

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

**MANAGEMENT AND LEASE AGREEMENT with
FIRST TEE – GREATER SAN ANTONIO**

This Agreement is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as “CITY”), a Texas Municipal corporation, acting by and through its City Manager pursuant to Ordinance No. 2024-----___ dated _____, 2024, and First Tee – Greater San Antonio. (doing business as “First Tee” and hereinafter referred to as “FTGSA” or “First Tee”), a Texas Non-Profit Corporation. FTGSA and CITY shall collectively be referred to as the "PARTIES."

PREAMBLE

WHEREAS, through Ordinance No. 90191, dated July 29, 1999, the CITY entered into a license agreement with San Antonio Golf Association (SAGA) doing business as Golf San Antonio (GSA), now known as First Tee – Greater San Antonio for the use, operation, and maintenance of the Polo Field Driving Range in Brackenridge Park for a fifteen-year period; and

WHEREAS, the CITY owns property identified as the Polo Field Driving Range which is located within Brackenridge Park; and

WHEREAS, through Ordinance No. 2007-05-03-0479, dated May 3, 2007, the CITY entered into a management agreement with Municipal Golf Association-San Antonio (MGA-SA) doing business as Alamo Golf Trails, for the use, operation, and maintenance of city owned golf courses and the San Pedro Driving Range for a term of ten years with two additional five-year renewal options; and

WHEREAS, through Ordinance No. 2007-12-13-1357, dated December 13, 2007, the CITY assigned its landlord interest in the GSA License Agreement to MGA-SA for the management of the contract; and

WHEREAS, the CITY, MGA-SA, and FTGSA desire to separate the agreements into two separate agreements which allows MGA-SA and FTGSA to operate independently and continue their long-standing relationship for the benefit of the citizens and visitors of San Antonio; and

NOW THEREFORE, the PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. TERM

- 1.1 The term of this Agreement shall commence upon City of San Antonio City Council approval and expire on December 31, 2034, unless earlier terminated as provided under the terms of this Agreement.
- 1.2 So long as the FTGSA is not then in default of any of the provisions of this Agreement or any other agreements with the CITY, this Agreement shall be extended for two (2) additional, ten (10) year renewal term subject to City Council approval.

II. GENERAL RESPONSIBILITIES AND RENT

- 2.1 FTGSA shall maintain its non-profit status with the Secretary of State and remain in good standing throughout the term of this Agreement.
- 2.2 FTGSA shall maintain insurance, as outlined in Section XI. Insurance Requirements of this Agreement throughout the term of this Agreement.

- 2.3 FTGSA's Board of Directors shall include a City Liaison to the Board as a non-voting ex-officio member. The CITY liaison shall be the Parks and Recreation Director (hereinafter referred to as the "Director"), or other CITY staff member as identified by the City Manager.
- 2.4 Throughout the term of this Agreement and any extensions thereof, FTGSA shall maintain membership in the First Tee and shall maintain accreditation with said Association or with such other similar organization which has been approved in writing by both FTGSA and CITY (the "Alternate Organization").
- 2.5 In consideration of the public benefit derived from FTGSA's operations, maintenance, educational programs, and general programming, FTGSA shall not owe any rent under this Agreement.

III. ACCEPTANCE AND CONDITIONS OF PREMISES

- 3.1 FTGSA shall accept the Leased Premises (hereinafter referred to as "PREMISES") described in Exhibit A in the present condition "AS IS", the Leased Premises being currently suitable for the permitted use.
- 3.2 All permanent structures existing at the PREMISES and those added during the term of this Agreement shall be the property of the CITY. CITY shall provide insurance coverage for its property in conformance with its general property insurance program.

IV. GENERAL OPERATING REQUIREMENTS

- 4.1 FTGSA shall establish operating days and hours for the Driving Range, so long as the hours are within the operating hours of Brackenridge Park and provided to the CITY annually. Special events and programming outside of park operating hours shall require approval from the Director.
- 4.2 FTGSA shall employ, pay, and supervise all personnel deemed necessary for management, operations, and maintenance, and programming.
- 4.3 FTGSA shall continue to own all furniture, fixtures, and equipment.
- 4.4 CITY shall have the right, in coordination with FTGSA, to temporarily suspend activities in accordance with construction, weather related, and/or local government restriction closures. CITY shall notify FTGSA at the earliest opportunity however in some instances the notification may be immediate.

V. REVENUE AND FEES

- 5.1 FTGSA shall collect and retain all revenues from all aspects of its operations for management, operations, maintenance, development, educational opportunities, and programming. Revenue may include, but not limited to: special events, food and beverages sales, merchandise, tournaments, membership fees, donations, fund raisers, promotions, public and private grants.
- 5.2 FEES. FTGSA shall establish customary and reasonable fees including membership fees.
- 5.3 RESERVATIONS. Reservations is defined as events not sponsored by FTGSA. Reservations for the PREMISES shall be allowed. FTGSA shall establish customary and reasonable fees for all reservations.
- 5.4 CITY DAYS. CITY shall reserve the right to utilize the PREMISES, at no cost, for up to twelve (12) full days each year during the term of this Agreement. In addition, the CITY shall reserve the right to utilize the Polo Field (does not include the First Tee Learning Center and Retail Space), at no cost, for up to twelve (12) times each year outside normal operating hours. CITY DAYS shall be coordinated ninety (90) days in advance to ensure not to impact FTGSA operations, maintenance, and/or programming.

5.5 SPECIAL EVENT ADMISSION. FTGSA may establish special event admission fees for special events. Provided, however, any such special admission fees which are to be in effect longer than 120 days must be approved by the Director in writing prior to its implementation.

VI. MAINTENANCE OBLIGATIONS

- 6.1 FTGSA at its sole expense shall maintain the PREMISES at or above acceptable standards for a driving range. Expenses shall include, but not be limited to, costs of managing, operating, maintaining, developing, equipment, supplies, utilities, and all capital improvements which FTGSA elects to carry out, or are required to carry out.
- 6.2 FTGSA shall keep all areas within the PREMISES free of graffiti.
- 6.3 FTGSA shall maintain all amenities and structures in good and working order, repair as necessary.
- 6.4 FTGSA shall promptly repair any damage to the PREMISES. FTGSA shall have no obligation to repair damage caused by CITY or CITY authorized contractors.
- 6.5 Notwithstanding any contrary provisions, should the PREMISES be damaged by fire, tornado, or other casualty, CITY shall be under no obligation to rebuild or repair the PREMISES.
- 6.6 CITY reserves the right to inspect the PREMISES, during normal business hours, without prior notification to the FTGSA.

VII. UTILITIES & WATER PROVISIONS

- 7.1 ELECTRIC UTILITIES. FTGSA shall be responsible for all electric utilities. FTGSA shall make payments directly to the utility company.
- 7.2 WATER & SEWER UTILITIES. FTGSA shall be responsible for all water and sewer utilities. FTGSA shall make payments directly to the utility company. FTGSA shall comply with the CITY's Conservation Ordinance, including year-round restrictions, drought restrictions, and charity car wash restrictions. If FTGSA receives fines or penalties for non-compliance with the CITY's Conservation Ordinance or any watering restrictions FTGSA shall be responsible for the payment of the fines or penalties. FTGSA shall coordinate and request through CITY any irrigation variances of the Conservation Ordinance. FTGSA shall comply with the San Antonio Water System (SAWS) Recycled Water Agreement.
- 7.3 OTHER UTILITIES. FTGSA shall pay for other utilities directly which may include but not limited to, garbage and recycling collection, telephone lines and connections, cable/satellite television connections, security services, internet services, and any other utility service used within the PREMISES. CITY will not be liable to FTGSA for any damages or otherwise if said services are interrupted or terminated because of necessary repairs, installations, improvements, or any cause beyond the control of the CITY.

VIII. IMPROVEMENTS

- 8.1 FTGSA may make improvements to the PREMISES. All permanent improvements, including capital improvements, regardless of the value, shall require approval of the Director and any necessary CITY departments, boards and/or commissions including, but not limited to, Historic Design Review Commission, Development Services Department; other approvals as required, including but not limited to, Texas Historic Commission.
- 8.2 FTGSA may not, without the prior written approval of the Director, construct, or allow to be constructed any permanent improvements to the PREMISES or make or allow to be made any permanent alterations to the structures within the PREMISES.

8.3 All improvements made on the PREMISES and/or alterations to permanent structures situated upon the PREMISES made by the FTGSA shall become the property of CITY upon the end of the term of this Agreement.

8.4 The CITY shall not be responsible or liable for, and FTGSA covenants that it shall not bind, or attempt to bind the CITY for the payment of any money in connection with the construction, repair, alteration, addition, or reconstruction in, on or about the PREMISES.

IX. REPORTING

9.1 Throughout the term of this Agreement and any extensions hereof, FTGSA shall maintain complete and accurate permanent financial records of all income and expenditures. Such records shall be maintained on a comprehensive basis, in accordance with generally accepted accounting principles. Such financial records and supporting documentation shall be preserved in Bexar County, Texas for at least five years and shall be open to CITY inspection following reasonable notification of intent to inspect by CITY's Director of Finance or other appropriate CITY official(s).

9.2 FTGSA shall furnish to CITY annual financial statements, audited to the level, which is customary for FTGSA, by which the audit has been conducted by an independent certified public accountant. Audited financial statements shall be submitted one hundred eighty (180) days after the end of the FTGSA's fiscal year.

9.3 FTGSA shall provide annual reports to include but not limited to: (a) number of participants, (b) participant age range, (c) number of volunteers, and (d) number of volunteer hours. FTGSA may provide additional pertinent data. Annual reports shall be submitted one hundred eighty (180) days after the end of FTGSA's fiscal year.

X. DEFAULTS AND TERMINATION

10.1 Should FTGSA fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this Agreement, or violate any of the material terms of this contract and such violation continues for a period of ninety (90) days following notice thereof from the CITY specifying the violation, the CITY shall have the right to immediately terminate the contract in whole or in part.

10.2 Notice of termination shall be provided in writing to FTGSA, effective upon the date set forth in the notice. CITY may, in CITY's sole discretion, provide an opportunity for FTGSA to cure the default. If CITY elects to offer an opportunity to cure, CITY shall provide notice to MBCF specifying the matters in default and the cure period. If FTGSA fails to cure the default within the ninety (90) day cure period described above, CITY shall have the right, without further notice, to terminate the Agreement in whole or in part. Such termination shall not relieve FTGSA of any liability to the CITY for damages sustained by virtue of any breach by FTGSA.

XI. INSURANCE REQUIREMENTS

11.1 No later than thirty (30) days before finalizing this Agreement, FTGSA must provide a completed certificate(s) of Insurance to CITY's Parks and Recreation Department. The certificate must be:

- a) clearly labeled with the legal name of the agreement in the Description of Operations block.
- b) completed by an agent and signed by a person authorized by the insurer to bind coverage on its behalf (CITY will not accept Memorandum of Insurance or Binders as proof of insurance).
- c) properly endorsed and have the agent's signature, and phone number.

Certificates may be mailed or sent via email, directly from the insurer's authorized representative. CITY shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by CITY'S Risk Management Department. No officer or employee, other than CITY'S Risk Manager, shall have authority to waive this requirement.

11.2 If the CITY does not receive copies of insurance endorsements, then by executing this Agreement, FTGSA certifies and represents that its endorsements do not materially alter or diminish the insurance coverage for the Agreement.

11.3 The City's Risk Manager reserves the right to modify the insurance coverages, their limits, and deductibles prior to the scheduled event or during the effective period of this Agreement based on changes in statutory law, court decisions, and changes in the insurance market which presents an increased risk exposure.

11.4 FTGSA shall obtain and maintain in full force and effect for the duration of this Agreement, at FTGSA sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below. If FTGSA claims to be self-insured, they must provide a copy of their declaration page so the CITY can review their deductibles:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation 2. Employers' Liability	<i>Statutory</i> \$1,000,000.00/\$1,000,000.00/ \$1,000,000.00
3. Broad Form Commercial Liability Insurance to include coverage for the following: a. Premises/Operations b. Independent Contractors c. Products/Completed Operations d. Personal/Advertising Injury e. Contractual Liability f. Damage to property rented by you* g. Explosion, Collapse, Underground Property Hazard Liability h. Sexual Abuse/Molestation i. Broad Form Property Damage to include Fire and Legal Liability	For <u>Bodily Injury</u> and <u>Property Damage</u> of: \$1,000,000.00 per occurrence; \$2,000,000.00 General Aggregate, or its equivalent in Umbrella Liability Coverage *f.) \$500,000
4. Business Automobile Liability: a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000.00 per occurrence
5. Professional Liability (Claims Made)	\$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
6. Liquor Liability*	\$1,000,000.00 per occurrence, with \$2,000,000.00 Aggregate or its equivalent in umbrella or excess liability coverage
7. Builder's Risk *	All Risk Policy written on an occurrence basis for 100% replacement cost during construction phase of any new or existing structure.
8. Umbrella or Excess Liability Coverage	\$5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.

9. Environmental Insurance –(Contractor’s Pollution Liability (Claims-made coverage)*	\$1,000,000 per occurrence; \$2,000,000 general aggregate for claims associated with hazardous materials, to include spills and mitigation.
*If Applicable	

11.5 FTGSA must require, by written contract, that all subcontractors providing goods or services FTGSA agrees to require, by written contract, that all subcontractors providing goods or services under this Agreement obtain the same insurance coverages required of FTGSA and provide a certificate of insurance and endorsement that names FTGSA and CITY as additional insureds. Respondent shall provide FTGSA with subcontractor certificates and endorsements before the subcontractor starts work. Such modification may be enacted by letter signed by City’s Risk Manager, which shall become a part of the contract for all purposes.

11.6 If a loss results in litigation, then the CITY is entitled, upon request and without expense to the City, to receive copies of the policies, declaration page and all endorsements. FTGSA must comply with such requests within 10 days by submitting the requested insurance documents to the CITY at the following address:

City of San Antonio
 Attn: Parks and Recreation
 P.O. Box 839966
 San Antonio, TX 78283-3966

11.7 FTGSA’s insurance policies must contain or be endorsed to contain the following provisions:

- Name CITY and its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with CITY. The endorsement requirement is not applicable for workers’ compensation and professional liability policies.
- Endorsement that the “other insurance” clause shall not apply to CITY where CITY is an additional insured shown on the policy. CITY’s insurance is not applicable in the event of a claim.
- Contractor shall submit a waiver of subrogation to include, workers’ compensation, employers’ liability, general liability and auto liability policies in favor of CITY; and
- Provide 30 days advance written notice directly to CITY of any suspension, cancellation, non-renewal or materials change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.

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

11.9 In addition to any other remedies CITY may have upon FTGSA’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time required, CITY may order FTGSA to stop work and/or withhold any payment(s) which become due to FTGSA under this Agreement until FTGSA demonstrates compliance with requirements.

11.10 Nothing contained in this Agreement shall be construed as limiting the extent to which FTGSA may be held responsible for payments of damages to persons or property resulting from FTGSA’s or its subcontractors’ performance of the work covered under this Agreement.

11.11 FTGSA’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by CITY for liability arising out of operations under this Agreement.

- 11.12 The insurance required is in addition to and separate from any other obligation contained in this Agreement and no claim or action by or on behalf of CITY shall be limited to insurance coverage provided.
- 11.13 FTGSA and any subcontractor are responsible for all damage to their own equipment and/or property result from their own negligence.

XII. INDEMNIFICATION

- 12.1 FTGSA covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, 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 or death and property damage, made upon the CITY, directly or indirectly arising out of, resulting from or related to FTGSA's activities under this AGREEMENT, including any acts or omissions of FTGSA, any agent, officer, director, representative, employee, consultant or sublessor of FTGSA, and their respective officers, agents, employees, directors and representatives while in the exercise or 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. The indemnity provided for in this paragraph shall not apply to any liability resulting from negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT FTGSA AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**
- 12.2 The provisions of this INDEMNIFICATION 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.**
- 12.3 FTGSA shall promptly advise the CITY in writing of any claim demand against the CITY, or any claim or demand against the FTGSA reasonably anticipates may adversely impact the CITY, known to FTGSA related to or arising out of FTGSA's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at FTGSA's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving FTGSA of any of its obligations under this paragraph.**

XIII. NOTICES

- 13.1 For purposes of this Agreement, all official communications and notices among the PARTIES shall be deemed sufficient if in writing and shall be (1) mailed, registered, or certified mail, postage prepaid, return receipt requested, or (2) delivered by a nationally recognized overnight air or ground courier service to the addresses set forth below:

City of San Antonio
Parks & Recreation Department
Attn: Director
P.O. Box 839966
San Antonio, TX 78283

First Tee – Greater San Antonio
Attn: CEO
915 Mulberry Ave.
San Antonio, TX 78212

Such Notice shall be deemed received within three (3) days after deposit in the U.S. mail or on the first business day after deposit with an overnight air or ground courier service. Notice of change of address by either PARTY must be made in writing and mailed to the other PARTY's last known address within five (5) business days of such change.

XIV. CONFLICT OF INTEREST

- 14.1 The Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as defined in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the CITY or any City agency such as city owned utilities. An officer or employee has a “prohibited financial interest” in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale:
- a City officer or employee;
 - parent, child or spouse;
 - a business entity in which the officer or employee, or his parent, child or spouse owns (a) 10% or more of the voting stock or shares of the business entity, or (b) 10% or more of the fair market value of the business entity;
 - a business entity in which any individual or entity above listed is a (a) subcontractor on a City contract, (b) a partner, or (c) a parent or subsidiary business entity
- 14.2 FTGSA warrants and certifies as follows:
- FTGSA and its officers, employees and agents are neither officers nor employees of the CITY.
 - FTGSA has tendered to the CITY a Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- 14.3 FTGSA acknowledges that CITY’s reliance on the above warranties and certifications is reasonable.

XV. SEVERABILITY OF PROVISIONS

- 15.1 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future Federal, State or Local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the PARTIES hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein; it is also the intention of the PARTIES hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.
- 15.2 All other provision of this lease agreement notwithstanding, in the event any obligation of CITY set out in this Agreement would cause this Agreement to be void by law or otherwise. the obligation shall be deemed to not be a part of this Agreement and shall be deemed severed from this Lease ab initio. Upon CITY notifying FTGSA that nay such provision has been eliminated from the Agreement for the reasons stated above, FTGSA shall thereafter have the right to elect to terminate this Agreement.

XVI. NON-WAIVER OF PERFORMANCE

- 16.1 No waiver by CITY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of CITY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification, or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.
- 16.2 No act or omission of CITY shall in any manner impair or prejudice any right, power, privilege, or remedy available to CITY herein or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

XVII. NON-DISCRIMINATION

17.1 As a party to this contract, FTGSA understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by Federal and State law, or as otherwise established herein.

XVIII. CONTRACTING

18.1 Compliance by contractors with this Agreement shall be the responsibility of the FTGSA. FTGSA shall be responsible to ensure that all permits required for the activities under this Agreement are obtained.

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

18.3 FTGSA shall not have liens on the property.

XIX. ENTIRE AGREEMENT

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

XX. CHANGES AND AMENDMENTS

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

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

XXI. PARTIES BOUND

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

XXII. RELATIONSHIP OF PARTIES

22.1 Nothing contained herein shall be deemed or constructed by PARTIES hereto, or by any third party, as creating the relationship of principal and agent, partners, joint ventures or any other similar such relationship between the PARTIES hereto.

XXIII. TEXAS LAW TO APPLY

23.1 This Agreement shall be constructed 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.

XXIV. GENDER

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

XXV. CAPTIONS

25.1 The captions contained in this Agreement as for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

XXVI. HOLDING OVER

26.1 FTGSA shall have no right to hold over after the end of the term of this Agreement.

XXVII. AUTHORITY

27.1 The signor of this Agreement for FTGSA hereby represents and warrants that they have full authority to execute this Agreement on behalf of the FTGSA.

27.2 If the signor of this Agreement separates from FTGSA, the signor shall have no authority to continue.

27.3 FTGSA shall not transfer, pledge, or otherwise assign this Agreement, any interest in and to same, or any claim arising thereunder, without first procuring the written approval of CITY. Any attempt to transfer, pledge or other assignment shall be void ad initio and shall confer no right upon any third person.

EXECUTED and **AGREED** to this the _____ day of _____, 20_____.

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

FIRST TEE – GREATER SAN ANTONIO

By: _____
Homer Garcia III, Director

By: _____
Carrie Kimbell, CEO

Date: _____

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY

EXHIBIT A: Leased Premises Maps

EXHIBIT B: San Antonio Water System Recycled Water Service Agreement



PARKS & RECREATION

EXHIBIT A Brackenridge Park First Tee Licensed Area Boundary



 First Tee Boundary
 Streets

0 0.02 0.04 0.07 Miles

EXHIBIT B

SAN ANTONIO WATER SYSTEM RECYCLED WATER SERVICE AGREEMENT

Effective Date:

Contract No.

PROVIDER:

**San Antonio Water System (SAWS)
2800 U.S. Hwy 281 North
P.O. Box 2449
San Antonio, Texas 78212-2449**

USER:

**San Antonio Development FORE Youth, Inc.
915 E. Mulberry
San Antonio, Texas 78212**

For the consideration provided herein, SAWS agrees to supply and User agrees to accept, store and use recycled water service in accordance with the terms and conditions of this Recycled Water Service Agreement (the "Agreement"). This Agreement incorporates and is subject to all of the terms and conditions set out herein as well as all of the following: all applicable Attachments and Appendices attached hereto; the SAWS Recycled Water User's Handbook (the "User's Handbook"), as it may be amended from time to time; the SAWS Cross Connection Control and Backflow Prevention Program, as it may be amended from time to time; and all applicable local, state, and federal statutes, ordinances, and regulations, as they may be amended, now or hereafter in effect ("Applicable Laws"), including, without limitation, Chapter 210 of Title 30 of the Texas Administrative Code and Article VIII of Chapter 34 of the City of San Antonio Code (the "City Code").

This Agreement contains and is subject to the provisions of the Appendices indicated below. In the event of a conflict between this Agreement and any applicable Appendices, the provisions of the applicable Appendices shall control.

Appendix One - Conversion Benefits: Applicable? yes no

Appendix Two - Exchange Documents: Applicable? yes no

Appendix Three - Other: Applicable? yes no

1. Use.

a. **General.** User covenants and agrees to use the recycled water provided under this Agreement (the "Recycled Water") only as authorized by Applicable Laws, and in accordance with the User's Handbook and the SAWS Cross Connection Control and Backflow Prevention Program.

b. **Specific.** Notwithstanding other uses authorized under Chapter 210 of Title 30 of the Texas Administrative Code or Chapter 34 of the City Code, User agrees to use the Recycled Water only for construction, commercial, industrial, or irrigation purposes and in accordance with all the terms and conditions of this Agreement. User agrees to use the Recycled Water only for the purpose(s) and in the location(s) described in Attachment A hereto. User agrees to obtain SAWS' written consent prior to using the Recycled Water for a purpose or at a location not described in Attachment A. Any changes to the purpose and location of use of the Recycled Water must be reflected in a substitute Attachment A and attached hereto. User agrees to take steps to minimize the risk of inadvertent human exposure to the Recycled Water. SAWS may terminate this Agreement immediately, in its sole discretion, if SAWS determines that User has failed to use the Recycled Water in accordance with Applicable Laws, this Agreement, and/or Attachment A.

2. Quantity

SAWS and User agree to the delivery and use of Recycled Water in accordance with the specifications set forth on Attachment B hereto. Attachment B may be amended if agreed to by both parties in writing.

3. Point of Delivery; Service Pressure.

a. Point of Delivery. Title to the Recycled Water shall pass from SAWS to User at the points of delivery, which shall be at the meter connections on User's premises ("Points of Delivery"). The amount of Recycled Water received by User shall be determined by and based upon monthly meter readings performed by SAWS.

b. Service Pressure. SAWS agrees to deliver to User Recycled Water. User shall supply, install and maintain at User's sole expense all equipment to obtain User's desired pressure for uses designated in Attachment A for User's purposes.

4. User's Recycled Water System.

a. Design, Construction and Maintenance. At User's sole expense, User shall design, install, construct, maintain, and operate all portions of the recycled water transportation, holding and distribution facilities on User's side of the Points of Delivery (the "Onsite System"), except that SAWS shall install the meters (or alternative measurement devices approved by SAWS) at SAWS' sole expense. User must ensure that the Onsite System, at all times while this Agreement is in effect, complies with Applicable Laws. SAWS reserves the right to conduct periodic site visits to analyze and test potable water and Recycled Water and to perform any other tests or inspections it deems necessary to ensure operational compliance of the Onsite System.

b. Inspections, Permits, Certifications. User shall be solely responsible for timely obtaining all necessary permits, approvals, and certificates from SAWS, the appropriate municipal or county plumbing department, and any other applicable governmental agencies for all activities relating to the Onsite System, including but not limited to, materials, construction, modifications, notifications, facility testing, violations, and emergency response, as such may be required by this Agreement, Applicable Laws, or SAWS policy.

5. Reports, Inspections,

a. Reports. User acknowledges that SAWS is required to submit monthly reports to the TCEQ pursuant to Chapter 210 of Title 30 of the Texas Administrative Code, regarding the quantity, quality, purpose and location of use of Recycled Water.

b. Inspection of Premises. User agrees to permit authorized representatives of SAWS or any other governmental agency with jurisdiction to inspect User's premises for the purpose of verifying compliance with this Agreement and all Applicable Laws. Inspections shall occur at reasonable times or during normal business hours. User acknowledges that by conducting inspections of User's premises or Onsite System, including backflow prevention assemblies, SAWS is not acting on behalf of the TCEQ or any other governmental body with jurisdiction to regulate User's use of Recycled Water or Onsite System, and such inspections or certifications by SAWS do not relieve User from its obligation to ensure that its use of Recycled Water or the Onsite System is in compliance with this Agreement or Applicable Laws.

c. Exemption from Aquifer Management Plan. Pursuant to Section 34-1278 of the City Code, as amended, Recycled Water provided under this Agreement is exempt from compliance with the specific water use reduction measures set forth in Section 34-332 of the City Code. Pursuant to Section 34-332 of the City Code (Measures for Landscape Irrigation: New and Established Plants), as amended, the use of Recycled Water is a defense to

prosecution for irrigation of landscape outside the designated landscape watering days and times established by Section 34-323 of the City Code.

6. Rates and Payments.

The rate, applicable fees and payment obligations applicable to User's purchase of Recycled Water under this Agreement shall at all times be as then set forth in Chapter 34 of the City Code, as it may be amended. User agrees to pay for the Annual Amount set forth on Attachment B if the Annual Amount is available from SAWS in the designated Monthly Volumes whether or not taken by User. SAWS will bill User annually for recycled water used up to December 31 of each year during the term of this Agreement for that portion of the Annual Amount not taken by User, offset by any amount not available from SAWS in the designated Monthly Volumes, during the preceding consecutive twelve month period.

7. Interruption of Service.

a. Substitute Water. SAWS shall not be liable for any interruptions in User's Recycled Water service. In the event of any interruption of service not caused by Force Majeure (Section 10) or due to User's breach of any provision in this Agreement, SAWS shall deliver to User substitute water at the Points of Delivery, in the amount and of the quality then required by this Agreement, and at the Recycled Water rates then applicable to User. Substitute water shall mean, as designated by SAWS: potable water from the SAWS potable water system, or recycled water from any other source delivered through the SAWS recycled water system ("Substitute Water"). SAWS will notify User prior to delivering potable water as Substitute Water.

b. User's Breach. SAWS may interrupt Recycled Water service at any time if SAWS determines that User is in breach of any provision in this Agreement. If SAWS interrupts service pursuant to this subsection, User shall have 30 days to cure the breach to the satisfaction of SAWS. If User fails to cure the breach to the satisfaction of SAWS in the period provided, SAWS shall have the right to immediately terminate this Agreement. The provisions of this Section are not intended to limit the rights of SAWS contained in Section 8 of this Agreement.

8. Termination.

a. With Notice. Except as otherwise provided herein, either party may terminate this Agreement by giving the other party 180 days written notice of intent to terminate.

b. Unauthorized Use. Notwithstanding any provision in this Agreement to the contrary, SAWS may terminate this Agreement immediately if SAWS determines that the use of the Recycled Water is not in strict compliance with this Agreement or Applicable Laws, as each may be amended.

c. Onsite System. Notwithstanding any provision in this Agreement to the contrary, SAWS may terminate this Agreement immediately if SAWS determines that the Onsite System is not in strict compliance with this Agreement or Applicable Laws, as each may be amended.

d. Nonpayment. In the event User fails to timely pay for Recycled Water in accordance with this Agreement, SAWS may interrupt service and terminate this Agreement as authorized by Chapter 34 of the City Code. Service will not be interrupted for failure to pay an amount contested in good faith by User and in accordance with SAWS' established procedures, so long as User timely pays all other charges due and not in dispute. All billing inquiries, disputes and decisions to terminate recycled water service for nonpayment shall be resolved in accordance with SAWS' established policies as such policies may be amended from time to time.

e. Conveyance of Premises. SAWS may terminate this Agreement immediately if User leases, sells, or conveys to another entity ownership, control or possession of all or parts of the land on which all or part of the

Onsite System is located; provided, however, that SAWS may, in its discretion and on conditions it may require, permit this Agreement to be assigned to such other entity if the entity will use the Annual Amount of Recycled Water for the same purposes and in the same locations as established in the applicable Attachments hereto, all in accordance with this Agreement.

9. Liability; Indemnification.

a. User's Liability. User shall be solely responsible for any and all claims, damages, deaths, losses, injury, fines, penalties, suits and liability of every kind, including environmental liability, arising from the use, distribution or discharge of the Recycled Water, whether such use is intended or accidental, or authorized by this Agreement and Applicable Laws or otherwise. User shall be solely responsible for any and all claims, damages, deaths, losses, injury, fines, penalties, suits and liability of every kind arising from or relating to the design, installation, construction, connection, maintenance, operation and modification of the Onsite System, regardless as to whether the Onsite System was released for service by SAWS.

b. **INDEMNIFICATION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, USER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CITY OF SAN ANTONIO ("COSA"), SAWS, AND THEIR EMPLOYEES, OFFICERS, AGENTS AND REPRESENTATIVES FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, CAUSES OF ACTION, SUITS, AND LIABILITY OF EVERY KIND, INCLUDING ENVIRONMENTAL LIABILITY, ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEYS' FEES, FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR DAMAGE TO ANY PROPERTY, ARISING OUT OF OR IN CONNECTION WITH USER'S DISTRIBUTION, USE AND/OR STORAGE OF THE RECYCLED WATER PROVIDED HEREUNDER, AND/OR THE DESIGN, INSTALLATION, CONSTRUCTION, CONNECTION, MAINTENANCE, MODIFICATION OR OPERATION OF USER'S ONSITE SYSTEM, INCLUDING WHEN CAUSED, IN WHOLE OR PART, BY USER, THIRD PARTIES, OR BY THE CONTRIBUTORY NEGLIGENCE OF COSA OR SAWS REPRESENTATIVES. IT IS THE EXPRESSED INTENT OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH IS AN INDEMNITY BY USER TO INDEMNIFY AND PROTECT COSA OR SAWS REPRESENTATIVES FROM THE NEGLIGENT ACTS OF THE USER, THIRD PARTIES, AND COSA OR SAWS REPRESENTATIVES, EXCEPT WHEN CAUSED BY THE SOLE NEGLIGENCE OF COSA OR SAWS REPRESENTATIVES.**

10. Force Majeure.

a. Generally. If SAWS or User are rendered unable by Force Majeure to carry out, in whole or in part, its respective obligations under this Agreement, including the provision of Substitute Water, or acceptance of the Minimum Amount of Recycled Water, then during the pendency of such Force Majeure but for no longer period, the obligations of SAWS or User, as the case may be, shall be excused to the extent of such Force Majeure and SAWS shall not be liable for any loss or damage for delay, for nonperformance, or for interruption of service due to Force Majeure. For purposes of this Agreement, Force Majeure means any act or event not reasonably within SAWS' control, including, but not limited to, breaks, malfunctions or sabotage of SAWS' treatment, distribution, wastewater collection or sanitary sewer systems or facilities, pumps, pipelines, mains, or machinery of any kind, unauthorized dumping of contaminants in SAWS' wastewater collection system or sanitary sewer system, Acts of God, an act or omission of an act by any governmental authority, war, riot, insurrection, strikes, acts of a public enemy, orders of any kind of the federal, state or local government, or any civil or military authority, blockades, embargoes, sabotages, terrorist acts, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts which result in an outflow of less than 116 m.g.d total discharge from all SAWS recycling plants, arrests, restraint of government and people, civil disturbances, or explosions.

b. CPS Priority Rights. User understands and agrees that City Public Service (“CPS”) has priority rights to receive recycled water under an existing agreement between CPS and SAWS. Accordingly, User understands and agrees that there may be Force Majeure events in which SAWS may be unable to deliver Recycled Water to User in the quantities set forth in this Agreement as a result of complying with CPS priority rights. Any such event shall be deemed a Force Majeure event under the terms of this Agreement.

11. Miscellaneous.

a. Complete Agreement. This Agreement, including all Applicable Laws, User’s Handbook and the SAWS Cross Connection Control and Backflow Prevention Program, and all the Attachments and all applicable Appendices hereto constitute the complete and entire agreement between the parties regarding the subject matter hereof. This Agreement supersedes and cancels all prior agreements relating to this subject, whether written or oral, unless expressly stated in this Agreement.

b. Severability. In case any one or more provisions, or parts of provisions, contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision, or part thereof, shall not affect any other provision hereof, and this Agreement shall be construed by a court, giving effect to the general intent and specific directives of the parties so as not to be invalid, illegal or unenforceable. In the event such provision, or part thereof, cannot be reformed or construed to be valid, legal, or enforceable, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

c. Performance of Contract. The obligations and undertaking of each of the parties to this Agreement shall be performed or deemed to be performed in San Antonio, Bexar County, Texas, and shall be construed in accordance with Texas law.

d. No Third-Party Beneficiaries. The parties hereto are entering into this Agreement solely for the benefit of themselves, their successors and permitted assigns, and agree that nothing herein shall be construed to confer any right, privilege or benefit on any person or entity other than the parties hereto, their successors and their permitted assigns. The parties hereby agree that this Agreement does not run with the land.

e. Assignment. This Agreement may not be assigned by User except as may be permitted under Section 8(e) herein (Conveyance of User Premises).

f. Waiver. Any waiver at any time by either party with respect to a default or other matter arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent default or matter.

g. Captions. The captions and headings appearing in this Agreement are inserted merely to facilitate reference and are not to be considered a part of this Agreement and in no way shall they affect the interpretation of any of the provisions of this Agreement.

h. Approvals. All approvals and agreements by either party that are required or contemplated under this Agreement must be in writing unless other means are specifically permitted, and must be signed by the person authorized to give such approvals and make such agreements for that party.

i. Notices. All notices under this Agreement shall be in writing unless otherwise required or permitted, and shall be mailed or faxed to the address or number provided in this subsection. All notices shall be effective on the date actually received or, if faxed the day faxed, provided an electronic confirmation of receipt is received.

For purposes of billings and payments, the mailing addresses of the parties shall, until changed as hereinafter provided, be as follows:

As to User(s):
San Antonio Development FORE Youth, Inc.
Attention: Carrie Kimbell
915 Mulberry
San Antonio, Texas, 78212

As to SAWS:
San Antonio Water System
Attention: Donovan Burton
2800 U.S. Hwy 281 North
San Antonio, Texas, 78212-2449

j. Cumulative Remedies. Except as expressly limited herein, the parties shall have all remedies, at law or equity, for any cause of action based on this Agreement.

k. User/Owner's Consent. The parties acknowledge that User will manage and operate the Onsite Systems at the locations designated on Attachments A thru B and location map on behalf of and as agent for the City of San Antonio ("COSA") pursuant to that certain Lease Agreement between COSA and User, as amended, with a ___ year lease term expiring ___ Date, and as may be further amended, (the "Lease"). User represents and warrants that COSA consents to this Agreement and has approved plans showing the Onsite System, water meters and connections to the recycled water system and making note of the fact that recycled water will be used in such system.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original effective as of the date of last signature below ("Effective Date").

USER:

San Antonio Development FORE Youth, Inc.

By: _____ Date _____
Carrie Kimbell, CEO

PROVIDER:

San Antonio Water System

By: _____ Date _____
Donovan Burton, Senior Vice President
Water Resources & Governmental Relations

**EXHIBIT B
ATTACHMENT A**

Purpose and Location of Use

Effective Date of this Attachment:

Contract No.

1. Purpose.

Describe the purposes of recycled water use:

- Commercial
- Industrial
- Irrigation (including all agricultural purposes)
- Landscape Maintenance (Excluding all residential uses)
- Other - Specify:

2. Location.

Map attached: yes no.

Describe the boundaries in which Recycled Water will be used: Golf San Antonio – First Tee uses recycled water for irrigation 915 E. Mulberry Ave. which is generally bounded by Mulberry Ave. to the south, east of St. Mary's, west of San Antonio River and south of park parking lot.

Does this Attachment A supersede another Attachment A?: Yes No

If yes, what is the Effective Date of the superseded Attachment A? _____

If yes, execution by authorized SAWS representative is required.

SAWS Representative

Date

EXHIBIT B

**ATTACHMENT B
Annual Amount and Monthly Volumes**

Effective Date of this Attachment:

Contract No.

User's Total Maximum Annual Quantity ("Annual Amount")	16.00 acre-feet per year
Gallons Per Minute Peak: 00 GPM	
MONTHLY VOLUMES	Acre-feet
January	1.333
February	1.333
March	1.333
April	1.333
May	1.333
June	1.333
July	1.333
August	1.333
September	1.333
October	1.333
November	1.333
December	1.333

Please note the following regarding take or pay for recycled water:

- a. **Annual Amount.** SAWS agrees to convey and transfer to User and User agrees to take from SAWS, Recycled Water up to the maximum quantity set forth herein per contract year (the "Annual Amount"), and in the monthly volumes set forth herein. User further agrees to take at least 75 percent of the Annual Amount in each 12 month period (the "Minimum Amount").
- b. **Rate of Delivery.** SAWS will deliver Recycled Water on a continuous basis during each twenty-four hour period at a rate consistent with User's anticipated hourly, daily, monthly, and/or annual utilization of Recycled Water as set forth herein.
- c. **Adjustment of Annual Amount.** If User fails to take the Minimum Amount for any two consecutive 12 month periods, for reasons other than rainfall, or the nonperformance by SAWS, SAWS may reduce the Annual Amount to an amount that reflects the User's actual usage over the previous 12 months. If User exceeds the contractual amount by 25 percent for any two consecutive 12 month periods SAWS may, in its sole discretion, increase the Annual Amount, based on availability and any other factors related to the provision of recycled water. All adjustments to the Annual Amount must be reflected in a substitute Attachment B and attached hereto.

Does this Attachment B supersede another Attachment B?: Yes No

If yes, what is the Effective Date of the superseded Attachment B? _____

If yes, execution by authorized SAWS representative is required.

SAWS Representative

Date

EXHIBIT B
Attachment C
LOCATION MAP

Golf San Antonio – First Tee

