT AND ACCOUNT OF FUNDS BY GRANTEE

5.01 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.

5.02 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. Records will be retained by Grantee in an electronic format and Grantee will forward the records to City at the end of the four year period.

5.03 In order to be reimbursed for work completed, Grantee shall submit to the 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 the City. Prior to reimbursement, City will have the right to inspect work completed to ensure conformance with the approved Plans.

5.04 City agrees to provide Grantee written notice regarding any expenditure the 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 the 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.

5.05 Unless CITY has questions concerning an expenditure by GRANTEE, CITY agrees to provide payment to GRANTEE within thirty (30) working days of receipt of completed invoice as defined above.

5.06 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 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 therefore wherein the amount disallowed or disapproved shall be specified.

VI. ALLOWABLE EXPENDITURES

6.01 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 in advance 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:

- Construction, purchase and installation of spectator seating at the proposed sports stadium and other City-approved areas to be constructed within Grantee's Licensed Premises, not to exceed \$650,000.

Expenditures of the 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.

6.02 The following shall not be considered allowable costs under this Agreement:

- Design costs
- Personnel costs, salaries or wages paid directly by Grantee or other similarly affiliated organization
- Travel and travel-related expenses
- Costs or fees for consultant and/or professional services, except for those directly related to the Project
- Costs or fees associated with attendance at meetings, seminars, or conferences
- Costs or fees associated with regular maintenance and operation
- Fundraising
- Equipment and Furnishings, unless provided by Grantee's Contractor and shown on the approved Plans
- Advertising

6.03 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.

VII. FURTHER REPRESENTATIONS, WARRANTIES AND COVENANTS

7.01 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 proceedings are presently pending or to Grantee's knowledge, threatened against Grantee.
- (D) None of the provisions contained herein contravene or in any way conflict with the authority under which Grantee is doing business or with the provisions of any existing indenture or agreement of Grantee.

VIII. ACCESSIBILITY OF RECORDS

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

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

IX. MONITORING AND EVALUATION

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

X. INDEMNITY

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

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

XI. INSURANCE

11.01 Prior to the commencement of any work under this Agreement, Grantee shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Parks and Recreation Department – Contract Services Division, which shall be clearly labeled, "Martin Luther King Park - Eastside Christian Action Group" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature, including the signer's phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Parks and Recreation Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

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

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

TYPE	AMOUNTS
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000

<p>3. Commercial General Liability (Broad Form) Insurance to include coverage for the following:</p> <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Environmental Impairment/Impact - sufficiently broad to cover disposal liability 	<p>For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage</p>
<p>4. Business Automobile Liability</p> <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<p><u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence</p>
<p>5. Builders Risk</p>	<p>100% of value of construction cost</p>

11.04 Grantee agrees to obtain all insurance coverages with minimum limits of not less than those limits delineated in Section 12.03 (Insurance table) from each vendor subcontracted by Grantee and provide a Certificate of Insurance and Endorsement that names the Grantee and the City as an additional insured.

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

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

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the

City, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation and employers' liability, auto liability and general liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

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

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

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

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

11.11 Workers' Compensation Insurance Coverage.

(a) Definitions:

- (1) Certificate of coverage ("certificate")- A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Division, or a coverage agreement (DWC-81, DWC-82, DWC-83, or DWC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.
- (2) Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the City.

- (3) Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- (b) The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the contractor providing services on the project, for the duration of the project.
- (c) The contractor must provide a certificate of coverage to the City prior to being awarded the contract.
- (d) If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the City showing that coverage has been extended.
- (e) The contractor shall obtain from each person providing services on a project, and provide to the City:
- (1) a certificate of coverage, prior to that person beginning work on the project, so the City will have on file certificates of coverage showing coverage for all persons providing services on the project; and
 - (2) no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.
- (f) The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.
- (g) The contractor shall notify the City in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

- (h) The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Division, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
- (i) The contractor shall contractually require each person with whom it contracts to provide services on a project, to:
 - (1) provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
 - (2) provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
 - (3) provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (4) obtain from each other person with whom it contracts, and provide to the contractor:
 - (i) a certificate of coverage, prior to the other person beginning work on the project; and
 - (ii) a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
 - (5) retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
 - (6) notify the City in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
 - (7) contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

- (j) By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the City that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Division's section of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- (k) The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the City to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the City.

XII. NONDISCRIMINATION

12.01 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 premises, which said discrimination Grantee acknowledges is prohibited.

XIII. CONFLICT OF INTEREST

13.01 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.

13.02 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.

13.03 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.

XIV. POLITICAL ACTIVITY

14.01 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.

XV. RIGHTS TO PROPOSAL AND CONTRACTUAL MATERIAL

15.01 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.

XVI. CONTRACTING

16.01 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 local, state and federal permits and approvals required for the activities under this Agreement are obtained.

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

XVII. CHANGES AND AMENDMENTS

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

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

XVIII. ASSIGNMENTS

18.01 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.

XIX. SEVERABILITY OF PROVISIONS

19.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the Parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XX. NON-WAIVER OF PERFORMANCE

20.01 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.

20.02 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.

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

XXI. ENTIRE AGREEMENT

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

XXII. NOTICES

22.01 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, to the addresses set forth below:

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

Grantee: Eastside Christian Action Group
4526 Walzem Road
San Antonio, Texas 78218

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.

XXIII. PARTIES BOUND

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

XXIV. RELATIONSHIP OF PARTIES

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

XXV. TEXAS LAW TO APPLY

25.01 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.

XXVI. GENDER

26.01 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.

XXVII. CAPTIONS

27.01 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.

XXVIII. LEGAL AUTHORITY

28.01 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.

28.02 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.

EXECUTED IN DUPLICATE ORIGINALS, each of which shall have the full force and effect of an original this the ___ day of _____, 20__.

CITY OF SAN ANTONIO

EASTSIDE CHRISTIAN ACTION GROUP

By: _____
Sheryl Sculley
City Manager

By: 
Frank Dunn
Executive Director

ATTEST: _____
CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY