

**AGREEMENT BETWEEN HARRIS COUNTY AND SOUTH BELT AREA SPORTS
ASSOCIATION, INC.**

THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §

This Agreement is made and entered into by and between HARRIS COUNTY, a body corporate and politic under the laws of the State of Texas, hereinafter referred to as the "County," and SOUTH BELT AREA SPORTS ASSOCIATION, INC., a Texas nonprofit corporation, hereinafter referred to as "Concessionaire."

WITNESSETH:

WHEREAS, Concessionaire desires to assist the County in providing recreational facilities for the general public, to promote the sports and hobbies of baseball, football, soccer, and softball, to develop within the general public the spirit of good sportsmanship and cooperation, and to provide a means to actively and recreationally occupy their time and leisure; and

WHEREAS, Concessionaire has requested the County's permission to use and to make improvements to a certain portion of El Franco Lee Park, a County park located at 9500 Hall Road, hereinafter referred to as the "Park," for the purposes described above; and

WHEREAS, the County is willing to allow Concessionaire to use and to make improvements to a certain portion of the Park for the purposes set forth above; and

WHEREAS, Concessionaire is willing to supervise and manage baseball, football, soccer, and softball fields and the appurtenances thereto;

NOW, THEREFORE, in consideration of the mutual covenants, agreements, and benefits to both parties, it is agreed as follows:

I.

Subject to the provisions of this Agreement, the County authorizes Concessionaire to use and to make improvements to those certain seven (7) baseball fields identified as "Lighted Baseball Fields" and "Baseball Fields;" that certain football field identified as "Football Field;" those certain eight (8) soccer fields identified as "Lighted Soccer Fields" and "Soccer Fields;" and those certain four (4) softball fields identified as "Lighted Softball Fields" on the diagram of the Park attached hereto as Exhibit "A" and made a part hereof, being herein collectively referred to as the "fields," for a term of one hundred and twenty (120) days, beginning upon execution of this Agreement and ending one hundred and twenty (120) days later, unless sooner ended in accordance with the provisions hereof.

II.

The fields are to be known as "South Belt Area Sports Association, Inc. Fields."

III.

All fixtures and improvements, and the alterations and additions thereto, made and/or installed in or upon the fields by Concessionaire, including, but not limited to, the playing areas, the appurtenances thereto, concession building, electronic scoreboards, stands, sidewalks, shrubberies, floodlighting facilities, and all other fixtures and improvements (similar or dissimilar), will immediately become the property of the County when installed and/or constructed upon the fields. Movable property, such as maintenance equipment, concession appliances, and portable field equipment not permanently attached, are not to become the property of the County, but are to remain the property of Concessionaire. Upon termination of the term of this Agreement, any such movable property not removed by Concessionaire prior to the date of termination becomes the property of the County.

IV.

Concessionaire will furnish architectural and/or engineering services, including complete detailed architectural and engineering designs and specifications for all improvements to be made to the fields, and the architectural and engineering designs and specifications will be submitted to, and approved by, the Commissioners Court of the County prior to the commencement of construction of improvements by Concessionaire.

V.

Concessionaire will maintain in good repair the fields and improvements thereon. Concessionaire will keep the fields and that portion of the Park lying and being within 25 yards of the fields in a neat, clean, and respectable condition. Concessionaire will pick up and haul away the trash on a regular basis and will mow the grass before it attains a height of six (6) inches.

With respect to the east-facing baseball field of the "Baseball Fields" depicted on Exhibit "A" and the concession stand adjacent thereto, Concessionaire will be responsible for and have supervision over the maintenance, scheduling, and operation, except during the following times:

- a. During the Dobie High School regular baseball season, which usually runs each year from January 1 through April 30, and in any year in which Dobie High School advances to the high school baseball playoffs, through May 31;
- b. In the event Dobie High School advances to the high school baseball state championship series in a particular year, which series is usually played in the first week of June, from June 1 until the completion of the series;
- c. During the time between 7:45 a.m. and 2:45 p.m. each school day during the school; and
- d. Any additional periods as may be reserved in writing by the County Commissioner of the precinct in which the Park is located.

Concessionaire understands that with respect to the exclusionary times identified above, another entity may have supervision over the maintenance, scheduling, and operation. At the time of execution of this Agreement, Dobie High School acting by and through the Pasadena Independent School District is the other entity having supervision during the exclusionary times. Concessionaire agrees to work and be agreeable with the other entity to resolve disagreements and ensure the most advantageous outcome for both Concessionaire and the other entity.

With respect to the soccer fields depicted on Exhibit "A," Concessionaire will maintain in good repair at all times the fields, goal posts, and other improvements thereon. This includes, but is not limited to, the repair of all divots and depressions in the surface of the soil. Prior to and at the conclusion of every use of the goals, Concessionaire will carefully examine the goal posts for structural integrity and insure that the goals are properly counterbalanced, anchored and secured to the ground, and not unstable, unanchored, improperly anchored, improperly counterbalanced, or subject to being tipped over. Concessionaire will check the goals for proper connecting hardware, and will replace damaged, worn-out, rusted, or missing parts, fasteners, and nets immediately. At the end of every use of the goals by Concessionaire, or when Concessionaire is performing field maintenance and it moves the goals, it will chain the goal posts to a pole or some other permanent structure or otherwise anchor and secure the goal posts to the ground in order to protect the public from injury, and, whenever possible, Concessionaire will store the goals away from access by the general public. Concessionaire will have medical first aid kits available at all times it is using the fields. The County has no obligation to make any repair or perform any maintenance to the fields, goals, goal posts, and other improvements thereto.

VI.

Concessionaire will provide and maintain in good repair adequate floodlighting and other necessary electrical outlets for the fields. In the event the County determines that Concessionaire is not complying with the provisions of this article, the County may terminate the term of this Agreement upon ten (10) days advance written notice to Concessionaire.

VII.

Concessionaire will provide and maintain in good repair all utility tie-ins and service lines, restrooms, water, gas, and sewage facilities. In the event the County determines that Concessionaire is not complying with the provisions of this article, the County may terminate the term of this Agreement upon ten (10) days advance written notice to Concessionaire.

VIII.

Concessionaire will provide and maintain in good repair all sidewalks, landscaping, and beautification for the fields. In the event the County determines that Concessionaire is not complying with the provisions of this article, the County may terminate the term of this Agreement upon ten (10) days advance written notice to Concessionaire.

IX.

Concessionaire will provide all necessary maintenance for the fields. In the event the County determines that Concessionaire is not complying with the provisions of this article, the County may terminate the term of this Agreement upon ten (10) days advance written notice to Concessionaire.

X.

At all times during the term of this Agreement, Concessionaire will, at its expense, maintain a general liability insurance policy covering the fields and all activities incidental thereto with coverage in amounts of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for injuries or death to any one person, not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for injuries or death to more than one person in any one accident or occurrence, and not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) for any single occurrence for injury to or destruction of property, or in the amounts of the County's maximum liability limitations under the Texas Tort Claims Act, as amended, whichever is greater. The policy will name the County as insured. The policy may name both Concessionaire and the County as insured, provided that the above policy limits are doubled. Concessionaire will deliver a copy of such policy to the County Auditor within 15 days of the effective date of this Agreement. In the event Concessionaire fails to provide the County with copies of all current insurance policies and renewals thereof, within 15 days of the expiration date of the policies and renewals thereof, the County may terminate this Agreement upon ten (10) days advance written notice to Concessionaire.

XI.

CONCESSIONAIRE EXPRESSLY AGREES TO INDEMNIFY AND HOLD THE COUNTY, ITS OFFICERS AND EMPLOYEES, HARMLESS FROM AND AGAINST ALL CLAIMS, LAWSUITS, AND RELATED EXPENSES IN ANY MANNER ARISING OUT OF THE USE OF THE FIELDS AND ALL ACTIVITIES OF CONCESSIONAIRE, ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES, AND VOLUNTEERS INCIDENT TO THIS AGREEMENT CONCESSIONAIRE WILL INDEMNIFY AND PROTECT THE COUNTY, ITS OFFICERS AND EMPLOYEES, FROM THEIR CONCURRING NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL PROXIMATE CAUSE OF ANY ALLEGED HARM OR DAMAGE. THE INDEMNITY PROVISION PROVIDED HEREIN HAS NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS FROM ONLY THE SOLE NEGLIGENCE OF THE COUNTY, ITS OFFICERS AND EMPLOYEES, UNMIXED WITH ANY FAULT OR NEGLIGENCE OF CONCESSIONAIRE OR ITS OFFICERS, EMPLOYEES, CONTRACTORS, REPRESENTATIVES, MEMBERS, AGENTS, GUESTS, INVITEES, AND VOLUNTEERS.

XII.

The prices charged the general public by Concessionaire, under any of the operations hereunder, will be reasonable and in accordance with general schedules of such charges in effect at the time this Agreement is executed, subject only to such changes therein as may be approved

by the Commissioners Court of the County. In this connection, Commissioners Court may determine the prices charged by Concessionaire in the operation of the fields and concession, and Concessionaire agrees to conform to such during the term of this Agreement.

XIII.

Concessionaire will maintain an accounting system and records, to be approved by the County Auditor, which will clearly and accurately reflect the collection of gross receipts. The term "gross receipts," as used herein, includes all money; and the market value of all property and services received by Concessionaire and by all other persons, firms, or organizations which have been permitted to use any portion of the fields, from all sales, programs, services, food, beverages, concessions, and all other items (similar and dissimilar) on the fields. State sales tax is excluded from the gross receipts. The term "gross receipts" does not include bona fide gifts, grants, and donations for specific projects and development, but includes gifts, grants, and donations which are solicited or received upon any representation (express or implied) that the donor or some third party is or will be entitled to any right or benefit not available to members of the public for free.

XIV.

The County may, at any reasonable time to be determined by the County Auditor, make an audit and inspection of the records to be maintained by Concessionaire. Concessionaire will not move such records outside of Harris County, Texas.

XV.

The fields will be primarily used under the supervision and auspices of Concessionaire for the general public. No fee of any kind will be charged by Concessionaire for use of the fields or for participation in any activity carried out thereon, or for any concession item, except upon the prior written approval of same by the Commissioners Court of the County. Provided, however, Concessionaire may establish and collect reasonable fees for the utilities and maintenance expense in connection with the use of the fields by any person. Notwithstanding any such fee, no person will ever be denied the use of the fields because of inability to pay any fee or expense of any kind or character which may be established for the use of the fields or participation in activities carried out by Concessionaire on the fields. Concessionaire may assume that all persons have the ability to pay such fees, unless any such person furnishes a duly executed, sworn affidavit of inability to pay the fees. In the event such affidavit is presented to Concessionaire, the burden of proving that such person does have the ability to pay the fees is on Concessionaire. Furthermore, Concessionaire will not discriminate against any person because of race, color, religion, sex, or national origin.

XVI.

Concessionaire's rights hereunder are subject to all County park rules, regulations, policies, and procedures. In exercising the rights and performing the obligations required of it under the terms of this Agreement, Concessionaire will comply with all applicable federal, state, county, and municipal ordinances, laws, rules, regulations, policies, and procedures, including, but not limited to, the Rules and Regulations for County Parks in Harris County, Texas, adopted by the

Commissioners Court of the County. Concessionaire will pay all applicable local, state, and federal taxes incident to the use of the fields, before they become delinquent. This includes any ad valorem taxes that may be assessed against the land upon which the fields are located if it loses its tax exempt status as a result of this Agreement.

XVII.

The County will establish the times when the fields may be used by Concessionaire for its activities, and the County may post signs, stating the hours, at the entrances to the Park. Concessionaire will make the fields available to all other persons at all times that Concessionaire either is not authorized to use the same or does not have scheduled activities on the fields.

XVIII.

Concessionaire will not permit on the fields any disorderly conduct or practice in violation of any federal, state, or municipal laws, rules, regulations, or ordinances, or of a sort likely to bring discredit upon the County or its governing body. Concessionaire will not sell or permit to be consumed or kept on the fields any beer, wine, or other alcoholic beverage, without the prior written approval of the Commissioner. Concessionaire will treat the public with courtesy and respect.

XIX.

Concessionaire will not construct or place any signs on the fields without the prior written consent of the County Commissioner of the precinct in which the Park is located. Without limiting the above, political signs, commercial signs, and signs stating in any manner that the fields are private property are expressly prohibited.

XX.

The County will provide utilities at the fields, provided, however, if and in the event the County fails to do so, Concessionaire's sole and exclusive remedy is to terminate this Agreement, and the County has no liability for failure to do so. Concessionaire will exercise the same degree of care and economy in the use of the utilities as would be prudently exercised by a person paying for the utilities.

XXI.

All improvements made to the fields will be of first class material and labor. Prior to the commencement of any construction work on the fields, Concessionaire will furnish to the County (1) a payment bond, if the construction work involves a cost in excess of \$25,000.00, and (2) a performance bond, if the construction work involves a cost in excess of \$100,000.00. The bonds shall be in the amounts and conform to the requirements of Tex. Gov't Code § 2253.021, as amended, for public works contracts.

XXII.

Concessionaire, at its own expense, will make all repairs and renewals necessary or advisable to keep the fields, and all improvements thereon, in good repair and condition, and the

County will have no obligation to make any repair to the fields and improvements thereto during the term of this Agreement.

XXIII.

The name of the current President of Concessionaire is Richard Newell. In the event the person named ceases to hold the office of President during the term of this Agreement, then and in that event, Concessionaire will give written notice to the County of each subsequent change in the office.

XXIV.

Either party, with or without cause, may terminate the term of this Agreement by giving written notice to that effect to the other party at least 30 days prior to the date of termination. Such notice may be given by the County to Concessionaire by registered or certified U.S. Mail, return receipt requested, postage prepaid, addressed to South Belt Area Sports Association, Inc., Attention: Richard Newell, President, 9874 Sage Orchard, Houston, Texas 77089, and such notice will be considered given and completed upon deposit of notice in the U.S. Mail as aforesaid. Such notice may be given by Concessionaire to the County by registered or certified U.S. Mail, return receipt requested, postage prepaid, addressed to Harris County, Attention: Commissioner Pct. 1, Harris County Administration Building, 1001 Preston, 9th Floor, Houston, Texas 77002, and such notice will be considered given and completed upon deposit of notice in the U.S. Mail as aforesaid. Either party may, from time-to-time and at any time, change its respective address and specify as its address any other address in the State of Texas by giving at least 15 days written notice of such change to the other party.

XXV.

Any oral representations or modifications concerning this instrument are of no force or effect excepting a subsequent modification. in writing signed by all the parties hereto.

XXVI.

The person signing herein on behalf of South Belt Area Sports Association, Inc., represents that he has been duly authorized to execute this Agreement by the Board of Directors of Concessionaire and that such authority has not been rescinded or modified.

To be effective upon Execution of all the parties.

[Execution Page Follows]

HARRIS COUNTY

By: _____
Lina Hidalgo
County Judge

APPROVED AS TO FORM:

CHRISTIAN D. MENEFEE
County Attorney

By: Philip Berzins
Philip Berzins
Assistant County Attorney
CAO File No.: 21GEN2411

**SOUTH BELT AREA SPORTS
ASSOCIATION, INC.**

By: Richard Newell 8/30/2021
Richard Newell
President

ATTEST

By: _____
Secretary, Board of Directors

ORDER OF COMMISSIONERS COURT

The Commissioners Court of Harris County, Texas, met in regular session at its regular term at the Harris County Administration Building in the City of Houston, Texas, on _____, with all members present except _____.

A quorum was present. Among other business, the following was transacted:

ORDER AUTHORIZING EXECUTION OF AN AGREEMENT BETWEEN HARRIS COUNTY AND SOUTH BELT AREA SPORTS ASSOCIATION, INC., PERTAINING TO THE BASEBALL, FOOTBALL, SOCCER, AND SOFTBALL FIELDS IN EL FRANCO LEE PARK

Commissioner _____ introduced an order and moved that Commissioners Court adopt the order. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Lina Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Rodney Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Adrian Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Tom S. Ramsey, P.E.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. R. Jack Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted follows:

IT IS ORDERED THAT:

1. The Harris County Judge is authorized to execute on behalf of Harris County the attached Agreement between Harris County and South Belt Area Sports Association, Inc., pertaining to the baseball, football, soccer, and softball fields in El Franco Lee Park.
2. All Harris County officials and employees are authorized to do any and all things necessary or convenient to accomplish the purposes of this order.