

STATE OF TEXAS § MEMORANDUM OF UNDERSTANDING with
§ EASTSIDE CHRISTIAN ACTION GROUP dba
COUNTY OF BEXAR § WHEATLEY HEIGHTS SPORTS CONSERVANCY

This Memorandum of Understanding ("MOU") 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. _____ dated **June 22, 2023**, and EASTSIDE CHRISTIAN ACTION GROUP dba WHEATLEY HEIGHTS SPORTS CONSERVANCY, (hereinafter referred to as "CONSERVANCY"), a Non-Profit Corporation. CONSERVANCY and CITY shall collectively be referred to as the "PARTIES."

PREAMBLE

WHEREAS, CITY is the owner of Martin Luther King (MLK) Park, which includes Wheatley Heights Sports Complex (WHSC); and

WHEREAS, WHSC is defined as the football stadium including a concession stand, event center, locker rooms, and two multi-use sports fields on the southern part of MLK Park; and

WHEREAS, CONSERVANCY has established a mission to empower and enhance the youth and culturally diverse community of the Eastside of San Antonio by ensuring access to a world class sports and entertainment venue, providing programs that foster affirmation of personal dignity, ensuring a safe and welcoming environment, and imparting education and training that inspire participants to reach their greatest potential; and

WHEREAS, the SA Parks System Plan was approved by City Council on April 11, 2019; and

WHEREAS, this MOU is consistent with the adopted SA Parks System Plan by leveraging community partnerships to expand recreational opportunities in the community; and

WHEREAS, CITY and CONSERVANCY will enter into this MOU regarding their mutual goals for adult and youth sports programming at WHSC; 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 MOU shall commence upon execution and expire May 31, 2028, if not terminated sooner according to the terms of this MOU.
- 1.2 So long as the CONSERVANCY is not then in default of any of the provisions of this MOU or any other agreements with the CITY, this MOU shall be extended for up to three (3) additional, five (5) year renewal options, subject to the approval of City Council. CONSERVANCY shall provide a written notice to the CITY of the CONSERVANCY's intent to renew the agreement one (1) year prior to the expiration of the initial term and each subsequent renewal term.

II. CONSERVANCY RIGHTS AND RESPONSIBILITIES

2.1 CONSERVANCY STRUCTURE.

- 2.1.1 CONSERVANCY shall maintain a 501(c)(3) Non-profit cooperation, authorized under the rules and regulations of the Internal Revenue Service, and shall not modify the status without prior written approval of CITY during the term of this MOU.

- 2.1.2 CONSERVANCY must establish and update Articles of Incorporation and By-laws by December 31, 2023. Upon completion the CONSERVANCY shall file the Articles of Incorporation and By-laws with the Secretary of State and provide copies to the CITY. The Articles of Incorporation and By-laws will become attachments to this MOU.
- 2.1.3 CONSERVANCY shall review and update the Articles of Incorporation and By-laws no less than every five (5) years and provide CITY with updated documents accordingly. Articles of Incorporation and By-laws shall not be modified without prior notice to the CITY.
- 2.1.4 CONSERVANCY's Board of Directors shall consist of no fewer than five (5) members and no more than eleven (11) voting members.
- 2.1.5 CONSERVANCY's Board of Directors shall include the CITY liaison to the Board as an ex-officio member.
- 2.1.6 CONSERVANCY shall establish a designated day-to-day point of contact (POC). CONSERVANCY POC may be an employee funded by the CONSERVANCY and shall be responsible for all day-to-day communications with the CITY.

2.2 DEVELOPMENT OF WHSC.

- 2.2.1 CONSERVANCY members, officers, and board members shall familiarize themselves with the SA Parks System Plan ("System Plan"), which was approved by the City Council of the City of San Antonio on April 11, 2019, and CITY will collaborate with CONSERVANCY regarding any future amendments or modifications to the System Plan which impact WHSC.
- 2.2.2 CITY shall collaborate with CONSERVANCY regarding design and construction plans for the development of WHSC. CONSERVANCY acknowledges, however, that CITY shall have final approval of design and construction decisions, through the Director of Parks and Recreation, other City departments, various Boards and Commissions, Community Engagement Process, and through the City Council.
- 2.2.3 CITY shall notify CONSERVANCY of all community meetings as related to WHSC.
- 2.2.4 CONSERVANCY shall not make, nor allow to be made, any changes or improvements to MLK Park including WHSC without the prior written approval of CITY.

2.3 FUNDRAISING.

- 2.3.1 CONSERVANCY shall have the right to pursue corporate and individual donors, sponsorships, and apply for grants for funding of capital improvements, programming, educational programs, and other benefits appropriate to the development and use of WHSC. All grant applications, donors, and sponsorships shall be subject to the prior written approval of CITY. CONSERVANCY acknowledges that CITY shall also have the right to apply for grants to benefit WHSC.
- 2.3.2 CITY shall collaborate with CONSERVANCY regarding the raising of funds for capital improvements to WHSC, including any necessary matching funds. Unless otherwise agreed to the PARTIES, upon early termination as provided in Section IX. DEFAULTS AND TERMINATION, all funds raised but not expended shall be transferred to CITY by CONSERVANCY and shall be used for the benefit of WHSC.
- 2.3.3 Donor Acknowledgement:
 - 2.3.3.1 CITY and CONSERVANCY acknowledge their mutual goal of protecting WHSC while providing opportunities for recognition of monetary and personal property donations.

- 2.3.3.2 *Acknowledgements*: All requests for Donor Acknowledgement are subject to the prior approval of CITY, through the Director of Parks and Recreation and all other CITY officials, including but not limited to the design approval of the City's Office of Historic Preservation.
- 2.3.3.3 *Monuments, memorials, Markers, and Plaques*: All monuments, memorials, markers, and plaques will be subject to the City of San Antonio Monuments, Memorials, Markers, and Plaques Policy.

2.4 USE OF WHSC.

- 2.4.1 CONSERVANCY shall coordinate all use with the Parks and Recreation Department, reservations are subject to availability.
- 2.4.2 CONSERVANCY shall have the right to utilize WHSC, at no cost, for board meetings.
- 2.4.3 CONSERVANCY DAYS: CONSERVANCY shall have the right to utilize WHSC, at no cost, for up to twelve (12) full days each year during the term of this MOU.
- 2.4.4 Additional usage shall be coordinated with the Parks and Recreation Department. The Director of Parks and Recreation has the authority to waive the fees for uses identified as public benefit.
- 2.4.5 CONSERVANCY shall have the right to operate the concessions at the WHSC football stadium for all events. Concession revenue shall be solely retained by CONSERVANCY as outlined in Section 2.5 Revenue and Expenditures. CITY shall work cooperatively with the CONSERVANCY identify events which require concessions.
- 2.4.6 CONSERVANCY shall have the right to access WHSC for the purpose outlined in this MOU. Use of WHSC for the purpose outlined in the MOU. Reservations are subject to availability and requires is coordination and the prior written approval of CITY.
- 2.4.7 CONSERVANCY, its members, officers, and Board Members, shall ensure that their use of WHSC is in a manner that does not result in damage or modification of WHSC and its amenities.
- 2.4.8 *PROGRAMMING*:
 - 2.4.8.1 CONSERVANCY shall have the right to propose and implement adult and youth sports programming at WHSC. All programs shall be reviewed and subject to prior written approval from CITY.
 - 2.4.8.2 CITY shall have the right, but not the obligation, to provide staff and technical support to CONSERVANCY's adult and youth sports programming.
- 2.4.9 *EVENTS*:
 - 2.4.9.1 CONSERVANCY shall have the right to host events at WHSC, including the event center, that are open to their membership, general public, and/or in association with adult and youth sports programs, fundraising programs, sponsorship programs, or other events as appropriate to WHSC. All events and associated sponsors are subject to coordination and the prior written approval of CITY.
 - 2.4.9.2 CITY shall have the right, but not the obligation, to provide staff and technical support to CONSERVANCY's events.
- 2.4.10 Should the CONSERVANCY desire to change its use of WHSC the PARTIES will enter into negotiations through an amendment. Upon mutually agreed upon terms the amendment will require approval by City Council.

2.5 REVENUE AND EXPENDITURES.

- 2.5.1 CONSERVANCY Rights and Responsibilities except for Donor Acknowledgements: CONSERVANCY shall collect and retain all revenue associated with its rights and responsibilities under the terms of this MOU (“Gross Revenue”).
- 2.5.2 CONSERVANCY may expend funds from Gross Revenue in order to offset the following expenses associated with activities under the terms of this MOU:
 - 2.5.2.1.1 Costs associated with the preparation of the annual Financial Statements.
 - 2.5.2.1.2 Costs directly associated with the rights and responsibilities of CONSERVANCY outlined in this MOU which may include, but not limited to: personnel, insurance, postage/ mailing, telecommunications, advertising/publicity, website hosting/design/administration, and legal fees.
 - 2.5.2.1.3 At the conclusion of this MOU, CONSERVANCY may donate the remaining revenues to the CITY or retain the revenues to complete all efforts associated with this MOU.
- 2.5.3 CONSERVANCY Rights and Responsibilities for Donor Acknowledgements: CONSERVANCY shall be responsible for the collection of all monetary donations and pay of associated costs, including the cost of design and installation of Donor Acknowledgement improvements.

2.6 COMMUNICATIONS AND PROMOTIONAL MATERIAL.

- 2.6.1 CONSERVANCY shall have the right to develop promotional materials, including a website, that promotes the goals, visions, events, and programming of WHSC. CONSERVANCY shall provide a link to the Parks and Recreation Department’s website.
- 2.6.2 All promotional material developed by CONSERVANCY shall acknowledge CITY’s ownership of WHSC and shall be subject to prior written approval of CITY.

2.7 REPORTING AND RECORDS.

- 2.7.1 On or before March 1st of each year during the term of this MOU, or other date that CONSERVANCY and CITY mutually select, CONSERVANCY shall provide a written report to CITY including, but not limited to:
 - 2.7.1.1 Operating Structure: A list of current Officers and Board Members, Changes in By-Laws and/or Articles of Incorporation, and any other pertinent information regarding the operating structure.
 - 2.7.1.2 Financial Statements: CONSERVANCY shall provide an Annual Financial Statement reflecting:
 - 2.7.1.2.1 Gross Revenue and Expenses.
 - 2.7.1.2.2 Net Revenue as well as documentation of funds received from fundraising, grants, and sponsorships.
 - 2.7.1.2.3 CITY shall have the right to request copies of the statements from the bank account in support of the Financial Statement.
 - 2.7.1.3 Programming & Events: CONSERVANCY shall provide an Annual Programming & Events Report reflecting:
 - 2.7.1.3.1 Adult Sports Programming including type of sport and Council District for each participant.
 - 2.7.1.3.2 Youth Sports Programming including type of sport and Council District for each participant.
 - 2.7.1.3.3 Events at the WHSC including the name of the party holding the event, type of event, and number of attendees.
 - 2.7.1.3.4 Any other pertinent information regarding use of WHSC, Programming, and Events.
- 2.7.2 Throughout the term of this MOU and any extensions hereof, CONSERVANCY shall maintain complete and accurate permanent financial records of all income and expenditures. Such financial

records and supporting documentation shall be preserved in Bexar County, Texas, for at least five (5) years and shall be open to CITY inspection, review, and audit following reasonable notification of intent to inspect.

- 2.7.3 CITY reserves the right to conduct, or cause to be conducted, a review and/or audit of CONSERVANCY's records at any and all times deemed necessary by CITY provided. CITY staff, a Certified Public Accountant (CPA), or other auditors as designated by CITY, may perform such audits and/or reviews. CITY reserves the right to determine the scope of every audit and/or review. In accordance herewith, CONSERVANCY agrees to make available to CITY all accounting records.

III. CITY RESPONSIBILITIES

- 3.1 CITY shall be responsible for all management, maintenance, operations, and capital improvements including but not limited to:
- 3.1.1 CITY shall be responsible for all electrical utilities.
 - 3.1.2 CITY shall be responsible for all water and sewer utilities.
 - 3.1.3 CITY shall be responsible for all security/fire systems and security of WHSC and MLK Park.
 - 3.1.4 CITY shall be responsible for all artificial and natural turf maintenance.
 - 3.1.5 CITY shall be responsible for all tree maintenance.
 - 3.1.6 CITY shall be responsible for all facility maintenance.
 - 3.1.7 CITY shall be responsible for all property insurance.
- 3.2 CITY shall be responsible for facility use and reservations. CITY shall develop programming consistent with the mission of the CONSERVANCY and the Parks and Recreation Department.
- 3.3 CITY shall establish a designated day-to-day point of contact (POC). CITY POC will be an employee funded by the CITY and shall be responsible for all day-to-day communications with the CONSERVANCY.
- 3.4 CONSERVANCY shall have no responsibilities for management, maintenance, operations, or capital improvements.

IV. DEFAULTS AND TERMINATION

- 4.1 Should CONSERVANCY fail to fulfill in a timely and proper manner, as determined solely by the Director, its material obligations under this MOU, or violate any of the material terms of this contract, the CITY shall have the right to immediately terminate the MOU in whole or in part.
- 4.2 Notice of termination shall be provided in writing to CONSERVANCY, effective upon the date set forth in the notice. CITY may, in CITY's sole discretion, provide an opportunity for CONSERVANCY to cure the default. If CITY elects to offer an opportunity to cure, CITY shall provide notice to CONSERVANCY specifying the matters in default and the cure period. If CONSERVANCY fails to cure the default within the cure period, CITY shall have the right, without further notice, to terminate the MOU in whole or in part. Such termination shall not relieve CONSERVANCY of any liability to the CITY for damages sustained by virtue of any breach by CONSERVANCY.

V. INSURANCE REQUIREMENTS

- 5.1 The CONSERVANCY is not required to provide insurance coverage. CONSERVANCY use, as outlined in this MOU, is consistent with other reservation users in the Parks and Recreation Department which do not require insurance coverage.
- 5.2 If the CONSERVANCY begins offering concession operations, CONSERVANCY shall obtain insurance coverage requirements and amounts as directed by the CITY.
- 5.3 Should the CONSERVANCY use change, as outlined in this MOU, CONSERVANCY shall obtain insurance coverage requirements and amounts as directed by the CITY.

VI. INDEMNIFICATION

- 6.1 **CONSERVANCY** covenants and agrees to **FULLY INDEMNIFY, DEFEND and HOLD HARMLESS**, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONSERVANCY's activities under this Agreement, including any acts or omissions of CONSERVANCY, any agent, officer, director, representative, employee, CONSERVANCY or subcontractor of CONSERVANCY, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers, or employees, in instances where such negligence causes personal injury, death, or property damage. **IN THE EVENT CONSERVANCY 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.**
- 6.2 The provisions of this INDEMNITY are solely for the benefit of the PARTIES hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. CONSERVANCY shall advise the CITY in writing within twenty-four (24) hours of any claim or demand against the CITY or CONSERVANCY known to CONSERVANCY related to or arising out of CONSERVANCY's activities under this MOU and shall see to the investigation and defense of such claim or demand at CONSERVANCY's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONSERVANCY of any of its obligations under this paragraph.

VII. NOTICES

- 7.1 For purposes of this MOU, 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

Eastside Christian Action Group dba
Wheatley Heights Sports Conservancy
Attn: Board Chairman
P.O. Box 90173
San Antonio, TX 78209

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.

VIII. CONFLICT OF INTEREST

- 8.1 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.

8.2 CONSERVANCY warrants and certifies as follows:

- CONSERVANCY and its officers, employees and agents are neither officers nor employees of the CITY.
- CONSERVANCY has tendered to the CITY a Contracts Disclosure Statement in compliance with the City's Ethics Code.

8.3 CONSERVANCY acknowledges that City's reliance on the above warranties and certifications is reasonable.

IX. SEVERABILITY OF PROVISIONS

- 9.1 If any clause or provision of this MOU 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 MOU 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 MOU that is invalid, illegal, or unenforceable, there be added as a part of the MOU 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.

X. NON-DISCRIMINATION

- 10.1 As a party to this contract, CONSERVANCY 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 state or federal law, or as otherwise established herein.

XI. CONTRACTING

- 11.1 Compliance by contractors with this MOU shall be the responsibility of CONSERVANCY. CONSERVANCY shall be responsible to ensure that all permits required for the activities under this MOU are obtained.
- 11.2 CITY shall in no event be obligated to any third party, including any sub-contractor of CONSERVANCY, for performance of or payment for work services.
- 11.3 CONSERVANCY shall not have liens on the property.

XII. ENTIRE MOU

- 12.1 This MOU constitutes the final and entire agreement between the PARTIES hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this MOU 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.

XIII. CHANGES AND AMENDMENTS

- 13.1 Except when the terms of this MOU expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall only be by amendment in writing executed by both CITY and CONSERVANCY.
- 13.2 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 MOU and that any such changes shall be automatically incorporated into this MOU without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation, or law.

XIV. PARTIES BOUND

14.1 This MOU 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.

XV. RELATIONSHIP OF PARTIES

15.1 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.

XVI. TEXAS LAW TO APPLY

16.1 This MOU 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.

XVII. GENDER

17.1 Words of any gender used in this MOU 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.

XVIII. CAPTIONS

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

XIX. HOLDING OVER

19.1 CONSERVANCY shall have no right to hold over after the end of the term of this MOU.

XX. AUTHORITY

20.1 The signor of this MOU for the CONSERVANCY hereby represents and warrants that they have full authority to execute this MOU on behalf of the CONSERVANCY.

20.2 If the signor of this MOU separates from CONSERVANCY, the signor shall have no authority to continue.

20.3 CONSERVANCY shall not transfer, pledge, or otherwise assign this MOU, 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

**WHEATLEY HEIGHTS
SPORTS CONSERVANCY**

By: _____
David W. McCary, Assistant City Manager

By: _____
Dr. Kenneth Kemp, Board Chairman

Date: _____

Date: _____

APPROVED AS TO FORM:

CITY ATTORNEY