

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PARKS AND RECREATION DEPARTMENT**

TO: Mayor and City Council

FROM: Malcolm Matthews, Director, Parks and Recreation Department

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady; Finance; Management and Budget; City Attorney; File

SUBJECT: Ordinance Authorizing an Athletic Field Use and Maintenance License Agreement with the San Antonio Elite Youth Soccer Organization for 11.0115 Acres of Parks and Recreation Department land that is leased from the Aviation Department.

DATE: June 3, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance will authorize an Athletic Field Use and Maintenance License Agreement with the San Antonio Elite Youth Soccer Organization (SAEYSO) for 11.0115 acres of Parks and Recreation Department land that is leased from the Aviation Department land on Old Bitters Road in City Council District 9.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

Athletic organizations request to utilize City sports fields through long-term arrangements in order to assure continuous availability of practice and game fields for their league play. San Antonio Elite Youth Soccer Organization (SAEYSO) approached the Parks and Recreation Department for such use. SAEYSO was looking for property near the Blossom Sports Complex, but the Parks and Recreation Department at that time had no such property. SAEYSO then inquired about property south of the Blossom Sports Complex. This property is currently owned by the Aviation Department. SAEYSO requested to obtain approval to utilize 11.0115 acres of unimproved property that the organization desires to develop into several practice fields for soccer, with a parking area and other improvements, in exchange for maintenance of the area.

The Parks and Recreation Department has had an existing Directive for Use of Aviation Department Land for property adjacent to McAllister Park for several years. This agreement enables the Parks and Recreation Department to utilize Airport ground space as expanded park area, in accordance with Federal Aviation Administration regulations. The Parks and Recreation

Department, in turn, provides maintenance and security for this area. In order to facilitate the development of additional youth soccer fields, the subject 11.0115 acres parcel has been added to the Parks and Recreation Department's Directive by a First Amendment. The Parks and Recreation Department will administer the License Agreement, and, in exchange for the use of the leased property, SAEYSO agrees to compensate the Parks and Recreation Department with property maintenance as in-kind services that are to be approved in writing by the Aviation Director.

The license agreement under consideration has a ten (10) year term from March 1, 2004 through February 28, 2014. The agreement specifies that SAEYSO has priority use of the fields on the dates identified on a written use schedule that they must submit to the Parks and Recreation Department. The agreement also states that they are permitted to operate a concession, as long as the proceeds benefit SAEYSO. SAEYSO is responsible for maintenance of the fields and premises during the term of the agreement.

The agreement stipulates that the fields are available for the public's use when they are not used by SAEYSO. This enables the Parks and Recreation Department to schedule other groups to use the fields during the off season period of SAEYSO.

All costs associated with improvements to the property will be the responsibility of SAEYSO. Should the license agreement be terminated, all improvements revert to the City. Also, use of the property is subject to compliance with all provisions and conditions of the Directive for Use of Aviation Department Land through the Parks and Recreation Department. SAEYSO's use of the land shall not preclude future airport use of the property.

POLICY ANALYSIS

The Field Use and Maintenance License Agreement is consistent with other agreements in effect for use and maintenance of City sports parks. It follows the long standing City policy of allowing use of public parks by athletic organizations as a means to provide youth recreation programs in San Antonio. Expansion of the Parks and Recreation Department's Directive for Use of Aviation Department Land meets all Aviation regulations related to this use.

FISCAL IMPACT

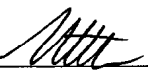
There is no impact on the City's General Fund through this agreement.

COORDINATION


The City Attorney's Office and Human Resources Department/Risk Management Division have reviewed this Athletic Field Use and Maintenance License Agreement.

SUPPLEMENTARY COMMENTS

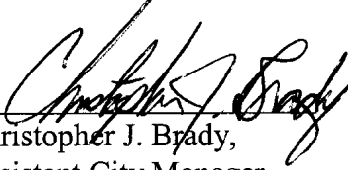
The Discretionary Contracts Disclosure Form completed by SAEYSO is attached.



Malcolm Matthews,
Director of Parks and Recreation



Kevin Dolliole,
Aviation Department



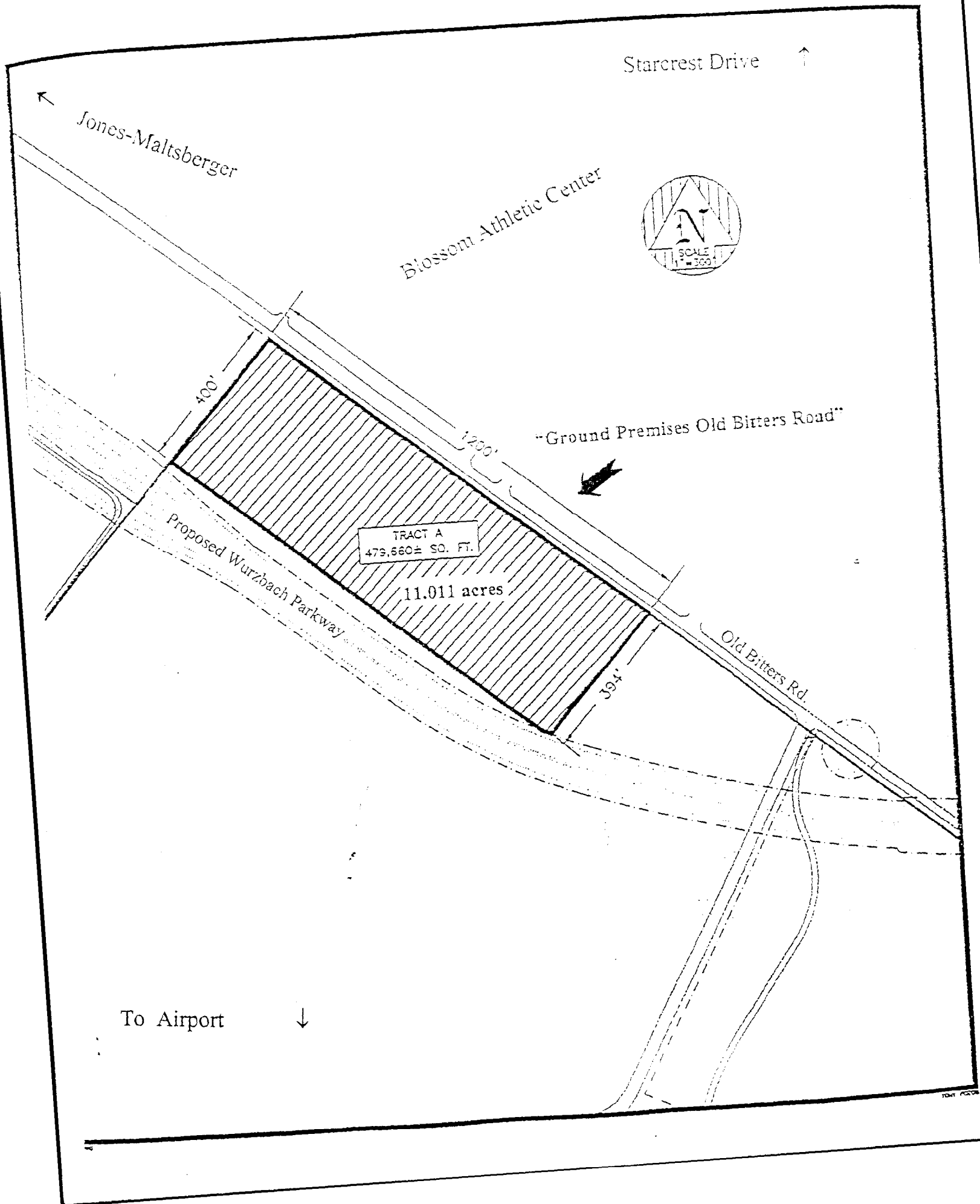
Christopher J. Brady,
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager

SAEYSO LEASE AREA



City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the city in the enforcement of provisions contained in the City Charter and the code of ethics, an individual or business entity seeking a discretionary contract from the city is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract;

NOT APPLICABLE

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:
_____ and the name of:

(A) any individual or business entity that would be a *subcontractor* on the discretionary contract;

NOT APPLICABLE

(B) any individual or business entity that is known to be a *partner*, or a *parent* or *subsidiary* business entity, of any individual or business entity who would be a party to the discretionary contract;

NOT APPLICABLE

(3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

NOT APPLICABLE

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

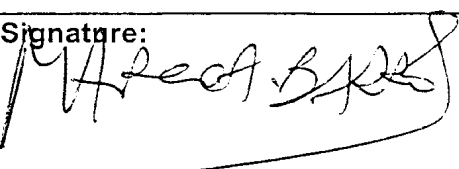
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current or former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Mayor Ed Garza Campaign	\$75.00	April 3, 2003
Councilman Art Hall Campaign	\$75.00	July 20, 2003
Councilman Enrique Barrera Campaign	\$100.00	August 11, 2003
Councilman Carroll Schubert	\$75.00	April 2003
Councilwoman Patti Radle	\$50.00	March 14, 2003

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

NONE - NOT APPLICABLE		
Signature: 	Title: PRESIDENT Company: SAN ANTONIO ELITE SOCCER ORGANIZATION	Date: MARCH 16, 2004

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

**ATHLETIC FIELD USE AND MAINTENANCE LICENSE AGREEMENT
SAN ANTONIO ELITE YOUTH SOCCER ORGANIZATION, INC. (ELITE)**

THIS ATHLETIC FIELD USE AND MAINTENANCE AGREEMENT (the "**Agreement**") made and entered into as of the _____ day of _____, 2004, by and between the **CITY OF SAN ANTONIO**, a Texas municipal corporation, acting by and through its City Manager or his designee, pursuant to Ordinance No. _____, dated _____, 2004 (herein called "**CITY**"), and **SAN ANTONIO ELITE YOUTH SOCCER ORGANIZATION, INC.**, a Texas non-profit corporation (herein called "**ELITE**");

1. WITNESSETH:

- 1.1 WHEREAS, **CITY** desires to maintain its athletic fields in the best condition possible while at the same time conserving its resources; and
- 1.2 WHEREAS, for the benefit not only of **ELITE'S** members but also of all the citizens of San Antonio, **CITY** desires to accept **ELITE'S** offer to maintain the athletic fields at hereinafter named property; and
- 1.3 WHEREAS, in consideration of **ELITE'S** maintenance of hereinafter cited athletic fields **CITY** desires to grant permission to **ELITE** to enter and use said athletic fields as prescribed hereinafter:

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

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

2. APPOINTMENT

- 2.1 CITY hereby designates **ELITE** as the primary user and maintainer of 11.0115 acres of Aviation Department Land ground space for athletic fields on Old Bitters Road ("Ground Premises Old Bitters Road"), and **ELITE** hereby accepts such obligations and agrees to perform such services and duties as required hereinafter.
- 2.2 By prior written mutual agreement, **CITY**, through its Director, Department of Parks and Recreation (hereafter called "**Director**"), and **ELITE** may, from time to time, add other athletic fields to foregoing list or delete from foregoing list as may be appropriate to accommodate growth and/or changes in the soccer program.

3. USE OF ATHLETIC FIELDS BY ELITE

- 3.1 **CITY**, for and in consideration of the mutual benefits to **CITY** and **ELITE** and the observance of the terms and conditions set forth hereinafter, hereby grants to **ELITE** permission to enter and use, without payment of **CITY'S** established athletic field use fee, the premises described in EXHIBIT A which is attached hereto and incorporated by reference herein. Such use shall also apply to any athletic fields added in the future pursuant to paragraph 2.2 hereinbefore.

3.2 Although **CITY** hereby grants to **ELITE** permission to enter and use, without payment of **CITY'S** established athletic field use fee, use of the premises is subject to **ELITE's** compliance with all provisions and conditions of the DIRECTIVE FOR USE OF AVIATION DEPARTMENT LAND BY AND BETWEEN AVIATION DEPARTMENT AND PARKS AND RECREATION DEPARTMENT dated February 21, 2003, as amended, including all attachments and exhibits, and **ELITE's** use of the premises shall not preclude future airport use of the Ground Premises. Such provisions include, but are not limited to:

3.2.1 Compensation to the Airport for the fair market value of the Ground Premises shall be by in-kind services, that are approved in writing by the Aviation Director, as user fees, every six (6) months in advance (without notice or demand, both of which are expressly waived) or direct financial payment, or a combination thereof. Such in-kind services shall be reported to the Aviation Director at 9800 Airport Blvd., San Antonio Texas, 78216 on the first day of each proceeding six (6) month period. The report shall be in a format similar in form to Exhibit B.

3.2.2 Compensation for use of the Ground Premises shall be as follows:

<u>Ground Premises</u>	<u>Annual Rate/Acre</u>	<u>Annual User Fee</u>	<u>Monthly User Fee</u>
11.0115 acres	\$588.06	\$6,475.42	\$539.62

3.3 Although permission to enter and use herein above cited premises is not exclusive, **CITY** shall give **ELITE** priority use of such premises upon submission of a written use schedule by **ELITE** to the Director. At those times during which **ELITE** has not scheduled the use of said premises and facilities, with the exception of any building(s) containing **ELITE** equipment and **ELITE**-operated concession stand(s), such premises and facilities shall be open to the general public for park and recreation purposes. **CITY** shall coordinate such public use of the premises with **ELITE** to avoid scheduling conflicts. Such use by the general public shall be subject to **CITY**-established use fees and such use fees shall be collected and retained by **CITY**.

3.4 The premises shall be occupied by **ELITE** for recreational purposes including but not necessarily limited to organized athletic team activities of soccer and food and beverage concessions. **ELITE** agrees and specifically understands that permission herein given does not grant to **ELITE** any interest or estate in the premises but is a mere personal privilege to do certain acts of a temporary character upon the premises, and that **CITY** retains dominion, possession and control of the premises, including access thereto at all times. **CITY** reserves the right to impose and enforce all necessary and proper rules for the management and operation of the premises.

3.5 **ELITE** 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 **ELITE** is called to any such violation, **ELITE** or those under its control will immediately desist from and correct such violation.

3.6 **ELITE** is hereby authorized to establish fees and charges for its membership and to collect and retain such fees and charges to defray its operating expenses and the costs of its hereinafter assigned obligations and duties. **ELITE** shall not charge or attempt to charge any general public user of the premises as may occur pursuant to paragraph 3.2 hereinbefore.

4. TERM OF AGREEMENT

- 4.1. The term of this **Agreement** shall commence upon execution hereof and shall continue for a period of ten (10) years beginning on March 1, 2004 which is hereinafter referred to as the commencement date, and expiring on February 28, 2014 if not earlier terminated according to the terms hereof.

5. ELITE MAINTENANCE OBLIGATIONS AND DUTIES

- 5.1. General Maintenance: During the term of this **Agreement**, **ELITE** shall provide year-around maintenance service (in no event less than the quality of maintenance service demonstrated in other **CITY**-owned athletic fields). In addition to the other obligations of **ELITE** set forth herein, **ELITE** shall render the following services and perform the following duties with regard to its maintenance of hereinbefore listed athletic fields, concession area and parking area(s) for **CITY** in a faithful, diligent, and efficient manner:

- 5.1.1. Keep the grass watered, mowed and trimmed to sustain acceptable standards of use conditions;
- 5.1.2. Provide weekly trash pickup and removal service and keep the fields, concession and parking areas free from litter and debris following all practice and regular games;
- 5.1.3. Seed and fertilize the fields as required to sustain acceptable standards of playing conditions;
- 5.1.4. Provide ant control services as frequently as required to control these pests;
- 5.1.5. Level the fields with dirt/sand as needed to sustain acceptable standards of playing conditions; and
- 5.1.6. Provide such other maintenance tasks and chores as may be required to sustain the athletic fields, and adjacent concession and parking areas at acceptable standards of use conditions.
 - 5.1.6.1. Parking Area(s) maintenance obligations extend to keeping such areas cleared of litter and trash and prompt notification to **CITY** when repairs are required.

- 5.2. **ELITE** shall promptly repair any damage to the premises caused by the use of the premises by **ELITE** or those persons under its control. **ELITE** shall have no duty to repair any damage caused by others whom **CITY** has authorized to use the premises. Notwithstanding any contrary provisions herein contained, should the premises be damaged by fire, tornado or other casualty, **CITY** shall be under no obligation to rebuild or repair the premises.

- 5.3. In carrying out the aforestated maintenance responsibilities, **ELITE** agrees to provide at its sole cost and expense the manpower and equipment needed to accomplish aforesaid maintenance responsibilities.

6. UTILITIES

- 6.1. **ELITE** will pay the cost of all utilities incurred during **ELITE'S** use, whether by **ELITE** or its sublicensees or permittees, excluding normal field irrigation and watering.

7. SCHEDULED FIELD MAINTENANCE

- 7.1. **ELITE** agrees to formulate an annual athletic field maintenance program and to submit same in writing to the **Director** not later than January 1, of each year of the term hereof. Said program will indicate planned mowing frequency and time frames for seeding, fertilization and other programmable field maintenance activities. The **Director** shall review said maintenance program and shall notify **ELITE** in writing within fifteen (15) days of any changes thereto it deems operationally and scientifically necessary. If changes are not required to **ELITE'S** program as submitted said program shall be deemed approved in the absence of **CITY** instructions to the contrary.
- 7.1.1. During seasons and/or years that the Edwards Aquifer Authority and/or San Antonio Water System (SAWS) has deemed that water restrictions, based on the Aquifer Management Plan, are required, **ELITE** agrees to follow and comply with the posted water restrictions, which currently include, but are not necessarily limited to:
- 7.1.1.1. **Stage 1** Aquifer level reaches 650 mean sea level feet: Ball fields may only be watered during the hours of 12:00 a.m. to 10:00 a.m. and 8:00 p.m. to 11:00 a.m. and only once a week. (SAWS allows for landscape irrigation until 12:00 midnight; however, the Park curfew closes the park(s) at 11:00 p.m.)
- 7.1.1.2. **Stage 2** Aquifer level reaches 640 mean sea level feet: Ball fields may only water before 9:00 a.m., and only to the extent necessary to protect health and safety, unless conservation plan is otherwise approved by SAWS.
- 7.2. **ELITE** further agrees to notify, in writing, the **Director** or his designee, in writing, two weeks in advance of any anticipated deviations from aforesaid scheduled maintenance program except in such cases when inclement weather precludes **ELITE** from carrying out its planned maintenance schedule.

8. CITY'S RIGHT OF INSPECTIONS

- 8.1. **CITY**, through the **Director** and/or his representative(s) shall have the right to inspect the fields and their amenities at any time.

9. CONCESSIONS

- 9.1. **ELITE** shall, during its use of the premises as provided herein, have the right to operate concessions for the sale of food, non-alcoholic beverages and similar consumable items. **ELITE** shall have the exclusive use of any concession stand(s) erected by it upon the premises as well as stocks of items supplied by it. No fee for the right to operate said concessions shall be payable to **CITY**; provided, however, that all profits generated thereby shall be applied to the operation of **ELITE**. **ELITE** shall obtain and maintain at its sole expense, all permits or licenses required for its concession operations hereunder.
- 9.2. **ELITE'S** concessions rights shall not apply during general public use of the premises as may occur pursuant to paragraph 2.2.

10. IMPROVEMENTS

- 10.1. **ELITE** 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, soccer fields, concession stands, utilities, fencing, and parking areas. During any period of construction or installation, **ELITE**, its members, employees, agents and contractors shall insure that the performance of said

construction or installation does not cause or result in damage to **CITY** property or adjoining property.

- 10.2. **ELITE** shall present, for review and written approval, all designs, plans and specifications to the **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 **ELITE**. **CITY** reserves the right to enter the premises at any time to inspect construction in progress and/or to determine the condition of fields and facilities so as to insure **ELITE'S** compliance with this **Agreement**.
- 10.3. **ELITE** 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. A copy of said permits or clearances shall be provided to the **Director** prior to the start of any construction. **ELITE** 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 **ELITE** during the performance of any said construction and against any claim for injury to person or property.
- 10.3.1. **ELITE** agrees to maintain all improvements that League installs, constructs and/or assembles in satisfactory condition for the duration of the **Agreement** and any or all renewals of **Agreement**.
- 10.4. Any improvements so installed by **ELITE** which can be removed without damage to the premises may be removed at the sole expense of **ELITE** at the termination of this **Agreement** without payment therefore being made by **CITY**. If the improvements are not so removable without said damage to the premises, then said improvements become the property of the **CITY**.

11. DEFAULTS AND TERMINATION RIGHTS

- 11.1. Default by **ELITE**: Any of the following events shall constitute default by **ELITE** under this **Agreement**:
- 11.1.1 **ELITE** shall apply for or consent to the appointment of a receiver, trustee, or liquidator of **ELITE** or of all or a substantial part of its assets, file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, make a general assignment for the benefit of creditors, file a petition or an answer seeking reorganization or arrangement with creditors or take advantage of any insolvency law, or file an answer admitting the material allegations of a petition filed against **ELITE** in any bankruptcy, reorganization, or insolvency proceedings, or if any order, judgment, or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating **ELITE** as bankrupt or insolvent or approving a petition seeking reorganization of **ELITE**, or appointing a receiver, trustee, or liquidator of **ELITE** or of all a substantial part of its assets, and such order, judgment, or decree shall continue non-stayed and in effect for any period of sixty (60) consecutive days; or
- 11.1.2. **ELITE** shall fail to keep, observe, or perform any material covenant, agreement, term, or provision of this **Agreement** to be kept, observed, or performed by **ELITE**, and such default shall continue for a period of thirty (30) days after notice thereof by **CITY** to **ELITE**, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that **ELITE** has commenced to cure such default.
- 11.2. Remedies of **CITY**: Upon the occurrence of an event of default by **ELITE** as specified in Paragraph 11.1 hereof, **CITY** shall be entitled to terminate this **Agreement** and **CITY** shall have no further obligation hereunder.

- 11.3. 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 ELITE to CITY, or if such default cannot be cured within thirty (30) days, then such additional period as shall be reasonable provided that CITY has commenced to cure such default.
- 11.4. Remedies of ELITE: Upon the occurrence of an event of default as specified in Paragraph 11.3 hereof, ELITE shall be entitled to terminate this **Agreement** and shall have such other rights at law or equity to which it may be entitled.
- 11.5. Either CITY or ELITE, with or without cause, may cancel this **Agreement** by giving six (6) months written notice thereof to the other party.

12. INDEMNIFICATION

- 12.1 ELITE covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to ELITE'S activities under this AGREEMENT, including any acts or omissions of ELITE, any agent, officer, director, representative, employee, consultant or subcontractor of ELITE, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH SUITS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF THE CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. 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. ELITE shall promptly advise the CITY in writing of any claim or demand against the CITY or ELITE known to ELITE related to or arising out of ELITE'S activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at ELITE'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving ELITE of any of its obligations under this paragraph.
- 12.2 It is the EXPRESS INTENT of the parties to this AGREEMENT, that the INDEMNITY provided for in this section (Section 12), is an INDEMNITY extended by ELITE to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the CITY is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage, and shall have no application when the negligent act of the CITY is the sole cause of the resultant injury, death, or damage. ELITE further AGREES TO DEFEND, AT ITS OWN EXPENSE and ON BEHALF OF THE CITY AND IN THE NAME OF THE CITY, any claim or litigation brought against the CITY and its elected officials, employees, officers, directors, volunteers and representatives, in connection with any such injury, death, or damage for which this INDEMNITY shall apply, as set forth above.

13. INSURANCE REQUIREMENTS

- 13.1. Any and all employees, representatives, agents or volunteers of **ELITE** while engaged in the performance of any work required by the **CITY** or any work related to a lease of space or Concession Agreement with the **CITY** shall be considered employees, representatives, agents or volunteers of **ELITE** only and not of the **CITY**. Any and all claims that may result from any obligation for which **ELITE** may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of **ELITE**.
- 13.2. Prior to the commencement of any work under this **Agreement**, **ELITE** shall furnish an original completed Certificate(s) of Insurance to the **CITY'S** Director, Parks and Recreation Department and City Clerk's Office, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the **CITY**. The **CITY** shall have no duty to pay or perform under this **Agreement** until such certificate shall have been delivered to the **CITY'S** Director, Parks and Recreation Department and the City Clerk's Office and no officer or employee shall have authority to waive this requirement.
- 13.3. The **CITY** reserves the right to review the insurance requirements of this section during the effective period of this **Agreement** and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this **Agreement**, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk.
- 13.4. **ELITE'S** financial integrity is of interest to **CITY**, therefore, subject to **ELITE'S** right to maintain reasonable deductibles in such amounts as are approved by **CITY**, **ELITE** shall obtain and maintain in full force and effect for the duration of this **Agreement**, and any extension hereof, at **ELITE'S** sole expense, insurance coverage written, on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-or better by A.M. Best Company and/or otherwise acceptable to the **CITY**, in the following types and amounts:

TYPE	AMOUNT
1. Workers' Compensation and Employers Liability*	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (Public) Liability Insurance to include coverage for the following: 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. Property Insurance: For physical damage to the property of ELITE , including improvements and betterment to the Leased Premises, if applicable.	Coverage for a minimum of eighty percent (80%) of the replacement cost of ELITE'S property

* If applicable

- 13.5. The **CITY** shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the **CITY**, and may make a reasonable request for 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). Upon such request by the **CITY**, the **ELITE** shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof.
- 13.6. **ELITE** agrees that with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.
- 13.6.1. Name the **CITY** and its officers, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;
- 13.6.2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the **CITY** is an additional insured shown on the policy;
- 13.6.3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the **CITY**.
- 13.7. **ELITE** shall notify the **CITY** in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the **CITY** at the following address:
- | | |
|---|--|
| City of San Antonio
Department of Parks and Recreation
Contract Services Division
P.O. Box 839966
San Antonio, Texas 78283-3966 | City of San Antonio
City Clerk's Office
City Hall-Second Floor
P.O. Box 839966
San Antonio, Texas 78283-3966 |
|---|--|
- 13.8. If **ELITE** 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**. Procuring of said insurance by the **CITY**, however, is not the exclusive remedy for failure of **ELITE** to maintain said insurance or secure said endorsements. In addition to any other remedies the **CITY** may have upon **ELITE** 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 **ELITE** to stop work hereunder, and/or withhold any payments(s) which become due to **ELITE** hereunder until **ELITE** demonstrates compliance with the requirements hereof.
- 13.9. Nothing herein contained shall be construed as limiting in any way the extent to which **ELITE** may be held responsible for payments of damages to persons or property resulting from **ELITE'S** or its subcontractors' performance of the work covered under this **Agreement**.
- 13.10. All personal property placed in the premises shall be at the sole risk of **ELITE**. **CITY** shall not be liable, and **ELITE** waives all claims for any damage either to the person or property of **ELITE** or to other persons due to the **Premises** or any part of appurtenances thereof becoming out of repair or arising from bursting or leaking of water, gas, waste pipes, or defective wiring or excessive or deficient electrical current; or from any act or omission of employees, or other occupants of the

Premises, or any other persons; due to the happening of any accident in or about **Premises**. **ELITE** shall save and hold harmless **CITY** from any claims arising out of damage to **ELITE** property or damage to **ELITE'S** business, including subrogation claims by **ELITE'S** insurers.

14. REPORTS

14.1. **ELITE** shall inform the **Director**, in writing, of its current officers of the **ELITE** and promptly advise said **Director**, in writing, of any changes thereto. Annually, beginning on January 1, of each year of this Agreement, **ELITE** will furnish to the **Director** a report and financial statement including the following information:

- 14.1.1 Value of the physical improvements placed on the property during the previous twelve (12) months;
- 14.1.2 Gross receipts from concessions operation, advertising and cash donations with a list of any future disbursements or physical improvements;
- 14.1.3 Disbursements for utilities, itemized as to water, electricity, gas and sewer (if applicable), for the previous twelve (12) months;
- 14.1.4 Disbursements of concessions;
- 14.1.5 Number of participants in **ELITE'S**, teams, and ages;
- 14.1.6 Certificate of insurance (required year-round);
- 14.1.7 Names, addresses, phone numbers and zip codes of all current executive board officers of **ELITE**;
- 14.1.8 Estimated number of spectators attending all events during the season;
- 14.1.9 Starting and ending date and month of each regular season;
- 14.1.10 Number of coaches and volunteers;
- 14.1.11 Number of tournaments and special events held (briefly describe);
- 14.1.12 **Current** constitution and by-laws, articles of incorporation, and corporation provision/signature of authority;
- 14.1.13 **ELITE'S** standard operating procedures policy (S.O.P.); and
- 14.1.14 Before the expiration date of the Maintenance Agreement, **ELITE** must submit a letter to the Director of Parks and Recreation requesting continued utilization of the property.

15. SIGNS

15.1 **ELITE** hereby agrees not to install or display any sign(s) upon the **Premises** without prior written approval of said sign(s) by the **CITY** through the Director. **ELITE** 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.

16. ASSIGNMENT

- 16.1 This **Agreement** is personal to **ELITE**. It is non-assignable, and any attempt to assign this **Agreement** will terminate all privileges granted to **ELITE** hereunder.

17. RELATIONSHIP OF PARTIES

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

18. CONFLICT OF INTEREST

- 18.1 **ELITE** acknowledges that it is informed that Texas law prohibits contracts between **CITY** and its "officers" and "employees", and that the prohibition extends to an officer and employee of **CITY** agencies such as **CITY**-owned utilities and certain **CITY** boards and commissions, and to contracts with any partnership, corporation or other organization in which the officer or employee has an interest. **ELITE** certifies (and this contract is made in reliance thereon) that neither it nor any person having an interest in this **Agreement** is an officer or employee of **CITY** or any of its agencies.

19. AMENDMENT

- 19.1 This **Agreement** together with the authorizing ordinance and any attached exhibits constitutes the entire agreement between the parties. No amendment, modification, or alteration of the terms of this **Agreement** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto. It is understood that the Charter of the City requires that all contracts with the City be in writing and adopted by ordinance.

20. SEPARABILITY

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

21. NOTICES

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

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

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

or to such other address as may have been designated in writing by the City Manager of the City of San Antonio from time to time. Notices to **ELITE** shall be deemed sufficient if in writing and mailed, registered or certified mail, postage prepaid, addressed to **ELITE** at:

San Antonio Elite Youth Soccer ORGANIZATION, Inc.
Attn: Marco Barros, President
14018 Sage Bluff
San Antonio, TX 78216

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

22. TEXAS LAW TO APPLY

- 22.1 **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.**

23. GENDER

- 23.1 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.

24. NON-DISCRIMINATION

- 24.1 **ELITE** 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 **ELITE** acknowledges is prohibited.

25. CAPTIONS

- 25.1 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**.

26. HOLDING OVER

- 26.1 Should **ELITE** hold over the Licensed Premises, or any part thereof, after the expiration or termination of the term of this License, unless otherwise agreed in writing, such holding over shall constitute and be construed as a month to month contract only, with all terms, conditions and requirements of the preceding License Agreement continuing in effect until such time as **ELITE** permanently ceases use of the athletic fields or a new License Agreement is executed.

27. ENTIRE AGREEMENT/AMENDMENT

- 27.1 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 **ELITE**.
- 27.2. No amendment, modification or alteration of the terms of this **Agreement** shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

27.3 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.

28. AUTHORITY

28.1 The signer of this Maintenance Agreement for **ELITE** hereby represents and warrants that he or she has full authority to execute this **Agreement** on behalf of **ELITE**.

IN WITNESS WHEREOF, we have affirmed our signatures this _____ day of _____ 2004.

LICENSOR:

CITY OF SAN ANTONIO, a Texas Municipal Corporation

By: _____
City Manager

ATTEST:

City Clerk

LICENSEE:

SAN ANTONIO ELITE YOUTH SOCCER ORGANIZATION, INC., a Texas Non-profit Corporation

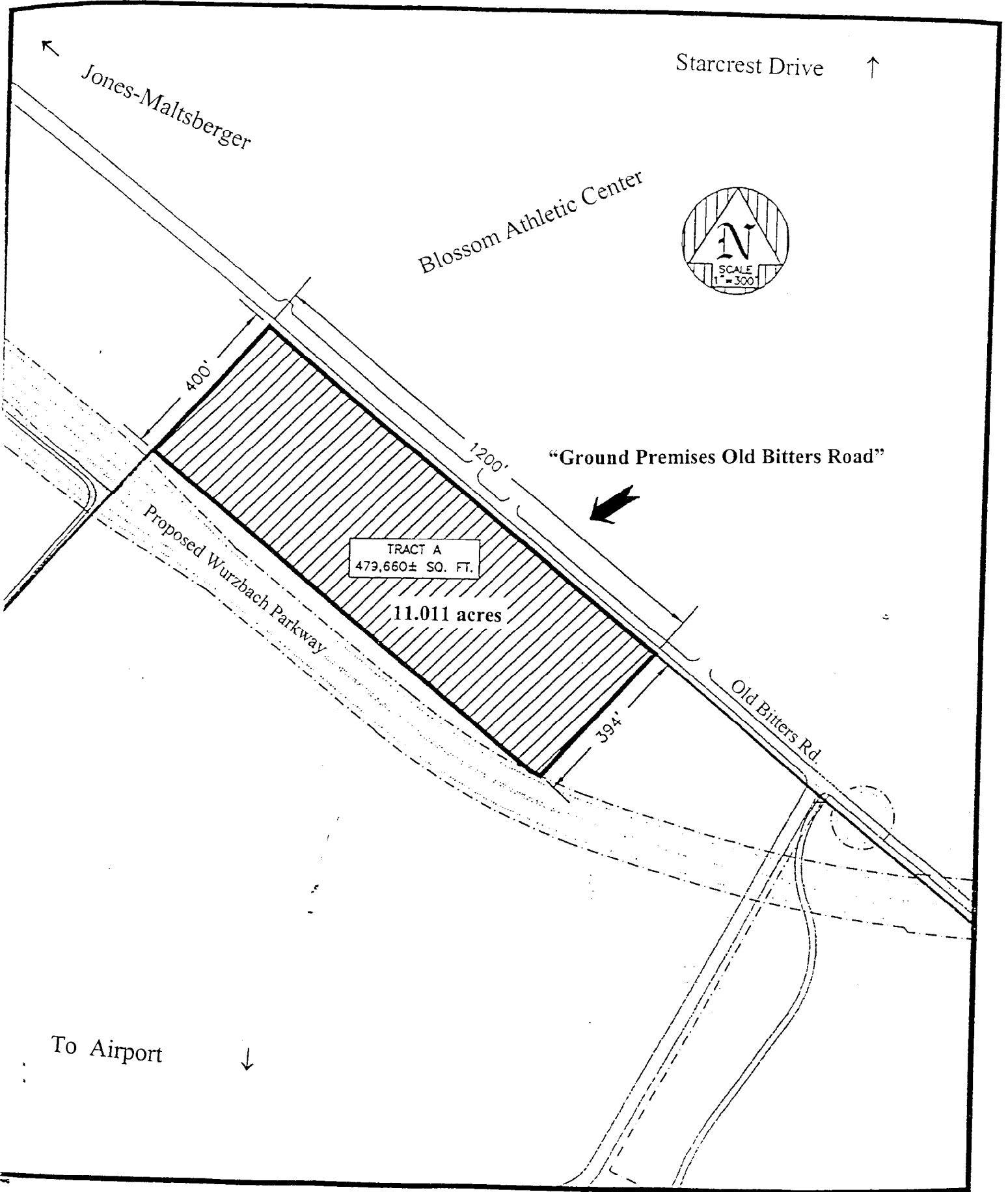
By: MARCO A. BARRERA

Title: PRESIDENT

APPROVED AS TO FORM:

City Attorney

EXHIBIT "A"



RE: Interdepartmental Land Use Agreement at San Antonio Airport -

No. _____

In-Kind Service Report.

Park Rangers have a routine presence at McAllister Park, serving the community 24 hours a day, seven (7) days a week. Our in-Kind security consist of ground and vehicle patrol round in and around McAllister Park and the Land Use remises.

Land Use Area Security for the month of _____, 2002

<u>Shift</u>	<u>Vehicle Patrol</u>	<u>Ground Patrols</u>	<u>Security Patrols</u>	<u>Total Patrols</u>	<u>Totals</u>
0600 - 1400					
0600 - 1400					
0600 - 1400					
TOTAL					

BY: _____

TITLE: _____

PHONE/FAX: _____

Exhibit "~~C~~" B "