



# City of West University Place

*A Neighborhood City*

## **CITY COUNCIL**

Bob Higley, Mayor  
Kevin Trautner, Mayor Pro Tem  
Lauri Lankford, Councilmember  
John P. Barnes, Councilmember  
Ed Sobash, Councilmember

## **STAFF**

David J. Beach, City Manager  
Scott Bounds, Olson and Olson, City Attorney  
Thelma Gilliam, City Secretary

## **City Council Special Meeting**

**Notice** is hereby given of a **Special Meeting** of the West University Place **City Council** to be held on Friday, **May 14, 2021** beginning at **4:00 p.m.**, for the purpose of considering the following agenda item(s).

Due to the Novel Coronavirus (COVID 19) pandemic and CDC's recommendation regarding social distancing measures, the meeting will be held via Zoom, which will allow for two-way communications between Council and the public for those desiring to participate. To attend the meeting via telephonic means, please call [346-248-7799](tel:346-248-7799) or you can join via <https://us02web.zoom.us/j/83775994585>. The Meeting ID Number is [837 7599 4585](https://us02web.zoom.us/j/83775994585). Should you have difficulty entering the meeting or need assistance during the meeting, email [westuzoom@westutx.gov](mailto:westuzoom@westutx.gov).

Note: All agenda items are subject to action. The City Council reserves the right to meet in a closed session on any agenda item should the need arise and, if applicable, pursuant to authorization by Title 5, Chapter 551, of the Texas Government Code.

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### **1. Call Special Meeting to Order/Roll Call**

### **2. Support of Youth Sports**

Matters related to agreements regarding youth sports. *Recommended Action: Adopt an ordinance amending the 2021 Budget to provide funds for youth sports programs, and authorize City Manager to enter into agreements with the West University Little Association and the West University Softball Association for youth baseball and youth softball programs. Mayor Bob Higley* [see Agenda Memo 2]

### **3. Adjourn**

I certify that the attached notice and agenda of items to be considered by the West University Place City Council on May 14, 2021 was posted on the Municipal Building bulletin board on May 11, 2021 at approximately 2:00 o'clock p.m.

(SEAL)

*Thelma A. Gilliam*

Thelma A. Gilliam, City Secretary



# AGENDA MEMO

Business of the City Council  
City of West University Place, Texas

<b>Meeting Date</b>	05.14.2021	<b>Agenda Item</b>	2
<b>Approved by City Manager</b>	Yes	<b>Presenter(s)</b>	Bob Higley, Mayor
<b>Reviewed by City Attorney</b>	Yes	<b>Department</b>	Council
<b>Subject</b>	Support of Youth Sports		
<b>Attachments</b>	1. Agreement – West U Softball Association 2. Agreement – West U Little League 3. Budget Amendment Ordinance		
<b>Financial Information</b>	Expenditure Required:		\$125,000
	Amount Budgeted:		\$0
	Account Number:		N/A
	Additional Appropriation Required:		\$125,000
	Additional Account Number:		101-6010-74130

### Executive Summary

In response to direction received from the City Council after discussions at its special meeting of May 6 and regular meeting of May 10, staff has drafted agreements in support of West U Little League and West U Softball Association youth sports.

The total amount of support will be \$125,000 for a 5-year period (\$62,500 to both Little League and the Softball Association), as well as, include naming rights, transparency requirements and other items as required by law.

Funding for 2021 will come from the Unassigned Fund Balance in the General Fund.

### Recommended Action

City Council recommended action:

1. Adopt an ordinance amending the 2021 Budget to provide funds for youth sports programs, and
2. Authorize the City Manager to enter into agreements with West University Little League Association and the West University Softball Association for your youth baseball and youth softball programs.

**AN AGREEMENT BETWEEN  
THE CITY OF WEST UNIVERSITY PLACE AND  
THE WEST UNIVERSITY SOFTBALL ASSOCIATION**

**THIS AGREEMENT** is made and entered into by and between the **CITY OF WEST UNIVERSITY PLACE** (the “City”), a Texas home rule municipality with its principal office being located at 3800 University Blvd., West University Place, TX 77005, and the **WEST UNIVERSITY SOFTBALL ASSOCIATION** (the “Association”), a Texas non-profit corporation, whose address is [address], and is entered into as of the date set forth below, with terms and conditions as follows.

**RECITALS**

**WHEREAS**, the City is authorized to establish, provide, acquire, maintain, construct, equip, operate and/or supervise recreational facilities and programs (*see, e.g.*, Tex. Loc. Gov’t Code Ch. 332); and

**WHEREAS**, the Association is a nonprofit corporation organized under the laws of the State of Texas, recognized under the IRS Code Sec. 501(c)(3), and provides softball programs on a nonprofit basis in the City of West University Place; and

**WHEREAS**, the Association acknowledges that the City and the West University Tri-Sports Association (“Tri-Sports”) entered into a Memorandum of Understanding (the MOU) on [date] regarding the use of certain fields; and

**WHEREAS**, the City and the Association recognize that sports programs are beneficial and that they may contribute to:

- a) quality, family-oriented recreational opportunities for the citizens of West University Place;
- b) opportunities for development of social and character building skills;
- c) promotion of citizen involvement in the decision-making process for recreation opportunities;
- d) establishment of partnerships with local groups to accomplish mutual goals and objectives;
- e) promotion of baseball as a recreation experience benefitting the health, wellness and mental well-being of the participants as well as benefitting the citizens of West University Place; and
- f) promotion of baseball and baseball events to the West University Place community; and

**WHEREAS**, the City desires to enter into an Agreement with the Association to support a softball program for the benefit of the youth of the City (the “Program”);

**NOW THEREFORE**, for and in consideration of the provisions contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Association agree as follows:

## AGREEMENT

### **SECTION 1. FINDINGS INCORPORATED.**

The foregoing Recitals are hereby incorporated into the body of this Agreement and shall be considered part of the mutual covenants, consideration, and promises that bind the Parties.

### **SECTION 2. TERM AND TERMINATION.**

(a) Effective Date. The effective date of this Agreement is \_\_\_\_\_, 2021.

(b) Term. The term of this Agreement shall commence on the Effective Date and, unless terminated earlier as provided herein, shall expire on May 31, 2026 (the "Initial Term").

(c) Termination for Uncured Default. Either party to this Agreement may terminate this Agreement as provided in this subparagraph (c) if the other party fails to comply with its terms. The party alleging the default will give the other party notice of the default in writing citing the terms of the Agreement that have been breached and what action the defaulting party must take to cure the default. If the party in default fails to cure the default as specified in the notice within thirty (30) days, the party giving the notice of default may terminate this Agreement by written notice to the other party, specifying the date of termination. Termination of the Agreement under this subparagraph (c) does not affect the right of either party to seek remedies for breach of the Agreement as allowed by law, including any damages or costs suffered by either party.

(d) Termination for Convenience. Either Party may terminate this Agreement at any time by providing not less than one hundred eighty (180) days prior written notice. Such termination does not affect the practice, game or postseason schedules that have been submitted for the fall and/or spring schedule. If the City terminates this Agreement under this subparagraph (d), the City's sole obligation to the Association shall be to pay the installments, if any, owed to the Association under Section 5(a) during the 180 day notice period.

### **SECTION 3. OBLIGATIONS OF THE CITY.**

The City covenants and agrees that it shall:

(a) Pay the Association for the administration of the Program in the amounts set forth in Section 5 of this Agreement.

(b) Provide the Association with the contact phone number and email of two (2) City employees, including the City Manager, to act as liaisons to the Association.

(c) For purposes of this Agreement, City Manager means the City Manager of the City or the City Manager's designee as provided in writing by the City Manager to the Association, provided, however, any requirement for written notice shall be provided to the City Manager with copy to the City Manager's designee.

#### **SECTION 4. OBLIGATIONS OF THE ASSOCIATION.**

The Association and City agree that the fall season begins around September 1st of each year; and the spring season begins around January 1st of each year. The Association covenants and agrees that it shall:

(a) Provide the City Manager/Designee in writing a calendar of events and the Program activities for all seasons no later than thirty (30) days prior to the first day of the season.

(b) Provide scorecards, bases, balls, portable safety screens, field preparation tools and equipment, umpire and concession personnel, security personnel, and any other facilities, equipment, services, or personnel necessary to run the Program.

(c) Provide the City Manager/Designee in writing the contact phone numbers and emails of two (2) persons to act as liaisons to the City and with the right to provide information or act on behalf of the Association regarding the Program.

(d) Be responsible for the safety and conduct of the officers, employees, volunteers and participants of the Association, including players, parents, spectators, volunteers, and the Association's employees, during the Program activities or at any time related to the Program activities, and provide security personnel and background checks of employees and volunteers, as needed to comply with this provision. The Association shall prohibit smoking, the consumption or possession of alcoholic beverages, and excessive noise during the Program activities.

(e) Be responsible citizens, including trash pickup at the conclusion of the Program activities each day. The Association shall promptly notify the City Manager/Designee of any damage or injury to persons or property or acts of vandalism that occur on any City property used during the Program. The Association shall immediately notify the City Manager/Designee of any existing or developing hazardous or dangerous conditions on any City property.

(f) Not make any modification to any City property (including the Recreation Center or Softball Fields on HISD Campus) without the prior approval of the City Manager/Designee. Additionally, the Association shall not place any locks or other barrier to entry on any portion of any City property without prior written approval of the City Manager/Designee and without providing to City copies of all keys or other entry mechanisms.

(g) Schedule the Program activities only between the hours of 8:00 a.m. and 9:00 p.m., except as permitted by the MOU.

(h) Agree to include and recognize the City's support for the Association's softball programs. The Association agrees to include a notice in any newsletters or promotional literature, including website, social media pages, tickets, and advertisements, that the Program and its activities are "supported by the City of West University Place" or other notice approved by the City Manager/Designee. The notice shall be included, at a minimum, on the home page of the website or social media platform, on any page of the Association's website or social media platforms that recognizes two or more donors, and on the front page of any newsletter or advertisement.

(i) Operate and provide its Program activities contemplated by this Agreement under the name “West U Softball”, “West U Softball Association”, or “West University Softball Association”.

(j) Provide the City copies of all newsletters, financial reports, annual reports, and other documents regularly provided to the parents of participants, participants or membership of the Association.

(k) Provide, at the time of the execution of this Agreement and within ten (10) days of any material changes, a copy of the Association’s incorporating documents (Certificate of Formation and Bylaws), IRS designation, list of current Board of Directors and staff, annual financial statement, audit, and annual report to the Board.

(l) **Income; Fees.** The Association may charge a fee for participation in Association sponsored events; provided, however, all fees shall be used sole for the purpose of covering expenses directly associated with the softball programs and activities of the Association. All income derived from Association softball activities, including fees, advertising, concessions and sales, shall be the exclusive property of the Association.

## **SECTION 5. PAYMENT.**

(a) **Payment.** The City shall pay the Association for the administration of the Program in the amount of sixty-two thousand five hundred dollars (\$62,500) per year, paid in four (4) equal installments each three months. The first payment shall be due June 1, 2021, in the amount of \$15,625. Provided, further, the City’s annual payments shall not exceed the lessor of:

1. 25% of the gross revenues (excluding the City's payments) collected or received by the Association during the contract year (each 365 day period ending May 31); or
2. \$800 per team per season.

(b) **Overpayments; refund.** In the event the City’s annual payments to the Association exceed the amount provided by subsection (a), the Association agrees to return the excess payments to the City within thirty (30) days of the end of the contract year.

(c) **Timing of Payments.** The Association shall invoice the City within ten (10) days of the execution of this Agreement and every three (3) months thereafter for the term of this Agreement. The invoice shall include a copy of the Association’s most recent financial statement, and the information and other reports required under Sections 3 and 6 of this Agreement. All payments to be made by the City to Association, including the time of payment and the payment of interest on overdue amounts, are subject Chapter 2251 of the Government Code (the Texas Prompt Payment Act).

(d) **Annual Appropriation.** The Association hereby acknowledges that payments made to the Association under this Agreement are subject to annual appropriation by the City, and that the City shall only provide payments to the Association if such funds have been approved and

dedicated for such a purpose in the City's annual budget. In the case that any payment contemplated under this Agreement are not approved by the City, then the Association shall have the right to terminate the Agreement upon written notice to the City. (Section 5, Article XI, Texas Constitution).

## **SECTION 6. ANCILLARY FINANCIAL MATTERS; RECORDS; REPORTS.**

(a) Annual Financial Statements. The Association shall provide to the City complete and unredacted copies of the Association's quarterly and year-end financial statements, together with any attached or referenced schedules, beginning upon the execution of this Agreement with the financial statements for the Association's fiscal year ending in 2020 and the first quarter of 2021, and within thirty (30) days of the end of each quarter or each contract year as appropriate during the term of this Agreement. Upon the City's request, the Association shall cause any affiliated or nonprofit entity acting in concert with the Association to provide the services to the City residents under this Agreement that entity's financial statements for the same prior period, which may include Tri-Sports, South Campus Sports Association, or Greater West U Area Sports Association. The Association shall also provide the number of persons receiving money from the Association and the names and city of residence of the top ten (10) persons receiving money from the Association during the prior year, as well as the names and city of residence of any officers of the Association, either current or prior, or their immediate family receiving any monies from the Association, directly or indirectly, and the amounts and purposes thereof.

(b) Maintenance of Records. The Association shall insure that the Association maintains fiscal records and supporting documents for all expenditures of funds made under this Agreement and in a manner that conforms to generally accepted accounting principles (GAAP). The Association further agrees to retain the records for four (4) years after the conclusion or termination of this Agreement.

(c) Inspection of Records. The Association shall provide the City or any person or entity authorized by the City, including the City's auditor, to have the right of access to any documents, papers or other records of the Association, in order to make audits, examinations, excerpts, and transcripts. The right also includes time and reasonable access to Association's personnel for the purpose of interview and discussion related to such documents.

(d) Reports. In addition to the financial reports required above, the Association shall also provide the following information to the City with each invoice:

1. the current number of volunteers for the Association that are residents of the City; and
2. the current number of participants registered with the Association that are residents of the City.

## **SECTION 7. INSURANCE.**

Without limiting any of the other obligations or liabilities of the Association, the Association shall, at its own expense, procure, pay for and maintain during the term of this Agreement the minimum insurance stipulated in Exhibit A- Insurance, with companies duly licensed to write business in the State of Texas. Payment of any and all deductibles on each

insurance policy shall be the responsibility of the Association.

**SECTION 8. RELEASE; INDEMNITY; INSURANCE BY CONTRACTORS.**

(a) RELEASE. THE ASSOCIATION HEREBY RELEASES CITY, ITS OFFICERS AND EMPLOYEES, FROM ANY ALL DEMANDS, CLAIMS OR LIABILITY OF ANY NATURE, WHICH MAY ARISE OUT OF OR OCCUR BY REASON OF ANY ACT OR OMISSION ON THE CITY'S PART, OR THE PART OF ANY OF ITS OFFICERS OR EMPLOYEES, ARISING OUT OF THE USE OF THE CITY'S PROPERTY, INCLUDING COSTS AND REASONABLE ATTORNEY FEES IN PROVIDING THE DEFENSE TO ANY CLAIM ARISING THEREFROM, INCLUDING ANY USE OF THE PROPERTY NOT ALLOWED UNDER THIS AGREEMENT BUT SANCTIONED BY THE ASSOCIATION, ALL EXCEPT TO THE EXTENT THE CLAIM ARISES FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, OR EMPLOYEES.

(b) INDEMNITY BY CONTRACTORS. THE ASSOCIATION SHALL REQUIRE ITS CONTRACTORS AND SUBCONTRACTORS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE ASSOCIATION AND THE CITY AND THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL DEMANDS, CLAIMS OR LIABILITY OF ANY NATURE WHICH MAY ARISE OUT OF OR OCCUR BY REASON OF ANY ACT OF OMISSION ON THE CONTRACTOR OR SUBCONTRACTOR'S PART, OR THE PART OF ANY OF ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AGENTS OR REPRESENTATIVES IN FURTHERANCE OF OR RELATED TO THE CONTRACT WITH THE ASSOCIATION.

(c) Responsibility for fines and taxes. The Association shall comply with the requirements of all applicable laws, rules, and regulations in connection with the services of Association and, except as expressly limited by Texas state law, shall exonerate, indemnify, defend, and hold harmless the City, its officers, agents and all employees from any and all liability, loss or damage resulting from third party governmental fines and fees arising out of noncompliance with such laws, rules and regulations, without limitation. The Association shall assume full responsibility for payments of Federal, State and Local taxes or contributions imposed or required under the Social Security, Worker's Compensation, and Income Tax Laws with respect to Contractor's employees.

(d) INDEMNIFICATION. THE ASSOCIATION SHALL INDEMNIFY THE CITY AND ITS OFFICERS AND EMPLOYEES FROM LIABILITY FOR DAMAGE TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY SUBCONTRACTOR OF SUPPLIER COMMITTED BY THE ASSOCIATION, THE ASSOCIATION'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ASSOCIATION EXERCISES CONTROL.

(e) ATTORNEY'S FEES. THE ASSOCIATION SHALL REIMBURSE, IN PROPORTION TO THE LIABILITY OF THE ASSOCIATION, THE CITY'S ATTORNEY'S FEES INCURRED DEFENDING THE CITY AGAINST A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE



ASSOCIATION, THE ASSOCIATION'S AGENT, OR ANOTHER ENTITY OVER WHICH THE ASSOCIATION EXERCISES CONTROL.

(f) **Insurance by Contractors.** The Association shall require its contractors and subcontractors to carry for the benefit of the Association and the City the minimum insurance as noted in Exhibit A-Insurance, attached. The Association shall cause the City to be named as an additional insured under all such policies, and shall provide that such insurance shall not be cancelled or changed except upon fifteen (15) days prior written notice to the City.

**SECTION 9. MISCELLANEOUS PROVISIONS.**

(a) **Non-Profit Status.** It is a material condition of this Agreement that the Association be operated as a non-profit corporation within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1985, as amended and future corresponding revenue laws of the United States. If the Association's non-profit status changes during the term of this Agreement, the Association must notify the City within thirty (30) days of such change.

(b) **Non-Discrimination.** Any member of the public who qualifies under applicable Association rules may participate in the Associations softball programs and events, and the Association shall not discriminate against any person or group because of race, color, gender, religion, handicap, age, or national origin.

(c) **Political Activities.** The Association shall not permit any part of its net earnings to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Association affecting one or more of its purposes); carry on propaganda, or otherwise attempt to influence legislation; participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; or attempt to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration or voter turnout drives.

(d) **Force Majeure.** Should any Party be delayed or hindered in the performance of any of its obligations or duties under this Agreement because of a force majeure, then the Party so delayed or hindered shall be excused from such delay or hindrance to the extent that it is caused by the force majeure. The term "force majeure", as used in this Agreement, includes without limitation of the generality thereof: acts of God, strikes, lockouts, other personnel disturbances or job actions, acts of the public enemy, laws, regulations, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, breakage or accidents to machinery or equipment, shortages of materials, equipment or supplies, or any other limitations of any Party, whether similar to those enumerated or otherwise, which are not within the reasonable control of the Party claiming such inability. If a Party is affected by strike, lockout or other personnel disturbance or job action, this Agreement does not compel the Party to acquiesce to any demand or position of any personnel or other party, it being understood that the strike, lockout, disturbance or action would be a force majeure for the duration thereof.

(e) Non-Parties. This Agreement shall bind and benefit the parties only. It shall not confer any rights or benefits upon any other party, nor may any other party enforce this Agreement or sue for any damages under this Agreement.

(f) Venue. The obligations of the parties to this Agreement are performable in Harris County, Texas, and exclusive venue for any legal action in connection with this Agreement shall lie in Harris County, Texas.

(g) Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Texas, without regard to conflicts of law or choice of law principals of Texas or any other state.

(h) Independent Contractor. No Partnership, Joint Venture or Joint Enterprise. The Association shall perform the work under this Agreement as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Association, the Association's officers, employees or volunteers in the means, methods, or details of the work to be performed by the Association under this Agreement. The City and the Association agree that the work performed under this Agreement is not inherently dangerous, that Association will perform the work in a workmanlike manner, and that Association will take proper care and precautions to insure the safety of the Association's officers, employees, volunteers and participants. It is specifically understood that the relationship described in this Agreement between the City and the Association is contractual in nature and is not to be construed to create an agency, partnership, joint enterprise or joint venture relationship between the City and the Association; nor shall one Party be liable for any debts incurred by the other Party in the conduct of such other Party's business or function.

(i) No Waiver of Immunity by City. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall constitute a waiver by the City of any provisions of applicable law relating to any immunity or defense as may be available to the City on behalf of itself, its trustees, officers, employees, and agents.

(j) 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, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

(k) Dispute Resolution Procedures. The Association and the City desire an expeditious means to resolve any disputes that may arise between them regarding this Agreement. If either party disputes any matter relating to this Agreement, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.



(s) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

(t) Special Conditions. To the extent applicable under Chapter 2252, Texas Government Code, the Association certifies that, at the time of execution of this Agreement neither the Vendor, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

**THIS AGREEMENT IS AGREED TO AND EXECUTED** as of the \_\_ day of \_\_\_\_\_ 2021, by the Association and the City, signing by and through their duly authorized representatives.

**CITY OF WEST UNIVERSITY PLACE**

**WEST UNIVERSITY SOFTBALL ASSOCIATION**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT A- Insurance, attached.

## EXHIBIT A- INSURANCE

All insurance shall be written by an insurer licensed to conduct business in the State of Texas. The Association shall name the City as an additional Insured on the Association's general liability policy, and shall provide any defense provided by the policy. The Association shall, at its own expense, purchase, maintain and keep in force insurance that shall protect against injury and/or damages that may arise out of or result from operations under this Agreement, whether the operations be by the Association, its employees, or by any agent, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, of the following types and limits:

+Worker's Compensation Insurance (with Waiver of Subrogation in favor of the City, its officers, agents and employees), with statutory limits.

+Commercial General Liability occurrence type insurance (No "XCU" restrictions shall be applicable). Products/completed operations coverage must be included.

A. Bodily injury five hundred thousand dollars (\$500,000) single limit per occurrence or five hundred thousand dollars (\$500,000) each person/ five hundred thousand dollars (\$500,000) per occurrence.

B. Tangible Property Damage one hundred thousand dollars (\$100,000) per occurrence.

C. Minimum aggregate policy year limit one million dollars (\$1,000,000).

+Commercial Automobile Liability Insurance (including owned, non-owned and hired vehicles coverages):

A. Minimum combined single limit of five hundred thousand dollars (\$500,000) per occurrence for bodily injury and tangible property damage.

B. If individual limits are provided minimum limits are three hundred thousand dollars (\$300,000) per person, five hundred thousand dollars (\$500,000) per occurrence for bodily injury and one hundred thousand dollars (\$100,000) per occurrence for property damage.

+Contractual Liability Insurance covering the indemnity provision of this Agreement in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Agreement by date, job number and location.

**AN AGREEMENT BETWEEN  
THE CITY OF WEST UNIVERSITY PLACE AND  
THE WEST UNIVERSITY LITTLE LEAGUE**

**THIS AGREEMENT** is made and entered into by and between the **CITY OF WEST UNIVERSITY PLACE** (the “City”), a Texas home rule municipality with its principal office being located at 3800 University Blvd., West University Place, TX 77005, and the **WEST UNIVERSITY LITTLE LEAGUE** (the “Association”), a Texas non-profit corporation, whose address is [address], and is entered into as of the date set forth below, with terms and conditions as follows.

**RECITALS**

**WHEREAS**, the City is authorized to establish, provide, acquire, maintain, construct, equip, operate and/or supervise recreational facilities and programs (*see, e.g.*, Tex. Loc. Gov’t Code Ch. 332); and

**WHEREAS**, the Association is a nonprofit corporation organized under the laws of the State of Texas, recognized under the IRS Code Sec. 501(c)(3), and provides baseball programs on a nonprofit basis in the City of West University Place; and

**WHEREAS**, the Association acknowledges that the City and the West University Tri-Sports Association (“Tri-Sports”) entered into a Memorandum of Understanding (the MOU) on [date] regarding the use of certain fields; and

**WHEREAS**, the City and the Association recognize that sports programs are beneficial and that they may contribute to:

- a) quality, family-oriented recreational opportunities for the citizens of West University Place;
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- c) promotion of citizen involvement in the decision-making process for recreation opportunities;
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(b) Provide the Association with the contact phone number and email of two (2) City employees, including the City Manager, to act as liaisons to the Association.

(c) For purposes of this Agreement, City Manager means the City Manager of the City or the City Manager's designee as provided in writing by the City Manager to the Association, provided, however, any requirement for written notice shall be provided to the City Manager with copy to the City Manager's designee.

#### **SECTION 4. OBLIGATIONS OF THE ASSOCIATION.**

The Association and City agree that the fall season begins around September 1st of each year; and the spring season begins around January 1st of each year. The Association covenants and agrees that it shall:

(a) Provide the City Manager/Designee in writing a calendar of events and the Program activities for all seasons no later than thirty (30) days prior to the first day of the season.

(b) Provide scorecards, bases, balls, portable safety screens, field preparation tools and equipment, umpire and concession personnel, security personnel, and any other facilities, equipment, services, or personnel necessary to run the Program.

(c) Provide the City Manager/Designee in writing the contact phone numbers and emails of two (2) persons to act as liaisons to the City and with the right to provide information or act on behalf of the Association regarding the Program.

(d) Be responsible for the safety and conduct of the officers, employees, volunteers and participants of the Association, including players, parents, spectators, volunteers, and the Association's employees, during the Program activities or at any time related to the Program activities, and provide background checks of personnel and volunteers and security personnel as needed to comply with this provision. The Association shall prohibit smoking, the consumption or possession of alcoholic beverages, and excessive noise during the Program activities.

(e) Be responsible citizens, including trash pickup at the conclusion of the Program activities each day. The Association shall promptly notify the City Manager/Designee of any damage or injury to persons or property or acts of vandalism that occur on any City property used during the Program. The Association shall immediately notify the City Manager/Designee of any existing or developing hazardous or dangerous conditions on any City property.

(f) Not make any modification to any City property (including the Recreation Center or Baseball Fields on HISD Campus) without the prior approval of the City Manager/Designee. Additionally, the Association shall not place any locks or other barrier to entry on any portion of any City property without prior written approval of the City Manager/Designee and without providing to City copies of all keys or other entry mechanisms.

(g) Schedule the Program activities only between the hours of 8:00 a.m. and 9:00 p.m., except as permitted by the MOU.

(h) Agree to include and recognize the City's support for the Association's baseball programs. The Association agrees to include a notice in any newsletters or promotional literature, including website, social media pages, tickets, and advertisements, that the Program and its activities are "supported by the City of West University Place" or other notice approved by the City Manager/Designee. The notice shall be included, at a minimum, on the home page of the website or social media platform, on any page of the Association's website or social media platforms that recognizes two or more donors, and on the front page of any newsletter or advertisement.



(i) Operate and provide its Program activities contemplated by this Agreement under the name “West U Baseball”, “West U Little league”, or “West University Little league”.

(j) Provide the City copies of all newsletters, financial reports, annual reports, and other documents regularly provided to the parents of participants, participants or membership of the Association.

(k) Provide, at the time of the execution of this Agreement and within ten (10) days of any material changes, a copy of the Association’s incorporating documents (Certificate of Formation and Bylaws), IRS designation, list of current Board of Directors and staff, annual financial statement, audit, and annual report to the Board.

(l) **Income; Fees.** The Association may charge a fee for participation in Association sponsored events; provided, however, all fees shall be used sole for the purpose of covering expenses directly associated with the baseball programs and activities of the Association. All income derived from Association baseball activities, including fees, advertising, concessions and sales, shall be the exclusive property of the Association.

## **SECTION 5. PAYMENT.**

(a) **Payment.** The City shall pay the Association for the administration of the Program in the amount of sixty-two thousand five hundred dollars (\$62,500) per year, paid in four (4) equal installments each three months. The first payment shall be due June 1, 2021, in the amount of \$15,625. Provided, further, the City’s annual payments shall not exceed the lessor of:

1. 25% of the gross revenues (excluding the City's payments) collected or received by the Association during the contract year (each 365 day period ending May 31); or
2. \$400 per team per season.

(b) **Overpayments; refund.** In the event the City’s annual payments to the Association exceed the amount provided by subsection (a), the Association agrees to return the excess payments to the City within thirty (30) days of the end of the contract year.

(c) **Timing of Payments.** The Association shall invoice the City within ten (10) days of the execution of this Agreement and every three (3) months thereafter for the term of this Agreement. The invoice shall include a copy of the Association’s most recent financial statement, and the information and other reports required under Sections 3 and 6 of this Agreement. All payments to be made by the City to Association, including the time of payment and the payment of interest on overdue amounts, are subject Chapter 2251 of the Government Code (the Texas Prompt Payment Act).

(d) **Annual Appropriation.** The Association hereby acknowledges that payments made to the Association under this Agreement are subject to annual appropriation by the City, and that the City shall only provide payments to the Association if such funds have been approved and dedicated for such a purpose in the City’s annual budget. In the case that any payment

contemplated under this Agreement are not approved by the City, then the Association shall have the right to terminate the Agreement upon written notice to the City. (Section 5, Article XI, Texas Constitution).

## **SECTION 6. ANCILLARY FINANCIAL MATTERS; RECORDS; REPORTS.**

(a) Annual Financial Statements. The Association shall provide to the City complete and unredacted copies of the Association's quarterly and year-end financial statements, together with any attached or referenced schedules, beginning upon the execution of this Agreement with the financial statements for the Association's fiscal year ending in 2020 and the first quarter of 2021, and within thirty (30) days of the end of each quarter or each contract year as appropriate during the term of this Agreement. Upon the City's request, the Association shall cause any affiliated or nonprofit entity acting in concert with the Association to provide the services to the City residents under this Agreement that entity's financial statements for the same prior period, which may include Tri-Sports, South Campus Sports Association, or Greater West U Area Sports Association. The Association shall also provide the number of persons receiving money from the Association and the names and city of residence of the top ten (10) persons receiving money from the Association during the prior year, as well as the names and city of residence of any officers of the Association, either current or prior, or their immediate family receiving any monies from the Association, directly or indirectly, and the amounts and purposes thereof.

(b) Maintenance of Records. The Association shall insure that the Association maintains fiscal records and supporting documents for all expenditures of funds made under this Agreement and in a manner that conforms to generally accepted accounting principles (GAAP). The Association further agrees to retain the records for four (4) years after the conclusion or termination of this Agreement.

(c) Inspection of Records. The Association shall provide the City or any person or entity authorized by the City, including the City's auditor, to have the right of access to any documents, papers or other records of the Association, in order to make audits, examinations, excerpts, and transcripts. The right also includes time and reasonable access to Association's personnel for the purpose of interview and discussion related to such documents.

(d) Reports. In addition to the financial reports required above, the Association shall also provide the following information to the City with each invoice:

1. the current number of volunteers for the Association that are residents of the City; and
2. the current number of participants registered with the Association that are residents of the City.

## **SECTION 7. INSURANCE.**

Without limiting any of the other obligations or liabilities of the Association, the Association shall, at its own expense, procure, pay for and maintain during the term of this Agreement the minimum insurance stipulated in Exhibit A- Insurance, with companies duly licensed to write business in the State of Texas. Payment of any and all deductibles on each insurance policy shall be the responsibility of the Association.

**SECTION 8. RELEASE; INDEMNITY; INSURANCE BY CONTRACTORS.**

(a) RELEASE. THE ASSOCIATION HEREBY RELEASES CITY, ITS OFFICERS AND EMPLOYEES, FROM ANY ALL DEMANDS, CLAIMS OR LIABILITY OF ANY NATURE, WHICH MAY ARISE OUT OF OR OCCUR BY REASON OF ANY ACT OR OMISSION ON THE CITY'S PART, OR THE PART OF ANY OF ITS OFFICERS OR EMPLOYEES, ARISING OUT OF THE USE OF THE CITY'S PROPERTY, INCLUDING COSTS AND REASONABLE ATTORNEY FEES IN PROVIDING THE DEFENSE TO ANY CLAIM ARISING THEREFROM, INCLUDING ANY USE OF THE PROPERTY NOT ALLOWED UNDER THIS AGREEMENT BUT SANCTIONED BY THE ASSOCIATION, ALL EXCEPT TO THE EXTENT THE CLAIM ARISES FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CITY, ITS OFFICERS, OR EMPLOYEES.

(b) INDEMNITY BY CONTRACTORS. THE ASSOCIATION SHALL REQUIRE ITS CONTRACTORS AND SUBCONTRACTORS TO INDEMNIFY, DEFEND AND HOLD HARMLESS THE ASSOCIATION AND THE CITY AND THEIR OFFICERS, AGENTS AND EMPLOYEES FROM ANY AND ALL DEMANDS, CLAIMS OR LIABILITY OF ANY NATURE WHICH MAY ARISE OUT OF OR OCCUR BY REASON OF ANY ACT OF OMISSION ON THE CONTRACTOR OR SUBCONTRACTOR'S PART, OR THE PART OF ANY OF ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, AGENTS OR REPRESENTATIVES IN FURTHERANCE OF OR RELATED TO THE CONTRACT WITH THE ASSOCIATION.

(c) Responsibility for fines and taxes. The Association shall comply with the requirements of all applicable laws, rules, and regulations in connection with the services of Association and, except as expressly limited by Texas state law, shall exonerate, indemnify, defend, and hold harmless the City, its officers, agents and all employees from any and all liability, loss or damage resulting from third party governmental fines and fees arising out of noncompliance with such laws, rules and regulations, without limitation. The Association shall assume full responsibility for payments of Federal, State and Local taxes or contributions imposed or required under the Social Security, Worker's Compensation, and Income Tax Laws with respect to Contractor's employees.

(d) INDEMNIFICATION. THE ASSOCIATION SHALL INDEMNIFY THE CITY AND ITS OFFICERS AND EMPLOYEES FROM LIABILITY FOR DAMAGE TO THE EXTENT THAT THE DAMAGE IS CAUSED BY OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY SUBCONTRACTOR OF SUPPLIER COMMITTED BY THE ASSOCIATION, THE ASSOCIATION'S AGENT, CONSULTANT UNDER CONTRACT, OR ANOTHER ENTITY OVER WHICH THE ASSOCIATION EXERCISES CONTROL.

(e) ATTORNEY'S FEES. THE ASSOCIATION SHALL REIMBURSE, IN PROPORTION TO THE LIABILITY OF THE ASSOCIATION, THE CITY'S ATTORNEY'S FEES INCURRED DEFENDING THE CITY AGAINST A CLAIM BASED WHOLLY OR PARTLY ON THE NEGLIGENCE OF, FAULT OF, OR BREACH OF CONTRACT BY THE ASSOCIATION, THE ASSOCIATION'S AGENT, OR ANOTHER ENTITY OVER WHICH THE ASSOCIATION EXERCISES CONTROL.

(f) **Insurance by Contractors.** The Association shall require its contractors and subcontractors to carry for the benefit of the Association and the City the minimum insurance as noted in Exhibit A-Insurance, attached. The Association shall cause the City to be named as an additional insured under all such policies, and shall provide that such insurance shall not be cancelled or changed except upon fifteen (15) days prior written notice to the City.

## **SECTION 9. MISCELLANEOUS PROVISIONS.**

(a) **Non-Profit Status.** It is a material condition of this Agreement that the Association be operated as a non-profit corporation within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1985, as amended and future corresponding revenue laws of the United States. If the Association's non-profit status changes during the term of this Agreement, the Association must notify the City within thirty (30) days of such change.

(b) **Non-Discrimination.** Any member of the public who qualifies under applicable Association rules may participate in the Associations baseball programs and events, and the Association shall not discriminate against any person or group because of race, color, gender, religion, handicap, age, or national origin.

(c) **Political Activities.** The Association shall not permit any part of its net earnings to inure to the benefit of any private individual (except that reasonable compensation may be paid for personal services rendered to or for the Association affecting one or more of its purposes); carry on propaganda, or otherwise attempt to influence legislation; participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of any candidate for public office; or attempt to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration or voter turnout drives.

(d) **Force Majeure.** Should any Party be delayed or hindered in the performance of any of its obligations or duties under this Agreement because of a force majeure, then the Party so delayed or hindered shall be excused from such delay or hindrance to the extent that it is caused by the force majeure. The term "force majeure", as used in this Agreement, includes without limitation of the generality thereof: acts of God, strikes, lockouts, other personnel disturbances or job actions, acts of the public enemy, laws, regulations, orders of any kind of the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraining of government and people, civil disturbances, explosions, breakage or accidents to machinery or equipment, shortages of materials, equipment or supplies, or any other limitations of any Party, whether similar to those enumerated or otherwise, which are not within the reasonable control of the Party claiming such inability. If a Party is affected by strike, lockout or other personnel disturbance or job action, this Agreement does not compel the Party to acquiesce to any demand or position of any personnel or other party, it being understood that the strike, lockout, disturbance or action would be a force majeure for the duration thereof.

(e) **Non-Parties.** This Agreement shall bind and benefit the parties only. It shall not confer any rights or benefits upon any other party, nor may any other party enforce this Agreement or sue for any damages under this Agreement.

(f) Venue. The obligations of the parties to this Agreement are performable in Harris County, Texas, and exclusive venue for any legal action in connection with this Agreement shall lie in Harris County, Texas.

(g) Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Texas, without regard to conflicts of law or choice of law principals of Texas or any other state.

(h) Independent Contractor. No Partnership, Joint Venture or Joint Enterprise. The Association shall perform the work under this Agreement as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Association, the Association's officers, employees or volunteers in the means, methods, or details of the work to be performed by the Association under this Agreement. The City and the Association agree that the work performed under this Agreement is not inherently dangerous, that Association will perform the work in a workmanlike manner, and that Association will take proper care and precautions to insure the safety of the Association's officers, employees, volunteers and participants. It is specifically understood that the relationship described in this Agreement between the City and the Association is contractual in nature and is not to be construed to create an agency, partnership, joint enterprise or joint venture relationship between the City and the Association; nor shall one Party be liable for any debts incurred by the other Party in the conduct of such other Party's business or function.

(i) No Waiver of Immunity by City. Notwithstanding any provision of this Agreement to the contrary, nothing in this Agreement shall constitute a waiver by the City of any provisions of applicable law relating to any immunity or defense as may be available to the City on behalf of itself, its trustees, officers, employees, and agents.

(j) 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, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be considered as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

(k) Dispute Resolution Procedures. The Association and the City desire an expeditious means to resolve any disputes that may arise between them regarding this Agreement. If either party disputes any matter relating to this Agreement, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.

(l) Attorney's Fees. Should the City bring suit against the Association for breach of this Agreement or for any other cause relating to this Agreement, the City shall be entitled to seek an award of attorney's fees or other costs relating to the suit.



(t) Special Conditions. To the extent applicable under Chapter 2252, Texas Government Code, the Association certifies that, at the time of execution of this Agreement neither the Association, nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the same (i) engages in business with Iran, Sudan, or any foreign terrorist organization as described in Chapter 806 or 807 of the Texas Government Code, or Subchapter F of Chapter 2252 of the Texas Government Code, or (ii) is a company listed by the Texas Comptroller of Public Accounts under Sections 806.051, 807.051, or 2252.153 of the Texas Government Code. The term “foreign terrorist organization” in this paragraph has the meaning assigned to such term in Section 2252.151 of the Texas Government Code.

**THIS AGREEMENT IS AGREED TO AND EXECUTED** as of the \_\_\_ day of \_\_\_\_\_ 2021, by the Association and the City, signing by and through their duly authorized representatives.

**CITY OF WEST UNIVERSITY PLACE**

**WEST UNIVERSITY LITTLE LEAGUE**

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

EXHIBIT A- Insurance, attached.

## EXHIBIT A- INSURANCE

All insurance shall be written by an insurer licensed to conduct business in the State of Texas. The Association shall name the City as an additional Insured on the Association's general liability policy, and shall provide any defense provided by the policy. The Association shall, at its own expense, purchase, maintain and keep in force insurance that shall protect against injury and/or damages that may arise out of or result from operations under this Agreement, whether the operations be by the Association, its employees, or by any agent, subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, of the following types and limits:

+Worker's Compensation Insurance (with Waiver of Subrogation in favor of the City, its officers, agents and employees), with statutory limits.

+Commercial General Liability occurrence type insurance (No "XCU" restrictions shall be applicable). Products/completed operations coverage must be included.

A. Bodily injury five hundred thousand dollars (\$500,000) single limit per occurrence or five hundred thousand dollars (\$500,000) each person/ five hundred thousand dollars (\$500,000) per occurrence.

B. Tangible Property Damage one hundred thousand dollars (\$100,000) per occurrence.

C. Minimum aggregate policy year limit one million dollars (\$1,000,000).

+Commercial Automobile Liability Insurance (including owned, non-owned and hired vehicles coverages):

A. Minimum combined single limit of five hundred thousand dollars (\$500,000) per occurrence for bodily injury and tangible property damage.

B. If individual limits are provided minimum limits are three hundred thousand dollars (\$300,000) per person, five hundred thousand dollars (\$500,000) per occurrence for bodily injury and one hundred thousand dollars (\$100,000) per occurrence for property damage.

+Contractual Liability Insurance covering the indemnity provision of this Agreement in the same amount and coverage as provided for Commercial General Liability Policy, specifically referring to this Agreement by date, job number and location.



**City of West University Place  
Harris County, Texas**

**ORDINANCE NO. XXXX**

**AN ORDINANCE AMENDING THE BUDGET OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2021 AND ENDING DECEMBER 31, 2021; CONTAINING FINDINGS AND PROVISIONS RELATING TO THE SUBJECT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, it is found and determined that changes in the current budget are necessary for municipal purposes and that amendments are necessary for emergencies of the kind contemplated by state law, and it is formally found, determined and declared that such emergencies exist;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WEST UNIVERSITY PLACE, TEXAS:**

Section 1. That the budget of the City of West University Place for the 12 month period beginning January 1, 2021, and ending December 31, 2021 as heretofore adopted be, and it is hereby, amended as shown in Exhibit A attached.

Section 2. The City Council approves, adopts and ratifies the findings set out in the preamble hereof and directs that the City Secretary file a copy of this ordinance with the county clerk, in the same manner as original budgets are required to be filed.

Section 3. All ordinances and parts of ordinances in conflict herewith are hereby repealed to the extent of the conflict only.

Section 4. If any word, phrase, clause, sentence, paragraph, section or other part of this ordinance or the application thereof to any person or circumstance, shall ever be held to be invalid or unconstitutional by any court of competent jurisdiction, neither the remainder of this ordinance, nor the application of such word, phrase, clause, sentence, paragraph, section, or other part of this ordinance to any other persons or circumstances, shall be affected thereby.

Section 5. The public importance of this measure and the requirement of the law create an emergency and an urgent public necessity requiring that this ordinance be passed and take effect as an emergency measure, and a state of emergency is hereby declared. This ordinance is accordingly passed as an emergency measure and shall take effect immediately upon adoption and signature.

**PASSED, APPROVED, AND ADOPTED ON FIRST AND FINAL READING** on the 12<sup>th</sup>  
day of May, 2021.

**SIGNED:**

**ATTEST:**

\_\_\_\_\_  
Bob Higley, Mayor

\_\_\_\_\_  
Thelma Gilliam, City Secretary

**RECOMMENDED:**

**REVIEWED:**

\_\_\_\_\_  
Dave Beach, City Manager

\_\_\_\_\_  
Olson & Olson, LLP, City Attorney  
By Scott Bounds

Exhibit A

CITY OF WEST UNIVERSITY PLACE, TEXAS  
BUDGET AMENDMENT

	2021 Budget	Amendment May 10, 2021	2021 Amended Budget
<b>GENERAL FUND - Parks &amp; Recreation Administration</b>			
Youth Sports	\$ -	\$ 125,000	\$ 125,000