

**FACILITY USE AND MAINTENANCE AGREEMENT BETWEEN THE CITY OF
AUSTIN AND AUSTIN METRO BASEBALL LEAGUE FOR DOWNS FIELD**

This Facility Use and Maintenance Agreement (the “**Agreement**”) is made and entered into as of October 31, 2016 (the “**Effective Date**”) by AUSTIN METRO BASEBALL LEAGUE, a 501(C)(7) organization (“**AMBL**”) and the CITY OF AUSTIN, TEXAS, a Texas home-rule municipal corporation organized and existing under the laws of the State of Texas (the “**City**”). AMBL and the City are each referred to herein as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, the City is the owner of that certain parkland property in Austin, Travis County, Texas, identified as Downs Mabson Fields, at 2816 E. 12th Street, Austin, Texas 78702 (the “**Park**”), which includes a baseball field (Downs Field) identified on **Exhibit A** (as may be renamed or reconfigured in the future by the City, the “**Athletic Field**”); and

WHEREAS, AMBL desires to use Downs Field to provide sports programs and other recreational activities to members of the public; and

WHEREAS, AMBL desires to maintain Downs Field, including but not limited to grading the infield, mowing, and reseeding and fertilization of the Athletic Field, as further described in **Exhibit B** (the “**Maintenance Standards**”) and **Exhibit C** (the “**Maintenance Area**”), for the benefit of the City and the Park; and

WHEREAS, the City has determined that the AMBL’s maintenance and athletic programs will benefit the public and the Park; and

WHEREAS, in exchange for the maintenance, the City intends to waive certain park use fees for AMBL’s use of the Park to conduct its athletic programs during the term of this Agreement; and

NOW, THEREFORE, in consideration of these premises, the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which both Parties acknowledge, the City and AMBL agree as follows:

1. TERM

The term of this Agreement begins on the date hereof and terminates on the earlier of (a) the third anniversary of the Effective Date, or (b) termination in accordance with **Article 8** (the “**Term**”). The Term may be extended for up to two additional periods of two years each by written agreement of the Parties prior to the expiration of the Term.

2. NO COST SHARING

The City will not share in or reimburse any costs of field maintenance or utilities and will not make any expenditure pursuant to this Agreement. AMBL will bear all such costs and any

other costs actually incurred by AMBL in the performance of its obligations under this Agreement.

3. **CONDITION OF PREMISES; DISCLAIMER OF WARRANTY**

Except as otherwise expressly provided in this Agreement, AMBL agrees to accept the Athletic Field in “as is” condition and agrees the City shall have no obligation to alter the site in any way prior to start of the agreement. Neither the City nor any agent, employee, or representative of the City, makes or has made any warranties nor representations of any kind or character, express or implied, with respect to the physical condition of the Athletic Field or its fitness or suitability for any particular use. The City hereby disclaims any and all warranty of suitability or fitness for purpose with respect to the Athletic Field, and AMBL hereby accepts such disclaimer.

4. **AMBL’S USE OF ATHLETIC FIELD**

A. During the Term, AMBL shall have a first priority right to use the Athletic Field to conduct its athletic programs, which will include practice and games for organized baseball during the months of April through October, and will share the Athletic Field with Huston-Tillotson University (**Huston-Tillotson**) during the months of April, September and October. Use of the field will be subject to advance approval of the City with respect to the dates and times for such use and AMBL shall designate certain dates that the field shall be reserved for use by the general public (see **Exhibit D**). If the City grants use of the Facility during AMBL’s first priority use, AMBL shall provide notice to the City of any damage caused by such third party not later than ten business day after such third party’s use of the Facility. In such event, the City, at its expense, shall repair any such damage to the Facility. If AMBL fails to report the third-party damage within the stated ten days, the repair responsibility will fall on AMBL. During the shared months, Huston-Tillotson will be granted priority use. During the Term, the City agrees to waive the fees identified on **Exhibit E** for AMBL’s use of the Athletic Field on the dates and times scheduled pursuant to this Agreement, subject to annual approval of the fee waiver by City Council through its adoption of the Parks and Recreation Department fee schedule or otherwise.

B. AMBL shall provide the City with an annual report not later than September 1 of each year during the Term that shall include the following items:

- (i) A proposed schedule of AMBL’s athletic season for the upcoming January 1 – December 31 period (a “**Calendar Year**”), stating all dates and times during which AMBL proposes to use the Athletic Field;
- (ii) A description of the athletic programs, leagues and other activities AMBL has provided at the Park that includes the percentage of participants who are Austin residents for each program, activity, or league in the past City Fiscal Year;
- (iii) Change in AMBL’s contact information, if any;
- (iv) Documentation of AMBL’s continuing compliance with the insurance requirements set forth in **Exhibit F**, including a certificate of insurance

- naming the City as an additional insured;
- (v) AMBL's most recent annual financial report;
- (vi) A report detailing AMBL's expenditures on maintenance of the Athletic Field during the past City Fiscal Year; and
- (vii) Documentation of AMBL's 501(c)(7) status.

C. The City shall review the proposed season schedule and work with AMBL to develop a mutually agreed upon schedule within 21 days of receipt thereof. Amendments to the approved schedule must be submitted to the City not less than 10 days before the requested change. The City will approve or deny the amendment request not later than five days after receipt. Failure to respond to the schedule within the relevant period shall not be deemed approval by the City. At all other dates and times not reserved through this process, the Athletic Field shall remain open to the public for its use through the PARD reservation system.

D. AMBL may erect signage at the Park stating that public use of the Athletic Field is by written permission of the City of Austin only. AMBL may erect other permanent signage at the Park. All signage requires advance written approval of the City. Upon request of the City, AMBL shall remove any signage it has installed at the termination of this Agreement, which obligation survives such termination. Any sponsorship banners or signs must be placed facing the interior of the Park and must meet the requirements provided by the Parks and Recreation Department's rules and regulations.

5. AMBL ATHLETIC FIELD RESPONSIBILITIES

A. AMBL shall endeavor in good faith to advise the public that all residents, who demonstrate the skill level required by the program, are welcome to participate in programs offered at the Park by AMBL. AMBL shall make a good faith effort to ensure that at least 75% of participants in AMBL's programs offered under this Agreement shall be residents of the City. To ensure compliance, Athletics staff will conduct an annual field audit.

B. AMBL shall provide year-round maintenance of the Athletic Field in accordance with the City's Field Maintenance Standards attached as **Exhibit "B"**, as may be amended in the future, and shall provide general litter control and clean-up duties related to the Athletic Field. AMBL shall ensure the Athletic Field and related structures, including but not limited to the restrooms, storage buildings, are reasonably safe for public use and kept in reasonably good repair and condition throughout the term of this Agreement to prevent undue deterioration. The City acknowledges and agrees that AMBL shall not incur any unreasonable or extraordinary costs due to the use of the Athletic Field by the public or the City outside of AMBL's programs. The City shall be responsible for all repairs to the restrooms.

C. AMBL shall comply with the City's water and energy conservation rules and regulations for the improvement, use, and maintenance of the Athletic Field and must switch off all lighting at the conclusion of each evening's programs (Conservation rules and regulations can be found at <http://www.austintexas.gov/department/water-conservation>). Any violation of the water and energy conservation rules may result in an assessment against AMBL.

AMBL is responsible for the costs of all utilities (electric, water, waste water, etc.) associated with

operation of the Athletic Field and related structures from the months of April through October. During the months of April, September, October and November, AMBL shall share half of the costs of utilities with Huston-Tillotson. As part of its year-round maintenance responsibilities in 5. B. above, AMBL shall share the cost of utilities with Huston-Tillotson for the month of November. If any extraordinary utility costs occur, PARD will thoroughly investigate the cause for the increase to determine whether AMBL's field use was responsible for the increase. If the increase occurred as a result of events beyond AMBL's control, AMBL will be charged only for the average costs of that utility for that month as averaged over the previous six months.

D. AMBL may not use two-cycle equipment, such as chain saws, weed eaters, small lawn mowers, and blowers, on Ozone Action Days.

E. AMBL shall conduct annual background checks consistent with the City's procedures and policies on all of its volunteers and employees who will interact with youth at the Park. City shall provide AMBL with a copy of these procedures and policies. AMBL shall maintain documentation of completed background checks for review upon request by the City. If the background checks reveal that an employee or volunteer is unsuitable for working with children, AMBL shall not allow the volunteer or employee to interact with youth.

F. AMBL shall not permit alcoholic beverages, tobacco, or illegal drugs to be consumed on or around the Athletic Field or within the Park during its use of the Athletic Field. To the extent not prohibited by law, AMBL shall not allow weapons of any kind on the Athletic Field or within the Park during its use of the Athletic Field. AMBL is authorized to eject from the Athletic Field any person in violation of these prohibitions, or whose behavior is disrupting AMBL's programs.

G. Except for vehicles associated with necessary maintenance or repairs, AMBL shall not allow any vehicle on the Athletic Field.

H. AMBL shall provide notice to the City of any significant damage, vandalism, needed repairs, or safety issues at the Athletic Field or related structures not later than 24 hours after AMBL identifies the damage, vandalism, repair or safety issue.

I. AMBL shall follow the City's Integrated Pest Management Standards attached as **Exhibit G**, as may be amended in the future. Except as provided in the Integrated Pest Management Standards, AMBL, its agents, employees, contractors, subcontractors and vendors shall not use or store on the subject Athletic Field any combustibles, any pesticide, insecticide, or herbicide.

J. AMBL understands and acknowledges that entering into this Agreement does not constitute an endorsement by the City of AMBL's organization, its financial stability, or the quality of its programs. AMBL shall not represent that it or any of its agents or employees are agents or employees of the City.

6. CONCESSIONS

A. During the times reserved for its use of the Athletic Field, AMBL may, at its sole expense, operate concessions within the Park utilizing existing concession facilities. Any concession operations shall be conducted in accordance with City Health Code requirements and

other applicable law.

B. AMBL may provide concessions provided that AMBL prior to commencing concession activities shall:

- (i) Obtain and display on site all necessary permits from the Austin Travis County Health Department;
- (ii) Provide a copy of all necessary permits to the Parks and Recreation Department;
- (iii) Provide litter control each day of the concession;
- (iv) Provide security for the concession; and
- (v) Supply the City with access to requested information regarding the concessions.

C. If AMBL provides temporary concessions, the items served must be nonhazardous, require no food handling, and be permitted and approved by the City of Austin/Travis County Health Department. Examples include previously inspected, prepackaged, individually wrapped food items, individually wrapped candy bars, bags of salty snacks, or canned drinks served from a cooler.

7. LIABILITY; INDEMNIFICATION; WAIVER

A. AMBL shall defend, indemnify and hold harmless the City, its officers, employees, contractors and agents against all claims, lawsuits, actions, damages, costs and expenses of any kind, including but not limited to those for property damage or loss, personal injury, death, and reasonable attorneys' fees, that relate to or arise out of (i) AMBL's breach of this Agreement, (ii) any violation of any applicable federal, state or local law, statute, order, ordinance, rule or regulation by AMBL, its officers, employees, contractors, subcontractors or agents, (iii) any negligent acts, omissions or intentional misconduct of AMBL, its officers, employees, contractors, subcontractors or agents in the performance of AMBL's obligations set forth in this Agreement or use of the Park, or (iv) the manner in which AMBL provides its athletic and recreational programs.

B. AMBL agrees that for any work performed by a volunteer or employee under this Agreement, AMBL will secure a Release Form attached as **Exhibit H**.

C. AMBL shall have no responsibility or liability for any damage to property resulting from the public's use of the Athletic Field outside of AMBL's programs or activities.

D. The obligations of AMBL under this **Article 12** will survive the termination of this Agreement.

8. TERMINATION AND AMENDMENT

A. If any party fails to properly fulfill its obligations under this Agreement in a timely manner, or if any party violates any of the provisions of the Agreement, the non-breaching party shall notify the other party in writing of the specific violation of the Agreement. The

breaching party shall have 30 days from receipt of this notice in which to cure any such violations. If the violation cannot be reasonably cured within said 30-day period and the breaching party has diligently pursued such remedy as shall be reasonably necessary to cure violation, then the Parties may agree in writing to an extension of the period during which the violation must be cured.

B. If the breaching party has not cured any such violation as specified in the written notice within the required time, then the non-breaching party, at its sole option, shall have the right to terminate this Agreement. This termination shall be made by sending written notice (the “**Notice of Termination**”) to the breaching party. The Notice of Termination shall be effective for all purposes when deposited in the U.S. Mail, postage prepaid and mailed Certified Mail, Return Receipt Requested.

C. In the event that the City Council does not approve the fee waivers associated with this Agreement, either Party may terminate this Agreement by written notice to the other Party.

D. In the event that any delay or failure of performance caused by Force Majeure events, as described in Section 11, continues for an uninterrupted period of 180 days from its occurrence or inception, either Party may, at any time following the end of the 180-day period and prior to the time performance is resumed, terminate this Agreement upon written notice to the other Party.

9. INSURANCE AND BONDS

A. Insurance. During the Term, AMBL and its Contractors, at their sole cost and expense, will obtain, provide and keep in force insurance meeting the requirements stated in **Exhibit F**. AMBL acknowledges that the City does not insure any items stored in the Park.

10. COMPLIANCE WITH LAWS

AMBL, at its sole expense, shall (i) comply with all applicable laws, statutes, orders, ordinances, rules and regulations of federal, state, and local governmental authorities (“**Laws**”) in its use of the Park and the performance of its obligations under this Agreement; (ii) comply with any direction, order or citation made pursuant to Law by any public officer requiring abatement of any nuisance or which imposes upon either of the Parties any duty or obligation arising from AMBL’s use of the Park or the performance of its obligations under this Agreement; (iii) without limiting the obligations of AMBL under clause (i) above, comply with all Laws governing, and all procedures established by the City for, the use, abatement, removal, storage, disposal or transport of any substances, chemicals or materials declared to be, or regulated as, hazardous or toxic under any applicable Laws (“**Hazardous Substances**”) and any required or permitted alteration, repair, maintenance, restoration, removal or other work in or about the Park that involves or affects any Hazardous Substances, and (iv) not use, store, dispose of, release, treat or otherwise handle, or permit any use, storage, disposal, release, treatment or other handling of, any Hazardous Substances in the Park; except that AMBL may use, store or handle Hazardous Substances as necessary during maintenance of the Athletic Field that such use, storage or handling is conducted in compliance with all applicable Laws and this Agreement.

11. FORCE MAJEURE; SUSPENSION OF USE

A. Each Party to this Agreement agrees to excuse the failure of the other Party to perform its obligations under this Agreement to the extent that failure is caused by an event of Force Majeure. "Force Majeure" means acts and events not within the control of the Party, and which the Party could not use due diligence to avoid or prevent. Events of Force Majeure include acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Force Majeure does not include economic or market conditions that affect a party's cost of performance.

B. The Party invoking Force Majeure shall give timely and adequate notice to the other Party of the event by telephone or e-mail, followed by prompt written notice of the Force Majeure in the manner required by this Agreement. The Party invoking Force Majeure shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a Party's performance is delayed by the event of Force Majeure, the Parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event.

C. The City may suspend or limit use of the Athletic Field if necessary to protect public health and safety. The City shall notify AMBL at least two days in advance of any necessary suspension/limitation, unless the suspension/limitation is due to an emergency situation, in which case the City will notify AMBL as soon as reasonably possible.

12. MISCELLANEOUS PROVISIONS

A. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. It replaces and supersedes any and all written or oral agreements between the Parties. Any previous agreement, assertion, statement, understanding, or other commitment before the Effective Date, whether written or oral, shall have no force or effect. No agreement, assertion, statement, understanding, or other commitment during or after the Term shall have any legal force or effect unless set forth in an amendment properly executed in writing by the Parties. The City Manager for the City of Austin is authorized to negotiate and execute changes to this agreement as he deems necessary.

B. Governing Law; Venue. This Agreement is governed by, and shall be construed and interpreted under, the laws of the State of Texas. Venue for any lawsuit concerning this Agreement shall lie exclusively in the state or federal courts located in Travis County, Texas.

C. Interpretation. Regardless of the actual drafter of this Agreement, this Agreement shall, in the event of any dispute over its meaning or application, be interpreted fairly and reasonably, and neither more strongly for or against any Party.

D. Notices. Any written notices required to be made under this Agreement shall be delivered by (i) registered or certified U.S. mail, return receipt requested, or (ii) by private express mail service, addressed as follows:

If to the City, to:

City of Austin
Director, Parks and Recreation
200 South Lamar
Austin, Texas 78704
sara.hensley@austintexas.gov
(512) 974-6700

With a copy to:

City of Austin,
Division Manager, Centralized Programs
200 South Lamar
Austin, Texas 78704
Tiffany.cabin@austintexas.gov
(512) 974-3903

If to AMBL, to:

Austin Metro Baseball League
Attn: Michael Lucas
1312 Quailfield Circle
Austin, Texas 78758
(512) 784-5930
mlucas@bfrench.com

If sent by U.S. mail, written notice shall be deemed given on the date of delivery indicated on the receipt issued by the relevant postal service or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal; if sent by private express mail service, written notice shall be deemed given upon receipt. A Party may update any of the notice and contact information in this section by providing such updated information to the other Party in the manner specified herein for written notices.

E. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors in interest, legal representatives, and assigns permitted hereunder.

F. Counterparts. The Agreement may be executed in multiple counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

G. Assignment. AMBL shall not assign or transfer any interest in the Agreement without the prior written consent of the City, and any purported assignment in violation of this Section shall be void..

H. Severability. If any part of this Agreement shall be held unenforceable for any reason, the remainder of the Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by a court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to

be so limited.

I. Waiver. The failure of any Party to demand strict performance of any or all of the terms of this Agreement, or to exercise any or all rights conferred by this Agreement, shall not be construed as a waiver or relinquishment of that Party's right to assert or rely upon any such right in the future and the same shall continue and remain in full force and effect. No term or provision of this Agreement may be waived or discharged orally, but only by an instrument in writing signed by the person against whom the enforcement of the waiver or discharge is sought.

J. Governmental Authority. Nothing in this Agreement will be construed to limit, restrict, modify, or abrogate the City's governmental authority or ordinances respecting the use of City parkland, except as specifically waived or modified herein or by specific action of the City Council, nor its duty to provide for the public health, safety, and welfare in the operation and maintenance of the Park.

K. Authority to Execute. Each Party warrants and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party, except as may be limited by applicable bankruptcy, insolvency, or similar laws affecting creditors' rights, or with respect to City, governmental immunity under the Constitution and laws of the State of Texas.

L. Survivability of Obligations. All provisions of the Agreement that impose continuing obligation on the Parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the Parties, shall survive the expiration or termination of this Agreement.

M. Termination without Cause. Either party shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty calendar days' prior written notice. Upon receipt of a notice of termination, League shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination.

N. **Company information held by the City.** The Company acknowledges that the City and this Agreement are subject to the Texas Public Information Act. The City agrees to use all reasonable precautions to protect the confidentiality of and to prevent the unauthorized use or disclosure of the Company's confidential information. Notwithstanding the foregoing, the City shall disclose the Company's confidential information only as required by Texas Government Code Chapter 552, and will provide notice, as required by Texas Government Code Section 552.305, to the Company prior to any such disclosure. This Agreement shall be construed by and governed in accordance with the laws of the State of Texas. The parties irrevocably submit to the jurisdiction of the district courts in Travis County, Texas and the U.S. District Court Western District of Texas to resolve disputes which cannot be resolved by the parties.

O. **Information held by the Company subject to the Public Information Act.** Information generated by this Agreement is governed by the Texas Public Information Act. Therefore, the City shall require access to information generated in connection with this agreement in order to fulfill its obligations under Chapter 552 of the Texas government code. The Company shall provide any information requested under Texas Government Code Chapter 552 to the City no later than three (3) business days from the date of the City's request to the Company. Failure to provide the requested information no later than three (3) business days in the format requested by

the City shall be considered a breach of the Agreement by the Company, and the City may initiate legal action or termination of the contract.
This Agreement is entered into as of the Effective Date.

AUSTIN METRO BASEBALL LEAGUE

By:  _____

Name: MICHAEL LUCAS

Title: PRESIDENT

CITY OF AUSTIN, TEXAS

By:  _____

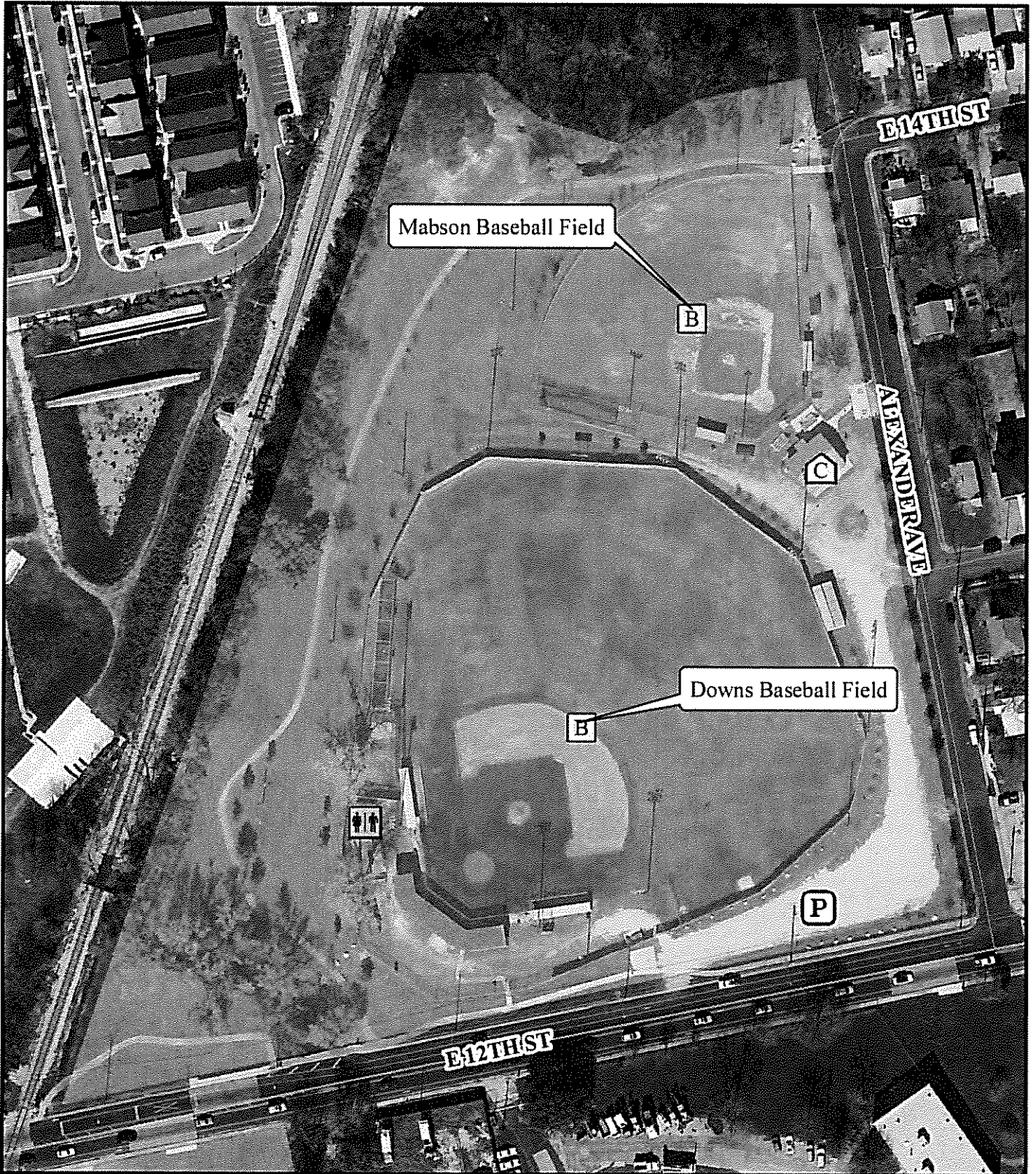
Name: Sara Hensley

Title: Director

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Attachments:

- Exhibit A - Map of Downs Field
- Exhibit B - Field Maintenance Standards
- Exhibit C - Maintenance Area
- Exhibit D - Schedule for Public Use
- Exhibit E - Fees Waived
- Exhibit F - Insurance Requirements
- Exhibit G - Integrated Pest Management Standards
- Exhibit H - Volunteer Release Form



Downs Mabson Fields:

Exhibit A



Legend

PARD Facilities



Baseball



Restroom



Concession



Parking Lot



City of Austin Parks

27 August 2015 hardya

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Parks and Recreation Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

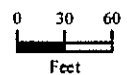


EXHIBIT B

Public Field Maintenance Manual - Downs Field

AMBL must maintain public fields at an adequate level to provide good, safe athletic fields. Following are the specific requirements:

1. Maintenance Calendar

- Develop an annual maintenance calendar a minimum of 6 months prior to the beginning of each Sports Season.
- Calendar will include all fixed and daily work schedules

2. Turf Care

- Athletic field turf to be Common Bermuda or Mid-Iron.
- Mow in accordance with species and variety of grass.
- Mow bi-weekly during summer growin season.
Install rye grass in fall.

3. Rest/Restoration

An annual rest and renovation program must be scheduled at all sites to maintain field sustainability

- All athletic field space will have a minimum of one month per year in rest.
- Fields heavily used will be rested a minimum of 8 hours for every 40 hours of use.
- Fields will be scheduled to rest in coordination with the annual league calendar.

4. Turf Edging

- Edge all turf edges located in the field of play using a power mechanical edger.
- Chemical edging permitted.
- Edge turf edges around warning tracks once per year during growing season,
- Edge around skinned infield area once per season, including base paths and mounds.
- Add infield and warning track material as needed to maintain smooth transition from soil to turf.
- Use a mechanical edger on turf edges to prevent a lip from developing at least twice a year or more often around problem.
- Edge turf edges not in the field of play (along sidewalks, pathways, fences, and buildings) and in high visibility areas are to be edged using a power monofilament type trimmer once per season.

EXHIBIT B

5. Overseeding is not recommended
6. Fertilizer
 - Proper fertilization applied to turf to provide minimal growth and plant health creating safe playing conditions.
 - Perform soil analysis to be once per year.
 - General guidelines should include granular applications high in Nitrogen, once during the growing season.
7. Aerifying
 - Aerify turf once per year using a core aerifier, or as field conditions warrant.
 - Top dress fields with sand at least once every five years and sweep into core holes using mat drag.
8. Disease/Pest and Weed Control
 - If needed, apply granular pre-emergent in turf areas for weed control in early spring and early fall.
 - Treat rodent populations (gophers and ground squirrels) to maintain zero populations.
 - Should they develop, remove mounds immediately and collapse and back fill tunnels.
 - Apply liquid pre-emergent in landscapes areas every winter.
 - Comply with PARD integrated pest management plan.
9. Infield Preparation (baseball and softball)
 - Maintain skinned infields providing a smooth consistent playing condition.
 - Use custom screened granite infield mix such as Hill-topper or Stabilizer.
 - Drag infields daily using a fine mat drag with front float.
 - Drag infields once per month when not in use.
 - Water infield areas following each dragging using a quick coupler or automatic infield rotor heads.
 - Nail drag infields as needed during heavy use times, to ensure consistent playing conditions.
10. Home Plate Area and Pitchers Mounds (baseball and softball.)
 - Construct home plate area and pitchers mounds of Pitching Mound Clay Mix
 - Repair monthly by adding new clay, tamping, dragging, and watering area.

EXHIBIT B

- Check pitching rubbers and plates to be checked monthly and replaced or rotated as needed.
- Check the slope and height of baseball pitching mounds at least twice per year with a carpenter's level to ensure rubbers and mounds are level with playing surface and at the correct height.

11. Field Lining and Painting

- Identify field markings using white athletic field marker shall be 4" wide.
- Mark foul lines for softball and baseball once per week to ensure clear visible markings using athletic field marker.
- Mark Infield foul lines and batter boxes using athletic field marker.
- Touch up Soccer goal area markings as needed to ensure clear, visible lines.

12. Outfield Fences, Foul Poles, Dugouts, Backstops, Bleachers, Soccer Goals and Corner Flags

- Check fence material on outfield fences, backstops, and dugouts monthly for loose pieces or hazardous conditions.
- Inspect bleachers and backstop kickboards monthly to check for the loose bolts, slitting wood, or hazardous conditions.
- Check soccer goals and foul poles monthly for any rusting metal or sharp edges and should be painted every three years.

13. Irrigation

- Irrigate turf and landscape areas using a computerized or automated irrigation system.
- Set irrigation schedules by emailing Athletics Coordinator preferred schedule for optimum growing conditions based on climate and maintenance schedules.
- Check irrigation heads, quick couplers and valve boxes weekly to ensure proper and even water distribution and safety.
- Routinely check heads for proper adjustment to compensate for dry areas or excessively wet areas.

14. Tree Maintenance

- Weed Control: Mechanical grass trimming around trees shall be accomplished in a way that will not scar the trunk in any way. No chemical removal of turf and weeds is permissible under drip line.

EXHIBIT B

- Mulching: Mulch base of tree in a minimum of six (6) foot diameter circle, to a depth of three (3) inches, maintaining one to two (1-2) inch clearance from perimeter of trunk.
- For all Trimming and pruning please email Athletics Coordinator.
- Staking: All newly planted trees shall be staked if needed. All nursery stakes will be removed at time of planting. All stakes are to be removed within the first year.

15.Litter Control

- Empty trash receptacle once per day, seven days per week.
- Spray/wash dug-outs, picnic areas, and seating area and food service areas bi-monthly to remove food stains.

16.Sustainability

- Recycling: Provide receptacles to collect aluminum and plastic recyclables.
- Irrigation: Audit control system annually for water conservation efforts.
- Lighting: Audit control system annually for electricity conservation efforts.
- Invasive Species: Develop a program to monitor.
- Chemicals: Use “green” chemicals for cleaning and disinfecting restrooms and surfaces when available.
- Fuels: Use “clean” fuels to maintain turf and structures when available.

17.Hardscape Surfaces

- Blow and/or sweep and clean concourse and hard surfaces once per month.
- Safety repairs take priority over appearance.

18.Restrooms/Drinking Fountains

Restrooms may be either permanent structures or may involve contracted service for portable toilets (porta potty).

- If permanent:
 - Restrooms are to be serviced at least once a week.
 - Servicing period should ensure adequate supply of toilet paper and paper towels, and that the restrooms are reasonably clean, sanitary, and free of bad odors.
- If contracted:
 - Ensure weekly check to ensure contracted cleaning service is performed.
 - Sanitize drinking fountains at least once per week.

EXHIBIT B

- Inspect drinking fountains weekly for proper water flow.

19. Lighting

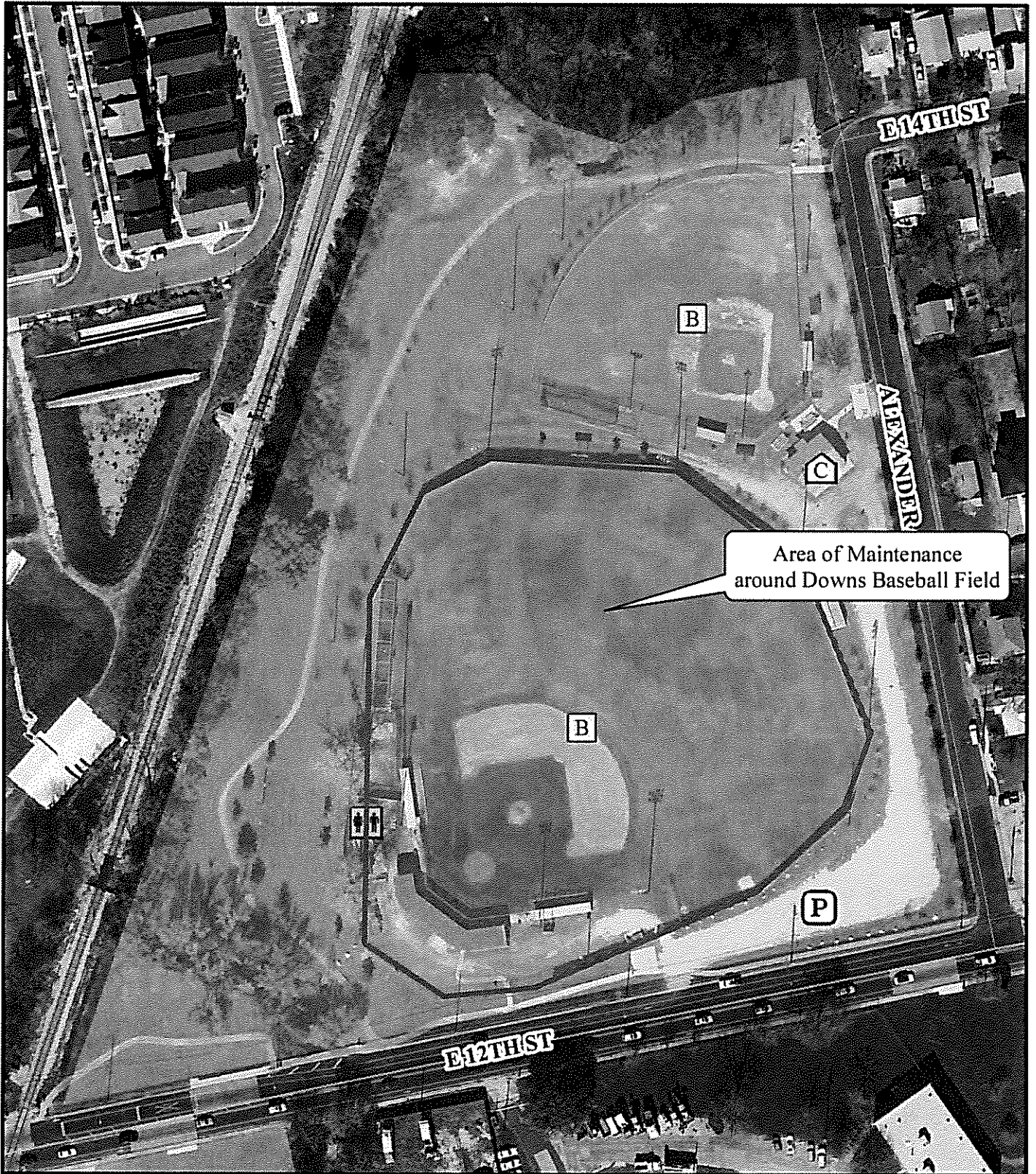
- Inspect site for required replacement or repair of fixtures observed or reported as not working.
- Once discovered, email Athletics Coordinator within 24 hours

20. Graffiti

- Inspect site monthly for appearance of graffiti.
- Once discovered, email Athletics Coordinator within 24 hours.

21. Building and Site Maintenance

- Structures: Notify Athletics Coordinator (within 24 hours) of any structure (gazebo, shade structures, maintenance shops, etc.) that requires repair.
- Initiate work order requests indicate a “3” priority. for lamp replacement and needed repairs. Includes HVAC, plumbing, electrical and structural components.
- Parking Lots: Inspect monthly. Maintain surface with minimal holes.



Downs Mabson Fields:

Exhibit C



PARC Facilities

B Baseball

Restroom

Legend

C Concession

P Parking Lot

City of Austin Parks

27 August 2015 hardya

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. This product has been produced by the Parks and Recreation Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.

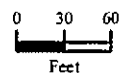


EXHIBIT D

SCHEDULE FOR PUBLIC USE

- Every Friday in the months of September and October for the term of the agreement;
- Every Memorial Day for the term of the agreement;
- The third Friday in the months of June and August for the term of the agreement;
- July 4th in 2017 and 2018 for the term of the agreement;
- Every Labor Day for the term of the agreement; and
- AML, Huston-Tillotson and City of Austin will determine other schedule flexibility to support the public's use of the facility.

EXHIBIT E

FEES WAIVED

During the term of the Facility Use and Maintenance Agreement with Huston-Tillotson University, the Parks and Recreation Department of the City of Austin agrees to waive the rental fees associated with the use of the baseball field at Downs Mabson Fields by tHuston-Tillotson University in exchange for in-kind maintenance services and utility payments provided under the Facility Use and Maintenance Agreement.

Exhibit F - Insurance Requirements

I. General Requirements

Austin Metro Baseball League shall forward certificates of insurance with the endorsements required below to the City as verification of coverage prior to commencement agreement hereunder. To the extent that the specific endorsements referenced herein are unavailable or that equivalent endorsements are available, the substitution of equivalent endorsements will be permitted subject to the reasonable approval of the City.

Austin Metro Baseball League shall not commence work until the required insurance is obtained and has been reviewed by the City. Approval of insurance by the City does not relieve or decrease the liability of Austin Metro Baseball League hereunder and is not a limitation of liability on the part of Austin Metro Baseball League.

Austin Metro Baseball League's and all contractor's and subcontractor's insurance coverage must be written by companies licensed to do business in the State of Texas at the time the policies are issued and must be written by companies with A.M. Best ratings of B+VII or better. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.

All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance must contain the following information:

Attn: Director, Parks and Recreation Department
City of Austin
P. O. Box 1088
Austin, Texas 78767

The "other" insurance clause must not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in this Agreement, covering both the City and Austin Metro Baseball League, be considered primary coverage as applicable.

If insurance policies are not written for amounts specified in this Agreement, Austin Metro Baseball League, contractors and subcontractors must carry umbrella or excess liability insurance for any differences in amounts specified. If excess liability insurance is provided, it must follow the form of the primary coverage.

The City shall be entitled, upon request and without expense, to receive certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the Parties hereto or the underwriter on any such policies.

Austin Metro Baseball League shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of this Agreement.

Austin Metro Baseball League and any contractor or subcontractor responsible for maintaining insurance shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions must be disclosed on the certificate of insurance.

The City may review the insurance requirements set forth herein during the Term and may make reasonable adjustments to insurance coverages, limits, and exclusions when reasonably deemed necessary and prudent by the City based upon applicable changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company(ies) and Austin Metro Baseball League.

The insurance coverages specified below are required minimums and are not intended to limit the responsibility or liability of Austin Metro Baseball League.

II. Specific Requirements

Worker's Compensation and Employers' Liability Insurance. Coverage must be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Art. 8308-1.01 et seq. Tex. Rev. Civ. Stat.). The minimum policy limits for Employer's Liability are \$1,000,000 bodily injury each accident, \$1,000,000 bodily injury by disease policy limit and \$1,000,000 bodily injury by disease each employee.

- (a) Austin Metro Baseball League's, its contractor's and subcontractor's policy shall apply to the State of Texas and include these endorsements in favor of the City:
 - (i) Waiver of Subrogation, Form WC 420304
 - (ii) Thirty days Notice of Cancellation, Form WC 420601

Commercial General Liability Insurance. The minimum bodily injury and property damage per occurrence are \$1,000,000 for coverages A and B.

- (a) The policy must contain the following provisions:
 - (i) Blanket contractual liability coverage for liability assumed under this contract and all contracts related to this project.
 - (ii) Independent contractor's coverage.
 - (iii) Products/completed operations liability for the duration of the warranty period.
- (b) The policy must also include these endorsements in favor of the City:
 - (i) Waiver of Subrogation, endorsement CG 2404

- (ii) Thirty days notice of cancellation, endorsement CG 0205
- (iii) The City listed as an additional insured, endorsement CG 2010

Business Automobile Liability Insurance. Austin Metro Baseball League, its contractor and subcontractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage,

- (a) The policy must include these endorsements in favor of the City of Austin:
 - (i) Waiver of subrogation, endorsement TE 2046A
 - (ii) Thirty days notice of cancellation, endorsement TE 0202A
 - (iii) The City listed as an additional insured, endorsement TE 9901B

Property Insurance. If any of the City's property is in the care, custody or control of Austin Metro Baseball League, then Austin Metro Baseball League shall provide property coverage on an "all risk of physical loss" form. The coverage must be provided on a replacement cost basis for the 100% value of the City's property. If property is being transported or stored off site by Austin Metro Baseball League, then transit and storage coverage must also be provided. The City shall be endorsed onto the policy as a loss payee.

Hazardous Material Insurance. If applicable, for work that involves asbestos or any hazardous materials or pollution defined as asbestos, any contractor or subcontractor responsible for such work must comply with the following insurance requirements in addition to those specified above:

- (a) Provide an asbestos abatement endorsement to the commercial general liability policy with minimum bodily injury and property damage limits of \$1,000,000 per occurrence for coverages A&B and products/completed operations coverage with a separate aggregate of \$1,000,000. This policy must not exclude asbestos or any hazardous materials or pollution defined as asbestos, and must provide "occurrence" coverage without a sunset clause. The policy must provide 30 day notice of cancellation and waiver of subrogation endorsements in favor of Austin Metro Baseball League and the City.
- (b) Any contractor or subcontractor responsible for transporting asbestos or any hazardous materials defined as asbestos shall provide pollution coverage. Federal law requires interstate or intrastate transporters of asbestos to provide an MCS 90 endorsement with a \$5,000,000 limit when transporting asbestos in bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more. Interstate transporters of asbestos in non-bulk in conveyances of gross vehicle weight rating of 10,000 pounds or more must provide an MCS 90 endorsement with a \$1,000,000 limit. The terms "conveyance" and "bulk" are defined by Title 49 CFR 171.8. All other transporters of asbestos shall provide either an MCS 90 endorsement with minimum limits of \$1,000,000 or an endorsement to their

Commercial General Liability Insurance policy which provides coverage for bodily injury and property damage arising out of the transportation of asbestos. The endorsement must, at a minimum, provide a \$1,000,000 limit of liability and cover events caused by the hazardous properties of airborne asbestos arising from fire, wind, hail, lightening, overturn of conveyance, collision with other vehicles or objects, and loading and unloading of conveyances.

- (c) The contractor shall submit complete copies of the policy providing pollution liability coverage to Austin Metro Baseball League and the City.

EXHIBIT G

Integrated Pest Management Requirements on Public Fields

PESTICIDE APPLICATIONS ON PUBLIC FIELDS

PURPOSE

This policy establishes oversight procedures over all pesticide applications taking place on public fields. Anticipated applications by AMBL must undergo a special approval process to satisfy certain licensing and other requirements before the work can take place. This oversight is essential to ensure that all pest management activities occurring on park land adhere to established IPM based goals and principles and address environmental and safety concerns.

BACKGROUND

Without proper oversight, pest management activities undertaken by non-PARD personnel may lead to regulatory, environmental or safety problems. Park infrastructure, landscapes, and the public may be put at risk, or IPM principles may not be adequately adhered to. The approval process within this policy is not intended to be a hindrance to appropriate and timely work. These procedures are intended to ensure that the best practices are used and problems avoided.

REQUIREMENTS

AMBL shall submit a completed *Application for Pesticide Use on Park Land* form to the IPM Program Coordinator or PARD Representative for evaluation before any pesticide application takes place.

This form can be obtained by contacting the Athletic Coordinator at 512-978-2670. Required information details license numbers, materials, methods, equipment, purpose, notification, reporting, and more.

After receiving the completed form, the coordinator shall review the proposal, contact any affected PARD staff, and approve or deny the request based on PARD IPM program principles.

After pesticide application, AMBL shall submit a pesticide tracking form. The form can be obtained by contacting the Athletic Coordinator at 512-978-2670.

Details of the required licensing and department oversight for various categories follow.

Employees of commercial pesticide operator companies:

Employees of commercial pesticide operator companies possessing valid state pesticide applicator licenses will be considered for approval to apply pesticides to PARD property. The applicator license in the state-defined category appropriate for the particular application is

EXHIBIT G

required. Applicators from ECorp must have a license and previous experience and have the division manager approve the treatment plan. The work must occur under the direction of a licensed supervisor.

Contractors must satisfy all of the standard applicable city contractual language pertaining to pesticide applications. These subjects may include safety precautions, liability issues, and other responsibilities. These issues are dealt with in the contract language agreed to before the project commences by both city representatives and the contractor. The performance record of contracting businesses applying pesticides to PARD lands shall also be regularly reviewed by PARD and any other city departments involved. This review shall include an examination of past work and safety performance. All involved departments will disclose pertinent information regarding any performance or safety issues raised from prior projects.

Employees of partner organizations:

Full time employees of partner organizations possessing valid state pesticide applicator licenses will be considered for approval to apply pesticides to PARD property. The applicator license in the state-defined category appropriate for the particular site is required and trainee license designations are not sufficient. There must also be direct on-site supervision from a fully licensed city department representative for the duration of the application, e.g. PARD staff.

EXHIBIT H



I, _____, effective _____

Print Name

Date

Volunteer to provide the service of _____ to the City of Austin Parks and Recreation Department at _____ Park to help _____ in the park.

In consideration of volunteer being allowed to provide a service for the City of Austin Parks and Recreation Department, the undersigned hereby releases the City, its employees and agents, from any action, claim or demand for personal injury or property loss arising from or due to any negligent act or omission of the City, its agents or employees. This release shall have no effect with regard to damages caused by the City's gross negligence. In the event the City or volunteer provides transportation for himself/herself or if his/her child is volunteering, this waiver and release shall extend to and release the volunteer driver or City employee driver from any and all liability. Permission is given for any emergency medical treatment, operation or anesthesia which might become necessary. I agree to be responsible for the expense of medical treatment or service.

Volunteer Signature

Date

Parent or Guardian Signature if Volunteer is Under Age 18

Date