

AN ORDINANCE 2011-01-13-0021

**AUTHORIZING THE FOLLOWING AGREEMENTS AND AMENDMENTS: AN AMENDMENT TO THE LEASE AGREEMENT WITH THE BOYS AND GIRLS CLUB OF SAN ANTONIO, INC. FOR THE CALDERON BRANCH AT 600 S. W. 19TH STREET, LOCATED IN COUNCIL DISTRICT 5; A LICENSE AGREEMENT WITH THE BOYS AND GIRLS CLUB OF SAN ANTONIO, INC. FOR THE PETER D. REED BASEBALL FIELD AT ELMENDORF PARK LOCATED IN COUNCIL DISTRICT 5; AN AMENDMENT TO THE LICENSE AGREEMENT WITH THE MCALLISTER PARK LITTLE LEAGUE FOR THE PREMISES AT MCALLISTER PARK LOCATED IN COUNCIL DISTRICT 9; AN AMENDMENT TO THE LICENSE AGREEMENT WITH SOUTHEAST BOYS BASEBALL, INC. FOR THE PREMISES AT SOUTHSIDE LIONS PARK LOCATED IN COUNCIL DISTRICT 3; A LICENSE AGREEMENT WITH KARMA-TEENS EMPOWERED D/B/A BROOKS INNER CITY SPORTS AT PYTEL PARK LOCATED IN COUNCIL DISTRICT 3.**

\* \* \* \* \*

**WHEREAS**, since 1973 the Boys and Girls Club of San Antonio, Inc. (Boys and Girls Club) has leased from the City the facility at 600 S.W. 19<sup>th</sup> Street, known as its Calderon Branch; and

**WHEREAS**, the fifty year lease agreement was approved through Ordinance 42051 dated April 5, 1973; and

**WHEREAS**, Boys and Girls Club serves 1800 youth annually at this Branch and programs include sports, recreation, academics and counseling; and

**WHEREAS**, since the inception of the lease the City has covered the cost of water/sewer usage in support of the benefits provided to the community by this non-profit entity, and Boys and Girls Club has covered the cost of the electrical usage; and

**WHEREAS**, the proposed amendment is an administrative correction of the lease to reflect the intent and practice of the parties with regard to payment of utilities for the past 37 years; and

**WHEREAS**, the agreement obligates Boys and Girls Club to utilize the water in a manner, amount and frequency that are consistent with efforts to conserve water resources; and

**WHEREAS**, Boys and Girls Club has been a party to a license agreement for the Peter D. Reed baseball field located approximately one block from its Calderon Branch in Elmendorf Park since 2001 and utilizes this field for their various baseball programs; and

**WHEREAS**, they have requested a renewal of this agreement to be coterminous with their Calderon Branch lease agreement to ensure their ability to offer this programming on a long term basis; and

**WHEREAS**, the proposed license agreement obligates Boys and Girls Club to provide maintenance of the field and improvements in consideration for the use of the property; and

**WHEREAS**, the McAllister Park Little League (MPLL) has licensed land for sports fields in McAllister Park since 1977 and this league currently serves over 1,200 youth annually; and

**WHEREAS**, over the years the acreage of the Premises has increased to accommodate this growing sports organization; and

**WHEREAS**, in 2008 MPLL was selected to receive \$2.67 million through the Bexar County Venue Tax Program to complete work on existing fields and construct supporting amenities; and

**WHEREAS**, the upper field portion of the premises was designated as the venue tax project site and the City and MPLL entered into a new license agreement for this area through Ordinance 2008-09-18-0835; and

**WHEREAS**, the remaining lower field area continues to be used by MPLL for practice and is covered by the original license agreement. Since the inception of the original license 33 years ago the City has covered the cost of water/sewer usage in support of the benefits provided to the community by this non-profit entity and the Bexar County Venue Tax project did not increase the acreage utilized by MPLL; and

**WHEREAS**, the proposed amendment is an administrative correction of the lease to reflect the intent and practice of the parties with regard to payment of utilities; and

**WHEREAS**, the agreement obligates MPLL to utilize the water in a manner, amount and frequency that are consistent with efforts to conserve water resources; and

**WHEREAS**, Southeast Boys Baseball, Inc. d/b/a Southeast Pony Baseball and Softball (Southeast Pony) has licensed land for sports fields in Southside Lions Park since 1969 and this league currently serves over 500 program participants annually; and

**WHEREAS**, in addition, the facility hosts multiple tournaments for approximately 5,000 youth annually; and

**WHEREAS**, in 2008 Southeast Pony was selected to receive \$3.3 million through the Bexar County Venue Tax Program to complete work on existing fields, add additional fields, and construct supporting amenities; and

**WHEREAS**, city and Southeast Pony entered into a new license agreement covering the original premises and additional land for the expanded program area through Ordinance 2008-09-18-0834; and

**WHEREAS**, since the inception of the original license over 40 years ago the City has covered the cost of water/sewer usage in support of the benefits provided to the community by this non-profit entity; and

**WHEREAS**, the proposed amendment is an administrative correction of the license to reflect the intent and practice of the parties with regard to payment of utilities for the original 14 acre premises, which is 44% of the current premises; and

**WHEREAS**, the agreement obligates Southeast Pony to utilize the water in a manner, amount and frequency that are consistent with efforts to conserve water resources; and

**WHEREAS**, Karma-Teens Empowered d/b/a Brooks Inner-City Sports (BICS) will utilize a multi-purpose sports field at Pytel Park for their football and baseball activities; and

**WHEREAS**, BICS was created in 2007 and its various sports programs, which also include basketball, volleyball, soccer and tae kwon do, currently serve approximately 1,500 youth; and

**WHEREAS**, the proposed license agreement has a term of five years commencing on February 1, 2011 and obligates BICS to provide maintenance of the field and improvements in consideration for the use of the property; **NOW THEREFORE:**

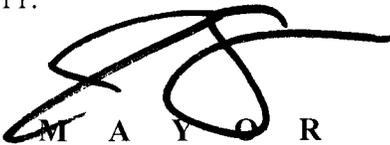
**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**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 the following: an amendment to the lease agreement with the Boys and Girls Club of San Antonio, Inc. for the Calderon Branch at 600 S. W. 19th Street, located in Council District 5; the renewal of a license agreement with the Boys and Girls Club of San Antonio, Inc. for the Peter D. Reed baseball field at Elmendorf Park located in Council District 5; an amendment to the license agreement with the McAllister Park Little League for the premises at McAllister Park located in Council District 9; an amendment to the license agreement with Southeast Boys Baseball, Inc. for the premises at Southside Lions Park located in Council District 3; a license agreement with Karma-Teens Empowered d/b/a Brooks Inner City Sports at Pytel Park located in Council District 3. Copies of said agreements and amendments are attached hereto and incorporated herein for all purposes as **Attachment I through V**.

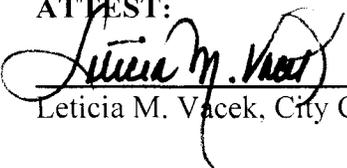
**SECTION 2.** The financial fiscal allocations in this Ordinance are subject to approval by the Chief Financial Officer, City of San Antonio. The Chief Financial Officer, may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, 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 3.** 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.

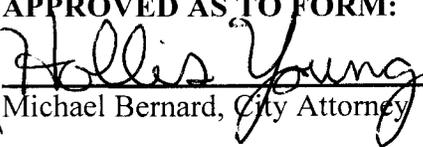
PASSED AND APPROVED this 13<sup>th</sup> day of January, 2011.

  
M A Y O R  
Julián Castro

ATTEST:

  
Leticia M. Vacek, City Clerk

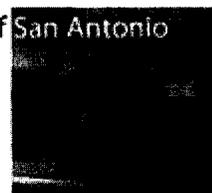
APPROVED AS TO FORM:

  
for Michael Bernard, City Attorney  
3



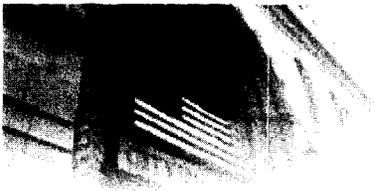
Request for  
**COUNCIL**  
ACTION

City of San Antonio



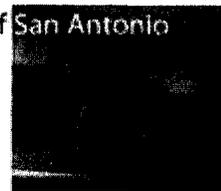
## Agenda Voting Results - 26A

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 24, 26A, 26B, 26C, 26D, 27						
<b>Date:</b>	01/13/2011						
<b>Time:</b>	09:21:33 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Boys and Girls Club of San Antonio, Inc. for the Calderon Branch at 600 S. W. 19th Street, located in Council District 5.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



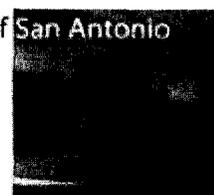
## Agenda Voting Results - 26B

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 24, 26A, 26B, 26C, 26D, 27						
<b>Date:</b>	01/13/2011						
<b>Time:</b>	09:21:33 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Boys and Girls Club of San Antonio, Inc. for the Peter D. Reed baseball field at Elmendorf Park located in Council District 5.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x



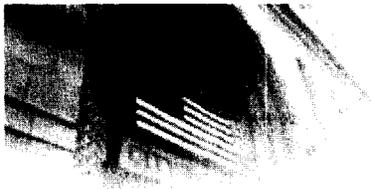
Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



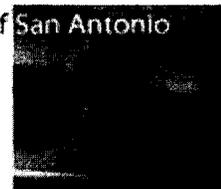
## Agenda Voting Results - 26C

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 24, 26A, 26B, 26C, 26D, 27						
<b>Date:</b>	01/13/2011						
<b>Time:</b>	09:21:33 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	McAllister Park Little League for their premises at McAllister Park located in Council District 9.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x



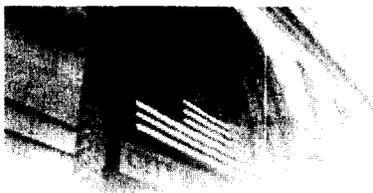
Request for  
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ACTION

City of San Antonio



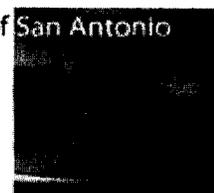
## Agenda Voting Results - 26D

<b>Name:</b>	5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19, 20, 21, 22, 24, 26A, 26B, 26C, 26D, 27						
<b>Date:</b>	01/13/2011						
<b>Time:</b>	09:21:33 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Southeast Boys Baseball, Inc. for their premises at Southside Lions Park in Council District 3.						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x			x	
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x				
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				x



Request for  
**COUNCIL**  
**ACTION**

City of San Antonio



## Agenda Voting Results - 26E

<b>Name:</b>	26E						
<b>Date:</b>	01/13/2011						
<b>Time:</b>	09:43:41 AM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	Karma-Teens Empowered d/b/a Brooks Inner-City Sports at Pytel Park located in Council District 3.						
<b>Result:</b>	Passed						
<b>Voter</b>	<b>Group</b>	<b>Not Present</b>	<b>Yea</b>	<b>Nay</b>	<b>Abstain</b>	<b>Motion</b>	<b>Second</b>
Julián Castro	Mayor		x				
Mary Alice P. Cisneros	District 1		x				x
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Philip A. Cortez	District 4		x				
David Medina Jr.	District 5		x				
Ray Lopez	District 6		x				
Justin Rodriguez	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
John G. Clamp	District 10		x				

AMENDMENT #1 TO LEASE AGREEMENT
BOYS AND GIRLS CLUB OF SAN ANTONIO, INC.

This Amendment #1 ("Amendment") to the Boys and Girls Club Calderon Branch Lease Agreement is made by and through the City of San Antonio, a Texas municipal corporation ("CITY"), acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, 201\_\_\_\_, and Boys and Girls Club of San Antonio, Inc. ("BGCSA").

WHEREAS, CITY and BGCSA entered into a Lease Agreement dated April 5, 1973 (the "Original Agreement") under the terms of which the CITY constructed the Boys and Girls Club Calderon Branch facility and BGCSA agreed to lease the facility and 3.8629 acres of property (collectively referred to as the "Premises") for a fifty year term in order to provide youth programs that promote social, educational, recreational, health, physical, cultural and character development; and

WHEREAS, the Original Agreement contractually obligates BGCSA to pay all utilities used at the Premises; and

WHEREAS, BGCSA currently pays for electric utilities at the Premises and CITY currently pays for water/sewer utilities at the Premises and both BGSCA and CITY desire to continue payment for the respective utilities through the remaining term of the Original Agreement;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the CITY and ASSOCIATION hereby agree as follows:

- A. Utilities: Section 12 of the Original Agreement shall be deleted in its entirety and shall be replaced with the following:

BGCSA shall be responsible for payment of all utility services used in the Premises with the exception of water/sewer utility service which shall be paid by CITY. BGCSA shall use its best efforts to ensure that its water usage shall occur in a manner, amount and frequency that is consistent with efforts to conserve water resources, and in a manner which is in strict compliance with all state and local regulation of water usage.

- B. All conditions and restrictions of the Original Agreement shall remain in effect unless otherwise modified under this Amendment.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

CITY OF SAN ANTONIO

BOYS AND GIRLS CLUB OF SAN ANTONIO, INC.

By: \_\_\_\_\_ City Manager

By: [Signature]
Name: JAMES E. WATSON
Title: EXECUTIVE DIRECTOR

Attest: \_\_\_\_\_ City Clerk

Approved as to Form: \_\_\_\_\_

**SPORTS LICENSE AGREEMENT  
BOYS AND GIRLS CLUB OF SAN ANTONIO, INC.**

This Sports License Agreement (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ ("CITY"), and BOYS AND GIRLS CLUB OF SAN ANTONIO, INC., a Texas non-profit corporation ("BGCSA");

**PREAMBLE**

The CITY licenses park property to Leagues that operate under nationally organized sports groups. Leagues are granted priority use of the park property and CITY waives fees that are normally charged to reserve sports fields. In exchange, Leagues agree to maintain the Premises in a condition that meets or exceeds the requirements of this License Agreement at all times. Leagues are permitted to sell concessions and establish fees to help offset the cost of maintaining their licensed areas.

**1. WITNESSETH:**

- 1.1 WHEREAS, CITY desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, BGCSA is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this Agreement; and

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

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

**2. USE OF PREMISES BY LEAGUE**

- 2.1 For so long as BGCSA maintains its non-profit and 501(c)(3) status and offers youth sports activities, CITY, for and in consideration of the mutual benefits to CITY and BGCSA and the observance of the terms and conditions set forth in this Agreement, grants to BGCSA permission to enter and use, without payment of CITY'S established field use fee, the Premises described in EXHIBIT A in Elmendorf Park each year during the term of this Agreement for the period of February through January of each year ("Program Period").
- 2.2 Although permission to enter and use the Premises is not exclusive, CITY shall give BGCSA priority use of the Premises.
- 2.3 At those times during which BGCSA is not utilizing the Premises, with the exception of any building(s) containing BGCSA equipment and BGCSA-operated concession stand(s), the Premises shall be open to the general public for park and recreation purposes.
- 2.4. The Premises shall be occupied by BGCSA for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. BGCSA agrees that the provisions of this Agreement do not grant to BGCSA any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that CITY retains dominion, possession and control of the Premises,

including access at all times. CITY reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.

- 2.5 BGCSA agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of BGCSA is called to any such violation, BGCSA or those under its control will immediately desist from and correct such violation.
- 2.6 BGCSA acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. BGCSA covenants and agrees that it will comply with all the terms and obligations, and, as part of its indemnification of the City, indemnify, hold harmless and defend CITY from all claims which might arise from BGCSA's activities under this Agreement.
- 2.7 BGCSA is authorized to establish fees and charges for its membership and admission fees to games, and to collect and retain such fees and charges to defray its operating expenses and the costs of its assigned obligations and duties. BGCSA shall not charge or attempt to charge any general public user of the Premises. The above notwithstanding, BGCSA may allow short term use of the Premises by other amateur youth sports groups and policies and fees associated with the use of the Premises by other groups will be consistently and fairly applied to all other users. These use fees ("Use Fees") shall be reasonable and customary and the Use Fees will be used by BGCSA to offset the cost of operation and maintenance of the Premises. BGCSA shall be fully responsible for all maintenance obligations outlined in this Agreement and shall not transfer or assign any maintenance obligations to short term users of the Premises. BGCSA will remain at all times during the term of this Agreement the primary user of the Premises and no short term use by one or more other users may result in BGCSA not being the user the majority of the time.

### **3. TERM OF AGREEMENT**

- 3.1 The term of this Agreement shall commence on February 1, 2011 and shall be coterminous with BGCSA's lease agreement for the Calderon Branch property which was authorized by Ordinance 42051 and will expire on April 4, 2023.

### **4. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 4.1 BGCSA has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. BGCSA'S taking possession of the Premises shall be conclusive evidence of BGCSA's acceptance of the Premises in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which licensed. CITY specifically disclaims any warranty of suitability for intended purposes of BGCSA.
- 4.2 BGCSA agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution, have been made by CITY or its agents to BGCSA unless the same are contained herein.

## **5. BGCSA'S MAINTENANCE OBLIGATIONS AND DUTIES**

- 5.1 General Maintenance: At all times during the term of this Agreement, BGCSA shall, at its sole expense provide all manpower, supplies and materials for the purpose of providing year round maintenance to the Premises in no event less than the quality of maintenance service demonstrated in other CITY-owned fields. In addition to the other obligations of BGCSA, BGCSA shall render the following services and perform the following duties with regard to its maintenance of all portions of the Premises, in a faithful, diligent, and efficient manner:
- 5.1.1 Maintain all sports fields at or better than an acceptable standard for play, including watering, mowing, trimming, seeding, leveling, and fertilizing;
  - 5.1.2 Maintain all areas within the Premises other than sports fields, including mowing and trimming in a frequency necessary to maintain the area in an attractive manner. Vegetation must be mowed and trimmed at the fence line.
  - 5.1.3 Trash pickup and removal service in a frequency sufficient to keep the Premises free from litter and debris;
  - 5.1.4 Provide pest control services as frequently as needed;
  - 5.1.5 Keep all areas within the Premises free of graffiti.
  - 5.1.6 Maintain all improvements and structures, including concession buildings, restrooms, bleachers, lighting that benefits the Premises, and other structures in good condition, and repair as needed (if applicable);
  - 5.1.7 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises (if applicable);
  - 5.1.8 Provide such other maintenance tasks and chores as may be required to sustain the Premises in good, clean, well maintained and attractive condition.
- 5.2 BGCSA shall promptly repair any damage to the Premises. BGCSA shall have no duty to repair any damage caused by others whom CITY has authorized to use the Premises. Notwithstanding any contrary provisions, should the Premises be damaged by fire, tornado or other casualty, CITY shall be under no obligation to rebuild or repair the Premises.
- 5.3 As the maintenance of the Premises in good condition is the primary consideration of this Agreement, CITY may elect to make frequent inspections of the Premises to evaluate the effectiveness and consistency of BGCSA's maintenance program. Failure to provide the required maintenance, as outlined in this Section, may result in the termination of this Agreement.
- 5.4 No parking is allowed in any area of the Premises, including area adjacent to concession stand. BGCSA shall have the non-exclusive right, along with other park visitors, to use the parking lot which is accessible from SW 19<sup>th</sup> Street. Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 5.5 BGCSA shall use reasonable efforts to recycle materials such as plastic bottles and aluminum cans used during its use of the Premises and concession operation. BGCSA agrees to comply with any recycling programs established and implemented during the term of this Agreement by CITY for the Park where the Premises are located.

## **6. UTILITIES**

- 6.1 BGCSA shall be responsible for the payment of all electrical usage for field lighting and other

electrical usage within the Premises.

- 6.2 BGCSA may utilize existing irrigation equipment within the Premises for purposes of irrigation and use of this equipment will obligate BGCSA to maintain the lines and sprinkler heads, as outlined in 5.1.7 above. It is the intent of CITY that irrigation, whether by an irrigation system or other means, occurs in a manner, amount and frequency that is consistent with efforts to conserve water resources. CITY has the right to establish, implement and modify irrigation policies and practices during the term of this Agreement. If CITY elects to allow BGCSA to control any irrigation system, BGCSA agrees to do so in compliance with CITY'S irrigation policies and practices. CITY shall pay for the cost of water associated with irrigation so long as CITY irrigation policies and practices are adhered to by BGCSA.

- 6.2.1 BGCSA must comply at all times with the City's Conservation Ordinance, including year round restrictions, drought restrictions, and charity car wash restrictions. BGCSA shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance.

## 7. CONCESSIONS

- 7.1 BGCSA shall have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. BGCSA shall have the exclusive use of any concession stand(s) within the Premises as well as stocks of items supplied by BGCSA. No fee for the right to operate concessions shall be payable to CITY; provided however, that all profits generated from the concession program ("Concession Revenue") shall be applied to the operation and maintenance of BGCSA. BGCSA shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations.
- 7.2 BGCSA's concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 2.3.
- 7.3 The above notwithstanding, BGCSA acknowledges that licensed mobile vendors have the right to offer for sale prepared and packaged food items and soft drinks in public parks, parking areas and streets.

## 8. IMPROVEMENTS

- 8.1. BGCSA may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, BGCSA, its members, employees, agents, and leagues shall ensure that the performance of the construction or installation does not cause or result in damage to CITY property or adjoining property.
- 8.2. BGCSA shall present, for review and written approval, all designs, plans, and specifications to the Director of Parks and Recreation ("Director") and applicable CITY boards prior to commencing any construction or installation upon the Premises. While CITY may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by BGCSA. CITY reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure BGCSA's compliance with this Agreement.

- 8.3. BGCSA agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA, if applicable. A copy of all permits or clearances shall be provided to the Director prior to the start of any construction, upon request by CITY. BGCSA covenants that it shall not bind, or attempt to bind, CITY for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the CITY against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to BGCSA during the performance of any said construction and against any claim for injury to person or property.
- 8.4. Any improvements installed by BGCSA which can be removed without damage to the Premises may be removed at the sole expense of BGCSA at the termination of this Agreement without payment being made by CITY. If the improvements are not removable without damage to the Premises, then the improvements will become the property of the CITY. Temporary structures, if present, shall be removed from the Premises at the sole expense of BGCSA at the termination of this Agreement without payment being made by CITY. In the event that BGCSA removes temporary structure(s) prior to the termination of this Agreement, the underlying property may, at the election of the CITY, become excluded from the licensed Premises.

## **9. DEFAULTS AND TERMINATION RIGHTS**

- 9.1 Default by BGCSA: Any of the following events shall constitute default by BGCSA under this Agreement:
- 9.1.1 BGCSA shall fail to maintain its non-profit or 501(c)(3) status and offer youth sports activities; or
- 9.1.2 BGCSA shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by BGCSA, and such default shall continue for a period of ten (10) days after notice by CITY to BGCSA, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that BGCSA has commenced to cure such default.
- 9.2 Remedies of CITY: Upon the occurrence of an event of default by BGCSA as specified in this Agreement, CITY shall be entitled to terminate this Agreement. After such termination, BGCSA shall have no further rights to access the Premises, shall immediately cease all activities thereon and CITY shall have no further obligation under the terms of this Agreement.
- 9.3 Default by CITY: CITY shall be in default under this Agreement if CITY fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by CITY, and such default shall continue for a period of thirty (30) days after notice thereof by BGCSA to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that CITY has commenced to cure such default.
- 9.4 Remedies of BGCSA: Upon the occurrence of an event of default as specified in this Agreement hereof, BGCSA shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.
- 9.5 Either CITY or BGCSA, with or without cause, may cancel this Agreement by giving six (6) months written notice thereof to the other party.

## 10. INDEMNIFICATION

- 10.1 **BGCSA 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 BGCSA's activities under this Agreement, including any acts or omissions of BGCSA, any agent, officer, director, representative, or employee, of BGCSA, 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, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT BGCSA 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.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. BGCSA shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or BGCSA known to BGCSA related to or arising out of BGCSA's activities under this Agreement and shall see to the investigation and defense of such claim or demand at BGCSA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving BGCSA of any of its obligations under this paragraph.

## 11. INSURANCE REQUIREMENTS

- 11.1 Prior to the commencement of any work under this Contract, BGCSA shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Parks and Recreation Department, which shall be clearly labeled "**BOYS AND GIRLS CLUB OF SAN ANTONIO, INC. – Peter D. Reed Field**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Parks and Recreation Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 11.2 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 contract. In no

instance will CITY allow modification whereupon CITY may incur increased risk.

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

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
3. Comprehensive Automobile Liability*	
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	Coverage for a minimum of eighty percent (80%) of the replacement cost of BGCSA's property.
c. Hired Vehicles	
4. Property Insurance: For physical damage to the property of BGCSA, including improvements and betterment to the Licensed Premises, if applicable.	

\*If Applicable

- 11.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). BGCSA 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. BGCSA 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

- 11.5 BGCSA 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 policies will provide a waiver of subrogation in favor of the CITY; and
  - D. Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 11.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, BGCSA shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend BGCSA'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.
- 11.7 If BGCSA fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of BGCSA to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon BGCSA's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order BGCSA to stop work hereunder, and/or withhold any payment(s) which become due to BGCSA hereunder until BGCSA demonstrates compliance with the requirements hereof.
- 11.8 Nothing herein contained shall be construed as limiting in any way the extent to which BGCSA may be held responsible for payments of damages to persons or property resulting from BGCSA's or its subcontractors' performance of the work covered under this Agreement.
- 11.9 It is agreed that BGCSA's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.
- 11.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

## **12. REPORTS**

- 12.1 On or before January 31 each year, BGCSA must provide to CITY the number of participants and their ages for the BGCSA's previous Program Period.
- 12.2 BGCSA is obligated to inform CITY within fifteen (15) days of a change in the following:
- 12.2.1 Changes in officers of the BGCSA: the name, position, and contact information must be provided.
  - 12.2.2 Amendments to BGCSA's constitution, by-laws, and/or articles of incorporation: copies

of the amended documents must be provided to CITY along with the notification.

- 12.3 If requested by CITY, BGCSA will provide all or a portion of the following information within fifteen (15) days after receipt of written request from CITY.
- 12.3.1 Starting and ending date of BGCSA activity;
  - 12.3.2 Description of tournaments and special events;
  - 12.3.3 Description and value of the physical improvements placed on the Premises and/or any planned physical improvements;
  - 12.3.4 Gross receipts from each of the following: a) Concession Revenue, as defined in 7.1, b) Use Fees, as defined in 2.7, c) advertising, d) cash donations, and all other sources of BGCSA revenue. BGCSA shall track Concession Revenue and Use Fees separately from other revenue sources.
  - 12.3.5 An accounting of the expenditure of all Concession Revenue and Use Fees for operational and maintenance costs of BGCSA. BGCSA shall track the expenditure of Concession Revenue and Use Fees separately in order to ensure that they are expended only for operational and maintenance expenses of BGCSA.

### **13. SIGNS**

- 13.1 BGCSA hereby agrees not to install or display any permanent sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the CITY through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the CITY as long as standard design of the sign has been approved in advance. For purposes of this agreement, temporary signs shall be defined as any sign or banner that is placed on the Premises before the game begins, and removed at the conclusion of the game. Signs which advertise businesses, sponsors, products, services, logos, or non-BGCSA events must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. BGCSA agrees it will not install any signs that advertise or promote any political campaigns or religious affiliations, alcohol use, tobacco use or sexually oriented businesses or any other matter inappropriate for a youth sports league. BGCSA further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized CITY authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor.

### **14. ASSIGNMENT**

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

### **15. RELATIONSHIP OF PARTIES**

- 15.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision

contained in this Agreement nor any acts of the parties create a relationship other than the relationship of Licensor and Licensee.

## **16. CONFLICT OF INTEREST**

- 16.1 BGCSA acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined therein, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 16.2 BGCSA warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as CITY owned utilities.

## **17. SEPARABILITY**

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

## **18. NOTICES**

- 18.1 Notices to CITY required or appropriate under this Agreement shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio  
Parks and Recreation Dept  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

**James Watson, Executive Director  
Boys and Girls Club of San Antonio, Inc.  
600 SW 19<sup>th</sup> Street  
San Antonio, Texas 78207**

**19. TEXAS LAW TO APPLY**

- 19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

**20. GENDER**

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

**21. NON-DISCRIMINATION**

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

**22. CAPTIONS**

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

**23. HOLDING OVER**

- 23.1. BGCSA shall have no right to hold over after the end of the term of this License Agreement.

**24. ENTIRE AGREEMENT/AMENDMENT**

- 24.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire Agreement between the parties, any other written or parole agreement with CITY being expressly waived by BGCSA.
- 24.2 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties.
- 24.3 It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

**25. AUTHORITY**

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

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_ day of \_\_\_\_\_ 20\_\_.

**CITY:**

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

\_\_\_\_\_  
Sheryl Sculley City  
Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**BOYS AND GIRLS CLUB OF SAN ANTONIO, INC.**, a Texas Non-profit Corporation

By:   
Name: JAMES E. WATSON  
Title: EXECUTIVE DIRECTOR

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney

# Exhibit A

## Legend

Licensed Premises



Map completed 11/9/2010 by Park Project Services

1 inch = 50 feet

0 50 100 150 Feet



AMENDMENT #1

BEXAR COUNTY VENUE TAX PROJECT LICENSE AGREEMENT

MCALLISTER PARK LITTLE LEAGUE, INC.

This Amendment No. 1 ("Amendment") to License Agreement – Bexar County Venue Tax Project is made by and between the City of San Antonio, a Texas municipal corporation ("CITY"), acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, 2010, and McAllister Park Little League, Inc. ("LICENSEE").

WHEREAS, pursuant to Ordinance No. 94448, passed and approved on August 30, 2001, CITY and LICENSEE entered into a Field Use and Maintenance Agreement ("Original Agreement") for property located within McAllister Park, for a five year term ending on August 31, 2006; and

WHEREAS, LICENSEE exercised the five year renewal option contained in the Original Agreement, extending the term to August 31, 2011; and

WHEREAS, Amendment No. 1 to the Original Agreement, pursuant to Ordinance No. 101064 passed and approved on June 23, 2005, added an additional 22.56 acres to the Premises, for a total of 60.543 acres; and

WHEREAS, pursuant to Ordinance No. 2008-09-18-0835, passed and approved on September 18, 2008, CITY and LICENSEE entered into a License Agreement – Bexar County Venue Tax Project ("License Agreement") for what is referred to as the upper fields, totaling 46.94 acres, and CITY and LICENSEE concurrently executed Amendment No. 2 to the Original Agreement in order to reflect the Premises is now 13.603 acres, which is referred to as the lower fields; and

WHEREAS, the License Agreement as written requires that LICENSEE pay for all utilities used on the 46.94 acre property; and

WHEREAS, because CITY paid for LICENSEE's water usage on the 46.94 acre property when it was considered a portion of the of the Original Agreement CITY has agreed to amend the License Agreement to require CITY to pay for LICENSEE's water usage;

NOW, THEREFORE,

In consideration of the mutual covenants and agreements set forth below, CITY and LICENSEE agree as follows:

A. Utilities

Section 7.1: The words "water" and "sewer" shall be deleted from the first sentence which lists the utility charges to be paid by LICENSEE. The following shall be added to Section 7.1:

*CITY shall pay for LICENSEE's water usage in or on the Premises and LICENSEE agrees to use water in a manner, amount and frequency that is consistent with efforts to conserve water resources. CITY has the right to establish, implement and modify irrigation policies and practices during the term of this Agreement. If CITY elects to allow LICENSEE to control any irrigation system, LICENSEE agrees to do so in compliance with CITY'S irrigation policies and practices. CITY shall pay for the cost of water associated with irrigation so long as CITY irrigation policies and practices are adhered to by LICENSEE.*

Section 7.1.1.: LICENSEE must comply at all times with the CITY's Conservation Ordinance, including year round restrictions, drought restrictions, and charity car wash restrictions. LICENSEE shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance.

Section 7.2.1.: The number 650 shall be replaced with 660.

Section 7.2.2.: The number 640 shall be replaced with 650.

- B. All conditions and restrictions of the License Agreement shall remain in effect unless otherwise modified under this Amendment.

EXECUTED on this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**CITY OF SAN ANTONIO:**

**MCALLISTER PARK LITTLE LEAGUE, INC.**

By: \_\_\_\_\_  
City Manager

By:   
Name: \_\_\_\_\_  
Title: *President MPLL*

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form: \_\_\_\_\_

**AMENDMENT #1 TO LICENSE AGREEMENT  
SOUTHEAST BOYS BASEBALL, INC.**

This Amendment #1 ("Amendment") to the License Agreement is made by and through the City of San Antonio, a Texas municipal corporation ("CITY"), acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_ passed and approved on \_\_\_\_\_, 2011, and Southeast Boys Baseball, Inc. ("Licensee").

WHEREAS Licensee has licensed from City since the 1960s approximately 14 acres in Southside Lions park to provide youth sports programs; and

WHEREAS, with the selection of Licensee to receive funding from the Bexar County Venue Tax project to expand and improve its facilities, CITY and Licensee entered into a License Agreement dated September 18, 2008 ("Original Agreement") under the terms of which the Licensee licensed approximately 31.6 acres in Southside Lions Park for a five year term; and

WHEREAS, the Original Agreement contractually obligates Licensee to pay all utilities used at the Premises; and

WHEREAS, Licensee and City desire that City cover the payment of water/sewer necessary for irrigation for the initial approximately 14 acre Premises and Licensee cover the payment of water/sewer for the approximately 17.6 acre expansion area associated with the Bexar County Venue Tax project;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That City and Licensee hereby agree as follows:

A. Utilities: The following will be added to Section 7.1 of the Original Agreement:

In consideration of the agreement, practice and intent of the parties since the inception of the use of the original 14 acre site by Licensee for the City to pay for irrigation water/sewer usage by Licensee, the parties agree to share the cost of water/sewer usage for the expanded Premises of 31.6 acres. Effective February 1, 2011, City will reimburse Licensee for 44% of the cost of irrigation water/sewer usage. Licensee shall submit to City a copy of invoices and evidence of payment of all irrigation water/sewer costs for the 31.6 acre site not more frequently than two (2) times each calendar year and City will reimburse Licensee 44% of the cost. Only irrigation water/sewer usage costs will be eligible for reimbursement and Licensee is responsible for all late fees, penalties, upgraded service and other costs other than water/sewer usage costs. Licensee shall use its best efforts to ensure that its water usage shall occur in a manner, amount and frequency that are consistent with efforts to conserve water resources, and in a manner which is in strict compliance with all state and local regulation of water usage. City has the right to establish, implement and modify irrigation policies and practices during the term of this Agreement and City shall reimburse Licensee for the cost of water/sewer as outlined above so long as City irrigation policies and practices are adhered to by Licensee.

B. All conditions and restrictions of the Original Agreement shall remain in effect unless otherwise modified under this Amendment.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

**CITY OF SAN ANTONIO**

**SOUTHEAST BOYS BASEBALL,  
INC.**

By: \_\_\_\_\_  
City Manager

By:   
Name: JoAnn Ramon  
Title: President

Attest: \_\_\_\_\_  
City Clerk

Approved as to Form: \_\_\_\_\_

**SPORTS LICENSE AGREEMENT**  
***KARMA – TEENS EMPOWERED D/B/A BROOKS INNER-CITY SPORTS***

This Sports License Agreement (the "Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the CITY OF SAN ANTONIO, a Texas municipal corporation, acting by and through its City Manager or her designee, pursuant to Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_ ("CITY"), and KARMA – TEENS EMPOWERED D/B/A BROOKS INNER-CITY SPORTS, a Texas non-profit corporation ("LEAGUE");

**PREAMBLE**

The CITY licenses park property to Leagues that operate under nationally organized sports groups. Leagues are granted priority use of the park property and CITY waives fees that are normally charged to reserve sports fields. In exchange, Leagues agree to maintain the Premises in a condition that meets or exceeds the requirements of this License Agreement at all times. Leagues are permitted to sell concessions and establish fees to help offset the cost of maintaining their licensed areas.

**1. WITNESSETH:**

- 1.1 WHEREAS, CITY desires to maintain its fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, LEAGUE is a 501(c)(3) non-profit and covenants and agrees to maintain such status throughout the term of this Agreement; and

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:**

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

**2. USE OF PREMISES BY LEAGUE**

- 2.1 For so long as LEAGUE maintains its non-profit and 501(c)(3) status and operates a nationally organized sports league, CITY, for and in consideration of the mutual benefits to CITY and LEAGUE and the observance of the terms and conditions set forth in this Agreement, grants to LEAGUE permission to enter and use, without payment of CITY'S established field use fee, one multi-purpose field (the "Premises") described in EXHIBIT A in Pytel Park each year during the term of this Agreement for the period of January through December ("Program Period").
  - 2.1.1 LEAGUE shall have first priority to license, develop and maintain additional property at Pytel Park in the event that CITY makes property located adjacent to the Premises available for development of sports fields by a non-profit organization during the term of this Agreement. CITY shall provide LEAGUE with written notification of availability of additional property and LEAGUE shall provide written notice of its intent to accept or reject the available property to CITY within 90 days of receiving CITY's written notification. Expansion of the Premises shall require execution of an amendment to this Agreement which shall be subject to City Council approval.
- 2.2 Although permission to enter and use the Premises is not exclusive, CITY shall give LEAGUE priority use of the Premises.
- 2.3 At those times during which LEAGUE is not utilizing the Premises, with the exception of any

- building(s) containing LEAGUE equipment and LEAGUE-operated concession stand(s), the Premises shall be open to the general public for park and recreation purposes.
- 2.4. The Premises shall be occupied by LEAGUE for recreational purposes including but not necessarily limited to organized athletic team activities and food and beverage concessions. LEAGUE agrees that the provisions of this Agreement do not grant to LEAGUE any interest or estate in the Premises but is a mere personal privilege to do certain acts of a temporary character upon the Premises, and that CITY retains dominion, possession and control of the Premises, including access at all times. CITY reserves the right to impose and enforce all necessary and proper rules for the management and operation of the Premises.
- 2.5 LEAGUE agrees that its members and any other individuals under its control shall abide by, conform to and comply with all applicable municipal, state and federal laws, ordinances, rules and regulations and that it will not do or permit to be done anything in violation hereof. If the attention of LEAGUE is called to any such violation, LEAGUE or those under its control will immediately desist from and correct such violation.
- 2.6 LEAGUE acknowledges and agrees that it has been informed that it has obligations to the general public under the terms of the Americans with Disability Act of 1990 as codified in 42 U.S.C. § 12101(a)(1) and (2) and as amended from time to time. LEAGUE covenants and agrees that it will comply with all the terms and obligations, and, as part of its indemnification of the City, indemnify, hold harmless and defend CITY from all claims which might arise from LEAGUE's activities under this Agreement.
- 2.7 LEAGUE is authorized to establish fees and charges for its membership and admission fees to games, and to collect and retain such fees and charges to defray its operating expenses and the costs of its assigned obligations and duties. LEAGUE shall not charge or attempt to charge any general public user of the Premises. The above notwithstanding, LEAGUE may allow short term use of the Premises by other amateur youth sports groups and policies and fees associated with the use of the Premises by other groups will be consistently and fairly applied to all other users. These use fees ("Use Fees") shall be reasonable and customary and the Use Fees will be used by LEAGUE to offset the cost of operation and maintenance of the Premises. LEAGUE shall be fully responsible for all maintenance obligations outlined in this Agreement and shall not transfer or assign any maintenance obligations to short term users of the Premises. LEAGUE will remain at all times during the term of this Agreement the primary user of the Premises and no short term use by one or more other users may result in LEAGUE not being the user the majority of the time.

### **3. TERM OF AGREEMENT**

- 3.1 The term of this Agreement is five (5) years, beginning on February 1, 2011, ("Commencement Date"), and expiring on January 31, 2016, if not earlier terminated according to the terms of this Agreement.

### **4. ACCEPTANCE AND CONDITIONS OF PREMISES**

- 4.1 LEAGUE has had sufficient time and opportunity to examine the Premises and acknowledges that there is in and about them nothing dangerous to life, limb, or health and hereby waives any claim for damages that may arise from defects of that character after occupancy. LEAGUE'S taking possession of the Premises shall be conclusive evidence of LEAGUE'S acceptance of the Premises in good satisfactory order in its present condition AS IS, WHERE IS AND WITH ALL FAULTS as suitable for the purpose for which licensed. CITY specifically disclaims any

warranty of suitability for intended purposes of LEAGUE.

- 4.2 LEAGUE agrees that no representations respecting the condition of the Premises and no promises to decorate, alter, repair, or improve the Premises, either before or after the execution, have been made by CITY or its agents to LEAGUE unless the same are contained herein.

## **5. LEAGUE'S MAINTENANCE OBLIGATIONS AND DUTIES**

- 5.1 General Maintenance: Each year during the term of this Agreement, LEAGUE shall, at its sole expense provide all manpower, supplies and materials for the purpose of providing year round maintenance to the Premises in no event less than the quality of maintenance service demonstrated in other CITY-owned fields. In addition to the other obligations of LEAGUE, LEAGUE shall render the following services and perform the following duties with regard to its maintenance of all portions of the Premises, in a faithful, diligent, and efficient manner:
- 5.1.1 Maintain all sports fields at or better than an acceptable standard for play, including watering, mowing, trimming, seeding, leveling, and fertilizing;
  - 5.1.2 Maintain all areas within the Premises other than sports fields, including mowing and trimming in a frequency necessary to maintain the area in an attractive manner. Vegetation must be mowed and trimmed at the fence line.
  - 5.1.3 Trash pickup and removal service in a frequency sufficient to keep the Premises free from litter and debris;
  - 5.1.4 Provide pest control services as frequently as needed;
  - 5.1.5 Keep all areas within the Premises free of graffiti.
  - 5.1.6 Maintain all improvements and structures, including concession buildings, restrooms, bleachers, lighting that benefits the Premises, and other structures in good condition, and repair as needed (if applicable);
  - 5.1.7 Maintain and replace, as needed, the irrigation piping and sprinkler heads within the Premises (if applicable);
  - 5.1.8 Provide such other maintenance tasks and chores as may be required to sustain the Premises in good, clean, well maintained and attractive condition.
- 5.2 LEAGUE shall promptly repair any damage to the Premises. LEAGUE shall have no duty to repair any damage caused by others whom CITY has authorized to use the Premises. Notwithstanding any contrary provisions, should the Premises be damaged by fire, tornado or other casualty, CITY shall be under no obligation to rebuild or repair the Premises.
- 5.3 As the maintenance of the Premises in good condition is the primary consideration of this Agreement, CITY may elect to make frequent inspections of the Premises to evaluate the effectiveness and consistency of LEAGUE's maintenance program. Failure to provide the required maintenance, as outlined in this Section, may result in the termination of this Agreement.
- 5.4 No parking is allowed in any area (including area adjacent to concession stand) other than the designated parking area within Pytel Park. Parking on the fields is strictly prohibited and will be seen as a violation of this License Agreement and subject to default.
- 5.5 LEAGUE shall use reasonable efforts to recycle materials such as plastic bottles and aluminum cans used during its use of the Premises and concession operation. LEAGUE agrees to comply

with any recycling programs established and implemented during the term of this Agreement by CITY for the Park where the Premises are located.

## 6. UTILITIES

6.1 LEAGUE has no lighted sports fields and shall not be required to reimburse CITY for the cost of electricity.

6.1.1 In the event that field lighting improvements are added to the Premises during the term of this Agreement, LEAGUE shall pay to CITY \$150 per month during LEAGUE's Program Period in order to offset CITY's cost of electricity. The monthly field lighting fee is currently \$150 per lighted field but may be adjusted in future in consideration of increased costs. Failure to promptly pay these electrical charges will be considered non-compliance and CITY shall have the right to terminate this Agreement. Payment shall commence on the first day of the calendar month of the Program Period and shall be due on or before the first day of each following month and mailed to:

City of San Antonio  
Treasury Division  
Central Billing Station  
PO Box 839966  
San Antonio, Texas 78283

6.2 LEAGUE may utilize existing irrigation equipment, if available, within the Premises for purposes of irrigation and use of this equipment will obligate LEAGUE to maintain the lines and sprinkler heads, as outlined in 5.1.7 above. It is the intent of CITY that irrigation, whether by an irrigation system or other means, occurs in a manner, amount and frequency that is consistent with efforts to conserve water resources. CITY has the right to establish, implement and modify irrigation policies and practices during the term of this Agreement. If CITY elects to allow LEAGUE to control any irrigation system, LEAGUE agrees to do so in compliance with CITY'S irrigation policies and practices. CITY shall pay for the cost of water associated with irrigation so long as CITY irrigation policies and practices are adhered to by LEAGUE.

6.2.1 LEAGUE must comply at all times with the City's Conservation Ordinance, including year round restrictions, drought restrictions, and charity car wash restrictions. League shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance.

## 7. CONCESSIONS

7.1 LEAGUE shall have the right to operate concessions for the sale of food, non-alcoholic beverages, and similar consumable items. LEAGUE shall have the exclusive use of any concession stand(s) within the Premises as well as stocks of items supplied by LEAGUE. No fee for the right to operate concessions shall be payable to CITY; provided however, that all profits generated from the concession program ("Concession Revenue") shall be applied to the operation and maintenance of LEAGUE. LEAGUE shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations.

7.2 LEAGUE'S concessions rights shall not apply during general public use of the Premises as may occur pursuant to paragraph 2.3.

7.3 The above notwithstanding, LEAGUE acknowledges that licensed mobile vendors have the right to offer for sale prepared and packaged food items and soft drinks in public parks, parking areas

and streets.

## **8. IMPROVEMENTS**

- 8.1. LEAGUE may, subject to having first obtained the written approval of the Director, install and/or construct facilities and improvements suitable for team activities, said facilities and improvements to include, but not necessarily be limited to field, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, LEAGUE, its members, employees, agents, and leagues shall ensure that the performance of the construction or installation does not cause or result in damage to CITY property or adjoining property.
- 8.2. LEAGUE shall present, for review and written approval, all designs, plans, and specifications to the Director of Parks and Recreation (“Director”) and applicable CITY boards prior to commencing any construction or installation upon the Premises. While CITY may render any assistance it deems advisable, all costs for construction and related activities shall be borne solely by LEAGUE. CITY reserves the right to enter the Premises at any time to inspect construction in progress and/or to determine the condition of field and facilities so as to insure LEAGUE’S compliance with this Agreement.
- 8.3. LEAGUE agrees that it shall obtain any and all plans approvals, necessary permits, and clearances relative to lighting, sewer system, and construction from appropriate local, state, and federal regulator agencies, including FAA, if applicable. A copy of all permits or clearances shall be provided to the Director prior to the start of any construction, upon request by CITY. LEAGUE covenants that it shall not bind, or attempt to bind, CITY for payment of any money in connection with any construction authorized hereunder and that it will fully indemnify and hold harmless the CITY against any and all claims, liens, suits, or actions asserted on account of labor, materials, or services furnished to LEAGUE during the performance of any said construction and against any claim for injury to person or property.
- 8.4. Any improvements installed by LEAGUE which can be removed without damage to the Premises may be removed at the sole expense of LEAGUE at the termination of this Agreement without payment being made by CITY. If the improvements are not removable without damage to the Premises, then the improvements will become the property of the CITY. Temporary structures, if present, shall be removed from the Premises at the sole expense of LEAGUE at the termination of this Agreement without payment being made by CITY. In the event that LEAGUE removes temporary structure(s) prior to the termination of this Agreement, the underlying property may, at the election of the CITY, become excluded from the licensed Premises.

## **9. DEFAULTS AND TERMINATION RIGHTS**

- 9.1 Default by LEAGUE: Any of the following events shall constitute default by LEAGUE under this Agreement:
  - 9.1.1 LEAGUE shall fail to maintain its non-profit or 501(c)(3) status and operate a nationally organized sports league; or
  - 9.1.2 LEAGUE shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by LEAGUE, and such default shall continue for a period of ten (10) days after notice by CITY to LEAGUE, or if such default cannot be cured within ten (10) days, then such additional period as shall be reasonable provided that LEAGUE has commenced to cure such default.

- 9.2 Remedies of CITY: Upon the occurrence of an event of default by LEAGUE as specified in this Agreement, CITY shall be entitled to terminate this Agreement. After such termination, LEAGUE shall have no further rights to access the Premises, shall immediately cease all activities thereon and CITY shall have no further obligation under the terms of this Agreement.
- 9.3 Default by CITY: CITY shall be in default under this Agreement if CITY fails to keep, observe, or perform any material covenant, agreement, term, or provision of this Agreement to be kept, observed, or performed by CITY, and such default shall continue for a period of thirty (30) days after notice thereof by LEAGUE to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonably provided that CITY has commenced to cure such default.
- 9.4 Remedies of LEAGUE: Upon the occurrence of an event of default as specified in this Agreement hereof, LEAGUE shall be entitled to terminate this Agreement and shall have such other rights at law or equity to which it may be entitled.
- 9.5 Either CITY or LEAGUE, with or without cause, may cancel this Agreement by giving six (6) months written notice thereof to the other party.

## 10. INDEMNIFICATION

- 10.1 LEAGUE covenant and agree 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 LEAGUE'S activities under this Agreement, including any acts or omissions of LEAGUE, any agent, officer, director, representative, or employee, of LEAGUE, 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 LEAGUE 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.**
- 10.2 The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. LEAGUE shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or LEAGUE known to LEAGUE related to or arising out of LEAGUE'S activities under this Agreement and shall see to the investigation and defense of such claim or demand at LEAGUE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving LEAGUE of any of its obligations under this paragraph.

## 11. INSURANCE REQUIREMENTS

- 11.1 Prior to the commencement of any work under this Contract, LEAGUE shall furnish copies of all required endorsements and an original completed Certificate(s) of Insurance to the CITY's Parks and Recreation Department, which shall be clearly labeled "**Karma – Teens Empowered D/B/A Brooks Inner-City Sports**" in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The CITY will not accept Memorandum of Insurance or Binders as proof of insurance. The original certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the CITY. The CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the CITY's Parks and Recreation Department. No officer or employee, other than the CITY's Risk Manager, shall have authority to waive this requirement.
- 11.2 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 contract. In no instance will CITY allow modification whereupon CITY may incur increased risk.
- 11.3 LEAGUE's financial integrity is of interest to the CITY; therefore, subject to LEAGUE's right to maintain reasonable deductibles in such amounts as are approved by the CITY, LEAGUE shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at LEAGUE's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed:

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$1,000,000/\$1,000,000/\$1,000,000
2. Commercial General (Public) Liability Insurance to include coverage for the following:	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence \$2,000,000 general aggregate or its equivalent in umbrella or excess liability coverage
a. Premises/Operations	
b. Independent Contractors	
c. Broad Form Contractual Liability	
d. Products/completed operations	
e. Broad form property damage, to include fire legal liability	
f. Personal Injury	
3. Comprehensive Automobile Liability*	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence or its equivalent
a. Owned/Leased Vehicles	
b. Non-owned Vehicles	
c. Hired Vehicles	
4. Property Insurance: For physical damage to the property of LEAGUE, including improvements and betterment to the Licensed Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of LEAGUE'S property.

\*If Applicable

- 11.4 The CITY shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). LEAGUE 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. LEAGUE 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

- 11.5 LEAGUE 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 policies will provide a waiver of subrogation in favor of the CITY; and
  - D. Provide thirty (30) calendar days advance written notice directly to CITY of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 11.6 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, LEAGUE shall provide a replacement Certificate of Insurance and applicable endorsements to CITY. CITY shall have the option to suspend LEAGUE'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.
- 11.7 If LEAGUE fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have, and is not the exclusive remedy for failure of LEAGUE to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon LEAGUE's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order LEAGUE to stop work hereunder, and/or withhold any payment(s) which become due to LEAGUE hereunder until LEAGUE demonstrates compliance with the requirements hereof.
- 11.8 Nothing herein contained shall be construed as limiting in any way the extent to which LEAGUE

may be held responsible for payments of damages to persons or property resulting from LEAGUE's or its subcontractors' performance of the work covered under this Agreement.

- 11.9 It is agreed that LEAGUE's insurance shall be deemed primary with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this contract.
- 11.10 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this contract.

## **12. REPORTS**

- 12.1 On or before March 15 of each year, LEAGUE must provide to CITY the number of participants and their ages for the LEAGUE's previous Program Period.
- 12.2 LEAGUE is obligated to inform CITY within fifteen (15) days of a change in the following:
  - 12.2.1 Changes in officers of the LEAGUE: the name, position, and contact information must be provided.
  - 12.2.2 Amendments to LEAGUE's constitution, by-laws, and/or articles of incorporation: copies of the amended documents must be provided to CITY along with the notification.
- 12.3 If requested by CITY, LEAGUE will provide all or a portion of the following information within fifteen (15) days after receipt of written request from CITY.
  - 12.3.1 Starting and ending date of LEAGUE activity;
  - 12.3.2 Description of tournaments and special events;
  - 12.3.3 Description and value of the physical improvements placed on the Premises and/or any planned physical improvements;
  - 12.3.4 Gross receipts from each of the following: a) Concession Revenue, as defined in 7.1, b) Use Fees, as defined in 2.7, c) advertising, d) cash donations, and all other sources of LEAGUE revenue. LEAGUE shall track Concession Revenue and Use Fees separately from other revenue sources.
  - 12.3.5 An accounting of the expenditure of all Concession Revenue and Use Fees for operational and maintenance costs of LEAGUE. LEAGUE shall track the expenditure of Concession Revenue and Use Fees separately in order to ensure that they are expended only for operational and maintenance expenses of LEAGUE.

## **13. SIGNS**

- 13.1 LEAGUE hereby agrees not to install or display any permanent sign(s) upon the Premises without the prior written approval to install or display said sign(s) by the CITY through the Director. Temporary signs used for sponsorship recognition may be installed from time to time without sign approval by the CITY as long as standard design of the sign has been approved in advance. For purposes of this agreement, temporary signs shall be defined as any sign or banner that is placed on the Premises before the game begins, and removed at the conclusion of the game. Signs which advertise businesses, sponsors, products, services, logos, or non-LEAGUE events must be installed facing inward and must not be legible from the entrance or streets adjacent to the Premises. LEAGUE agrees it will not install any signs that advertise or promote any political campaigns or religious affiliations, alcohol use, tobacco use or sexually oriented

businesses or any other matter inappropriate for a youth sports league. LEAGUE further agrees to comply with such design criteria as may be established and amended from time to time by duly authorized CITY authority and to comply with established sign review procedures for proposed new signs. In order to ensure public safety, certain sign installations, especially signs that require a pole with concrete, may require the use of a licensed and bonded sign contractor.

#### **14. ASSIGNMENT**

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

#### **15. RELATIONSHIP OF PARTIES**

- 15.1 Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures, or any other similar such relationship between parties hereto. It is understood and agreed that no provision contained in this Agreement nor any acts of the parties create a relationship other than the relationship of Licensor and Licensee.

#### **16. CONFLICT OF INTEREST**

- 16.1 LEAGUE acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a CITY officer or employee, as those terms are defined therein, from having a financial interest in any contract with the CITY or any CITY agency such as CITY-owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, material, supplies, or services, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee, or his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market values of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 16.2 LEAGUE warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY or any of its agencies such as CITY owned utilities.

#### **17. SEPARABILITY**

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

**18. NOTICES**

- 18.1 Notices to CITY required or appropriate under this Agreement shall be deemed sufficient if in writing and hand delivered or mailed, registered or certified mail, postage prepaid, addressed to:

City of San Antonio  
Parks and Recreation Dept  
Contract Services Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

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

Ron Hayes, President  
Karma – Teens Empowered D/B/A Brooks Inner-City Sports  
810 Fair Avenue  
San Antonio, Texas 78223

**19. TEXAS LAW TO APPLY**

- 19.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**

**20. GENDER**

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

**21. NON-DISCRIMINATION**

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

**22. CAPTIONS**

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

**23. HOLDING OVER**

- 23.1 LEAGUE shall have no right to hold over after the end of the term of this License Agreement.

**24. ENTIRE AGREEMENT/AMENDMENT**

- 24.1 This Agreement, together with its attached exhibits and the authorizing ordinance, in writing, constitutes the entire Agreement between the parties, any other written or parole agreement with CITY being expressly waived by LEAGUE.
- 24.2 No amendment, modification or alteration of the terms of this Agreement shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties.
- 24.3 It is understood that the Charter of the CITY requires that all contracts with the CITY be in writing and adopted by ordinance. All amendments also need approval evidenced by an ordinance.

**25. AUTHORITY**

- 25.1 The signer of this License Agreement for LEAGUE hereby represents and warrants that he or she has full authority to execute this Agreement on behalf of LEAGUE.

IN WITNESS WHEREOF, we have affirmed our signatures this \_\_\_ day of \_\_\_\_\_ 20\_\_.

**CITY:**

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

\_\_\_\_\_  
Sheryl Sculley City  
Manager

ATTEST:

\_\_\_\_\_  
City Clerk

**LEAGUE:**

**BROOKS INNER-CITY SPORTS**, a Texas Non-profit Corporation

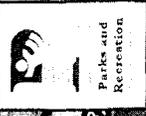
By: Ken Hay

Title: President

APPROVED AS TO FORM: \_\_\_\_\_, City Attorney

# Exhibit A

**Legend**  
Licensed Premises



## EXHIBIT "A"

LICENSED PREMISES WILL INCLUDE ONE  
MULTI-PURPOSE FIELD FOR BASEBALL  
AND FOOTBALL ACTIVITIES. THE SIZE AND  
DIMENSION OF THE PREMISES TO BE  
DETERMINED BY THE PARTIES

1 inch = 200 feet  
0 200 400 600 Feet

Map completed 11/16/2010 by Park Project Services