

ROLLINGWOOD MUNICIPAL PARK ATHLETIC FIELDS OPERATION,
MAINTENANCE AND GROUND LEASE AGREEMENT

THIS OPERATION, MAINTENANCE AND GROUND LEASE AGREEMENT ("Agreement"), effective _____, (the "**Effective Date**") is made and entered into by and between THE CITY OF ROLLINGWOOD, TEXAS, a general law city located in Travis County, Texas (the "City"), WESTERN HILLS LITTLE LEAGUE, INC. (the "**Little League Corporation**") and the WESTERN HILLS GIRLS SOFTBALL PROGRAM, INC. (the "**Softball Corporation**") (Little League Corporation and Softball Corporation collectively referred to as ("**Lessees**").

ARTICLE 1
RECITALS

1.1 The City is the owner of an 8.934 acre municipal park, locally known as "Hatley Park" (the "**Park**"), which is located within the incorporated city limits of the City, and which is available for the recreational benefit and use of residents and property owners in the City and the general public. There are, at the present time, athletic fields located within the boundaries of the Park (the "**Athletic Fields**").

1.2 The Little League Corporation and the Softball Corporation operate respective youth sports league which benefit the citizens of Rollingwood.

1.3 The City and Lessees desire to enter an agreement pursuant to which the Lessees may utilize the Athletic Fields during specified periods of time and shall maintain certain portions of the Athletic fields.

ARTICLE 2
DEMISE OF LEASE PREMISES

The City, for and in consideration of the covenants and obligations described in this Agreement which are to be kept, performed and observed by the Lessees, does hereby lease and demise to the Lessees, and the Lessees do hereby rent and accept from the City, the Athletic Fields, as more particularly described on Exhibit "A", attached hereto and incorporated herein by reference, together with all improvements now located or hereafter constructed on the Athletic Fields (collectively, the "**Leased Premises**") for the time period and uses as provided for in Section 4.1 of this Agreement.

ARTICLE 3
TERM

3.1 Primary Term. This Agreement shall be for a period of ten (10) years (the

“Primary Term”), commencing on the Effective Date and ending _____, 2030; subject to earlier termination upon the conditions set forth in this Agreement.

3.2 Renewal Option. Lessees shall have the option to renew this Agreement (“Renewal Option”) for an additional five (5) year term (“Renewal Term”). Lessees shall provide written notice to City of its intention to exercise the Renewal Option at least 120 days prior the termination of the Primary Term.

ARTICLE 4
USE OF PREMISES

4.1 Permitted Uses. The Lessees shall have the first right of use of the Leased Premises for organized youth athletics and activities to support youth athletics for the dates and times provided for in the attached Exhibit B. The Lessees shall comply with all rules and regulations imposed by any governmental entity related to their use of the Athletic Fields, including any rules, regulations or ordinances established from time to time by the City. The City is authorized to use or otherwise allow the use of the Leased Premises at any time not identified in the Exhibit B.

4.2 Waste, Nuisance or Illegal Uses. The Lessees shall not use, or permit the use, of the Leased Premises in any manner inconsistent with this Agreement, which results in waste of the Leased Premises, or which constitutes a nuisance, or any unlawful use or purpose.

ARTICLE 5
CONSIDERATION; OBLIGATIONS OF LESSEES

5.1 Joint and Several Liability. Lessees shall be jointly and severally liable to the City for all consideration and obligations of Lessees under this Agreement.

5.2 Consideration. As consideration for the right of use the Leased Premises Lessees shall make those improvements as provided for in Section 8.1 of this agreement and pay to the City the amount of thirty-three thousand dollars and zero cents (\$33,000.00) annually as a non-refundable fee. Said fee to be paid upon the Effective Date of this Agreement and annually upon the anniversary date of the Effective Date. The annual consideration shall increase by two percent (2%) each year the Agreement is in effect.

5.3 Parking. The Lessees shall have first right of use of the parking abutting the leased premises during games or practices during the times set forth on Exhibit B subject to a set aside of five (5) parking spaces for City use, the location of said spaces to be at the sole discretion of the City.

5.4 Insurance. Little League Corporation and Softball Corporation, individually, shall acquire the minimum insurance coverages as mandated by the City of Rollingwood, which shall include: (1) general liability insurance with limits of coverage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, to include coverage for sexual abuse with the same minimum limits of coverage; (2) sports excess accident insurance with a limit of coverage of not less than \$100,000 per incident; (3) directors' and officers' insurance coverage with a limit of not less than \$1,000,000 per occurrence; and (4) crime coverage with a limit of not less than \$35,000 per occurrence. These coverages will cover the Leased Premises and use thereof, and the City shall be included as an additional insured in each such policy of insurance.

5.5 Litter Control. Lessees shall be responsible for removal of trash daily from dugouts, in and around concession stands, playing fields the facilities/buildings, parking areas, and common areas for trash, debris, and litter associated with their use. The City may require reimbursement for costs associated with Lessees failure to comply with this Section.

5.6 Lessee shall perform background checks for all prospective coaches and others to be authorized by Lessee to supervise any youth activities conducted by Lessee on the Leased Premises. The attached Exhibit C provides for the minimum investigations to be undertaken by Lessee in performing such background checks.

ARTICLE 6 TAXES

It is acknowledged that, at the time this Agreement is executed, it is contemplated that the Leased Premises, as municipal property, shall be exempt from all real property taxes and assessments. The parties agree to cooperate as necessary to maintain the tax-exempt status of the Leased Premises. However, in the event that, as a result of the Lessees' use of the Leased Premises, the Leased Premises become subject to any real property taxes and assessments, the Lessees covenants and agrees to pay all such taxes and assessments to the appropriate assessing authority as and when due. If the Lessees fails to pay any taxes and assessments as required, the Lessees shall be in material default under this Agreement. The Lessees shall pay all taxes and assessments which may be imposed on any personal property of the Lessees which may be located on the Leased Premises.

ARTICLE 7 UTILITIES

The City shall pay all utility charges for water, electricity and other utility services for the Leased Premises.

ARTICLE 8

ATHLETIC FIELD IMPROVEMENTS

8.1 Athletic Field Improvements.

a. Lessees agrees to expend a minimum of thirty thousand dollars (\$30,000.00) to maintain and/or improve the current structures on the Leased Premises within twelve (12) months of the effective date of this Agreement. A schedule of the improvements, their costs and a timeline for their completion shall be provided to the City within 30 days of the Effective Date of this Agreement. Major changes or modifications which Lessees desire to make to the Leased Premises must be approved, in advance, by the City Council of the City and must comply with the City of Rollingwood Code of Ordinances. For purposes of this subsection, the term "major" shall refer to any and all additions to, or repair or replacement of, any existing structure and/or landscaping or other such modifications which (i) require a building permit, or (ii) exceed a total project cost or value of \$1,000.00. The Lessees shall submit plans to the City detailing the proposed changes, shall provide a statement of the purpose for any such changes or modifications and obtain the written approval of the City Council prior to making such changes and/or modifications, which approval shall not be unreasonably withheld, conditioned or delayed.

b. All minor changes and/or modifications which the Lessees desire to make to the Leased Premises must be approved in advance by the City Administrator, such approval not to be unreasonably withheld. For purposes of this subsection, the term "minor" shall refer to any and all additions to, or repair or replacement of, any existing structure and/or landscaping or other such modifications which (i) do not require a building permit or (ii) do not exceed a total project cost or value of \$1,000.00. It shall not be necessary for the Lessees to submit detailed plans regarding such changes unless such plans are requested in writing by the City Administrator.

c. The Lessees shall obtain all required written approvals prior to initiating any changes and/or modifications.

8.2 City's Ownership of Improvements. It is expressly understood and agreed that all improvements, now on or hereafter placed by the Lessees on the Leased Premises and any and all fixtures of whatsoever nature at any time constructed, placed or maintained on any part of the Leased Premises by the Lessees shall become the property of the City and shall remain upon the Leased Premises at the termination of this Agreement.

ARTICLE 9 REPAIRS, RESTORATION AND MAINTENANCE

9.1 Lessees' Duty to Maintain and to Repair

a. The Lessees accept the Leased Premises "as is". The Lessees shall, at their

sole cost and expense, keep and maintain the dirt, fencing, bleachers, backstops, batting cages and bases. At the termination of this Agreement, the Lessees shall deliver the Leased Premises, together with any improvements, to the City in a clean and sanitary condition, and in a good state of repair. It is acknowledged and agreed that all improvements to the Leased Premises undertaken by or on behalf of the Lessees are for the benefit of the Lessees and the Lessees does not act as agent of the City in connection with such work. Any claim of lien may attach only to the interest of the Lessees in the Leased Premises and not to the free title of the City.

b. All major repairs which the Lessees to the structure of the Leased Premises must be approved in writing, in advance, by the City Council of the City. For purposes of this subsection, the term "major" shall refer to all repairs which exceed a total project cost or value of one thousand dollars and zero cents (\$1,000.00). The Lessees shall submit plans detailing the proposed repairs to the City prior to making such repairs.

c. All minor repairs which the Lessees make to the Leased Premises must be approved in writing, in advance, by the City Administrator. For purposes of this subsection, the term "minor" shall refer to all repairs which do not exceed a total project cost or value of one thousand dollars and zero cents (\$1,000.00). It shall not be necessary to submit detailed plans regarding such repairs unless such plans are requested by the City Administrator.

d. Lessees shall coordinate all repairs with the City Administrator.

9.2 City's Duty to Maintain and to Repair

a. The City shall be responsible for the mowing, irrigation, maintenance and repairs to the field house.

9.3 City's Option to Repair. If the Lessees do not make any repairs required hereunder, or necessary to comply with any laws, ordinances, rules or regulations of any public authority or of the Board of Fire Underwriters or of any similar body, or that the City may deem necessary to prevent waste or deterioration of the Leased Premises, or necessary to make the Leased Premise safe or secure, the City may deliver written notice to the Lessees setting forth the repairs which the City requires. If the Lessees does not make such repairs within ten (10) days of the delivery of such notice, unless the time for effecting such repairs is extended in writing by the City Administrator, the City or its representatives may go upon the Leased Premises and make any necessary repairs to the Leased Premises and perform and work therein which may be necessary. Further, the City or its representatives shall have the right to go on the Leased Premises and effect any repair which may be necessary in the event of an emergency or to correct a dangerous condition existing on the Leased Premises without notice to the Lessees. If the City makes repairs under this paragraph, the Lessees shall reimburse the City for the cost of making such repairs upon demand. Nothing herein contained shall imply any

duty on the part of the City to do any work which, under any provision of this Agreement, the Lessees may be required to do and shall not constitute a waiver of the Lessees' default in failing to do such work. No exercise by the City of any rights reserved in this paragraph shall entitle the Lessees to any damage for any injury or inconvenience occasioned as a result of such work.

9.3 Mechanic's Liens

a. The Lessees shall not permit any mechanics' liens or other liens to be filed against the Leased Premises nor against the Lessees' leasehold interest in the land or any improvements on the Leased Premises by reason of any work, labor, services, or materials supplied or claimed to have been supplied to the Lessees or to anyone holding the Leased Premises or any part thereof through or under the Lessees.

b. If any such mechanics' liens or materialmen's liens are recorded against the Leased Premises or any improvements thereon, the Lessees shall cause the same to be removed or, in the alternative, if the Lessees in good faith desires to contest the lien in question, the Lessees may do so, but in such case the Lessees shall be required to post adequate security acceptable to the City and shall indemnify and save the City harmless from all liability for damages occasioned by such lien and shall, in the event of a judgment of foreclosure on said mechanics lien, cause the same to be discharged and removed prior to the execution of such judgment.

ARTICLE 10
CONDEMNATION

If the Leased Premises or any part thereof shall be taken for public or quasi-public purposes by condemnation as a result of any such action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain, this Agreement shall immediately terminate and any award or consideration for such transfer shall be and remain the sole property of the City.

ARTICLE 11
CASUALTY DESTRUCTION/INDEMNIFICATION

11.1 Destruction. If the Leased Premises are damaged by fire or other insured casualty loss which is not caused by the negligence, misuse or fault of the Lessees or the Lessees' agents, guests or invitees, the Lessees shall give immediate notice to the City and the City shall cause the damage to be repaired with reasonable promptness; however, the time period for repair shall not begin until insurance proceeds are received by the City. If the casualty loss renders the Leased Premises totally unusable by the Lessees, will require the expenditure of funds of the City other than insurance proceeds, or will require greater than (2)

two months to repair, either the City or the Lessees may terminate this Agreement by giving written notice to the other party at any time prior to completion of repairs, or the parties may elect to continue this Agreement in effect.

11.2 INDEMNIFICATION OF THE CITY. THE CITY SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM ANY USE OF THE LEASED PREMISES, OR ANY PART THEREOF, OR CAUSED BY ANY DEFECT IN ANY BUILDING, STRUCTURE OR OTHER IMPROVEMENT THEREON, OR IN ANY EQUIPMENT OR OTHER FACILITY THEREIN, OR CAUSED BY OR ARISING FROM ANY ACT OR OMISSION OF THE LESSEES, OR ANY OF ITS AGENTS, EMPLOYEES, VOLUNTEERS, LICENSEES, OR INVITEES, OR BY OR FROM ANY ACCIDENT ON THE LAND OR ANY FIRE OR OTHER CASUALTY THEREON, OR OCCASIONED BY THE FAILURE OF THE LESSEES TO MAINTAIN THE PREMISES IN SAFE CONDITION, OR ARISING FROM ANY OTHER CAUSE WHATSOEVER; AND THE LESSEES HEREBY WAIVES ON ITS BEHALF ALL CLAIMS AND DEMANDS AGAINST THE CITY FOR ANY SUCH LOSS, DAMAGES OR INJURY OF THE LESSEES AND HEREBY AGREES TO INDEMNIFY AND HOLD THE CITY ENTIRELY FREE AND HARMLESS FROM ALL LIABILITY FOR ANY SUCH LOSS, DAMAGE OR INJURY OF OTHER PERSONS AND FROM ALL COSTS AND EXPENSES ARISING THEREFROM.

ARTICLE 12
ASSIGNMENT AND SUBLEASE

12.1 Assignment. The Lessees may not assign this Agreement or enter into a sublease of this Agreement for non-softball or baseball related activities without the prior, written approval of the City Administrator, which may be withheld. The Lessees may assign this Agreement or enter into a sublease of this Agreement for softball or baseball related activities with the prior, written approval of the City Administrator, which approval may not be unreasonably withheld. Any transfer, assignment or sale of this Agreement by the Lessees without the City's prior, written consent shall be void and of no force or effect.

ARTICLE 13
DEFAULT AND REMEDIES

13.1 Termination on Default.

a. If either party alleges that the other party has failed to abide by the terms of this Lease Agreement, the City or Lessees shall notify the other party in writing which outlines the

specific complaints. The party shall have thirty (30) days to correct the complaints. If the complaints continue, the City staff will present a recommendation to City Council to terminate this Lease Agreement. City Council shall have the authority to make the final decision on termination.

If the City exercises its remedy to terminate this Agreement, the City may then or at any time thereafter re-enter the Leased Premises and take complete and peaceful possession of the Leased Premises with or without process of law, and may remove all persons therefrom and, in such event, the Lessees covenants to peaceably and quietly yield and surrender the Leased Premises to the City. In the event of such a termination, neither party shall be under any further obligation to the other, except that the Lessees shall remain liable for the breach of any term, covenant or condition of this Agreement occurring prior to the date of termination.

b. Each and all of the remedies given to the City in this Agreement or by law are cumulative, and the exercise of one right or remedy by the City shall not impair the City's right to exercise any other right or remedy, and the Lessees hereby waives all claims or demands for damages that may be caused by the City in re-entering and taking possession of the Leased Premises as provided in this Agreement, and all claims or demands for damages that may result from the destruction of or injury to said Leased Premises and all claims or demands for damages or loss of property belonging to the Lessees, or to any other person, firm or Lessees in or upon the Leased Premises at the time of such re-entry.

ARTICLE 14

GENERAL PROTECTIVE PROVISIONS

14.1 Right of Entry and Inspection. The Lessees shall permit the City or City's agents, representatives or employees to enter on the Leased Premises for the purpose of inspection or of maintaining, repairing, improving or altering the Leased Premises.

14.2 No Partnership. The relationship between the City and the Lessees always shall remain solely that of landlord and tenant and shall not be deemed a partnership or joint venture.

14.3 No Waiver. No waiver by the City of any default or breach of any covenant, condition or stipulation contained in this Agreement shall be treated as a waiver of any subsequent default or breach of the same or any other covenant, condition or stipulation hereof.

14.4 Bankruptcy. Notwithstanding any provision herein to the contrary, if this Agreement is assigned to any person or entity pursuant to the provision of the Bankruptcy Code, 11 U.S.C. 101, et. seq. (the "Bankruptcy Code"), (a) any and all monies or other consideration payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to the City, shall be and remain the exclusive property of the City and shall not constitute property of the Lessees or of the estate of the Lessees within the meaning of the

Bankruptcy Code; and (b) such person or entity shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement on and after the date of such assignment.

14.5 Use Clause. The Lessees agrees not to use the Leased Premises or any building situated upon the Leased Premises, or any part thereof, for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Texas, the County of Travis, the City or any other lawful authority having jurisdiction over the Leased Premises.

14.1 Joint and Several Liability. All parties signing this Lease as a Lessee shall be jointly and severally liable for all obligations of Lessees.

ARTICLE 15
MISCELLANEOUS

15.1 Parties Bound. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

15.2 Notices. All notices, demands or requests from one party to another party may be personally delivered or sent by certified mail, postage prepaid, to the addresses stated in this section and shall be deemed to have been given at the time of personal delivery or three (3) days after mailing.

To the City: City of Rollingwood 403 Nixon Drive
Austin, Texas 78746 Attn: Mayor

With copy to: Charles E. Zech
2500 W. William Cannon, Unit 609
Austin, Texas 78748

To the Little League Corporation: Western Hills Little League, Inc.
PO Box 163132
Austin, Texas 78716

With copy to: Chad Smith
515 Congress, Suite 2100
Austin, Texas 78701

To the Softball Corporation: Western Hills Girls Softball Program, Inc.
5410 Bee Caves Road

West Lake Hills, Texas, 78746
Attention: Steve Franke

Either party shall have the right to change its address(es) for notice under this Agreement by delivery of written notice in accordance with Section 15.2

15.3 Texas Law to Apply. 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 Travis County, Texas.

15.4 Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15.5 Prior Agreements Superseded. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter.

15.6 Amendment. No amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

15.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15.8 Attorney's Fees. If the City or the Lessees breach any of the terms of this Agreement whereby one party employs attorneys to protect or enforce its rights hereunder and prevails, then the prevailing party shall be reimbursed by the other party for all reasonable attorney's fees incurred in the process.

15.9 Time of Essence. Time is of the essence in the performing of all obligations under this lease.

15.10 Headings. The headings in each of the paragraphs of this Agreement are for convenience only and are not to be construed as part of the sections of this Agreement for any reason whatsoever.

15.11 Severability. Invalidation of any or more of the covenants, restrictions, conditions or provisions contained in this Agreement, or any part hereof, shall in no matter affect any of the other covenants, restrictions, conditions or provisions hereof, which shall remain in

full force and effect.

15.12 Restrictive Covenants Controlling. Nothing contained in this Agreement shall be deemed or construed to modify, revise, amend or in any way alter the restrictive covenants contained in that one certain Warranty Deed, dated May 28, 1993, from The Optimist Club of Western Hills, Austin, Texas a/k/a Optimist Club of Western Hill, Inc., a Texas Lessees, Grantor, to the City of Rollingwood, Texas, a municipal Lessees situated in Travis County, Texas, Grantee, recorded in Volume 11946, Page 1984, Real Property Records of Travis County, Texas, as the same may hereafter be amended from time to time. In the event of any conflict between the provisions of this Agreement and the terms of such restrictive covenants, the provisions of the restrictive covenants shall control and the conflicting provision of this Agreement shall be deemed invalid and shall be severed from this Agreement in accordance with Section 15.11 hereof.

[SIGNATURE PAGE FOLLOWS]

EXECUTED, on this the _____ day of _____, 2020.

City:

Lessee: Western Hills Little League, Inc.:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Lessee: Western Hills Girls Softball Program, Inc.:

By: _____

Name: _____

Title: _____

Exhibit A



Exhibit B

Dates and Times of Permitted Use by Lessee (Main Seasons):

From February 1 - June 30 and August 1 - November 30

Monday-Friday 4:00 p.m. to 9:00 p.m.

Saturday 7:00 a.m. to 7:00 p.m.

Sunday 8:00 a.m. to 7:00 p.m.

Dates and Times of Permitted Use by Lessee (For All Star Seasons/As needed):

From July 1-July 31

Monday-Friday 4:00 p.m. to 9:00 p.m.

Saturday 9:00 a.m. to 7:00 p.m.

Sunday 4:00 p.m. to 9:00 p.m.

Dates and Times outside of those listed are subject to approval by the City Administrator on a case by case basis.

Exhibit C

Background Check Policy

1. As a condition of service to the league, all coaches, Board of Directors members and any other persons, who provide regular service to the league and/or have repetitive access to, or contact with players or teams, must complete an annual background check.
2. A nationwide check that includes applicable sex offender registry and criminal data is required.
3. Any conviction, guilty plea, no contest plea, or admission of a crime against, or involving a minor may not work, or volunteer, in the Western Hills Little League (WHLL) or Western Hills Girls Softball (WHGS) Programs in any capacity.
4. This list of offenses is not intended to be all-inclusive and in no way sets limits on the offenses that are deemed grounds for disqualifying an individual from affiliation with the WHLL or WHGS Programs. Decisions on all other crimes or offenses not otherwise described above will be made at the sole discretion of the Background Screening Committee.